

No. 13597

Supreme Court of Illinois

Baker

vs.

Hays

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 157

Baker

vs

Henry

13597

Replead

State of Illinois vs April Term 1862
Supreme Court

157
Alonzo Baker }
vs: }
Alfred Hayes } Appeal from Warren.

And now comes said
appellee by Reed & Strain & E. F. Bull his
attorneys and moves the court to strike
the Bill of exceptions from the records
in this cause for the reason following
— viz: The Bill of exceptions were filed
(see page 55 of Record) on the 13th day of
December A.D. 1861, and it does not appear
in any manner that that was one of the
days of the term of court at which said
cause was tried neither does it appear
from the record that time was given after
the adjournment of the court in which
to prepare and file a bill of exceptions.
Neither does it appear from the record
that the bill of exceptions was filed in open
court —

E. F. Bull

Apples Atty

Suggestions

1st This cause was tried at Oct. Term of
Warren circuit for the year A.D. 1861
and it is not at all probable that that
Term of court lasted until the 13th of Dec.
(over)

1861, ~~and~~ ~~where~~ the probabilities are against
that supposition

2nd This court cannot presume that the
13th of Dec. 1861. was one of the days of the
Oct. Term 1861 of the Western Cir. Circuit Court,
nor that the bill of exceptions was signed in
open court. — What does not appear is
presumed not to exist — and those facts
must appear affirmatively or else the Bill
of exceptions is improper in the record

E. F. Bull

Apples City

188 157

Alonso Baker

vs

Alfred Hoys

Mo. to State Bill of
Exceptions from Record
& Exceptions

It is remembered that on the tenth day
of October A.D. 1860 an Appeal was filed in
the office of the Clerk of the Circuit Court
of Warren County, Illinois which said
appeal papers are in the words & figures
following: to Wit:
State of Illinois ³/₄
County of Warren ³/₄

Alfred Nays being duly sworn
deposes and saith that he and John Job
is now lawfully entitled to the possession
of the South West quarter of Section nineteen
(19) in Township nine North of the base line
and one (1) West of the fourth (4) principal
meridian in the County of Warren in the
State of Illinois, that this deponent has
been lawfully entitled to the possession
of the said Land since the sixteenth (16th)
of February Eighteen hundred and sixty
That on or about the fourteenth (14th)
day of February Eighteen hundred and
Sixty (1860), this deponent was in the actual
possession of said Land

That on or about the (16) sixteenth day
of February 1860 while he deponent was
in the actual possession of the said Land
and claimed it, one Alonzo Baker made
an entry into said Land when entry was
not given said Baker by law, that said

Baker continued in possession of said Land and now detains willfully, forcibly and wrongfully and ever since the day of said entry hath forcibly, willfully and wrongfully detained said Land from the possession of him the said Alfred Nays. Your affiant further states that the said Alonzo Baker wrongfully entered into said Land on or about the said sixteenth (16) day of February 1860. and without right and kept the said Alfred Nays from regaining the possession of said Land and now withholds and ever since said entry hath withheld possession of said Land from the said Alfred Nays. Your affiant further states that the said Alonzo Baker was not at the time of said entry lawfully entitled to the possession of said premises, and further that on the (17) seventeenth day of February (1860) Eighteen hundred and sixty, Alfred Nays did by his Agent A. M. Lewis make a demand in writing for the possession of said premises from said Alonzo Baker and the said Baker refused to give up possession of said premises, Alfred Nays Subscribed and sworn to before me this the 24th day of March 1860. N. H. Bogue J. P.
Filed Oct 10th 1860
H. T. Ledy Clark

Baker continued in possession of said Land and now detains willfully, forcibly and wrongfully and ever since the day of said entry hath forcibly, willfully and wrongfully detained said Land from the possession of him the said Alfred Nays. Your affiant further states that the said Alonzo Baker wrongfully entered into said Land on or about the said sixteenth (16) day of February 1860. and without right and kept the said Alfred Nays from regaining the possession of said Land and now withholds and ever since said entry hath withheld possession of said Land from the said Alfred Nays. Your affiant further states that the said Alonzo Baker was not at the time of said entry lawfully entitled to the possession of said premises, and further that on the (17) seventeenth day of February (1860) Eighteen hundred and sixty, Alfred Nays did by his Agent H. M. Lewis make a demand in writing for the possession of said premises from said Alonzo Baker and the said Baker refused to give up possession of said premises, Alfred Nays Subscribed and sworn to before me this the 24th day of March 1860. H. H. Bogue J. P.
Filed Oct 10th 1860
H. T. Ledy Clark

State of Illinois
 County of Warren To the People of the
 State of Illinois, to the Sheriff
 or any Constable of said County Greeting!
 Whereas complaint hath been made before
 me a Justice of the peace of the County of
 Warren and State of Illinois that Alonzo
 Baker on or about the sixteenth day
 of February 1860 in the County of Warren
 and State of Illinois did unlawfully
 enter into the Land and possession of
 Alfred Nays, then situate and known
 and described as follows, to wit, The
 South West Quarter of Section nineteen
 (19) Nine north of the base line and one
 (1) West of the fourth principal Meridian in
 the County of Warren and State of Illinois
 and then and there did wilfully, forcibly
 & wrongfully claim the possession of said
 Land against the Express will of the said
 Alfred Nays who claimed to have the right
 of possession of said Land and to have
 been in the actual possession thereof at
 the time of said illegal entry.

We therefore command you to Summon
 the said Alonzo Baker to appear before
 me at my office in Monmouth on the
 2nd day of April, 1860 at 10 o'clock AM.
 to answer said complaint and have

you then and then this writ.
 Given under my hand and seal this 24th
 day of March 1860

H. H. Bogue J. P. (Seal)

Personally served the within by reading the
 same to the within named defendant,
 Dated this 28th day of March 1860.

Milage .80[¢]

J. A. Paynton

Service .25

Const

Filed Oct 10 1860.

W^m Laferty Clerk

State of Illinois
 Warren County Pleas before the Honorable
 Aaron Tyler Judge of the tenth Judicial
 Circuit, of the State of Illinois. At a Circuit
 Court begun and held at the Court House
 in Monmouth in the said County of Warren
 and State of Illinois on the Fourth Monday
 in the Month of October in the year of our Lord
 One thousand eight hundred and sixty. It
 being the 22nd day of said Month and year.

Present Hon Aaron Tyler Judge
 James N. Stewart State Attorney
 Seth Smith Sheriff
 W^m Laferty Clerk

5
Alfred Hays^s vs. Alonzo Baker^d Appeal.

And afterwards to wit on the 3rd day of November 1860 the following order was entered upon the records of said Court which was as follows to wit.

Alfred Hays^s vs. Alonzo Baker^d Appeal.

This day came the defendant and enters his motion for a rule on the Plaintiff to give security for costs herein.

And afterwards to wit on the 17th day of November AD 1860 the following order was entered upon the records of said Court which was as follows.

Alfred Hays^s vs. Alonzo Baker^d Appeal.

This day came the Plaintiff by his attorney and moves the Court to dismiss the appeal herein, for want of sufficient Bond. Thereupon came the said defendant and enters his motion for leave to file sufficient Bond in this case. And after hearing the said motions it is ordered by the Court that the motion to dismiss the

5

6
appeal. herein be overruled, And that the
said defendant have leave to file sufficient
Bond in this cause to day.

State of Illinois }
Warren County }
} Pleas before the
Honorable Charles. B. Lawrence Judge of
the tenth Judicial Circuit of the State of
Illinois, At a Circuit Court begun and held
at the Court House in the City of Monmouth
in Warren County and State of Illinois on
the Fourth Monday in the month of October
in the year of Our Lord One thousand eight
hundred and sixty one, It being the twenty
eighth day of said month.

Present Now Charles B. Lawrence, Judge.

James N. Stewart States Attorney
David Turnbull Sheriff
W. Laferty Clerk.

Alfred Nays }
vs. } Appeal
Alonzo Baker }

And afterwards to wit on the
6th day of November A.D. 1861 the following
order was entered upon the records of said
Court which was as follows to wit.

7

Alfred Hays
vs
Alonzo Baker

3
3
3
Appeal

This day came Plaintiff by attorney and on his motion it was ordered by the Court that an attachment issue here in for George W. Savage. Thereupon came the parties and their attorneys and issue being joined for trial they put themselves upon the Country, - thereupon came a jury to wit, Messrs. Palmer, Larnard Kidder, G. M. Littleton, W. H. Frantz, Benjamin Ketting, James Milliams, J. N. Grandall, William Taylor, A. S. Markham, T. J. Callwell, S. C. Smith & Addison Basworts who being duly sworn to well and truly try the issue joined herein, and after hearing a part of the evidence, and the hour of adjournment having arrived, the jury were permitted to separate to meet the Court at 8 1/2 o'clock to morrow morning.

And afterwards
AD 1861

to wit on the 7th day of November, the following order was entered upon the records of said Court which was as follows to wit.

Alfred Hays
vs
Alonzo Baker

3
3
3
Appeal..

7

5
Alfred Hays^s vs Alonzo Baker^d Appeal.

And afterwards to wit on the 9th day of November 1860 the following order was entered upon the records of said Court which was as follows to wit.

Alfred Hays^s vs Alonzo Baker^d Appeal.

This day came the defendant and enters his motion for a rule on the Plaintiff to give security for costs herein.

And afterwards to wit on the 17th day of November AD 1860 the following order was entered upon the records of said Court which was as follows.

Alfred Hays^s vs Alonzo Baker^d Appeal.

This day came the Plaintiff by his attorney and moves the Court to dismiss the appeal herein, for want of sufficient Bond. Thereupon came the said defendant and enters his motion for leave to file sufficient Bond in this case. And after hearing the said motions it is ordered by the Court that the motion to dismiss the

5

appeal. herein be overruled, And that the said defendant have leave to file sufficient Bond in this cause to day.

State of Illinois ³/₃ J.
 Warren County ³/₃ Pleas before the
 Honorable Charles. B. Lawrence Judge of
 the tenth Judicial Circuit of the State of
 Illinois, At a Circuit Court begun and held
 at the Court House in the City of Monmouth
 in Warren County and state of Illinois on
 the Fourth Monday in the month of October
 in the year of Our Lord One thousand eight
 hundred and sixty one, It being the twenty
 eighth day of said month.

Present Now Charles. B. Lawrence, Judge.

James. N. Stewart States Attorney
 David Turnbull Sheriff
 W. Laferty Clerk.

Alfred Nays ³/₃
 vs. ³/₃ Appeal
 Alonzo Baker ³/₃

And afterwards to wit on the
 6th day of November AD 1861 the following
 order was entered upon the records of said
 Court which was as follows to wit.

7

Alfred Hays
vs
Alonzo Baker

Appeal

This day came Plaintiff by attorney and on his motion it was ordered by the Court that an attachment issue here in for George W. Savage. Thereupon came the parties and their attorneys and issue being joined for trial they put themselves upon the Country, - thereupon came a jury to wit, L. S. Palmer, Larnard Kidder, L. M. Littleton, W. H. Frantz, Benjamin Kitting, James Milliams, J. N. Brandall, William Taylor, A. S. Markham, T. J. Callwell, S. C. Smith & Addison Basworth who being duly sworn to well and truly try the issue joined herein, and after hearing a part of the evidence, and the hour of adjournment having arrived, the jury were permitted to separate to meet the Court at 8 1/2 o'clock to morrow morning.

And afterwards
AD 1864

to wit on the 7th day of November, the following order was entered upon the records of said Court which was as follows to wit.

Alfred Hays
vs
Alonzo Baker

Appeal

7

This day again came the parties, their attorneys, and also the jury empanelled herein on yesterday, and having heard the evidence and received the instructions of the Court, as well on behalf of the defendant as of the said Plaintiff, upon their oaths do say, "We the Jury find the defendant guilty in manner and form as charged in the Complaint, Whereupon came defendant and entered his motion for a new trial.

And afterwards to wit, on the 15th day of November AD 1861 the following order was entered upon the records of said Court, which is as follows to wit.

Alfred Kay. 3
 3
 3 Appeal.
 3
 Alonzo Baker

This day came on this cause to a hearing on defendants motion for a new trial, which motion is overruled by the Court, thereupon came defendant and enters his motion in arrest of judgment, and also in arrest of Writ of restitution, which motions are overruled by the Court, - thereupon it is considered by the Court that the defendant.

9

is guilty of wrongfully withholding the possession of the premises in manner and form as charged by Plaintiff in his complaint mentioned and described. And that a Writ of Restitution issue herein. And it is further ordered by the Court that the Plaintiff have and recover of said defendant his costs herein expended and may have execution therefor. Thereupon came the defendant and prayed an appeal to the Supreme Court, which is allowed by the Court upon the said defendant entering into bond within sixty days in the penal sum of (\$600) Six Hundred dollars with Alexander G. Kirkpatrick as security conditioned according to law.

9

State of Illinois³
 County of Warren³ Warren Circuit Court October
 Term A.D. 1861.

Alfred Hayes³
 vs Appeal³ Forcible Entry & Detainer.
 Alonzo Baker³

Be it remembered that on the trial of said Cause, the Plaintiff in order to sustain the issue on his part, introduced H. M. Loris as a witness who being first duly sworn testified that the plaintiff occupied the Quarter of land in dispute; that plaintiff went into the possession of it in the Spring of the year 1859. The plaintiff then showed to the witness a lease of the land in controversy from Robert Fletcher to him dated October 29th A.D. 1858 as follows to wit. This Indenture made this twenty ninth day of October 1858, between Robert Fletcher of the first part and Alfred Hayes of the second part Witnesseth that the said party of the first part, for and in consideration of the Covenants and agreements hereinafter mentioned to be kept and performed by the said party of the second part his executors, administrators and assigns hath demised and leased to the said party of the second part all those premises situate lying and being

in the Town of Berwick in the County of Warren and State of Illinois known and described as follows, to wit: The South West Quarter of Section (19) Nineteen in Township (9) North (1) one West of the (4) fourth principal meridian. To have and to hold the said above described premises with the appurtenances unto the said party of the second part, his executors, administrators and assigns from the first day of March 1859 for and during and until the first day of March one thousand eight hundred and sixty one. And the said party of the second part in consideration of the leasing of the premises aforesaid by the said party of the first part to the said party of the second part doth Covenant and agree with the said party of the first part, his heirs, executors, administrators and assigns to pay the said party of the first part as rent for the said demised premises, the sum of Three hundred and seventy five dollars per year payable each year in advance and the pay is to be applied on a Note held by Nays against Fletcher and Fletcher guarantees the peaceable possession of the place to Nays & Nays till the Hedge. And the said party of the second part further Covenants with the said party of the first part that

at the expiration of the term in this lease mentioned, he will yield up the said demised premises to the said party of the first part in as good condition as when the same were entered upon by the said party of the second part, inevitable accidents and ordinary wear excepted. And if at any time said term shall be ended at such Election of said party of the first part his heirs, executors administrators or assigns as aforesaid, or in any other way, the said party of the second part his executors, administrators and assigns do hereby covenant, and agree to surrender and deliver up said above described premises and property, peaceably to the said party of the first part his heirs, executors administrators and assigns immediately upon the termination of said term as aforesaid. And if he shall remain in possession of the same ten days after notice of such default or after the termination of this lease, in any of the ways above named he shall be deemed guilty of a forcible detainer of said premises under the Statutes and shall be subject to all the conditions and provisions above.

13

named. And to eviction and removal
forcibly or otherwise with or without pro-
cess of law as above stated. In testimo-
ny whereof the said parties have hereunto
set their hands and seals the day and
year first above written.

H. M. Lewis Robert Fletcher
Witness Alfred Hayes

Paid on the within Bond Three Hundred
and Seventy five Dollars, March 1st 1859.
And asked the witness if he knew any
thing about it. To which the witness re-
plied that he saw it executed by Fletcher
& the plaintiff and delivered to the plaintiff
on or within a day or two of its date.

That plaintiff went into the occupancy of
the premises under said lease in the
spring of 1859 in March. Mr Maldron
occupied the House on the land until
the fall of the year 1859. The land was
all fenced and under cultivation.

There was a small dwelling house, a
temporary stable & Crib on the land.

The first year the plaintiff himself cultiva-
ted about 40 or 45 acres of the premises.
He had in about 30 acres of Corn & Hungarian
grass. Says the plaintiff leased in 1859 a
part of it to Ray who that year cultivated
a part of it. Maldron also leased a part

plaintiff a part of it for that year + cultivated it.

The plaintiff was a bachelor + boarded sometimes at Otho Carrs a short distance from the premises. The first winter after the plaintiff leased the premises he kept his horses, wagon, harness + farming implements on the farm near the house. Plff during that fall + early part of winter + until after defendant moved into the house, - had seed corn in the house on the premises. Plff gathered Corn on the premises in fall + winter of 1859 and shelled it up on the farm. - I saw corn in the pen belonging to Nays that I supposed was raised on the farm. I hauled some of it to Monmouth for Nays. So did Baker. He hauled one day. Mr Waldron had used the house the fall before Baker moved in. Waldron moved out the fall of 1859. He also testified that the tenants of plaintiff moved off the premises in the fall of 1859 and he understood left the Country for Missouri.

The plaintiff then offered in evidence the said lease from Fletcher to him, which was admitted by the Court + read in evidence to the jury, to the reading of

which the defendant objected, but the Court overruled the objection and permitted the lease to be read, to which decision the defendant at the time excepted.

This witness further stated that the part of the quarter occupied by Waldron was about the house including the house, and that the part cultivated by plff was in another part of the field; - that Waldron occupied the house until Fall, and during the winter no family lived in the house; that both Waldron and Ray had rented of plff in March 1859 for one year, but that both had gone off in the Fall of 1859; that a part of Rays corn was still standing on the ground when defendant entered; that when defendant entered no person was living in the house and plff was boarding with one Hodges. The said Witness was then further examined by the plaintiff and testified that he served a notice on the defendant to quit on the 16th day of February AD 1860. or within a day or two of that time. The plaintiff then exhibited to the witness a notice dated February 16th AD 1860. in the words & figures following, to wit:

To Mr Alonzo Baker

Sir. Take notice that

I hereby demand that you quit and immediately deliver up possession of the South West Quarter of Section nineteen in Township nine North of Range one West of the fourth principal meridian in Warren County Illinois, being the same now occupied by you. Mr H. M. Lewis is hereby authorized to receive possession of the same for me. Dated this the 16th day of February A.D. 1860.

Alfred Hayes.

Filed Oct 10 1860:

W. Laferty, Clerk.

And asked the witness if that was or not a true Copy of the notice he served on the defendant at the time above stated, to which the witness replied that it was a true Copy of the Original notice he served on the said Defendant, That the Defendant was in the possession of the premises and living in the house when he served the notice and continued to live there until now. That the defendant laughed about it when I served the notice on him.

The plaintiff then offered the Copy of the said notice identified by said witness as a true Copy of the original, in evidence which was admitted by the court and.

the same read in evidence to the jury without objection.

On Cross Examination the said witness testified that he did not certainly know how much of the land was cultivated by the plaintiff - that plff's part was on the east part of the field. Kays kept his team on the place. He, Plff; did not live on the farm after Maldron moved away - No family lived in the house Maldron leased of Kays: Ray had a part of the land. He also cribbed his corn near the house. I do not wish to speak definitely of the quantity Kays cultivated. The tenants of Kays went off the fall of 1854. The plaintiff then called as a witness in his behalf William Hodger who being first duly sworn testified that he lived fifty rods from the land in dispute that in 1854 Kays, Maldron, Ray & Capps, cultivated the land. Maldron, Ray, & Capps as tenants of Kays, Kays exercised control over the premises, Kays was not a man of family Kays worked on the premises that summer & winter. He sold what he grew to feeders. Had a pile of corn near the stable. He gathered the corn & threw it in piles in the field. In the morning of February 16th 1860 he heard persons talking before it was fairly light. When they got up to the house on

the farm in dispute they stopped & soon the witness stated, he saw them. - that he saw the family in the house that day. It was just 4. O'Clock. when I heard them. It was the defendant & his family in the house that I saw that day & he was satisfied it was them he heard talking. At that time Nays horses or mules were in the stable about 50 yards. from the house. - That in the year 1859 Nays cultivated about 50 acres of the land & the others cultivated the balance as Nays tenants - That both Waldron & Ray left the premises in the fall of 1859. for the state of Missouri. That plff had hauled lumber on the land to make corn cribs & put the tenants Corn in. That the plaintiff kept his farming utensils in the temporary stabling during the winter & worked on the farm during the winter & summer. The left is still living on the premises. The witness further stated that he did not know of plaintiffs making any use of the house after Waldron went out, unless he might have had some seed-corn stored there. There was a pile of corn near the stable. The plaintiff had put up a pen and his tenants had put corn in. The corn raised by the plaintiff he had sold to cattle men.

On cross examination the witness stated that he was present at a conversation between the plaintiff and Robert Cameron at witnesses house, he thought in February 1860 & before the 16th. He came to see plaintiff about the premises in controversy, that Cameron wanted to rent the premises to plaintiff but the plaintiff wanted to hold the premises under his lease for two years from Fletcher. That before Cameron left he said to plff, that he would take so much for rent & would give the plff, a week to think of it, That the plaintiff did not entirely give up the possession of the premises, He was to have a week to consider & was to meet Cameron in 'Wormouth. Cameron claimed to have had Fletcher's title, Cameron claimed to have a Sheriff's title, During the examination of this witness two papers were shown to him by defendants counsel and one by plaintiffs counsel, which witness swore was executed by Cameron and plaintiff at the conversation referred to, and related to the possession of this land. On being shown these papers the witness testified that the plaintiff agreed to give up possession on the conditions specified in the papers, but the said papers were not

offered in evidence by either plaintiff or defendant nor either of the papers.

On re-examination the witness stated that Cameron told the plaintiff that he would throw him out of the place unless he rented them of him - Hays then told Cameron that he had a lease for two years & that he would hold on - Cameron then told the plaintiff that unless he made the arrangement he would throw him out as he had a better title than Fletcher. The Hays objected to Baker occupying the premises - objected that day.

The plaintiff here rested.

The defendant to maintain the issue on his part, then called N. C. Hammond who being first duly sworn testified that a few days before Baker moved into the house & premises the plaintiff went over to the defendant & requested the defendant to go up and rent the premises from Robert Cameron & that the plaintiff would sub-let a part of the premises from the defendant. This was some time in February 1860. The defendant went off the next morning for the purpose of as defendant stated at the time, of renting the premises from Cameron & came back

in the evening after being absent all day & said he had rented of Cameron.

On cross examination the witness stated that he lived in Warren County in 1860 - Was traveling around most of the time - That Pfff said he wanted Deft to rent the premises & he would till a part & board with Defendant & furnish a part of the provisions for the family.

The Defendant then called William Baker, who testified that he was a brother of the Defendant, that he helped the defendant move to the house on the premises in controversy - That the first load was taken to the house in the afternoon in day light & about 4 O'clock & that next morning they made an early start, because he & his brother wanted to go to Monmouth & return that day - & that there was no one occupying the house when they went in.

On cross examination the witness said that the front door was locked, but that the back door was not, There was a little corn in the house at the time they went in, and nothing else - that the key was on the inside of the front door Upon re-examination the witness said that the Deft when he went into the possession of the premises stated that he went in as the tenant of Robert Cameron.

The defendant then called George W. Savage, who testified that the entry of the defendant so far

as he knew was not with the consent of the plaintiff - that there was no conspiracy between plff. & the witness Savage that he was to lease said premises to plff. & that this suit was not brought for the sole & only purpose of putting said Savage into the possession of said premises - That the witness had not entered into any agreement with said plff. to keep him harmless from the payment of all costs & expenses in the prosecution of this suit, & that in the event of the plffs. succeeding, there was no arrangement by which the possession was to be transferred to the witness.

The witness further testified that after the defendant went into possession of the premises in controversy and before the commencement of this suit he had given a lease of the premises to the plaintiff in his own name though he claimed to act for Robert Fletcher - That he had also, at the time the lease was executed signed a receipt on a separate piece of paper to the plaintiff for all rent to be due on the lease.

The Court here arrested this course of examination as irrelevant, whereupon the defendant offered to prove by the witness

that after the entry by the defendant on the premises in controversy Robert Cameron had obtained the title of Fletcher, - that the witness Savage claiming an adverse title to said premises, pretended to lease said premises to said plaintiff, and that by arrangement between said Savage and said plaintiff the present suit was brought by said plaintiff for the sole purpose of putting said Savage into the possession of said premises, and that said Savage had entered into an agreement with the plaintiff to save him harmless from all costs + expenses in this suit, and that in the event of said plaintiff recovering then the possession of the premises was to be transferred to said Savage; but the Court on the ground that the witness had been already interrogated on these points, and because the evidence was in itself immaterial, decided that the examination of the witness for the purpose named should be prosecuted no further, to which decision of the Court the defendant then and there in open Court excepted. The defendant then offered in evidence the following records + papers to wit, which was admitted to be the records which they purport on their face to be,

State of Illinois } Warren Circuit Court
Warren County } September, J. AD 1858.

J. L. Usher assignee of
Wm R. Pendleton

v s.

Robert Fletcher &
Rhods S. Fletcher

Bill to Foreclose
Deceit.

And now this cause coming on to be heard and it appearing to the satisfaction of the Court that due and legal service has been had upon the said Defendants ten days before the sitting of the Court at which said Complainant's Bill was filed and the said defendants having been duly called and made default and the said Bill of Complaint having been referred to the Master in Chancery of said County to hear the proof and allegations of the parties and report to the Court and the said Master in Chancery having made report that the said defendant Robert Fletcher did on the 21 day of July AD 1855 execute his certain promissory note of Five hundred dollars to W. R. Pendleton, payable on the first day of May 1857 with six per cent interest from date, also that said Defendant Robert Fletcher and Rhods S. Fletcher his wife did on the day of the date of said

26

note execute a certain deed of Mortgage (the said note and Mortgage being the same mentioned in Complainant Bill), to secure the sum of Fifteen hundred dollars of which sum the said note formed a part which said Mortgage was given on the South West Quarter of section nineteen in township nine north range one West of the 4th principal meridian in Warren County and State of Illinois, - that said Mortgage was acknowledged on the 21st day of July 1855 before J. G. Madden a Notary Public for the County of Warren and State aforesaid and recorded in the Recorder's Office in said County in Vol 4 of Mortgages & pages 7 & 8. Also that the said note and Mortgage were assigned by W. R. Pendleton to the plaintiff in said Bill on the 23rd day of July 1855. And it also appearing from said report that there is now due on said note and Mortgage to said plaintiff the sum of Three hundred and ninety eight dollars & eighty eight Cents. Now is ordered, adjudged and decreed by the Court that the said defendant Robert Fletcher and Rhoda S. Fletcher pay to the said plaintiff the said sum of three hundred & ninety eight & ⁸⁸/₁₀₀ dollars on or before the 25th day of November AD 1858 and that in default of such payment the said master in Chancery James G. Madden Esq. sell said Mortgaged

premises at the door of the Court House in
said County between the hours of 10 a.m.
and 5 P.M., after giving the notice required
by law in the sale of land under execution
to the highest bidder for Cash and that he
execute to the purchaser or purchasers thereof
a certificate of purchase of said premises
and that he pay to the said J. L. Usher, a pe-
gnee aforesaid the said sum of three hundred
& ninety eight & ⁸⁸/₁₀₀ dollars and cents of this
suit and pay the balance if any to the defend-
ant and report his doings in this cause.

Filed Sept 20th 1858
W^m Lafaty Clk.

J. S. Thompson

State of Illinois
Warren County

I hereby certify that on this
day I did as the Master in Chancery of Warren
County in accordance with a decree rendered
at the September Term A.D. 1858, of the Warren
County Circuit Court in favor of J. L. Usher, a pe-
vs Robert Fletcher et al after having advertised
the same according to Law, offer for sale at
the door of the Court House in the City of Mon-
mouth at about the hour of 2 O'clock P.M. of
said day, at Public Auction for Cash the
following described Real Estate situated in

the County of Warren and State of Illinois to wit
The South West Quarter of section nineteen (19)
in Township nine (9) North of Range one (1)
West of the 4th principal meridian and
that the same was struck off to Arthur A
Smith the Plaintiff named in the said decree
for the sum of Four Hundred and thirty six
dollars and forty four cents, that being the
amount of the judgement and costs in the
aforesaid cause and the highest and best bid
for the same, and that the said Arthur A Smith
will be entitled to a Deed for the aforesaid tract
of Land on the 18th day of March A.D. 1860, unless
the same is redeemed according to law. Witness
my hand this 18th day of December A.D. 1858.

Filed Dec 23rd 1858 James G. Madden
Wm Lafaty, clk. Master in Chancery W.C.

Chancery.

State of Illinois ³/₁₂ of March Term A.D. 1858 of the
Warren County ³/₃ Warren County Circuit Court.
J. L. Usher apigne
of W^m R. Pendleton

vs.

Robert Fletcher et al

Report of James G. Madden
Master in Chancery Warren County Ills, as follows to
wit, I hereby report that on the 18th day of

December AD 1858 at about the hours of 2.0 clock
P.M. of said day, I offered for sale in accordance
with the decree in the above cause after having
advertised the same according to law the follow-
ing tract of land situated in the County of
Warren and state of Illinois & described as
follows to wit. The South West Quarter of section
Nineteen (19) in Township nine north of range
one west of the 4th principal Meridian and
the same was struck off to Arthur A. Smith for
the debt and costs being the sum of Four hundred
and thirty six & ⁴⁴/₁₀₀ Dollars for which I gave
him a certificate & filed a duplicate certificate
with the Clerk of the Circuit Court & also paid the
Costs of the said suit to the several persons entitled
thereto, all which is respectfully submitted,
Master Fees \$2. James G. Madder
Paid by Plaintiff Master in Chancery W. L.

State of Illinois
Warren County
J. L. Usher assignee
of W. R. Pendleton
vs
Robert Fletcher.

J. Seth Smith Sheriff of
the County of Warren and state of Illinois
do hereby certify that Robert Cameron has

8

this day deposited in my hands the sum of Four-hundred & eighty dollars & thirty five cents as redemption money on the South West Quarter of section nineteen (19) in Township nine (9) north of range one (1). West of the fourth principal meridian in Warren County State of Illinois which said tract or lot of land was sold on the 18th day of December A.D. 1858 by James G. Madden Master in Chancery as the property of Robert Fletcher on foreclosure of Mortgage in favor of J. L. Usher assignee of M. R. Pendleton to Arthur A. Smith for the sum of Four hundred & thirty six dollars & forty four cents.

Given under my hand & seal this 19th day of December A.D. 1859.

(Seal) Seth Smith, Sheriff of Warren County

(Seal). By Jas A Smith Deputy.

Filed & recorded Dec 20th 1859

Wm Laferty, Ck.

United States of America
State of Illinois
County of Warren

At a regular Term of
the Circuit Court of said County of Warren, begun
and holden at the Court House in Mornmout in
said County of Warren on Monday the twenty fourth
day of October in the year of Our Lord, One thous-
and eight hundred and fifty nine, being the
fourth Monday of said month.

Present His Honorable John S. Thompson, Judge
William Laferty Clerk
& Seth Smith Sheriff.

Robert Cameron
vs
Robert Fletcher

Assumpsit.

And afterwards to wit on
the 27th day of October AD 1859 the following
Judgement was entered upon the records of
of said Court which is in words & figures as
follows to wit.

Robert Cameron
vs
Robert Fletcher

Assumpsit.

This day come the said
plaintiff by Kirkpatrick his Attorney and
the said defendant, being three times solemnly
called; come not nor comes any one for

him to defend this suit, but he makes default
herein, It is therefore considered and ordered
by the Court that said plaintiff have judgment
by default against the said defendant for his
damages herein, And it appearing to the Court
that this suit is brought upon an instrument
of writing for the payment of money only, and
that the damages of said plaintiff in this case
rest in computation, it is thereupon ordered
by the Court that the Clerk assess, compute and
report the said damages, Whereupon the Clerk
proceeded to make the assessment and computation
aforesaid, and reported to the Court the sum
of (\$1,724.²⁵). One thousand seven hundred and
twenty four ²⁵/₁₀₀ dollars, as the amount of the plaintiff's
damages herein, which assessment and
computation upon examination by the Court,
appearing to be just and correct, it by the Court
approved and allowed. It is therefore considered
and ordered by the Court that the said plaintiff
have and recover of the said defendant, the
said sum of (\$1,724.²⁵) One thousand seven hundred
and twenty four ²⁵/₁₀₀ dollars, being the amount of
damages assessed and computed as aforesaid,
together with his costs and charges herein
expended and that he have execution therefor
against the said defendant.

State of Illinois
Warrick County

The People of the State of Illinois
To the Sheriff of said County "Greeting,

We command you that of the goods and chattels lands and Tenements of Robert Fletcher defendant in your County, you cause to be made the sum of One thousand Seven hundred and twenty four & $\frac{25}{100}$ dollars which Robert Cameron lately in the Circuit Court of said Warrick County, at a term thereof begun and held at Mornmouth in said Warrick County on the fourth Monday of October AD 1859 on the 27th day of said month, said Plaintiff recovered against the said defendant and which by the said Court was adjudged to the said Plaintiff for damages, And also the further sum of Six & $\frac{40}{100}$ dollars which were adjudged to the said Plaintiff for cost and charges in that behalf expended, whereof the said defendant doth stand convicted as appears to us of record And have you these moneys ready to render to the said Plaintiff, for damages and cost aforesaid and make return of this writ, with an endorsement thereon in what manner you shall have received the same in ninety days from the date hereof.

Witness William Saffery Clerk of

1859

our said Court and the Seal thereof
at Mornmouth in said County this
22^d day Nov AD 1859

Wm Safety Club

On the back of said Execution is the following.

"Received this Execution this 24th day of Nov AD 1859
at 12 o'clock M

Seth Smith Sheriff

State of Illinois }
Warren County }

By virtue of the within and
foregoing Execution and process I have levied on
the South West quarter of section nineteen in
Township nine South of range one West of the
fourth principal meridian in Warren County
State of Illinois this day December 15th 1859
Taken as the property of Robert Fletcher

Seth Smith Sheriff

I Seth Smith Sheriff of Warren County Illinois do
certify that after advertising the above described
land according to law, I offered the same for
sale at the front door of the Court House in
the City of Mornmouth Warren County Illinois
on the 9th day of January AD 1860 at the hour of
2 o'clock P M of said day and that the same was
struck off to Robert Cannon he being the

highest & best bidder therefor, for the sum of
Four hundred and eighty two $\frac{2}{3}$ dollars
that being the amount of redemption money paid
me by the said Robert Cameron on the 19th day
of December AD 1859 to redeem said land
from a sale of the same made by the Master
in Chancery for Maum County Illinois to Arthur
A Smith on the 18th day of December 1858 by
virtue of a decree of the Maum County Circuit
Court rendered at the term thereof AD 1858
in favour of J L Usher assignee of W. B.
Pendleton Vs Robert Fletcher and the interest
on said redemption money from said 19th
day of December AD 1859 to said 9th day of
January AD 1860 - and there being no other
bid for said land I have this day executed
& delivered a deed for said premises to said
Robert Cameron according to ~~law~~ the Statute
in such case made & provided

Dated January 9th 1860

Seth Smith Sheriff
of Maum County Illinois

Whereas Robert Cameron did at the October term
 A.D. 1859 of the Circuit Court for the County of Warren in
 the State of Illinois recover a judgment against
 Robert Fletcher for the sum of One thousand
 seven hundred & twenty four dollars and twenty
 five cents, and costs of suit upon which judg-
 ment an execution was issued dated on the
 22nd day of November A.D. 1859 directed to the
 Sheriff of Warren County Illinois to execute, and
 by virtue of said execution the Sheriff levied
 upon the land hereinafter described and the
 same was struck off and sold to Robert
 Cameron he being the highest and best
 bidder therefor, and the time and place of the
 sale thereof having been duly advertised
 according to law, Now therefore know all
 by this deed that I, Seth Smith Sheriff of
 Warren County in consideration of the premises
 have granted, bargained and sold and do
 hereby convey to the said Robert Cameron
 his heirs and assigns the following described
 tract of Land in the South West Quarter of
 Section Nineteen (19) in Township Nine (9)
 North of Range one (1) West of the fourth prin-
 cipal meridian in Warren County and
 State of Illinois To have and to hold the said
 described property with all the appurtenances
 thereunto belonging to the said Robert Cameron
 his heirs and assigns forever. Witness my

Hand and seal this 9th day of January
in the year of our Lord, One thousand eight
hundred and sixty

Seth Smith (L.S.)

Sheriff Warren County

State of Illinois

Warren County

I, William Laferty Clerk of
the Circuit Court in & for the said County of
Warren do Certify that on this day personally
appeared before me Seth Smith Sheriff
of said County of Warren whose name app
ears subscribed to the foregoing deed of
Conveyance as having executed the same,
who is personally known to me to be the
identical person who & in whose name
the acknowledgment is proposed to be made
and acknowledged the execution thereof as
his voluntary act & deed for the uses
and purposes therein expressed, Given
under my hand & seal of Office at
Warrmouth this 9th day of January AD 1860
(Seal). Wm Laferty Clerk

As justifying the entry of Baker, the Deft
as the tenant of Cameron, To which the
plaintiff objected, but was willing that
the same might be admitted simply and
only for the purpose of showing to what

extent the defendant claimed possession of the premises.

The Court sustained the plff's objection to the introduction of said papers & records as justifying the entry of the defendant; but offered to admit the same in order to show the extent of the defendants claim of possession. But the defendant declined to introduce the same for the mere and only purpose of showing extent of possession. And then & there excepted to the decision of the Court in sustaining the plff's objection to the introduction of the same as evidence of the right of the defendant to enter on the premises in controversy. The Defendant then offered in evidence the following Mortgage from Fletcher to Cameron, to wit:

m This Indenture made and entered into this 30th day of April in the year of our Lord, One thousand eight Hundred and fifty seven, between Robert Fletcher & Rhoda S. his wife of the County of Warren & State of Ills of the first part, and Robert Cameron of the second part, witnesseth that the said party of the first part for and in consideration of the sum of Fifteen Hundred Dollars paid by the said party of the second part, the receipt of which is hereby acknowl

edged do by these presents grant, bargain
and sell, unto the said party of the second
part his heirs and assigns a Certain tract
or parcel of Land situated in the County of
Marion, and State of Illinois, being the
South west Quarter of section Nineteen in
Township Nine North of the Base line of
range one west of the fourth principal
meridian, containing one hundred & sixty
(160) acres, together with all and singular
the hereditaments and appurtenances thereunto
belonging or in any wise appertaining, To
have and to hold the said premises as above
described with the appurtenances, unto the
said party of the second part his heirs
and assigns forever, And the said party
of the first part for themselves and their
heirs, executors and administrators do
hereby covenant to and with the said party
of the second part his heirs and assigns
that they are well seized of the premises
above conveyed as of a good and indefea-
sible estate in fee-simple and have good
right to sell and convey the same in
manner and form as aforesaid, And that
the said premises are free from all incum-
brances and that the above bargained prem-
ises in the quiet and peaceable possession

10

of the said party of the second part, his heirs and assigns, against the Claims of all persons whomsoever he will forever warrant and defend, Provided Nevertheless that if the said party of the first part their heirs executors or administrators shall truly pay to the said party of the second part his heirs executors administrators or assigns the just and full sum of fifteen Hundred Dollars on the first day of January Ad 1860, then this Deed as also a certain promissory Note bearing even date herewith, given by the said party of the first part to the said party of the second part, conditioned to pay the said sum of fifteen hundred at the time aforesaid shall be void, otherwise to remain in full force and virtue. In testimony whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

Signed, sealed, and ³ Robert Fletcher
delivered in presence of ³ Rhoda S. Fletcher,
State of Illinois ³
Warren County ³

I, Elisha Nye a Justice of the Peace for said County do, certify that on this day appeared before me Robert Fletcher and Rhoda S. his wife whose names, appear signed to the foregoing deed of conveyance

ance, and who are personally known to me to be the identical persons whose names are subscribed to said deed as having executed the same, and acknowledged that they had executed the same as their voluntary act and deed for the uses and purposes therein expressed. And Rhoda S. Fletcher wife of the said Robert Fletcher having been made by me acquainted with the contents of said deed and being by me examined separate and apart from her husband, acknowledged that she had executed the same and relinquished her dower to the premises conveyed voluntarily freely and without any compulsion of her said husband. Given under my hand and seal at Warrmouth this thirtieth day of April Eighteen hundred and fifty seven.

(Seal). Elisha Nye, Justice of the Peace
To which the plaintiff objected as evidence of any right of entry by defendant on the premises in controversy, but was willing that the same might be introduced to show the extent of defendant's possession. The Court sustained the plaintiff's objection, but the defendant declined to introduce the same in order merely to show the extent of defendant's claim of possession.

The Court offered to allow the defendant to introduce said mortgage in order to show the extent of defendant's claim of possession, but the defendant declined to do so, & insisted that he had a right to introduce it as evidence justifying the defendant's entry. But the court decided otherwise & would not let defendant introduce it for that purpose. To which decision the defendant then & there excepted & still excepts. This was all the evidence in the case.

The Court then gave the following instructions to the jury on behalf of the plaintiff; to wit:
The jury are instructed that this an action of Forcible Entry and Detainer, brought by the Plaintiff, Hays, against the Defendant, Baker, for wrongfully invading the alleged possession of the plaintiff of the land described in the Complaint and detaining the same from the plaintiff. And if from the evidence before them, the jury finds that on or about the 16th day of February A.D. 1860 the said plaintiff was in the actual possession of said land or any part thereof, and that while he was so in the possession thereof, the defendant forcibly entered on the same or any part thereof in which the plaintiff was in the actual possession, against the will and consent of the plaintiff, and detained the

No. 1

G. Hays

same after notice in writing to him to
surrender the same, then the defendant is
guilty in manner & form as charged in the
complaint and the jury should so find.

No 2

Guinn

If Hays was in the actual possession at the
time and the defendant entered forcibly &
against the will & without the authority of
the plaintiff, it is no justifying or
defence that Hays had no title to the land
and it is wholly immaterial whether Hays
was in possession rightfully or wrongfully.

No 3

Guinn

Any entry upon the possession of another
wrongfully and without right is, in contem-
plation of law, a forcible entry. And in
this case if the jury believe from the evidence
that the defendant forcibly entered on the prem-
ises described in the Complaint & that they
were then at the time of such entry in the
actual possession of the plaintiff, Hays, it is
no defence that Baker, the defendant, made
such entry as the tenant and by the authority
of Robert Cameron.

No 4

Guinn

If the jury find from the evidence that during
the winter of 1860 the plaintiff was in the actual
use and enjoyment of the land described
in the Complaint & that he & his tenants had,
the season before, cultivated it; that on or
about the 16th February 1860 the plaintiff had

seed Corn in the house on said premises, Corn in the field & in the pen, kept his horses and farming implements thereon & that no one else was using the same, then Nays had the actual & exclusive possession of the entire tract enclosed, And it is for the purposes of this case, wholly immaterial whether he was in possession under any kind of title or not or whether he was there under Fletcher or any one else, & he had such possession as would entitle him to maintain an action against one for a forcible entry & detainer thereof.

Given.

No 5

In an action of this kind title is not material the questions are did Nays the plaintiff, at the time alledged in the complaint have actual possession of the premises, 2^{ndly} If he had such possession while he was there possessed, did the defendant forcibly enter upon his possession at the time complained of or forcibly enter upon a part thereof, And 3^{rdly} did he detain the same from the plaintiff after demand in writing for the possession thereof made before the commencement of this suit.

Given

No 7

In the determination of this case the jury are instructed that the fact that the house on said premises was only used for keeping seed Corn in, if such, from the evidence they believe to be the fact, and was not occupied

Given
45

otherwise, still, if Hays had the actual use of the land on which the house was located & no one else was in possession thereof, then the plaintiff, Hays had as much the possession of the house as he had of the farm or land on which it was located.

No 8

Gwen

The jury are instructed that although a man may have the legal and paramount title to land, if the land is in the actual possession of another who holds without right or authority, still the owner has no right forcibly to enter upon the premises take possession thereof and oust the occupant. To the giving of which instructions & each & all of them the defendant then & there in open court objected & excepted.

The Defendant then requested the Court to give to the jury the following instructions, to wit:

The jury are instructed that if they believe from the evidence that Fletcher leased the land in controversy to the plaintiff and that the time of such demise had not terminated, yet if Baker the defendant went into the possession of the premises by agreement with the plaintiff Hays in manner & form & by virtue of the agreement testified to by witness Hammond then the jury should

find for the defendant,

If the jury believe from the evidence that the plaintiff agreed to give up the possession of the same premises to the defendant and the defendant ~~went~~ by virtue of such agreement went into the possession of the same premises without any force or any objection on the part of the plaintiff then the plaintiff cannot recover in this action,

The Testimony of George W. Savage so far as given not having been objected to by the Counsel of the plaintiff is proper for the consideration of the jury

If the jury believe from the evidence that the defendant went into the possession of said premises by virtue of an agreement with the plaintiff, which agreement was not objected to by Fletcher the lessor of the plaintiff and with consent of Fletcher then the plaintiff cannot recover in this action.

It is for the plaintiff to prove each and all the material allegations of his Complaint, and if he has failed in any one of these, then the jury should find for the defendant.

If the jury believe from the evidence that the plaintiff agreed with the defendant in the presence of Witness Hammond that the defendant should rent the land in controversy from Robert Cameron who claimed to own the land and that in accordance with the Terms of such agreement the defendant Baker rented the land from Cameron and thereby Baker went into the possession of the premises in question then the plaintiff cannot recover in this action.

The Jury are instructed that if they believe from the evidence that the premises in controversy were vacant & unoccupied at the time of the entry of the defendant and that such entry was in accordance with the terms of the agreement between the plaintiff and the defendant if they believe from the evidence that any such agreement was made then the jury should find for the defendant.

It is not for the plaintiff to come into Court and say that the agreement between him & Baker was in violation of the lease from Fletcher to him of the premises in controversy.

The plaintiff had a right to attorn to the person who acquired the title of Fletcher which Fletcher had before & at the time of such lease and at the time of such attornment had passed by operation of law into such possession

If the jury believe from the evidence that Robert Cameron acquired the title of Fletcher the lessor of plaintiff, and that the plaintiff attorned to Cameron without any objection & with the consent of Fletcher then such attornment was proper, and if the jury further believe from the evidence that by virtue of such attornment and by agreement between the plaintiff & the defendant, the defendant went into the possession of said premises then the jury should find for the defendant.

If the jury believe from the evidence that an agreement was made between Fletcher the lessor of plaintiff, and the plaintiff, and the defendant by which the defendant went into the possession of the premises in contravention and that afterwards the plaintiff conspired with one George W. Savage and attorned to Savage and that this suit is brought for the purpose of giving Savage the possession

of said premises who hold an adverse title to Fletcher then the jury should find for the defendant.

4
The Court will instruct the jury that if they believe from the evidence that waldo Ray and Capps or either or any of them had leased of the plaintiff any particular portion of the premises and that at the time of the giving of the notices to quit possession the term of any such lease or leases had not expired they are bound to find for the defendant.

The Court will instruct the jury that if they believe from the evidence that Madelo had leased a certain portion of the premises of the plaintiff and that such lease had not in February 1860 expired and that the house which defendant entered is situated on such portion they should find for the defendant.

The Court will instruct the jury that notwithstanding they may believe from the evidence that plaintiff in October 1858 leased the premises for two years from March there-
after and that defendant entered therein as charged in plaintiff's complaint. Yet if

they further believe from the evidence that plaintiff had sublet to others all of the premises save 40 or 50 acres and that the term of such letting had not in February 1860 expired, the plaintiff cannot in this case recover possession of so much of the premises as he has so sublet nor of such portion if they further believe from the evidence that before the entry of defendant, plaintiff requested him to rent the premises of Cameron in which case the plaintiff cannot under any circumstances recover said premises or any portion thereof and although he may not have sublet any portion thereof.

But the Court refused to give all of said instructions, but in lieu thereof gave the following to wit.

The Jury are instructed that if they believe from the evidence that Fletcher leased the land in controversy to the plaintiff and that the term of such demise had not terminated, yet if Baker the defendant went into the possession of the premises in pursuance of an agreement with the plaintiff Hays and without force and with the consent of said Hays, they will find for the defendant.

Gives

Given

If the jury believe from the evidence that the plaintiff agreed to give up the possession of the same premises to the defendant, and the defendant under & by virtue of such agreement went into the possession of the same premises without any force and without any objections on the part of the plaintiff, then the plaintiff cannot recover in this action.

Given

The testimony of George W. Savage so far as given not having been objected to by the counsel of the plaintiff, is proper for the consideration of the jury, so far as it is material under the instructions of the Court.

Given

If the jury believe from the evidence that the defendant went into the possession of said premises by virtue of an agreement with the plaintiff that such agreement was known to and ratified by Fletcher the lessor of the plaintiff and that the defendant entered without force and with the consent of Fletcher and of the plaintiff then the plaintiff cannot recover in this action.

General

It is for the plaintiff to prove each & all the material allegations of his complaint and if he has failed in any one of these, the jury should find for the defendant.

As which decision of the Court in refusing to give said instructions and each of them as asked and giving them and each of them as they were given, the defendant then & there in open court excepted.

And the jury having retired to consider of their verdict having agreed & returned the same in open Court in the words following to wit, "We the jury find the Defendant guilty in manner and form as charged in the Complaint."

The Defendant entered his motion for a new trial which motion is in the words & figures following to wit,

Alfred Nays vs Alongo Baker Warren Circuit Court October Term AD 1861.

And said Defendant comes & moves the Court for a new trial herein for the following reasons to wit,

The Court improperly excluded testimony on the part of the defendant and permitted improper evidence on the part of the plaintiff

1st

5.4
2nd/₁₁

The Court refused proper instructions on the part of the defendant, and improperly altered the defendant's instructions as given, and gave improper instructions on the part of the plaintiff.

3rd/₁₁

The Verdict of the Jury is against law

4th/₁₁

The Verdict of the Jury is against the evidence

5th/₁₁

The Court improperly refused to allow the defendant to show the conspiracy between the plaintiff & George W. Savage

6th/₁₁

And for other reasons.

A. G. Kirkpatrick

D. Atty.

But the Court overruled said motion for a new trial to which decision the defendant then & there in open court excepted & still excepts.

And the defendant then entered his motion in arrest of judgment & writ of restitution, but the Court overruled the same, to which decision the defendant then & there excepted & still excepts. The Court thereupon rendered judgment for the plff. to which the deft then & there excepted & still excepts.

And inasmuch as the foregoing do not

appear of record the defendant prays that
 this his Bill of Exceptions may be signed
 & sealed & made a matter of Record,
 which is done.

C. B. Lawrence (Seal),

Filed Dec 13th 1861.

W. Lafaty. clk.

Know all Men by these Presents, that we
 Alongs Baker & A. G. Kirkpatrick are held
 and firmly bound unto Alfred Hays in the
 penal sum of Six Hundred dollars for the
 payment of which, well and truly to be made,
 we bind ourselves, our heirs, executors and
 administrators, jointly, severally and firmly
 by these presents Witness our hands and seals,
 this 16th day of November Anno Domini,
 one thousand eight hundred and (61) sixty one
 The conditions of the above obligation is such:
 That whereas Alfred Hays did, on the 15th day
 of November, 1861, in the Circuit Court, within
 and for the County of Warren, and State of Illinois,
 recover a judgment against the above bounden
 Alongs Baker for the costs of suit together with
 a writ for the possession of the property des-
 cribed in the complaint of said Hays from
 which judgment of said Circuit Court, the said
 Alongs Baker has prayed for and obtained an

appeal to the Supreme Court of said State
Now if the said Alonzo Baker shall duly
prosecute his said appeal with effect,
and shall moreover pay the amount of the
judgment, costs, interest and damages, ren-
dered and to be rendered against him in
case the said judgment shall be affirmed
in the said Supreme Court, then the above
obligation to be null and void, otherwise
to remain in full force and virtue.

Alonzo Baker (L.S.)

A. G. Kirkpatrick (L.S.)

Filed Nov 16th 1861.

Wm Laferty, Clerk

State of Illinois

Warrick County I Wm Laferty Clerk of the Circuit
Court in and for said County do hereby Certify that
the within and foregoing is a true and correct
copy of the record and proceedings in the foregoing
case as the same appears from the records and
files of my office

In testimony whereof I have hereunto set
my hand and affixed the seal of our said
Circuit at my office in Warrick this
14th day of March AD 1862

Wm Laferty Clerk

Fees \$10.00



~~and~~ appellant, ~~the~~ instructions
as given, and gave improper
instructions on the part of the
appellee

3^d The verdict of the jury ~~was~~
was against law

4th The verdict of the jury, was
against the evidence

5th The court below improperly
refused to allow the appellant
to show the conspiracy between
appellee & George W. Savage

6th and for other reasons

8th The court erred in refusing
to allow the appellant to show
that he had the title of Flecker,
under whom the appellee claimed
as lessee

7th The court erred in refusing
to allow the appellant to show the
arrangement between Savage &
the appellee, as stated

9th The court erred in overruling
the motions for a new trial, &
in arrest of judgment, & writ
of restitution & each of them

10th The proceedings were otherwise
informal & erroneous

A. S. Kirkpatrick
for appellant

188 157
Mouyo Baker

7
Alfred Hays

Appeal from
Wanau

clerk with Henry
15 m. m.

Filed Apr. 9. 1862.
L. Island
Clerk.