RECORD

No. 1.

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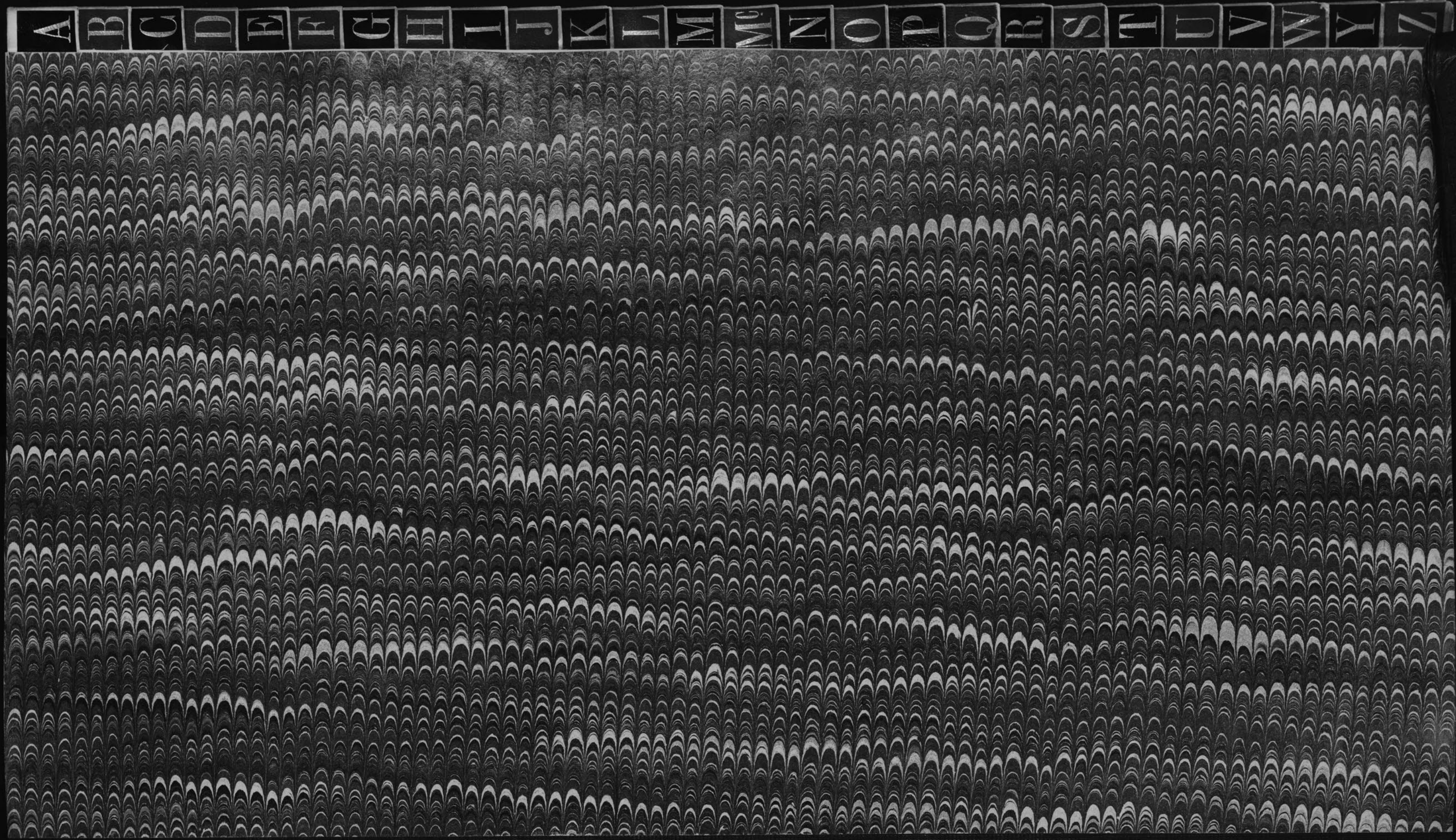
SIEBERT & LILLEY,

Opera House Building, COLUMBUS, O.

NOTICE.

We have a copy of the Ruling, Binding, etc., of this Book on our files. If you should want to duplicate it at any future time, send us the LETTERING ON THE BACK, and we can make another just like it.

SIEBERT & LILLEY.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Pleas before the Honorable Thomas Beer. J. J. Moore and Henry W. Seney Judges of the Circuit Court within and for the 3d Judicial district in the State of Ohio, begun and held at the court house in the town of Marysville within and for the County of Union and State of Ohio on the 28th day of April A.D. 1885. Heretofore to wit on the 4th day of September 1876 a petition was filed with the clerk of the court which reads as follows.

No 2157

James Sweney and Landon Bishop plaintiffs
vs
The Board of County Commissioners of Union County Ohio
W. L. Curry as Auditor of Union County Ohio.
S. S. Jewell as Treasurer of Union County Ohio.
The Marysville New California and Franklin County
line Board of Free Turnpike Commissioners and
S. B. Woodburn, Israel Slack and A. H. McCampbell as
Commissioners comprising said Board, Defendants

The State of Ohio Union County
Court of Common pleas.

Petition

The above named plaintiffs represent to the court, That at the several dates herein named they were residents of Union County Ohio were respectively at said dates as they are still owners of lands lying within the bounds of the Free Turnpike road hereinafter named, whose lands have been assessed for the construction of the same. 2d That on the 18th day of January A D 1876 Israel Slack and John M. Dodge as petitioners, published in the Marysville Tribune, a newspaper published in said Union County, and purporting to be of general circulation therein for the period of three weeks only, a notice of which the following is a copy.

Road Notice

Notice is hereby given that a petition will be presented to the Board of County Commissioners of Union County Ohio at their March Session, A.D. 1876 praying for the appointment of commissioners to lay out and establish a free Turnpike road described as follows: Beginning in the Center of Center Street at the corporation line of Marysville; thence with the Marysville and Columbus road, (formerly Kenton as the Columbus Marysville and Bellefontaine dirt Turnpike) passing through New California; thence on said road called the Mud turnpike to intersect the Post road so called near the residence of Samuel Banks; thence Eastwardly on said Post road to the line of Union County at the terminus of the Dublin & Plain City Free Turnpike, that being the point where the Easterly line of Union County crosses said Post Road.

Israel Slack, John M. Dodge, Petitioners.

That on the 7th day of March A.D. 1876 presented to said Board of County Commissioners their said petition asking the appointment of Commissioners to lay out and establish a free turnpike road within the boundaries above named and that thereupon said Board of County commissioners appointed S. B. Woodburn, A. H. McCampbell and Brad Slack as such road Commissioners who have qualified and Entered upon the discharge of their duties as such, as a body corporate under the name of the Marysville, New California & Franklin County line Board of Free turnpike Commissioners and have laid out Established and are proceeding to construct said Free turnpike road.

That the commissioners of said Union County have levied for the purpose of constructing said Free Turnpike road, the sum of ten Mills per annum

on the Valuation of all the lands and taxable property within the bounds of said road as laid out and established by said road commissioners and have certified to the auditor of said county, their said levy, who has entered the same upon the duplicate of said county for collection. That said levy so made extends for the period of five years, and the road as established and laid out includes the lands of these plaintiffs. That the amount of tax levied upon the property of the plaintiffs James Sweeney per annum for the construction of said free Turnpike Road amounts to $43.25 and upon the property of the plaintiff Landon Bishop for the same purpose amounts to the sum of $50.94 per annum.

That said petition was not when the same was presented to said Board of County Commissioners, nor when said Board acted on the same, nor when said Board appointed said road commissioners to lay out and establish said free Turnpike road named in said petition, signed by a majority of all the land holders residing in the said county of Union, and then owning lands lying within the bounds of such free Turnpike road as provided in the act of March 9th A.D. 1875; (Ohio Laws volume 72 page 93). That the question involved in this proceeding is one of a common and general interest of many persons and the parties who petitioned for said contemplated improvement are numerous, and it is impractible to bring them all before the court. The plaintiffs therefore make the said Board of County Commissioners the said S. B. Woodburn, A. H. McCampbell and Israel Slack the Road commissioners appointed as aforesaid, the Auditor and Treasurer of said County defendants herein to defend for the benefit of all of said petitioners who may be opposed to the objects and prayer of this petition.

The plaintiffs accordingly pray that upon the hearing of this cause all and singular the proceedings and order aforesaid may be set aside and that the said board of county commissioners, the said board of Road commissioners as such and the said S. B. Woodburn Israel Slack and the said A. H. McCampbell in their individual capacities, as well as the said County Auditor and Treasurer may be respectively enjoined from taking any other Step, or doing, or ordering to be done, any other or further act or thing whatever in aid or furtherance of said contemplated improvement under color or in Execution of the proceedings and orders aforesaid and that said Auditor and Treasurer may be perpetualy enjoined from collecting of these plaintiffs or either of them, the tax so levied against them and for such other and further, or different relief as they are respectively entitled to.

By James E. Wright & Reid & Pearce, plaintiffs Attorney.

Sheriff Return

Entry

Answer

The State of Ohio Union County S.S.

James Sweeney one of the plaintiffs being duly Sworn says the allegations and facts Stated in the foregoing petition are true. James Sweeney.

Sworn to before me and Signed in my presence by the said James Sweeney this 4th day of Sept A.D. 1876. W. M. Winget. Clerk.

Raecipe — To Clerk. Issue Summons upon the above petition directed to the Sheriff of Union County returnable according to law.

Summons — The State of Ohio Union County S.S.

To the Sheriff of the County of Union Greeting:

We command You to notify The Board of County Commissioners of Union County Ohio W. L. Curry Auditor and S. S. Jewell Treasurer of Union County Ohio The Marysville, New California and Franklin County line Board of

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James Sweeney

Sheriff of Union

Greeting;
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Free Turnpike Commissioners, S. B. Woodburn Israel Slack & A. D. McCampbell as Commissioners composing said Board that they have been sued by James Sweeney & Landon Bishop in the court of common pleas of Union county, and that unless they answer by the 7th day of October A.D. 1876 the petition of the said James Sweeney and Landon Bishop against them filed in the Clerks Office of said court; Such petition will be taken as true, and judgment rendered accordingly

You will make due return of this Summons on the 18th day of September A.D. 1876.

Witness My hand and the Seal of said Court; this 4th day of September A.D. 1876.

(Seal) W. M. Wright: Clerk.

Sheriff Return

The State of Ohio, Union County S.S.

Received this writ September 4th A.D. 1876, and pursuant to its command, on the 5th 6th & 7th days of September A.D. 1876. I Served James Purington, N.S. McAllister John Gray, W.L. Curry, J.S. Jewell, S.B. Woodburn, Israel Slack and A.D. McCampbell by delivering personally to each of them a certified copy of this writ with the Endorsements thereon. Service 2.40 Mileage 80c Cop 2.40 Return 10. Total $10.98

John C. Price, Sheriff of U.C.

Afterward on the 4th day of February 1878 an entry was made on the journal of said Court which reads as follows:

Entry

James Sweeney Et al
vs
Board of County Commissioners Et al

This day this cause came on to be heard by consent of counsel upon the matter of the plaintiffs for leave to pay the Treasurer of Union County all of their taxes without penalty other than the Turnpike Tax named in the said plaintiffs petition, and the court being fully satisfied that said plaintiffs ought to be permitted to pay their taxes without penalties accruing since the commencement of this suit to the present time, they having always been ready and willing to so do. It is by the like consent of counsel herein ordered that the Treasurer of said County be and he is hereby ordered to receive from said plaintiffs their taxes aforesaid, other than the Turnpike before named, and to continue so to receive them until the final hearing of this cause.

Afterward on the 3d day of April 1878 an answer was filed with the clerk of said court which reads as follows,

Answer

James Sweeney & Landon Bishop
vs
The Board of County Commissioners of Union County Ohio
W. L. Curry Auditor S. S. Jewell & others

Court Common Pleas
Union County Ohio

Now comes the defendants in the above cause and for answer say they deny that the notice mentioned in said petition as made in the Marysville Tribune was published "Only 3 Weeks" and they aver that said notice was duly published for four weeks consecutively in said paper as required by law.

They deny the allegation in said petition averring that a majority of all the land holders residing in said County of Union lying within the bounds of said free Turnpike road as provided in the act of March 1878 (Ohio Laws Vol 72 page 93) Ordinal Sign the petition for said improvement - but defendants aver that a majority of said resident land owners did Sign said petition prior to the time the said Board ordered said improvement to be made as required by law.

2d Defence.

The said defendants say, that the injunction ought not be allowed by the court for this, that they say that the said petition was not filed until long after said improvement to be made and a large part of the work was done and a large part of the money expended for the same and a large part of the bonds the purpose of raising the funds to construct said improvement were executed and sold prior to the filing of said petition, to-wit; said petition was filed 8th Sept 1876, and the job of making said improvment was given by said Board of Road Commissioners on the first day of June 1876 and contract then executed by said Board with Job Dillon Wm H. Haines & Richard H White for Twenty six thousand and two hundred dollars for the work of said improvement exclusive of the Bridges and Culverts and Twenty thousand dollars of said Bonds were executed prior to said 8th Sept 1876 and all of said contractors commenced grading said road in June and July 1876 before the 4th of Sept 1876 had completed a large part of the grading and had commenced putting on the gravel as required by said contract, all of which acts contracts, work and sales were well known at the time to the plaintiffs who reside upon the said improvement and yet they took no steps to prevent the same but have received the benefit of said improvement which has added to the value of their said lands much more than the tax or assesment levied upon the same and it would be inequitable and unjust to suffer them to have received and enjoy said benefit and improvement and fail to pay their share of the said expense of making said improvement and therefore the defendants ask to be dismissed with their costs. Robinson & Piper & R L Woodburn Atty for Defendants.

The State of Ohio Union County ss.

Israel Slack being duly sworn deposes and says the allegations of the foregoing answer are true as he verily believes.

Israel Slack

Sworn to before me and Signed in my presence this 3d of April 1878.

A. A. Brightler. Notary Public. Seal

Entry

On the 4th day of May 1878 a Reply was filed with the Clerk of said court which reads as follows;

Reply

James Sweeney and Landon Bishop Plaintiffs } Court of Common Pleas
vs } Union County Ohio
The Board of County Commissioners et al }

And now come the said James Sweeney and Landon Bishop plaintiffs and for their Reply to the said defendants answer say that immediately after the said improvements was ordered these plaintiffs gave due notice to said defendants that they would resist and oppose the building of said road and the assessment of any part of the expense of the same upon their lands, and the defendants were frequently informed and at all times after the making of said order the defendants were well assured that plaintiffs were opposed to said improvement and were preparing to resist the same by all necessary and proper legal means and were so informed by plaintiffs from time to time, and as soon as plaintiffs became informed that defendants were proceeding to act upon the order made by them for said improvement and had made contracts for the construction of said improvement and before they had made

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any preparation for the construction of said road, or had incured any expense by reason of the same they were notified by the plaintiffs that as soon as counsel could be employed and the necessary arrangements made therefor Suit would be brought to restrain the construction of said improvement and assessment of the expense therefor or any part thereof upon the lands of plaintiffs and thereupon as soon as plaintiffs were informed or had knowledge that defendants would not stop the said improvement and work thereon in accordance with plaintiffs request and demands so made upon them but would proceed in the matter of building said road these plaintiffs immediately employed counsel and as soon as necessary arrangements could be made this suit was instituted to restrain and enjoin the said proceedings and assessments which was done in a few weeks after work had been commenced on said road and which was done at the earliest moment that plaintiffs counsel could commence the same after it was found that the said work was to be proceeded with and they had obtained the necessary facts and information upon which to bring said action, and said action was in fact brought and defendants were properly served with process before more than but a small portion of said work had been done, Plaintiffs further say that they never acquiesced in any manner to said improvement but at all times opposed the same and commenced the present action as soon as they found it would be necessary to protect their rights of all of which the defendants had full knowledge.

Plaintiffs deny each and every allegation of the said answer not herein admitted

By J. E. Wright and Reid & Powell, their attorneys

The State of Ohio, Union County, ss.

James Sweeney one of the above named plaintiffs being first duly sworn upon his oath says that the facts stated and allegations in the above pleading are true as he believes.

James Sweeney.

Sworn to before me and subscribed in My presence this 1st day of May A.D. 1878

W. M. Wingt. Clerk

By Taber Randall. Deputy.

Entry

On the 20th day of May an entry was made on the journal of said court which reads as follows, to wit

James Sweeny et al
vs
The Board of County Commissioner of Union County et al

This day came on this cause to be heard by the court on motion of the plaintiff and by consent of the parties this cause is submitted to M. C. Lawrence as Master commissioner to take the testimony and report on the facts upon the issues joined between the parties, and also upon the question whether plaintiffs have been unequally assessed as compared with others assessed for the making of said improvements, and what part of said improvement had been made prior to the filing of the plaintiffs petition, and who were entitled to be counted for against said improvement within the boundaries of the said road, and which of them had subscribed said petition when said improvement was ordered by the board and all other facts involved in the case, and by agreement of parties the report of said Commissioner with his findings on the law and the evidence are to be acted upon by Judge Beer and his decision and decree entered of this term the same as if the case was heard and the decree entered now and all right of appeal are to be saved and entered as of this term of Court the same as in term time.

Entry

On the 2d day February 1883 an entry was made on the journal of said Court which reads as follows.

James Sweeny et al
vs
The Board of Commissioners of Union County Ohio et al

This day this cause came on to be heard and by consent and agreement of parties this cause is submitted to John H. Kinkade as Master Commissioner to take the testimony and report the facts upon the issues joined between the parties and report the Evidence and his findings upon the law and the Evidence.

afterward on the 27th day of July 1883 the Report of said Referee was filed with the clerk of said Court which reads as follows.

Report of Referee

James Sweeney 2nd Leander Bishop Plaintiffs
against
The Board of County Commissioners of Union County Ohio & Others Defendants

The undersigned to whom by consent and agreement of parties, and by order of said court bearing date the 2d day of February A D 1883, the above entitled action, was submitted and refered, as Special Master Commissioner to take the testimony and report the facts upon the issues joined between the parties, and report the evidence and his findings upon the law and the evidence, Respectfully reports; that on the 11th day of June 1883 he was duly qualified as said Master Commissioner before J. D. Burgner, Clerk of said Court; that in pursuance of said order he has been attended from time to time by the parties to this action, and their counsel. that in pursuance of an agreement between the said parties and counsel, the testimony of the witnesses taken before Hon M. O. Lawrence, (now dec'd) and by him reduced to writing, while acting as Special Master herein under a former order of said court; was duly submitted to the undersigned Special Master to be by him considered and acted upon the same as though taken by himself (which said written testimony is herewith filed). That the undersigned master commissioner has taken the testimony of all the witnesses produced before him by either of the parties in writing and the same is herewith filed, That he has also considered such other evidence as records, deeds &c refered to in said written testimony (both before himself and before the former Master aforesaid) that he has also carefully considered the said testimony taken by said Master aforesaid, that he has heard the allegations of the parties, and the arguments of their counsel, That he has duly considered the same and finds, decides, and reports as follows;

As a Matter of fact; 1st That the "Road Notice" Signed and given by Israel Slack and John H. Dodge" and refered to in the plaintiffs petition, was duly published in "the Marysville Tribune" a newspaper published in said Union County Ohio, and of general circulation therein for the period of four consecutive weeks commencing with the date of January 18 1876.

2d That the proceedings of the said Board of Commissioners of Union County on the petition of said Israel Slack and others to said Board for a free turnpike and refered to in said petition were Regular and in accordance with law throughout.

That the said petition of Israel Slack and others to said Board of

Motion

Ex to Rep't

of commissioners was when the same were presented to said Board of County commissioners, and when said board acted upon the same and when said Board appointed said Commissioners to lay out and establish the said free turnpike road named in said petition - Signed by a majority of all the land holders residing in the said county of Union and thereowning lands lying within the bounds of such free turnpike road as provided in the act of March 24th A.D 1875: (Ohio Laws Volume 72 Page 93).

3d That the bonds for said Road improvement had been issued and sold and that $21350.00/11 about 3/4 of the Estimated Expense of said road improvement was made and Expended and that a large portion of the grading, graveling and bridging on said free turnpike road was done, before the said plaintiffs took any Steps toward resisting said improvement:

As a Matter of Law That the plaintiffs being within the bounds of the said Free Turnpike and assessed to pay the expense of the same, having suffered the proceedings and work to go on with a knowledge of the same, until so large an amount of the work had been done, and the bonds issued and sold, and until said free turnpike road was so nearly completed, They are estopped from enjoining the collection of the tax levied for the said improvement.

In accordance with the above findings an injunction should not be allowed nor the collection of said tax restrained and a judgment should be entered against the Plaintiffs for costs, All of Which is respectfully Submitted.

July 24th 1883, J. H. Weinkade
Special Master Commissioner.

On the 5th day of September 1883 a motion to set aside the Report of the Master Which reads as follows,

Motion

James Sweeney et al
vs
The Commissioners of Union County et al

The State of Ohio Union County, Court of Common Pleas

And now comes the plaintiffs and move the Court to set aside the report and findings of the Special Master Commissioner J. H. Weinkade for the following reasons, to-wit:

1st That said report does not contain a finding of the facts from the testimony taken before him, but simply a conclusion from the facts.

2d That said Master does not state in his report how he found from the testimony before him, certain persons should be counted, whether for against said improvement or not at all.

3d That said Master in his report should have stated how he found all the facts about which testimony was given and not only the result of all the facts taken together.

4th That said Master should in his said report have stated each fact found by him.

Powell & Fulton for plaintiffs

"also," Exceptions which read as follows"

Ex to Rept

James Sweeney et al
vs
Commissioners of Union County et al

State of Ohio Union County Court of Common Pleas
Exceptions to Report of J. H. Weinkade as Master Commissioner

And now comes the plaintiffs and excepts to the report of the Master J. H. Weinkade herein as follows.

1st To that part of said report that finds that a majority of the resident land owners within the bounds of said road signed the petition for said road improvement for the reason that the same is contrary to the facts.

2d To that part of said report that finds that said plaintiffs are estopped for the reason that said finding is contrary to law. Powell and Fuller for Plaintiffs

On the 2d day of October 1883 any Entry was made on the journal of said Court which reads as follows,

Entry

James Sweeney et al
vs
The Commissioners of Union County et al

This day this cause came on to be heard upon the plaintiffs motion to set aside the report of the Referee, and on the motion of the defendants to confirm the same, and on the exceptions of said plaintiff to the report of said Master Whereupon the court being fully advised in the premises do overrule the motion of the plaintiffs and the court do hereby confirm the said report, To which ruling of the court in overruling the motion to set aside the report, and in overruling the Exceptions of said plaintiffs to said report the plaintiffs at the time excepted. Whereupon it is ordered and decreed by the court that all orders made in this cause as to the payment of taxes be set aside and the plaintiffs petition be and the same is dismissed on its Merits, and that the plaintiffs pay the costs of this proceeding taxed to $ within ten days and in default thereof that Execution therefor as upon judgments at law, and the court order that as a part of the costs in this case that $150 be paid to the administrator of M. C. Lawrence Dec'd former Referee for his services for taking the testimoney herein which was used before J. H. Kinkeade present Referee also it is ordered that as a part of the costs herein that $40.00 be paid J. H. Kinkeade for his services as Referee in this cause. Whereupon the plaintiffs gave notice of their intention to appeal this cause to the District court, and the court fixed their appeal Bond at $400.00.

On the 29th day of January 1884 The plaintiffs filed their appeal bond with the clerk of this court which reads as follows,

Appeal Bond

Know all men by these presents, that We, James Sweeny L. Bishop and George Becher are held and firmly bound unto the Commissioners of Union County in the penal Sum of Four Hundred dollars, to the payment of which, well and truly to be made, We do hereby jointly and severally bind ourselves, our heirs, Executors and administrators Dec'ed es, and dated this 28th day of January A.D. 1884.

The condition of the above obligation is such, that: Whereas, the said James Sweeney and L. Bishop have taken an appeal from a certain judgment rendered against them in favor of the said commissioners in the court of Common pleas within and for the county Union in the State of Ohio, at the September term thereof A.D. 1883 for the Sum of Costs to the District court within and for the county aforesaid, Now if the said James Sweeney & L. Bishop shall abide and perform the order and judgment of said District court, and shall pay all moneys, costs and damages which may be required of or awarded against them by said District court then this obligation to be void; otherwise to remain in full force and virtue in law. (Signed) James Sweeney, Landon Bishop — George Brecher.

I approve the above bond, with Sureties thereto, this 29th day of January A.D. 1884,

J. D. Burgner, Clerk

On the 30th day of April 1883. the following Entries and bond were filed with the Clerk of the Circuit Court and read as follows:

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Entry

James Sweeney et al
vs
The Board of County Commsioners et al

This day the parties appeared and by their agreement leave is granted plaintiffs to file an additional bond herein instanter and thereupon this cause was submitted to the court upon the report of the Special Master Commissioner the exceptions thereto, the pleadings Evidence and arguments of Counsel and the same was taken under advisement by the Court,

"Additional Appeal Bond, Circuit Court."

Know all men by these presents:

That James Sweeney Landon Bishop and George Lorasure are held and firmly bound unto the Board of Commissioners of Union County Ohio and others, in the penal Sum of Four Hundred dollars, to the payment of which well and truly to be made we do jointly and Severally bind ourselves, our heirs, Executors and administrators. Sealed with our seals and dated this 22d day of April 1883.

The condition is such that whereas the said James Sweeney and others have taken an appeal from a certain judgment against them in favor of the said Board of Commissioners of Union County Ohio & others in the Court of Common pleas within and for the County of Union and State of Ohio at the September term 1883 in case No 2157 Entitled James Sweeney et ae vs. Commissioners of Union County et al for the Sum of [illegible] dollars costs to the District Court of said County; Case No 117 on the docket of said District Court. Now, being desirous that said cause shall be transfered to the Circuit Court of said county, this additional bond is given so that if the said James Sweeney and others shall prosecute their appeal to effect without unnecessary delay and shall abide and perform the order and judgment of said Circuit Court and pay all moneys, damages and costs which may be awarded against the said James Sweeney and others then this obligation shall be void; otherwise it shall remain in full force and virtue in law.

In presence of
McKendrie Bishop
James Norris

James Sweeney [Seal]
Landon Bishop [Seal]
Geo Lorasure [Seal]

The Execution of the above undertaking and the Sufficiency of the Sureties therein approved by me this 25th day of April A D 1883;

J D Burgner, Clerk of Common Pleas Court of said County,

James Sweeney and Landon Bishop.
vs
The Board of County Commissioners et al

This day again came the said parties and said cause having heretofore been taken under advisement by the court upon consideration thereof the court do find,

1st That the "Road notice" Signed and given by Israel Slack and John Ko. Dodge and refered to in plaintiffs petition was duly published in the Marysville Tribune

a newspaper published in said Union County Ohio, and of general circulation therein for the period of four consecutive weeks commencing with the date of January 18th 1876.
2d That the bonds for said improvements had been issued and sold and that $21350.00 about 3/4 of the Estimated Expense of said improvement was made and Expended, and that a large portion of the grading, graveling and bridging on said Free Turnpike Road was done before the plaintiffs took any Steps toward resisting said improvement and that said improvement was fully constructed and completed prior to the day of December A.D. 1878, the construction of which and the Expenditure made thereon each and all of said plaintiffs had full knowledge thereof as said improvement progressed.
3d " That upon the issues joined the court finds for the defendants excepting the issue as to the number of land owners Signing the petition for said improvement and as to said issue the court refuses to find for the reason that the foregoing facts being found; said issue cannot give the plaintiffs the Relief prayed for
To all of which said plaintiffs then and there excepted.
It is therefore ordered adjudged and decreed that the plaintiffs petition be and the same is hereby dismissed and that the plaintiffs pay all the costs herein taxed at $ and in default thereof that Execution issue therefor.
It is further ordered, adjudged and decreed that a Referee fee of $15.00 be paid to the administrator of W. C. Lawrence deceased, for the Services of W. C. Lawrence as Referee in said cause, and that a Referee fee of $40.00 be paid to J. H. Kinkade for his Services as Referee in said cause, and that both of said fees be taxed as a part of the costs in said cause, It is further ordered that a Special Mandate be Sent to the court of Common Pleas of this county, to carry said decree for cost into Execution.
To all of which said plaintiffs then and there Excepted.
On the 1st day of May 1885 a Motion for new trial was filed in the above case which reads as follows;

Motion

James Sweeney et al
vs
The Board of Commissioners of Union County et al

The State of Ohio Union County Circuit Court-

And now comes the plaintiffs and move the Court for a new trial herein for the following reasons, to-wit;
1st That the decision is not sustained by Sufficient evidence
2d That the decision is contrary to law.
3d Error of law occuring during the trial and excepted to by plaintiffs.
J. E. Wright Ed Powell & Fullen for Plffs.

On the 1st day of May an Entry was made on the journal of said court which reads as follows.

Entry

James Sweeney et al
vs
The Commissioners of Union County Ohio et al

This day this cause came on to be heard upon the Motion of plaintiffs for a new trial and was argued by counsel.
On consideration whereof and the court being fully advised in the premises find that said Motion is not well taken and the same is therefore overruled.
To which ruling and finding the plaintiffs excepted

W. H. H. J. D. Burgner, Clerk
By W. M. Wright Deputy.

Pleas before the Honorable Thomas Beer, John J. Moore and Henry W. Seney Judges of the Circuit Court within and for the County of Union of the Third Judicial Circuit of the State of Ohio, begun and held at the Court House in the town of Marysville, on Tuesday the 28th day of April in the year of our Lord one thousand eight hundred and eighty-five. Heretofore a Petition in Error, and the Transcript and original pleadings from the Court of Common Pleas were filed with the Clerk of the Circuit Court. Said Transcript was filed on the 9th day of February A. D. 1883, and reads as follows, to-wit:-

The State of Ohio } In Common Pleas Court. April and Sept. Terms 1883-4
Union County, ss. }
Henry Fox Plaintiff
vs. Certified Copy of Journal Entries.
John Liggett, Defendant.

Entry

March 8th 1883.

This case is remanded from District Court for a new trial herein.

May 10th 1883.

Cause continued by agreement.

Thursday, September 6th 1883. April Term.

By consent of parties the entry of continuance in this cause is set aside and cause set for trial at this April Term.

Saturday, September 8th 1883. April Term.

This day came the parties by their attorneys and this cause came on to be tried: and thereupon came a jury to-wit:- W. E. Tanner, John Conner, Jr. James Mitchell, W. R. Robinson, W. H. Jordon, James Poling, Lewis Figley, George Coons, W. H. Willis, Lewis Brown, Cicero Hunt and Levi Scuffin who, being duly impaneled and sworn to well and truly try the issue joined between the parties in this cause, and a true verdict render according to the evidence, unless withdrawn by consent of parties or discharged by the Court; and after hearing the testimony, arguments of Counsel and charge of the Court; the said Jurors retired from their room to deliberate upon their Verdict; and after due deliberation returned into open Court and presented their verdict in writing in the words and figures following, to-wit:-
"Verdict" The State of Ohio, Union County ss. April Term A. D. 1883, to-wit:- Sept 8th 1883. Henry Fox Plff't vs. John Liggett Deft. We, the jury in this case being duly impannelled and sworn do find and say that we find for the Defendant. Levi Scuffin, Foreman." And thereupon Plaintiff filed his motion for a new trial which motion is continued.

Monday October 3rd A. D. 1883, September Term 1883.

This day this cause came on to be heard on the motion of the Plaintiff to set aside the verdict of the jury and grant a new trial herein for reasons contained in said motion, and the Court being fully advised in the premises overrules said motion to which overruling of said motion the Plaintiff by his Attorneys then and there excepted and asked the Court to allow, sign and seal his bill of exceptions; which was accordingly done. It is therefore considered ordered and adjudged by the Court that the defendant recover from the Plaintiff his costs herein expended

taxed at $ and that the Defendant go hence without day.

Saturday, January 12th 1884, Sept. Term 1883.

This day comes the said Henry Fox and presents to the Court his certain bill of exceptions herein which being found by the Court to be true is allowed signed and sealed, and on motion is hereby made a part of the Record

The State of Ohio }
Union County, ss. }

I, J. D. Burgner, Clerk of the Court of Common Pleas within and for said County, and in whose custody the Files, Journals and Records of said Court are required by the laws of the State of Ohio to be kept; hereby certify that the foregoing is taken and copied from the Journal of the Proceedings of the Court within and for said County, and that said foregoing copy has been compared by me with the original entry on said Journal and that the same is a correct transcript thereof. In testimony whereof, I do hereto subscribe my name officially and affix the Seal of said Court at the Court House in Marysville, Ohio in said County, this 1st day of March A.D. 1884. J. D. Burgner Clerk.

Seal

On the 9th day of February A.D. 1883, said Petition in Error was filed with the Clerk of said Circuit Court and reads as follows; to-wit:-

Petition in Error

Henry Fox Plaintiff
vs.
John Liggett, Defendant

Union County, District Court.
Petition in Error.

John Liggett Defendant.

The said Henry Fox Plaintiff complains of For that the said Defendant John Liggett at the September Term A.D. 1884 at the Court of Common Pleas for the said County of Union recovered a judgment by the consideration of said Court against the Plaintiff Henry Fox, in a certain action then pending in said Court wherein the said Henry Fox was Plaintiff and the said John Liggett was defendant a copy of the record of the judgment and proceedings including the Journal Entries & Bill of Exceptions in which case duly certified is hereto attached marked "A" and made a part of this petition And also the original pleadings and papers in this case. And the said Henry Fox avers there is error in the record and proceedings in this case, to-wit:-

1st The Court erred in refusing to charge the jury as requested by the plaintiff, as to the legal effect of certain alleged offers to buy the land in dispute by the Defendant John Liggett from the Plaintiff Henry Fox or those under whom he claimed.

2nd " The Court erred in refusing to charge the Jury as requested by the Plaintiff that in order to sustain the defense of adverse possession the possession must be hostile, and therefore must be brought home to the knowledge of the owner.

3rd " The Court erred in refusing to charge the Jury as requested by Plaintiff "that the evidence to establish adverse possession must be clear and convincing and not merely a preponderance."

4th " The Court erred in charging the jury that no more than a fair preponderance of the evidence was required to sustain the defense of adverse possession, or the Statute of limitations

5th " The Court erred in overruling the Plaintiffs motion for a new trial.

6th The said Judgment was given for the Defendant John Liggett when it ought to have been given for the said Henry Fox Plaintiff according to the law of the land. The said Plaintiff Henry Fox therefore prays that said judgment may be reversed and the said Plaintiff restored to all things he has lost by reason thereof.

P. B. Cole & Sons.
Attorneys for Plaintiff

March 3rd 1884. The Defendant in error John Liggett hereby waives the issuing and service of Summons in this and enters his appearance herein.

Robinsons & Pence
Attorneys for Defendant.

Afterward on Wednesday April 2nd A.D. 1884, an Entry was made on the Journal by the Clerk of said Circuit Court which reads as follows, to-wit:-

Entry — Henry Fox vs. John Liggett — 13.

The parties appeared by their attorneys and thereupon this cause was submitted to the Court upon the petition in Error, exhibits and transcript and arguments of Counsel, the arguments not being concluded the further hearing of this case was adjourned until tomorrow morning.

Thursday April 3rd 1884; the following Entry was made on the Journal of said Circuit Court by the Clerk, to-wit:-

Entry — Henry Fox vs. John Liggett — 13.

This day appeared the parties by their Attorneys and this cause was further heard by arguments of Counsel and the arguments being concluded this cause was taken under advisement by the Court.

Wednesday May 6th 1884, an Entry was made on the Journal of said Court which reads as follows, to-wit:-

Entry — Henry Fox vs. John Liggett — 13

This cause having been submitted and now on full investigation the Court find there is no error apparant in said record. It is therefore considered, ordered and adjudged by the Court that said judgment be and the same is affirmed with costs and that the Defendant in Error recover of the Plaintiff in Error his costs herein taxed to $ And the Court being of the opinion that reasonable grounds for proceeding in error existed allow no penalty.

It is therefore considered and ordered that a special mandate issue to the Court of Common Pleas of this County for execution upon said judgment. To all of which Plaintiff in Error excepts.

Attest J. Q. Burgner Clerk.
By A. R. Burgner, Deputy

Pleas before the Honorable Thomas Beer, John J. Moore and Henry W. Seney, Judges of the Circuit Court within and for the County of Union of the Third Judicial Circuit of the State of Ohio, begun and held at the Court House in the town of Marysville on the 28th day of April in the year of our Lord one thousand eight hundred and eighty-five. Heretofore a petition in Error and the Transcript and original pleadings from the Court of Common Pleas were filed with the Clerk of the Circuit Court, said transcript was filed on the 9th day of February A.D. 1885, and reads as follows, to-wit:-

The State of Ohio,
Union County, ss. } In Common Pleas Court, September Term, 1883.

First National Bank of Delaware, Ohio, Plaintiff
vs.
John Rodgers and Howard Rodgers, Defendant

Certified copy of Journal Entries.

Wednesday September 27th 1882.

This day came the Plaintiff by Cooper and Van Deman its Attorneys and thereupon came R. L. Woodbury one of the Attorneys of Record of this Court who, by virtue of a Warrant of Attorney duly executed, and now produced in open Court and duly proven, waived the issuing and service of process and entered appearance of said defendants herein, and by virtue of the same Warrant of Attorney, confesses that there is due from said defendants to said plaintiff as is alleged in said plaintiffs petition the sum of $1009.$^{20}/_{100}$.

It is therefore considered that said plaintiff do recover of said defendants the sum of $1009.$^{20}/_{100}$ so as aforesaid confessed to be due together with costs of suit herein, to be taxed, and with interest to be computed at the rate of eight per centum per annum, And by virtue of said Warrant of Attorney all errors are released and all right of appeal, and all right to file a petition in error are waived.

Afterwards on the 5th day of October A.D. 1882
the following entry was made on the Journal of said Court, to-wit:-

Howard Rodgers, Plaintiff
vs.
The First National Bank of Delaware, Ohio, Defendants

Before the Probate Judge, Union County, Ohio.
Motion for temporary injunction in the Court of Common Pleas, Union County Ohio

And now on this 5th day of Oct. 1882, came the plaintiff, by his Attorney; and it being made to appear that there is at this time no Common Pleas, District or Supreme Judge within said County the motion of the plaintiff for a temporary injunction came on and was heard upon the petition of the plaintiff and the affidavits therein filed, and after hearing the arguments of counsel, and being fully advised in the premises, it is considered and ordered that a temporary injunction be and the same hereby is allowed in this case to restrain the said defendant The First National Bank of Delaware from further proceedings in the sale by the Sheriff of the goods and chattels levied upon by him by virtue of the execution issued upon the judgment rendered in the action of the First National Bank of Delaware against John Rodgers and Howard Rodgers in said Court of Common Pleas at the September Term thereof 1882 and numbered 4116. And the

said Bank is further restrained from proceeding to collect the judgment and cost in said action until the said action of Howard Rodgers against said Bank can be and is heard and decided by said Court of Common Pleas so far as said judgment and execution relates to said Howard Rodgers, but all liens and any and all liens that may be acquired by reason of said liens are to remain in full force and virtue in law, the same as if the injunction had not been allowed and the property levied upon by virtue of the judgment and execution in said action is to remain in the custody of the Sheriff of Delaware County Ohio; until the further order of the Court of Common Pleas of Union County, Ohio, as prayed for in said petition of plaintiff. It is further ordered that the Clerk of Court of Common Pleas issue summons in this case endorsed injunction allowed on said plaintiff, giving an undertaking to the said defendant in the sum of $250. 00/100 conditioned according to law, with security to be accepted by the said Clerk of the Court of Common Pleas.

Afterwards on the 26th day of Jan. 1883, the following entry was made on the Journal of said Court, to-wit:-

Howard Rodgers
vs.
The First National Bank of
Delaware Ohio.

This day came the said parties by their Attorneys and thereupon this cause came on to be heard upon the petition of the plaintiff, the answer of the defendant and testimony. On consideration whereof the Court do find that the judgment was taken upon a warrant of Attorney and that the defendant was not summoned or legally notified of the time and place of taking said judgment and that said judgment was taken for more than due plaintiff. It is therefore considered that said judgment heretofore rendered in said action at the September Term of this Court A.D. 1882 be and the same is hereby vacated and set aside with costs and that the said Howard Rodgers have leave to answer the same in 20 days from the rising of this Court and thereupon this cause is continued with leave to Bank to substitute copies for the originals notes filed with petition.

On the 21st day of Sept. 1883 the following entry was made on the Journal, to-wit:-

The First National Bank
of Delaware, Ohio
vs.
Howard Rodgers

This day came the parties by their attorneys and this cause came on to be tried; and thereupon came a jury, to-wit: Elbert Tobey, Lewis Brown, W. H. Willis, Cicero Kent, Walter Bales, James Poling Jr. George Goon, Levi Swaffie, W. H. Jordon, W. R. Robinson Lewis Figley and James Mitchell, who, being duly empanneled and sworn to well and truly try the issue, joined between the parties in this cause, and a true verdict render according to the evidence, unless withdrawn by consent of parties, or discharged by the Court; and after hearing the testimony, arguments of Counsel, and charge

of the Court; the said Jurors retired to their room to deliberate on their verdict and after due deliberation returned into open Court and presented their verdict in writing in the words and figures following, to-wit:
Verdict. State of Ohio, Union County, ss. Sept. Term 1883, to-wit: Sept. 21st 1883, No. 4116
First National Bank of Delaware, Ohio, vs. Howard Rodgers.
We the Jury in this case being duly impaneled and sworn do find and say that we find for the defendant Howard Rodgers.
W. H. Willis, Foreman.

Afterward on the 3rd day of October 1883, the following entry was made on the Journal of said Court, to-wit:-
First National Bank of Delaware, Ohio.
vs.
John Rodgers and Howard Rodgers.
This day this cause came on for hearing on the motion for a new trial and to set aside the verdict herein and was argued by counsel. On consideration whereof the Court doth overrule said motion to which ruling of the Court the said plaintiff did except and presented its Bill of Exceptions to the Court and asked that the same be allowed signed and sealed by the Court and ordered to be made part of the Record in this case all which is accordingly done and it is hereby ordered that the said Bill of Exceptions be made part of the record of this case and this order be entered on the Journal of this Court. It is therefore ordered and adjudged that the said defendant Howard Rodgers go hence without day and recover of the plaintiff his costs herein expended taxed at $ and that the plaintiff pay its own costs to which ruling and judgment of the Court the said plaintiff did also except.

The State of Ohio
Union County, ss. } A. J. D. Burgner, Clerk of the Common Pleas Court within and for said County, and in whose custody the Files, Journals and Records of said Court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journals of the proceedings of the said Court within and for said County, and that said foregoing copy has been compared by me with the original entries on said Journals and that the same is a correct transcript thereof.
In testimony whereof, I do hereto subscribe my name officially and affix the Seal of said Court, at the Court House in Marysville, Ohio, in said County, this 3rd day of October A.D. 1883.
Seal
J. D. Burgner, Clerk

On the 9th day of February A.D. 1884, the following Petition in Error was filed with the Clerk of said Circuit Court, to-wit:-
The First National Bank of Delaware, Ohio, Plaintiff in Error
vs.
Howard Rogers, Defendant in Error
District Court, Union County, O.
Petition in Error
Petition in Error
The Plaintiff in Error, The

Entry 10

First National Bank of Delaware, Ohio, says it is a National Bank duly organized under and in pursuance of the Act of Congress, and is located and doing business in the County of Delaware and State of Ohio; that at the October Term A.D. 1882, of the Court of Common Pleas in and for the County of Union in said State the defendant in error recovered a judgment against this plaintiff in Error, in a certain action pending in said Court wherein this plaintiff in error was the plaintiff below and John Rogers and Howard Rogers were the defendants below as appears from the records, files, and transcript herein filed and made part of this Petition in Error.

Plaintiff in Error says that in the Record, judgment and proceedings of the Court of Common Pleas of Union County aforesaid, in said judgment and proceedings aforesaid there are manifest and manifold errors to the prejudice of the said Plaintiff in Error in this, to-wit:-

I. The said Court of Common Pleas erred in refusing to permit the said Plaintiff below to give certain testimony and which ruling of the Court was excepted to at the time as disclosed by the said Bill of Exceptions.

II. The said Court of Common Pleas erred in permitting the said defendant below to give certain testimony in said Bill of Exceptions referred to as appears of record.

III. The said Court of Common Pleas erred in refusing to charge the Jury and to give in charge to Jury certain specific charges in writing as requested by the plaintiff below, to which refusal the plaintiff below did except as appears of record in said cause.

IV. The said Court of Common Pleas erred in its charge to the jury to which the plaintiff below did at the time except as appears of record.

V. The said Court of Common Pleas erred in refusing to set aside the verdict of the jury in said action and to grant a new trial of said cause.

VI. The said Court of Common Pleas erred in rendering a judgment in favor of the defendant Howard Rodgers in said action.

VII. The said judgment of the Court of Common Pleas should have been in favor of the plaintiff below instead of the said defendant below Howard Rogers.

Wherefore for these and other manifest errors of the said Court below the Plaintiff in Error asks that the said verdict and judgment of the Court below may be set aside, reversed and held for naught and that the plaintiff in Error may be restored to all it has lost by reason thereof.

Robinson & Peper Att'ys
Carper & Van Deman Atty for Pff in Error

We hereby waive the issuing and service of summons in Error in this case and enter the appearance of the defendant in Error Howard Rodgers to this action

Howard Rodgers Deft:
By J. Hipple his Attorney

On Saturday May 2nd A.D. 1885, the following Entry was made by the Clerk in the Journal of said Court, to-wit:-

The First National Bank of Delaware Ohio
vs.
John Rogers

The parties appeared

Entry
10

by their attorneys and thereupon this cause was submitted to the Court upon the pleadings, exhibits and the arguments of Counsel and the same was taken under advisement by the Court

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On Wednesday May 6th A.D. 1885, the following entry was made on the Journal of said Circuit Court:

First National Bank of Delaware, Ohio, Plff. in Error.

vs.

John Rodgers, Deft. in Error.

Entry

10.

This day again came the parties by their attorneys and said cause having heretofore been taken under advisement by the Court, upon consideration thereof the Court do find there is no error Apparent on the record in said proceedings and judgment. That there was reasonable grounds for proceeding in error. It is therefore considered by the Court that the said judgment be and the same hereby is affirmed and that the defendant in error recover from the plaintiff in error his costs herein taxed at $

It is further ordered that a special mandate be sent to the Common Pleas Court of Union County for execution, to all of which judgment and decision said plaintiff in error then and there excepted.

Attest J. Q. Burgner Clerk
By A. R. Burgner Deputy

J. 13 - P. 321

J. 13 - P. 321

Pleas before the Honorable Thomas Beer, John L. Moore and Henry W. Seney Judges of the Circuit Court within and for the County of Union Third Judicial Circuit of the State of Ohio, begun and held at the Court House in the town of Marysville on the 1st day of December in the year of our Lord one thousand eight hundred and eighty five. Heretofore a Petition in Error and the transcript and original pleadings from the Court of Common Pleas were filed with the Clerk of the Circuit Court. Said Transcript was filed on the 28th day of Nov. A.D. 1884 and reads as follows, to-wit:-

J. 13 - P 322

The State of Ohio
Union County, ss
H. A. Willis Plaintiff
Against
W. H. Robinson, Defendant

In Common Pleas Court - September Term, 1884
Journal Vol. 13. Page 254
Certified Copy of Journal Entry.

Transcript

31

Sept. 12th 1884

This day came the parties by their attorneys and this cause came on to be tried; and thereupon came a jury to-wit- Simpson Price, Levi Keegan, Luther Turner, Geo. Coleman, Samuel Hammer Solomon Walker, Michael P. Wood, N. M. Kirk, Stephen Shirk, J. N. Gosnell, George Wallace and Geo. Nichol who being duly empannelled and sworn to well and truly try the issue joined between the parties in this cause and a true verdict render according to the evidence, unless withdrawn by consent of parties or discharged by the Court - and after hearing the testimony, arguments of counsel and charge of the Court; the said jurors retired to their room to deliberate upon their verdict; and after due deliberation returned into open Court and presented

Verdict

Petition in Error

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Verdict

their verdict in writing in the words and figures following, to-wit

The State of Ohio, Union County ss. September Term 1884. To-wit: September 12th 1884.

W. A. Wiles, Plaintiff vs. W. H. Robinson, Defendant.

We, the jury in this case being duly impanneled and sworn do find and say that we find for the plaintiff in the sum of $40. 93/100. A. N. Gosnell, Foreman.

December 17th 1884

J. 13-P. 321

W. A. Willes Plaintiff
vs.
W. H. Robinson, Defendant

Certified Copy of Journal Entry.

This day this cause came on for hearing upon the motion of defendant for a new trial and was argued by counsel and submitted to the Court. Whereupon the Court being fully advised in the premises does overrule said motion to which ruling, decision and judgment of the Court the defendant then and there excepted, and on his application 30 days from the rising of this Court was granted to the defendant to prepare his bill of exceptions, and the records are ordered to be kept open for that purpose.

December 17th 1884

J. 13-P. 321

W. A. Willes, Plaintiff
vs.
W. H. Robinson, Defendant.

Certified Copy of Journal Entry.

The jury in this action having on a former day of this term rendered a verdict for the plaintiff and assessed his damages at $40.93 and a motion for a new trial having been overruled It is therefore considered by the Court that W. A. Willes recover from the said W. H. Robinson the said sum of $40.93 together with his costs herein expended.

January 7th 1885.

J. 13-P. 322

W. A Willes, Plaintiff
vs.
W. H. Robinson Defendant

Certified Copy of Journal Entry.

Entry on Bill of Exceptions, January 7th 1885.

Now comes the defendant and presents his bill of exceptions which is allowed signed, sealed and made part of the record in this case. January 7th 1885.

The State of Ohio.
Union County ss. I, J. D. Burgner, Clerk of the Common Pleas Court within and for said County, and in whose custody the files, journals and records of said Court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal No. 13 of the proceedings of the Common Pleas Court within and for said County, and that said foregoing copies have been compared by me with the original entries on said Journal No. 13 and that the same is a correct transcript thereof. In testimony whereof, I do hereto subscribe my name officially and affixed the Seal of said Court, at the Court House in the town of Marysville in said County, this 23rd day of November A. D. 1885.

Seal

J. D. Burgner Clerk
By A. R. Burgner Deputy.

On the 17th day of April A. D. 1885, the following Petition in Error was filed with the Clerk of said Circuit Court, To-wit:-

Petition in Error

State of Ohio, Union County, ss.

W. H. Robinson, Plaintiff in Error
vs.
H. A. Willes, Defendant in Error.

To the Circuit Court.
Petition in Error

The plaintiff in Error says that at the

No. 31

September Term A.D. 1884 of the Court of Common Pleas of Union County, defendant-in Error recovered a judgment by the consideration of said Court against plaintiff in Error in an action then pending therein wherein defendant-in Error was plaintiff, and plaintiff in error was defendant. A transcript of the docket and journal entries in which case together with the original pleadings, papers and Bill of exceptions is filed herewith.

Where is error in said record and proceedings in this, to-wit:-

1st Said Court erred in overruling the motion of plaintiff in error for a new trial.

2nd Said Court erred in ruling out the evidence of the said W. H. Robinson and refusing to let him testify as will appear by the Bill of Exceptions filed herein.

3rd Said Court erred in ruling out evidence offered by the said W. H. Robinson.

There was irregularity and abuse of the discretion of the Court by which the defendant was prevented from having a fair trial

Said judgment was given for said H. A. Wills when it should have been given for said W. H. Robinson according to law.

Plaintiff in Error therefore prays that said judgment may be reversed and that he be restored to all things he has lost by reason thereof

J. L. Cameron Attorney for Plaintiff in Error.

Waiver of Summons

The defendant in Error hereby waives the issuing and service of summons and enters his appearance herein

H. A. Wills

By A. T. Carpenter his Attorney.

Afterward, on the 2nd day of Dec. A.D. 1885 the following Entry was made on the Journal by the the Clerk of said Circuit Court, to-wit:-

Entry

W. H. Robinson Plaintiff in Error

vs.

H. A. Wills, Defendant in Error

Circuit Court.

31

This day came the parties by their attorneys and submitted this cause to the Court on the petition in error, bill of exceptions, original pleadings and arguments of counsel and the same was taken under advisement by the Court.

Afterwards on the 4th day of December A.D. 1885 an Entry was made on the Journal by the Clerk of said Circuit Court which reads as follows, to-wit:-

Entry

W. H. Robinson, Plaintiff in Error.

vs.

H. A. Wills, Defendant in Error.

In Circuit Court of Union County, Ohio.

31

This cause came on for hearing upon the petition in error and the Transcript of the proceedings and judgment of the Court of Common Pleas of said County: On consideration whereof the Court find there is no error in said proceedings and judgment, and the said judgment is therefore affirmed at the cost of the plaintiff in error taxed at $ and execution is awarded therefor. And the Court further order that this cause be remanded to the Common Pleas Court of Union County for judgment in accordance with the above finding and that a special mandate therefor be sent to said Court. To all of which findings, rulings and judgment the said William H. Robinson excepts.

Attest J. D. Burgner, Clerk.

By A. R. Burgner, Deputy.

Pleas before the Honorable Thomas Beer, John J. Moore and Henry W. Seney, Judges of the Circuit Court within and for the County of Union of the Third Judicial Circuit of the State of Ohio, begun and held at the Court House in the town of Marysville on the 1st day of December in the year of our Lord one thousand eight hundred and eighty-five. Heretofore an Appeal Bond, and the Transcript and original pleading from the Court of Common Pleas were filed with the Clerk of the Circuit Court. Said Transcript was filed Feb. 9th 1885 and reads as follows, to-wit:-

Transcript

The State of Ohio, Union County ss. In Common Pleas Court.

S. S. McCracken Plaintiff

Against

Isaac W. McCracken, Defendant.

"No. 3442"

Certified Copy of Journal Entry

17.

Journal 11, Page 455.

And now comes the said S. S. McCracken by Carpenter & Brodrick his attorneys and the said Isaac W. McCracken and Margaret McCracken still failing to answer or demur to said petition, it is considered that the said plaintiff is entitled to an account of the money due him in the premises and the Court after hearing the evidence do find that there is due to the said plaintiff, on the note and mortgage in said petition described the sum of Four Hundred and Eight Dollars and Eighteen Cents with interest thereon at the rate of eight per centum per annum from the 8th day of September A. D. 1879. It is therefore considered by the said Court here that the said plaintiff recover of the defendants Isaac W. McCracken the said sum of $408. 18 the sum so found due as aforesaid with 8% interest thereon from the 8th day of September A. D. 1879 and also his costs taxed to $ and it is further ordered and adjudged that an order issue to the Sheriff of said County commanding him to cause the said lands and tenements in said petition described to be appraised advertised and sold according to law and bring the proceeds into Court for further order herein, and leave is granted to the defendants "Woodburn Sarvice Wheel Company" to file answer herein within 20 days from the rising of Court and cause continued.

Journal. 11- Page 516

-Jan. 30th 1882.-

This cause came on to be heard on motion to set aside the sale made in this cause Whereupon the Court order the sale set aside and cause continued under the former order

Journal 12- Page 414

-May 24th 1882-

This day this cause came on for hearing on motion of the Cross-petitioners herein to redocket the same and the same was argued by counsel and submitted to the Court, on consideration whereof the Court do sustain said motion. It is therefore considered and adjudged by the Court that this cause be re docketed on the trial docket of said Court. And thereupon the said Cross-petitioners asked and obtained leave of the Court to file amended Answer and cross petition herein by the 20th day of June A. D. 1882.

Journal 12- Page 429

-June 27th 1882-

And now comes the said defendant Hale & Street and the defendant W. H. Ferguson by their Attorneys respectively and the said defendants still failing to answer or demurre to the Answer and Cross petition of said Hale & Street or to the answer and cross petition of said W. H. Ferguson. It is considered that said Hale & Street and said W. H. Ferguson are each entitled to an account of the money due them in the premises, and the Court after hearing the evidence

do find that there is due Hale & Fleet on the note and mortgage in their answer and cross petition described to June 27th 1882, the sum of $385.65 and that there is due to W. H. Ferguson on the note and mortgage in his answer and Cross Petition described to June 27th 1882, the sum of $451.55. It is therefore considered by the said Court here that the said Hale & Fleet recover of the defendant Isaac W. McCracken the said sum of $385.65 the sum so found due and also his cost taxed to $. and it is further ordered and adjudged that in case the said Isaac W. McCracken fail for five days from the 27th day of June A.D. 1882, to pay to said Hale & Fleet said sum of $385.65 and to said W. H. Ferguson said sum of $451.55 so as aforesaid found due with costs of suit an order issue to the Sheriff of said County commanding him to cause the said lands and tenements in said answer and cross petitions described to be appraised advertised and sold according to law and that he bring the proceeds of said sale into Court subject to the further order of the Court and to the distributive thereof.

Journal 12 - Page 438.

June 27th A.D. 1882

And this cause came on further to be heard on the Cross-petition of W. H. Ferguson and thereupon the Court being fully advised in the premises do find that there is due to said Ferguson on the note and mortgage first mentioned in said Cross-petition the sum of $108.00 on the mortgage given by Isaac W. McCracken and wife for the purchase money of lot "212" in said petition described and recorded Jan. 16th 1871. Further that there is due to said Ferguson on said mortgage in said Cross Petition described the sum of $343.45 which mortgage signed by Isaac W. McCracken and his wife Margaret McCracken Feb. 21st 1877 and recorded Feb. 21st 1877 as alleged in said cross-petition. It is therefore ordered and decreed that if said Isaac McCracken and Margaret McCracken fail for 20 days from the rising of this Court to pay said sum of money with int. from the 27th June 1882 and the costs of this proceeding then an order of Sale issue on the demand of said Ferguson directed to the Sheriff of this County commanding him to appraise, advertise and sell according to law the said premises in said petition described and the proceeds thereof bring into Court to await the further order of the Court distributing said proceeds among the parties and for that purpose this cause is continued.

Journal 13 - Page 78

October 3rd A.D. 1883.

On motion of defendants and cross petitioners and upon producing the return of the Sheriff of the Sale made under the former order of this Court and the Court on careful examination of the proceedings of the said Sheriff being satisfied that the same have been had in all respects in conformity to law and the order of this Court. It is ordered that said proceeding and sale, be and the same is hereby approved and confirmed and it is further ordered that the said Sheriff convey to the purchaser William H. Ferguson it appearing that D. E. Hale & Geo. W. Fleet have assigned their bid to him by deed in fee simple the lands and tenements so sold, and the said purchaser is hereby subrogated to all the rights of all the lien holders in said premises for the protection of his title and a writ of possession is awarded to put said purchaser in possession of said premises

And the Court coming now to the distribution of the proceeds of said sale amounting to $15.35.00 and said proceeds arising from the sale of said lot No. 212 and part of Lot No. 211 in the town of Richwood as the same are described in the petition and cross petition filed herein. And there being certain liens against said premises, some of which are against Lot No. 212 alone, and others

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being against both lots; and being agreed by the parties and found to be just by the Court, that said Lot No. 212 and part of Lot 211, are all of equal value; it is therefore adjudged by the Court that said sum of $1535.00 be divided in two equal parts of $767.50 each, and the same be distributed as follows:- As to the money arising upon the sale of Lot No. 211- First:- One half of the costs of this action taxed at $ Second: One half of the taxes due up to date of sale $154.34. Third: One half of the allowance decreed to the wife of said defendant A. W. Mc. Cracken in lieu of a homestead in premises sold, to-wit:- $250.00. Fourth, To the Woodburn, Sarven Wheel Co. the balance due said Company on its judgment against the said A. W. Mc. Cracken rendered Oct. 7th 1876, to-wit: including interest to date $44.13 Fifth, To Rodgers, Duck & Lewis the balance due said company on its judgment against A. W. Mc. Cracken rendered Feb. 19th 1877, to-wit:- including interest and costs paid $100.00 Sixth: Wagner and Horney the amount due them on their judgment against A. W. Mc. Cracken rendered Feb. 21st 1877, to-wit: $221.00 or so much thereof, as the balance remaining after paying said judgment of Rodgers, Duck & Lewis in full, to-wit:- $163.20. As to the money arising from the sale of Lot No. 212 to-wit: $767.50 as follows:- 1st One half of the costs of this action taxed at $34.54 2nd One half the taxes due upon the premises sold to date $154.34, 3rd To Wm H. Ferguson the amount due him upon his judgment on his note and mortgage dated Jan. 16th 1871, for purchase money, to-wit:- including interest to date, $113.83. 4th To the wife of said defendant A. W. Mc. Cracken one half the amount decreed to her in lieu of homestead in said premises, $250.00 5th To Godman and Thornhill and Co. the amount due them on their note and mortgage dated Dec. 27th 1875, signed by A. W. Mc. Cracken, only so the balance remaining after the allowance in the preceding items is made to be applied as far as it will go to the payment of said claim of Godman, Thornhill & Co. to-wit $193.30. And in the third place that out of the said $500.00 above decreed to the wife of the defendant A. W. Mc. Cracken in lieu of a homestead, the following liens on said Lot No. 212 which precludes the allowance of a homestead, be paid as follows: 1st to S. Carter & Co. the amount due on their mechanics lien dated Feb. 7th 1877, on which judgment was rendered against said A. W. Mc. Cracken, Iroquois 1879 for $45.25 amount now due thereon including interest and costs of said suit $96.70 2nd To W. H. Ferguson the amount due him on his judgment rendered on his note and mortgage dated and filed for record Feb. 21st 1877 at o clock P.M. so much of what remains of said $500.00 after paying the said amount due on the last mentioned claim until the claim is paid in full to-wit: $371.44 And there remaining still in the hands of the Sheriff the sum of $33.19 he is hereby ordered to pay the same upon the claim of Hale and Treet as set forth in their cross-petition filed herein. To all of which ruling and decision of the Court the defendants Hale & Treet by their attorneys then and there excepted. Margaret Mc. Cracken who claimed homestead allowance also excepted as above.

Journal 13 - Page 97

- Dec. 20th 1883 -

The defendants Hale & Treet thereupon gave notice of their intention to appeal to the District Court from this order of distribution of the proceeds of said sale as to the said Hale and Treet and the Court fix the Appeal Bond for said Hale & Treet at $100.00

Journal 13 - Page 101

- December 24th 1883 -

This day came the defendants Hale & Treet by their attorneys and gave notice of their intention to appeal from the judgment decree and rulings of this Court as to the distribution of the proceeds of sale of the premises in the petition described

but this appeal shall not in any manner effect the sale, confirmation of sale or the deed made by the Sheriff to the purchase of said premises but said sale, confirmation and deed shall remain same as if this appeal had not been taken. The Court being fully advised in the premises fix the bond at One Hundred Dollars.

The State of Ohio,
Union County, ss. } I, J. Q. Bruegger, Clerk of the Common Pleas Court within and for said County, and in whose custody the files, journals and Records of said Court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the journals of the proceedings of the said Court within and for said County, and that said foregoing copy has been compared by me with original entries on said journals and that the same is a correct transcript thereof. In testimony whereof, I do hereto subscribe my name officially and affix the Seal of said Court at the Court House in Marysville in said County this 6th day of March A. D. 1884. J. Q. Bruegger Clerk
Seal
By W. M. Wenger Deputy Clk.

On the 9th day of Feb. A. D. 1885. the following Appeal Bond was filed with the Clerk of said Circuit Court, to-wit:-

Bond

Appeal Bond

17

Know all men by these presents, that we David E. Hale, R. Carey and Geo. P. Robinson are held and firmly bound unto Godman Thornhill & Co. and others in the penal sum of One Hundred Dollars, to the payment of which, well and truly to be made, we do hereby jointly and severally bind ourselves, our heirs, executors and administrators. Signed by us, and dated this day of January A. D. 1884. The condition of the above obligation is such, that, whereas, the said Hale and Fleet have taken an appeal from a certain decree and order rendered against them in favor of the said Godman, Thornhill & Co. et. al. in the Court of Common Pleas within and for the County of Union in the State of Ohio, at the September Term thereof, A. D. 1883 for the sum of $ to the District Court within and for the County aforesaid. Now, if the said Hale & Fleet shall abide and perform the order and judgment of said District Court and shall pay all moneys, costs and damages, which may be required of or awarded against them by said District Court, then this obligation to be void; otherwise to remain in full force and virtue in law.

(Signed) D. E. Hale
R. Carey
Geo. P. Robinson

I approve the above Bond, with the sureties thereto, this 11th day of Jany. A. D. 1884
J. Q. Bruegger Clerk.

Afterwards, on the 28th day of November A. D. 1885, the following Transcript was filed with the Clerk of said Circuit Court, to-wit:-

S. S. McCracken, Plaintiff
Against
A. W. McCracken, Defendant

Transcript

The State of Ohio, Union County, ss
In Court of Common Pleas, May Term 1885.
Certified Copy of Journal Entry.

17

Journal Vol. 13. Page 477

This day this cause came on to be heard upon the application of the defendants Godman Thornhill & Co. for a nunc pro tunc order herein finding the amount due them on their mortgage as set up in their Answer and Cross petition herein filed and the Court do find that there was an omission to enter the same upon the Journal of this Court at the September 1883 Term thereof. The Court do therefore find that at said term of said Court, to-wit: October 3rd 1883, there was due from said defendant

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A. W. McCracken to said defendants Goodman Thornhill & Co. on their said mortgage the sum of Seven Hundred and Thirteen and 12/100 Dollars, and the Court do find that said mortgage of said defendants Godman, Thornhill & Co. was a valid and subsisting lien on the premises mentioned in said answer and cross-petition of said Godman, Thornhill & Co. It is ordered and adjudged by the Court that this finding and decree take effect of and date from said September 1885, of this Court, to-wit: October 3rd 1885.

The State of Ohio, }
Union County, ss. } I, J. Q. Burgner, Clerk of the Common Pleas Court within and for said County, and in whose custody the files, Journals and Records of said Court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal No. 13 of the proceedings of the Common Pleas Court within and for said County, and that said foregoing copy has been compared by me with the original entry on said Journal No. 13 and that the same is a correct transcript thereof. In testimony whereof, I do hereto subscribe my name officially and affix the Seal of said Court, at the Court House in the town of Marysville in said County, this 27th day of Nov. A.D. 1885.

Seal

J. Q. Burgner Clerk By A. R. Burgner Deputy Clerk.

Afterwards on the 2nd day of Dec. A.D. 1885, the following Entry was filed with the Clerk of said Court, to-wit:-

S. W. McCracken, Plaintiff
vs.
A. W. McCracken, et. al. Defendant.

Entry

17

Circuit Court.

This day this cause came on to be heard upon the pleadings and evidence and the same was argued by counsel and submitted to the Court. On consideration whereof the Court do find that the premises as described in plaintiffs petition were sold for the sum of $14.33.00 and that said Lots Nos 211 and 212 were of equal value making the proceeds of each Lot $7.16.50 The Court further order distribution of the proceeds of said sale of each lot as follows:- As to the proceeds of Lot No. 211 the Sheriff pay: 1st One half the costs of this action in the Court of Common Pleas taxed at $44.83. 2nd One half of the taxes due at date of sale. $155.34. 3rd One half of the allowance to Margaret McCracken in lieu of a homestead $250.00. 4th To the Woodburn Sarven Wheel Co. on its judgment herein set up $44.13. 5th To Rogers, Duck and Lewis the remainder due on their judgment $100.00 and 6th To Wagner & Forney the remainder of said proceeds $16.32.

As to the proceeds of Lot No 212, the Sheriff pay: 1st One-half the costs of this action in the Common Pleas Court taxed at $54.84. 2nd One half the taxes due at date of sale $155.34 3rd To Wm H. Ferguson, the amount due on his mortgage $113.85. 4th One half the allowance to Margaret McCracken in lieu of a homestead $250.00. 5th To Godman, Thornhill & Co. the remainder of said proceeds $193.50

As to the allowance in lieu of a homestead, the Sheriff pay:- 1st To S. Carter & Co. the amount due on his mechanics lien $95.40 2nd To. W. H. Ferguson the amount due on his mortgage $371.41 and 3rd To Hale & Peat the remainder of said allowance $33.19 And the said appellants herein, Hale & Peat not recovering a greater sum than in the Court below, it is ordered that they pay all the costs in this case.

It is further ordered that this case be remanded to the said Common Pleas Court of Union County Ohio for execution.

Attest J. Q. Burgner, Clerk.
By A. R. Burgner, Deputy.

Transcript

16.

Pleas before the Honorable Thomas Beer, John J. Moore and Henry W. Seney, Judges of the Circuit Court within and for the County of Union of the Third Judicial Circuit of the State of Ohio, begun and held at the Court House in the Town of Marysville on the 28th day of April in the year of our Lord one thousand eight hundred and eighty five. Heretofore, to-wit:- On the 1st day of March A.D. 1884, the following Transcript was filed with the Clerk of said Court, to-wit:

The State of Ohio, } In Common Pleas Court.
Union County ss. } September Term, 1883.

Michael Hannegan Plaintiff in Error.
Against
Village of Richwood, O. Defendant in Error

Journal Vol 13 Page 77
Certified Copy of Journal Entry.
Wednesday, Oct. 3rd 1883.

This day this cause came on to be heard on the petition in Error of the said Michael Hannegan to reverse the judgment of the mayor of the said Village of Richwood, the transcript and the bill of exceptions, and was argued by counsel. On consideration whereof and the Court being fully advised in the premises finds that there is no error in the judgment of the said mayor and affirms the judgment of the said mayor at the costs of the plaintiff in error Michael Hannegan which he is ordered to pay in ten days and in default of such payment of costs in this Court execution is awarded. To all of which rulings and judgments, decisions and orders of the Court, the plaintiff in error then and there and at the time excepted. And thereupon the Court fix the amount of the Supersedeas Bond to be executed by the plaintiff in Error at $150.00

The State of Ohio, }
Union County, ss. } I, J. D. Burgner, Clerk of the Court of Common Pleas within and for said County and in whose custody the files, Journals and Records of said Court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal of the proceedings of the Court within and for said County and that said foregoing copy has been compared by me with the original entry on said journal and that the same is a correct transcript thereof.

(Seal) In testimony whereof, I do hereto subscribe my name officially and affix the Seal of said Court at the Court House in Marysville, Ohio in said County, this 1st day of March A.D. 1884, J. D. Burgner Clerk.

Afterward on the 9th day of February A.D. 1885, the following Bond was filed with the Clerk of said Court, to-wit:-

Bond

16.

Whereas, Michael Hannegan has instituted proceedings in the Court of Common Pleas in and for the County of Union, and State of Ohio, to reverse a judgment & fine rendered by S. W. Van Winkle as Mayor of the Village of Richwood in said County of Union on the 12th day of September 1883, for the violation of an ordinance to prohibit ale beer and porter houses and places of habitual resort for tippling and intemperance, in the sum of Fifty Dollars and Ten and 50/100 Dollars costs of suit in a prosecution in favor of said Village of Richwood and against the said Michael Hannegan Now therefore we Michael Hannegan and Peter Sells do bind ourselves to the said Village of Richwood in the sum of One Hundred and Fifty Dollars, that if the said judgment and fine be affirmed in whole or in part, we will pay to the said village of Richwood the whole or the part of the said judgment affirmed and the costs in the said Common Pleas Court together with the amount of any judgment that may be rendered against the said Michael Hannegan on the further trial of the case after the question of error shall have been determined.

Petition in Error

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This 19th day of September 1883. Mike Hannegan {Seal}
Peter Sells {Seal}

Surety approved this 19th day of September 1883.
J. L. Brugner Clerk.

On the 9th day of February A.D. 1883, the following Petition in Error was filed with the Clerk of said Court, to-wit:-

Petition in Error

Michael Hannigan Plaintiff in Error,
Against
The Village of Richwood, Defendant in Error

In the District Court
Union County, Ohio.
Petition in Error.

16.

The said Michael Hannigan plaintiff in error, complains of the said defendant in error, for that the said defendant in error on the 12th day of September A.D. 1883, before S. W. VanWinkle as mayor of the Village of Richwood in said County of Union, recovered a judgment and fine by the consideration of said mayor against the said plaintiff in error in a certain action and prosecution then pending before said mayor, wherein the said Village of Richwood was plaintiff and the said Michael Hannigan was defendant. The said Michael Hannigan duly prosecuted his petition in error, in said case in the Court of Common Pleas of said County, to reverse the judgment of said mayor and such proceedings were had upon said petition in error, that at the September Term A.D. 1883 said judgment was affirmed in said Court of Common Pleas. A copy and transcript of the judgment and proceedings before said mayor, and before said Court of Common Pleas, are hereto attached and made a part hereof. That said Michael Hannigan avers, that there is error in said record and proceedings to-wit:-

I. The said Court of Common Pleas erred on the hearing of said cause in affirming the judgment of said mayor of the Village of Richwood.
II. The finding and judgment of said Court were against the evidence, and against the law of the case.
III. The said Court erred in rendering judgment for said village, when by the law of the land the judgment should have been for the said Michael Hannigan. The said Michael Hannigan therefore prays that said judgment of said Court of Common Pleas and of said Mayor, be reversed set aside and held for naught, and that the said Michael Hannigan be restored to all things he has lost by reason thereof

Porter & Porter Attorneys for Plaintiff in Error.

I hereby waive the issuing and service of Summons in error against said village of Richwood, and enter its appearance herein. Dated this 13th day of February A.D. 1884.

Powell & Hilton Attorneys for Defendant

Afterwards on the 1st day of May A.D. 1885, the following entry was made on the Journal by the Clerk of said Court, to-wit:-

Entry

16

Michael Hannigan, Plaintiff in Error,
Against
The Village of Richwood, Defendant in Error.

In Error

This day this cause which heretofore during this term was heard and was taken under advisement by the Court again came on for decision and judgment and the Court being fully advised in the premises do find that there is no

apparent upon the record in the proceeding of said Court of Common Pleas to the prejudice of the plaintiff in error in this to-wit:-
1st The finding and judgment of the Court of Common Pleas and of said Mayor was not sustained by the evidence introduced in the case.
2nd It does not appear that the complaint made before the mayor and on which the plaintiff in Error was arrested was in writing under oath. It is therefore considered and adjuded that the judgment rendered by this Court of Common Pleas and by the Mayor of said Village of Richwood be reversed with costs and held for naught -- and that the plaintiff in error be discharged and that he recover of said Village of Richwood his costs wfe to this time taxed at $ And it is further ordered that a special mandate be sent to the Court of Common Pleas of this County to carry this judgment into execution
And thereupon the defendant in Error excepts to the ruling, decision and judgment of this Court.

Attest J. Q. Burgner Clerk.
By A. R. Burgner Deputy.

Pleas before the Honorable Thomas Beer, John J. Moore and Henry W. Seney Judges of the Circuit Court begun and held at the Court House in the town of Marysville within and for the County of Union of the Third Judicial District of the State of Ohio, on the 28th day of April in the year of our Lord one thousand eight hundred and eighty five, Heretofore, to-wit:-
On the 1st day of March A.D. 1884, the following Transcript was filed with the Clerk of said Court, To-wit:-

Transcript 12.

The State of Ohio, Union County ss. In Common Pleas Court - September Term, 1883.
David W. Taylor Plaintiff in Error
Against
Village of Richwood, Ohio, Defendant in Error

Journal Vol. 13 — Page 77.
Certified Copy of Journal Entry.
Wednesday, Oct. 3rd 1883.

This day this cause came on to be heard on the petition in Error of the said David W. Taylor to return the judgment of the Mayor of the said Village of Richwood, the transcript and the and the bill of exceptions and was argued by counsel. On consideration whereof and the Court being fully advised in the premises find that is no error in the judgment of the said mayor, and affirms the judgment of the said mayor at the costs of the plaintiff in error David W. Taylor, which he is ordered to pay in ten days, and in default of such payment of costs in this Court execution is awarded. To all of which rulings, judgments decisions and orders of the Court the plaintiff in Error then and there and at the time excepted, and thereupon the Court fix the amount of the Supersedeas Bond to be executed by the Plaintiff in Error at $150.00

The State of Ohio,
Union County, ss. } I, J. Q. Burgner, Clerk of the Court of Common Pleas within and for said County, and in whose custody the files Journals and records of said Court are required by the laws of the State of Ohio to be kept, hereby certify that that the fore-going is taken and copied from the Journal of the proceedings of the said Court within and for said County, and that said

Petition in Error 12 — Entry 12

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In testimony whereof, I do hereto subscribe my name officially and affix the Seal of said Court, at the Court House in Marysville Ohio in said County, this 1st day of March A.D. 1884

{Seal}

J. L. Burgner Clerk.

Afterwards on the 5 day of March, 1884 a Petition was filed with the Clerk of said Court which reads as follows, to-wit:-

Petition in Error

David W. Taylor, Plaintiff in Error.
Against
The Village of Richwood, Defendant in Error

In the District Court
Union County, Ohio.
Petition in Error

12

The said David W. Taylor plaintiff in error, complains of the said defendant in error for that said defendant in error, on the 3rd day of September A.D. 1883, before S. W. Van Winkle as Mayor of the Village of Richwood in said County of Union, recovered a judgment and fine by the consideration of said mayor, against the said plaintiff in error, in a certain action and prosecution then pending before said mayor, wherein the said Village of Richwood was plaintiff and the said David W. Taylor was defendant. The said David W. Taylor, duly prosecuted his petition in error in said case in the Court of Common Pleas of said county, to reverse the judgment of said mayor, and such proceedings were had upon said petition in error, that at the September Term A.D. 1883 said judgment was affirmed in said Court of Common Pleas.

A copy and transcript of the judgment and proceedings before said mayor, and before said Court of Common Pleas, are hereto attached and made a part hereof. That said David W. Taylor avers, that there is error in said record and proceedings, to-wit:-

II. That said Court of Common Pleas erred, in the hearing of said cause in affirming the judgment of said mayor of the Village of Richwood.

III. The finding and judgment of said Court were against the evidence and against the law of the land.

IIII. The said Court erred in rendering judgment for said village, when by the law of the land the judgment should have been for the said David W. Taylor

The said David W. Taylor therefore prays that said judgment of said Court of Common Pleas, and of said mayor, be reversed, set aside and held for naught and that the said David W. Taylor be restored to all things he has lost by reason thereof

Porter & Porter, Attorneys for Plaintiff in Error

I hereby waive the issuing and service of summons in error, against said village of Richwood, and enter its appearance herein. Dated this 10th day of February A.D. 1884,

Powell & Fullon Attorneys for Defendant

Afterward on the 1st day of May A.D. 1886, an Entry was made on the Journal of said Court which reads as follows, to-wit:-

Entry

12

David W. Taylor Plaintiff in Error
vs.
Village of Richwood, Defendant in Error

In Error.

This day this cause which heretofore during this term was heard and was taken under advisement by the Court, again came on for decision and judgment and the Court being fully advised in the premises do find that there is error

apparent upon the record in the proceeding of said Court of Common Pleas to the prejudice of the plaintiff in error in this, to-wit:-
1st The finding and judgment of the Court of Common Pleas and of said mayor was not sustained by the evidence introduced in the case.
2nd It does not appear that the complaint made before the mayor and on which the plaintiff in error was arrested was in writing under oath.

It is therefore considered and adjudged that the judgment rendered by the Court of Common Pleas and by the mayor of said village of Richwood be reversed with costs and held for naught, and that the plaintiff in error be discharged, and that he recover of said village of Richwood his costs up to this time, taxed at $ And it is further ordered that a special mandate be sent to the Court of Common Pleas of this County to carry this judgment into execution.

And thereupon the defendant in error excepts to the ruling decision and judgment of this Court.

Attest J. L. Burgner, Clerk.
By A. R. Burgner, Deputy.

Pleas before the Honorable Thomas Bee, John J. Moore and Henry W. Seney judges of the Circuit Court begun and held at the Court House in the town of Marysville within and for the County of Union of the Third Judicial Circuit of the State of Ohio, on the 28th day of April in the year of our Lord one thousand eight hundred and eighty-five. Heretofore, to-wit:-

On the 24th day of December A.D. 1883, a Bond was filed with the Clerk of said Court which reads as follows, to-wit:-

Bond

Whereas John Orr has instituted proceedings in the Court of Common Pleas in and for the County of Union, and State of Ohio, to reverse a judgment rendered by S. W. Van Winkle mayor of the village of Richwood in said County Union on the 12th day of September 1883, for the violation of an ordinance to prohibit ale, beer and porter houses and places of habitual resort for tippling and intemperance the sum of Seventy five Dollars and Twelve and 30/100 Dollars costs of suit in a prosecution in favor of said Village of Richwood and against the said John Orr. Now therefore we John Orr and J. J. Finley do bind ourselves to the said Village of Richwood in the sum of One Hundred and Fifty Dollars that if the said judgment be affirmed in whole or in part, we will pay to the said village of Richwood the whole or the part of the said judgment affirmed and the costs in the said Common Pleas Court, together with the amount of any judgment that may be rendered against the said John Orr on the further trial of the case after the question of error shall have been determined.

Petition in Error

11.

---- This 24th day of Dec. 1883. ----
Surety approved this 24th day of Dec. 1883.

John Orr {Seal}
J. J. Finley {Seal}
J. L. Burgner Clerk.

Afterwards on the 1st day of March A.D. 1884, the following Transcript was filed with the Clerk of said Court:-

Transcript

The State of Ohio Union County ss. In Common Pleas Court, Sept. Term. 1883.
John Orr Plaintiff in Error
Against
Village of Richwood Defendant in Error

Journal Vol. 13 ---- Page 75.
Certified Copy of Journal Entry.
Wednesday Oct. 3rd 1883.

This day this cause came on to

11

be heard on the petition in error of the said John Orr to reverse the judgment of the mayor of the said Village of Richwood, the transcript and bill of exceptions and was argued by counsel. On consideration whereof and the Court being fully advised in the premises finds that there is no error in the judgment of the said mayor and affirm the judgment of the said Mayor at the costs of the plaintiff in error John Orr which he is ordered to pay in ten days and in default of such payment of costs in this Court execution is awarded. To all of which rulings and judgments orders and decisions of the Court the plaintiff in error then and there and at the time excepted. And thereupon the Court fix the amount of the Supersedeus Bond to be executed by the plaintiff in error at $150.00

The State of Ohio, }
Union County, ss. } I, J. D. Burgner, Clerk of the Common Pleas Court within and for said County, and in whose custody the files, Journals and records of said Court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal of the proceedings of the said Court within and for said County, and that said foregoing copy has been compared by me with the original entry on said Journal, and that the same is a correct transcript thereof.

In testimony whereof, I do hereto subscribe my name, officially and affix the Seal of said Court, at the Court House in Marysville, Ohio in said County, this 1st day of March A.D. 1884

{Seal}

J. D. Burgner Clerk.

Afterward on the 5th day of March A.D. 1884 the following Petition in Error was filed with the Clerk of said Court, to-wit:-

Petition in Error

11.

John Orr Plaintiff in Error
Against
The Village of Richwood, Defendant in Error

In the District Court
Union County Ohio
Petition in Error.

The said John Orr plaintiff in error for that the said defendant in error, on the 12th day of September A.D. 1883, before S. M. Van Winkle as mayor of the Village of Richwood in said County of Union, recovered a judgment and fine by the consideration of said mayor against the said plaintiff in error in a certain action and prosecution then pending before said mayor, wherein the said Village of Richwood was plaintiff and and the said John Orr was defendant.

The said John Orr, duly prosecuted his petition in error, in said case in the Court of Common Pleas of said County, to reverse the judgment of said mayor, and such proceedings were had, upon said petition in error, that at the September Term A.D. 1883, said judgment was affirmed in said Court of Common Pleas. A copy and transcript of the judgment and proceedings before said mayor, and before said Court of Common Pleas, are hereto attached and made a part hereof. That said John Orr avers, that there is error in said record and proceedings, to-wit:-

I. The said Court of Common Pleas erred in the hearing of said cause, in affirming the judgment of said mayor of the Village of Richwood.

II. The finding and judgment of said Court were against the evidence and against the law of the case.

III. Said Court erred in rendering judgment for said village, whereby

the law of the land the judgment should have been for the said John Orr.
The said John Orr therefore prays that said judgment of said Court of Common Pleas and of said mayor, be reversed, set aside and held for naught and that the said John Orr be restored to all things he has lost by reason thereof

Porter & Porter Attorneys for Plaintiff in Error

I hereby waive the issuing and service of summons in error against said village of Richwood and enter its appearance herein. Dated this 13th day of February A.D. 1884

Powell & Fulton Attorneys for Defendant

Afterwards, on the 1st day of May A.D. 1885, an Entry was made on the Journal of said Court which reads as follows, to-wit:-

John Orr, Plaintiff in Error.
Against
The Village of Richwood, Defendant in Error.
In Error.

Entry
11.

This day this cause which heretofore during this term was heard and was taken under advisement by the Court again came on for decision and judgment. and the Court being fully advised in the premises do find that there is error appeared upon the record in the proceedings of said Court of Common Pleas to the prejudice of the plaintiff in error in this to-wit:-
1st The finding and judgment of the Court of Common Pleas and of said mayor was not sustained by the evidence introduced in the case
2nd It does not appear that the complaint made before the mayor and on which the plaintiff in error was arrested was in writing under oath
It is therefore considered and adjudged that the judgment rendered by the Court of Common Pleas and by the mayor of said Village of Richwood be reversed with costs and held for naught. and that the plaintiff in error be discharged and that he recover of said Village of Richwood his costs herein to this time taxed at $. And it is further ordered that a special mandate be sent to the Court of Common Pleas of this County to carry this judgment into execution. And thereupon the defendant in error excepts to the ruling decision and judgment of this Court.

Attest J. D. Burgner Clerk
By A. R. Burgner Deputy.

Pleas before the Honorable Thomas Beer John J. Moore and Henry W. Seney Judges of the Circuit Court begun and held at the Court House in the Town of Marysville within and for the County of Union of the Third Judicial District of the State of Ohio, on the 28th day of April in the year of our Lord one thousand eight hundred and eighty-five- Heretofore, to-wit:-

On the 1st day of March A.D. 1884, the following Transcript was filed with the Clerk of said Court, to-wit:-

The State of Ohio, Union County, ss. In Common Pleas Court Sept. Term, 1883.
Journal Vol. 13" ——— Page 73.
Certified Copy of Journal Entry.
Wednesday Oct. 3rd 1883.

Peter Sells Plaintiff in Error
vs.
Village of Richwood, Defendant in Error.

Transcript

19

This day this cause came on to be heard on the petition in error of the said Peter Sells to reverse the judgment of the mayor of the said Village of Richwood, the transcript and the bill of exceptions, and was argued by counsel. On consideration whereof and the Court being fully advised in the premises finds that there is no error in the judgment of the said mayor, and affirms the judgment of the said mayor at the cost of the plaintiff in error Peter Sells which he is ordered to pay in ten days, and in default of such payment of costs in this Court execution is awarded. To all of which rulings, judgments, orders and decisions of the Court the plaintiff in error then and there excepted. And thereupon the Court fix the amount of the supersedeas Bond to be executed by the plaintiff in error at $150.00

The State of Ohio,
Union County ss. } I, J. D. Burgner, Clerk of the Common Pleas Court within and for the said County, and in whose custody the files, journals and records of said Court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal of the proceedings of the said Court within and for said County, and that said foregoing copy has been compared by me with the original entry on said Journal and that the same is a correct transcript thereof.

In testimony whereof, I do hereto subscribe my name officially and affix the seal of said Court, at the Court House in Marysville Ohio in said County, this 1st day of March A.D. 1884. J. D. Burgner Clerk [Seal]

Afterwards on the 9th day of Feb. A.D. 1885, the following Petition in Error was filed with the Clerk of said Court- to-wit

Petition in Error

Peter Sells Plaintiff in Error
Against
The Village of Richwood, Defendant in Error

In the District Court
Union County, Ohio.
Petition in Error

19

The said Peter Sells, plaintiff in error complains of the said defendant in error, for that the said defendant in error on the 12th day of September A.D. 1883, before S. W. VanWinkle as mayor of the Village of Richwood in said County of Union, recovered a judgment and fine by the consideration of said mayor against the said plaintiff in error, in a certain action and prosecution then pending before said mayor, wherein the said Village of Richwood was plaintiff and the said Peter Sells was defendant. The said Peter Sells duly prosecuted his petition in error, in said case in the Court of Common Pleas of said County to reverse the judgment of said

mayor, and such proceedings were had upon said petition in error, that at the September Term A.D. 1883 said judgment was affirmed in said Court of Common Pleas. A copy and transcript of the judgment and proceedings before said Court of Common Pleas, are hereto attached and made a part hereof. That said Peter Sells avers that there is error in said record and proceedings, to-wit:-

I. That said Court of Common Pleas erred on the hearing of said cause, in affirming the judgment of said mayor of the village of Richwood.

II. The finding and judgment of said court were against the evidence, and against the law of the land.

III. The said Court erred in rendering judgment for said village, when by the laws of the land the judgment should have been for the said Peter Sells. The said Peter Sells therefore prays that said judgment of said Court of Common Pleas and of said mayor, be reversed, set aside, and held for naught, and that the said Peter Sells be restored to all things he has lost by reason thereof.

Porter & Porter Attorneys for Plaintiff in Error

I hereby waive the issuing and service of summons in error against said village of Richwood and enter its appearance herein. Dated this 13th day of February A.D. 1884

Powell & Hutton Attorneys for Defendant.

Afterwards on the 1st day of May A.D. 1885, an Entry was made on the Journal by the Clerk of said Court, which reads as follows, to-wit:-

Peter Sells Plaintiff in Error
Against
The Village of Richwood, Defendant in Error

In Error.

Entry

19.

This day this cause which heretofore during this term was heard and was taken under advisement by the Court, again came on for decision and judgment and the Court being fully advised in the premises do find that there is error apparent upon the record in the proceeding of said Court of Common Pleas to the prejudice of the plaintiff in error in this, to-wit:-

1st The finding and judgment of the Court of Common Pleas and of said mayor was not sustained by the evidence introduced in the case.

2nd It does not appear that the complaint made before the mayor and on which the plaintiff in error was arrested was in writing under oath. It is therefore considered and adjudged that the judgment rendered by the Court of Common Pleas and by the mayor of said Village of Richwood be reversed with costs and held for naught, and that the plaintiff in error be discharged and that he recover of said village of Richwood his costs upto this time taxed at $ And it is further ordered that a special mandate be sent to the Court of Common Pleas of this County to carry this judgment into execution. And thereupon the defendant in error excepts to the ending decision and judgment of this Court.

Attest- J. R. Burgner Clerk.
By A. R Burgner, Deputy

Pleas before the Honorable Thomas Beer, John J. Moore and Henry W. Seney Judges of the Circuit Court within and for the County of Union of the Third Judicial District of the State of Ohio, begun and held at the Court House in the Town of Marysville on the 28th day of April in the year of our Lord one thousand eight hundred and eighty-five. Heretofore, to-wit:-

On the 9th day of February A. D. 1885, a Bond was filed with the Clerk of said Court which reads as follows to-wit:-

Bond

Appeal Bond.

Know all men by these presents, that we, Isaac Jolliff, John Jolliff are held and firmly bound unto John R. Taylor Admr. of James O'Laughlin deceased in the penal sum of One Hundred Dollars, to the payment of which, well and truly to be made, we do hereby jointly and severally bind ourselves, our heirs, executors and administrators. Signed by us and dated this 11th day of May A. D. 1883. The condition of the above obligation is such, that whereas, the said Isaac Jolliff has taken an appeal from a certain decree rendered against him in favor of the said John R. Taylor as Admr. &c in the Court of Common Pleas within and for the County of Union in the State of Ohio, at the April Term thereof A. D. 1883, for the sum of Seven Hundred Sixty-eight and 16/100 Dollars to the District Court within and for the County aforesaid. Now, if the said Isaac Jolliff shall abide and perform the order and judgment of said District Court, and shall pay all moneys, costs and damages, which may be required of or awarded against him by said District Court, then, this obligation to be void; otherwise to remain in full force and virtue in law. (Signed) Isaac Jolliff

John Jolliff.

I approve the above Bond, with the sureties thereto, this 11th day of May A. D. 1883. J. Q. Bingner, Clerk.

On the 9th day of February A. D. 1885, the following Transcript was filed with the Clerk of said Court, to-wit:-

Transcript

The State of Ohio, Union County, ss. Court of Common Pleas, Jan. Term A. D. 1883

John R. Taylor Ex. &c. vs. Isaac Jolliff et. al.

J. 12 - Pages 546 and 605.

Tuesday, January 23rd A. D. 1883.

This day this cause came on to be heard upon application and showing of defendants for a continuance and was upon said application and showing continued at the costs of the defendants. It is therefore ordered and adjudged that the defendants pay the costs of this action made at this term of Court taxed to $ within 30 days and in default thereof that execution issue therefor.

April Term 1883, to-wit:- April 23rd A. D. 1883.

This cause now coming on for hearing was submitted to the Court on the petition, the Answer of defendants, reply of plaintiff thereto and the evidence and was argued by counsel, on consideration thereof the Court find on the issue joined for the plaintiff and that there is justly due from the defendant Isaac Jolliff to the plaintiff as Administrator with the will annexed of the estate of James O'Laughlin deceased, on the note and mortgage in said petition described the sum of Seven Hundred and Sixty Eight and 16/100 Dollars (including

interest computed thereon to April 16th 1883, the 1st day of this term) And it is further ordered and adjudged that in case said defendant fails for ten days to pay to the said plaintiff as such Administrator the said sum of $768 16/100 with interest thereon at 8% from April 16th 1883, so as aforesaid found due with costs of suit an order issue to the Sheriff of said County commanding him to cause the said lands and tenements in said petition described to be appraised advertised and sold according to law, and apply the proceeds of said sale in satisfaction of the said sum so found due with costs of suit.

Therefore the said defendants served notice of their intention to appeal this case to the District Court. And the Court here allows said appeal and fixes the bond for appeal at $100.00

The State of Ohio,
Union County, ss. } I J. Q. Burgner, Clerk of the Common Pleas Court within and for said County, and in whose custody the files, journals and records of said Court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal of the proceedings of the said Court within and for said County, and that said foregoing copy has been compared by me with the original entry on said Journal and that the same is a correct transcript thereof. In testimony whereof, I do hereto subscribe my name officially and affix the Seal of said Court, at the Court House in Marysville Ohio in said County, this 21st day of June A D 1883

J. Q. Burgner, Clerk. {Seal}

Afterwards on the 30th day of April A.D. 1885, an Entry was made on the Journal of said Court which reads as follows, to-wit:-

Entry

John R. Taylor, Executor
vs.
Isaac Jolliff et. al.

This cause now coming on for hearing was submitted to the Court on the pleadings and the evidence and was argued by counsel; on consideration whereof the Court find on the issue joined for the plaintiff and that there is justly due from the defendant Isaac Jolliff to the plaintiff as administrator with the will annexed of the estate of James O'Laughlin on the note and mortgage in said petition described the sum of Five Hundred Dollars ($500.00) with 8% interest from this 1st day of May 1883. And it is further ordered and adjudged that in case said defendant fails for 30 days to pay to the said plaintiff, as such administrator the said sum of Five Hundred Dollars with int. thereon @ 8% from May 1st 1885, so as aforesaid found due, with costs of suit, an order issue to the Sheriff of said County commanding him to cause the said lands and tenements in said petition described to be appraised advertised and sold according to law and apply the proceeds of said sale in satisfaction of the said sum so found due with costs of suit. It is further ordered that this cause be remanded to the Common Pleas Court of Union County to carry this decree into execution and for all further proceedings and that a special mandate therefor be sent to the said Court.

Attest J. Q. Burgner Clerk.
By A. R. Burgner, Deputy.

Petition in Error

Petition in Error

Plea before the Honorable Thomas Beer, John J. Moore, and Henry W. Seney Judges of the Circuit Court begun and held at the Court House in the town of Marysville within and for the County of Union of the Third Judicial Circuit of the State of Ohio, on the 1st day of December in the year of our Lord one thousand eight hundred and eighty five. Heretofore to-wit: On the 23rd day of Sept A.D. 1884 the following Petition in Error was filed with the Clerk of the Court of Common Pleas, to-wit:-

A. Faris Plaintiff
vs.
W. W. McMahan, Defendant.

Court of Common Pleas Union County Ohio.
Petition in Error

The plaintiff A. Faris complains of the defendant W. W. McMahan for that the said defendant in an action in replevin before H. M. McAdams a justice of the Peace for Claibourne Township in said County of Union on the 25th day of Aug. 1884, obtained judgment by consideration of said justice against the plaintiff in which action the said McMahan was plaintiff and the said Faris was defendant, a copy of the record of said judgment and proceedings in said case duly certified by said justice is hereto attached marked A. and made a part of this petition and the said A. Faris avers that there is error in the said record and proceeding in this to-wit:-

First:- The said justice erred in overruling defendants motion for judgment against the plaintiff as set forth in said record.

Second:- The said justice erred in overruling defendants objections to the admission of testimony tending to prove the joint ownership of the mare in controversy as set forth in said record.

Third:- Said justice erred in overruling defendants objection to the admission of testimony on the part of the plaintiff tending to prove certain items of damage to the plaintiff by the wrongful detention of said mare by the defendant as set forth in said Record and also in admitting testimony, tending to prove damages and the wrongful detention of said property by the defendant without the plaintiff having given the defendant any further notice of his claim to exemption than the written notice set forth in said record.

Fourth:- Said justice erred in overruling defendants objection to the admission of testimony, tending to prove that plaintiff was a person engaged in the business of agriculture and in admitting said testimony to go to the jury when objected to by defendant as set forth in said record.

Fifth: That the facts set forth in the affidavit of the plaintiff in said action on which the writ of replevin was issued are not sufficient in law to maintain said action against the defendant the said A. Faris

Sixth: Said judgment was given for the said W. W. McMahan when it ought to have been given for said A. Faris according to the law of the land. Wherefore the plaintiff A. Faris prays that said judgment may be reversed and set aside and the said plaintiff restored to all things he has lost by reason thereof. P. R. Kerr Attorney for Plaintiff

Also on Sept 23rd 1884, was filed with the Clerk of the Common Pleas Court the following transcript, to-wit:-

Transcript

W. W. Mc. Mahon
vs.
A. Frais, Constable of
Claiborne Tp. Union Co. O.

Before F. M. Mc. Adams J. P. in and for
Claiborne Tp. Union Co. Ohio.
Docket A— No. 29— Page 448.
Aug. 18th 1884. The plaintiff made his complaint and affidavit as follows:— State of Ohio Union County ss. Before me, the undersigned, a justice of the peace in and for said County came W. W. Mc. Mahon, resident of said County of Union and being duly sworn says that he has a special ownership or interest and has a good right to the immediate possession of the goods and chattels following to-wit:— One brown mare, four years old, and that the same is wrongfully detained from him by A. Frais, Constable of Claiborne Tp. Union County O. and that the said goods and chattels were taken in execution and not on any order against the said W. W. Mc. Mahon, or for the payment of any tax, fine or amercement assessed against him or by virtue of any order of delivery issued under the law hereof, or any other mesne or final process issued against the said W. W. Mc. Mahon, and that the same is exempt under the statutes.
W. W. Mc. Mahon.
Sworn to and subscribed before me this 18th day of August 1884.
F. M. Mc. Adams J. P.
Aug. 18th 1884. Issued Writ of Replevin with summons to defendant to appear and answer at 9 o'clock on the 22nd day of August 1884.
Aug 20th 1884 Issued Subpoenas for witnesses for plaintiff as follows: Alex. Read, R. Robinson, J. Shipley, Frank Mc. Mahon and Joseph Rogers. placed this writ in the hands of A. C. Smart Constable who made return as follows:— I have served each of the within named witnesses by copy. Fee $3.33. A. C. Smart Const.
Return on Writ of Replevin:— Received this writ Aug. 18" 1884, and by virtue of this writ I replevied the within described property on the 18th day of Aug. 1884 and caused the same to be appraised by Harrison Flickinger and W. B. Burke, two responsible persons who were by me first duly sworn to truly assess the value of said property (see attached schedule) the within named plaintiff gave a replevin bond according to law, with H R Robinson and W. H. Cookright as sureties; whereupon I delivered said property to said plaintiff as directed I served this writ on the within named defendant by certified copy personally Fees:— $3.20
A. C. Smart Constable
Aug. 22" 1884, At the hour named in the Summons for hearing the answer of the defendant, both parties appeared. The defendant, by his counsel, filed and argued a motion for judgment for defendant against the plaintiff on account of the insufficiency of the affidavit, which motion was by me overruled, and the defendant excepted. The defendant then made demand for a jury, and in due form of law the following named jurors were chosen, to-wit:— Geo. B. Hamilton, Geo. W. Holland, O. Bunn, Geo. Smith, W. S. Loveless, John Ogan. Case continued to Aug. 25th at 8 A. M.
Aug 22" 1884. Issued Summons for said jurors & } F. M. Mc. Adams J. P.
directed the same to A. C. Smart Constable, who made return as follows:—
"Personally served by copy on each of the persons named herein Fees: $1.25—
A. C. Smart Const.
Aug. 22" 1884 Subpoenas issued for defendants witnesses as follows:— L. F. Hill, W. W. Hill, James Gooding: Placed this writ for service in hands

Bill of Exceptions.

of A. O. Smart, Const: who made return as follows: "I have served each of the within named persons by copy, personally. Fees: $1.70 A. O. Smart Const. Aug. 25th 1884, Parties met at 8 A. M. The jurors named, except G. W. Holland were duly sworn. Examined W. W. McMahon Frank McMahon Joseph Rogers, R. W. Robinson, Alex Read for Plaintiff. Examined A. Fears, W. W. Hill James Gooding and L. H. Hill for defendant. The case was argued by counsel pro and con. following which the jury returned the following

Verdict

The jury find that the right of property and possession of said goods and chattels when this action commenced was in the plaintiff, and we do assess his damages in the premises at $100. It is therefore considered that the plaintiff recover said damages assessed, and costs

Geo. B. Hamilton Foreman.

I am therefore of the opinion and it is my judgment that the plaintiff recover of the defendant the sum of one dollar and costs in this action taxed at $

F. M. McAdams.

Witness fees: Plff. A Reed $1.50 W. R. Robinson $1.50; J. Rogers $1.30, Frank McMahon $4.00 5 70
" " Dft. James Gooding, 50c L. H. Hill 50c, W. W. Hill 50c 1 30

Justice's Costs:- 8 papers filed = 40c Sums. 25; Rend Judg. 40c, Record 1.80, Subpoenas 60c, Swearing witnesses 50c. Continuance 20c, Satisfaction 20c, Venire 40c, Swearing jury 25c trying case $1.00, Writ of Repl. 40c, Aff. 40c, Index 15c. $6 95

Const. Fees:- Subp. Serv. Copy. & mile 1.35 70 } Serv. Repl. 25- Copy 25; Writ 25- 75- Appraisers Swearing 1.00, Bond 50:=1.50 Sums Jury 1.00 Mileage 25;=1.25- Att. trial 1.00 Ex 75 Total $10 30
Jury Fees. $1.50, Aff. fees 1.00 Total $27.25- Judgment 1.00, Costs 27.95 Total Costs $28.95

At the close of the trial the defendants counsel asked the Court to fix upon a time to settle and seal a Bill of Exceptions on certain rulings of the Court during the progress of the case. The justice appointed 8 A. M. Aug. 28th 1884 and the Court adjourned.

F. M. McAdams J. P.

The following is a true copy of the Bill above mentioned:-

Bill of Exceptions.

W. W. McMahon
vs.
A. Fears

Before F. M. McAdams J. P. in and for Claiborne Tp. Union Co. Ohio.

Be it remembered that on the trial of the above entitled case, the plaintiff, to maintain his case, offered to prove by his own oath that he was the owner of one half interest in the bay mare in controversy; that he and his son were the joint owners of said mare, to which defendant objected as contrary to the affidavit; objection over ruled and testimony allowed to go to the jury, to which defendant excepted.

+ Also, that the plaintiff offered to prove by his own oath that he was damaged by the wrongful detention of said mare by reason of a livery bill contracted for a horse and buggy to carry his wife and daughter home, after said mare was levied upon by the constable before he had any notice that the plaintiff claimed said mare exempt; objected to by defendant; objection over-ruled and testimony allowed to go to jury, to which defendant excepted. Also defendant objected to any proof by the plaintiff on the question of damages or to show a wrongful detention by the defendant except to produce the record and show that he the defendant acted without legal authority or went beyond his writ; as no notice was served

whom him informing him of the grounds upon which the plaintiff claimed the property as exempt - except the following, which was in writing.
" A. Faris Constable of Claibourne Twp. Union Co. O. I hereby demand of you the bay mare of mine you levied upon today in an execution in favor of Miles and Sperry vs W. W. Hills Docket - I demand the mare because I am entitled to one horse under the statutes, and therefore I demand of you the exemption that I am entitled to under the statutes as made and provided. Aug. 16th 1884. W. W. McMahon
+ + + Objection overruled; and testimony tending to prove various items of damages to the plaintiff was given to the jury - to which defendant excepts. Further the plaintiff proposed and offered to prove that last year and in former years he had raised certain crops of grain as tending to show that he was a person engaged in the business of agriculture; to which the defendant objected as not tending to prove the wrongful detention of said mare by the defendant - because exempt from execution under the statutes of the State, nor the plaintiffs right to the immediate possession of the same according to the terms of his affidavit; objection overruled and said testimony allowed to go to the jury, to which defendant excepted, and to all the foregoing ruling and overruling of said justice the defendant excepts and asks the Court to sign and seal this Bill of Exceptions, which is done accordingly this 28th day of August - 1884
In witness whereof I have signed and seated the same this 28th day of August - 1884. F. M. McAdams J. P. Seal
The State of Ohio }
Union County. ss. } I do hereby certify that the above is a full and true copy from my docket of the proceedings had by and before me at my office in said Township in the above action. F. M. McAdams
Justice of the Peace

Summons in Error 35.

Praecipe The Clerk will issue summons according to law to defendants, directed to Sheriff of Union Co. P. R. Kerr Attorney for Plaintiff
On the 23rd day of Sept. 1884, a Summons was issued by the Clerk of said Common Pleas Court - which was returned and filed Oct. 6th 1884 endorsed as follows, to-wit:-
State of Ohio, Union County ss.
Received this writ Sept. 23rd A.D. 1884, and pursuant to its command on the 27th day of Sept. A.D. 1884, I served the same by delivering to the within named defendant W. W. McMahon a true copy of this writ with endorsements thereon - Service 3s, Mileage 2.4s, Cop. 2s, Total $2.9s John Hohensack Sheriff

Fee 1st

Afterwards on the 23rd day of April A.D. 1885 the following Petition in Error was filed with the Clerk of said Courts, to-wit:-

2nd Petition in Error 35

A. Faris Plaintiff
vs.
Wm W. McMahon Defendant
} Circuit Court, Union County, Ohio.

Transcript 35.

The said plaintiff complains of the said W. W. McMahon and says that the said W. W. McMahon at the Feb. Term 1885 of the Common Pleas Court of said County, recovered a judgment against the plaintiff by consideration of said Court in a certain action for the recovery of a judgment rendered by F. M. McAdams a Justice of the Peace in said County, against said

Plaintiff and in favor of said defendant, then pending in said Common Pleas Court, a copy of the record of said judgment and proceedings in said case in the Common Pleas Court and also of the record and proceedings of said cause before said magistrate, duly certified are hereto attached and made a part of this petition. And the said A Faris avers there is error in said record and judgment of said Court, to-wit; Said Court erred in confirming the judgment of the Justice of the Peace, that said judgments were given for the plaintiff which by the law of the land they ought to have been for the defendant. Wherefore defendant prays that said judgment of confirmation by the Common Pleas Court may be reversed, and that the judgment of said Justice of the Peace may be reversed, and action set down in the Common Pleas Court for trial

P. R. Kerr Attorney for Plaintiff

Clerk will issue Summons for defendant to Sheriff of Union Co. Ohio.

P. R. Kerr Attorney for Plaintiff

Summons in Error 35.

On the 5th day of May A.D. 1885 the following Summons in Error was issued by the Clerk of said Courts, to-wit:-

State of Ohio } Summons in Error Circuit Court,
Union County ss. } To the Sheriff of the County of Union ——

You are hereby commanded to notify W. W. McMahon that A. Faris has filed a petition in the Clerks Office of the Circuit Court of Union County asking the reversal of a judgment against said A. Faris, rendered at the February term of the Court of Common Pleas A.D. 1885, of said County, and that unless the said W. W. McMahan attend on the first day of next term of said Circuit Court, said judgment may be reversed. You will make due return of this Summons, on the 16th day of May 1885.

Witness my hand and seal of said Circuit Court at Marysville Ohio, this 5th day of May A.D. 1885.

{Seal}

J. Q. Bingner Clerk.

Said Writ returned and filed May 16th A.D. 1885 endorsed as follows, to-wit:- Sheriffs Office, Union County Ohio. Received this Writ on the 5th day of May A.D. 1885. & served the same by handing a true copy thereof with the endorsements thereon to said W. W. McMahon - Copy 30, Service 30, Mileage 2.56, Total $3.06

M. Hopkins Sheriff, By A. W. Goodwin Deputy.

Ex 1st

On the 27th day of April A.D. 1885 the following Transcript was filed with the Clerk of said Courts, to-wit:

The State of Ohio, Union County, ss. In Common Pleas Court February Term, 1885.
A. Faris, Plaintiff
vs.
W. W. McMahan, Defendant.

Transcript 35.

Journal Vol 13, Page 356, Feby 24th 1885

Certified Copy of Journal Entry

This day this cause came on to be heard upon the petition of the plaintiff and the Court being fully advised in the premises find no error in the proceedings of the Justice of the Peace before whom the case was tried. Wherefore it is ordered and adjudged by the Court that the judgment of the Court below be confirmed and that the defendant recover of the plaintiff his costs herein taxed $ To all of which the plaintiff excepts

The State of Ohio,
Union County, ss } I, J. Q. Burgner, Clerk of the Court of Common Pleas within and for said County, and in whose custody the files, journals & records of said Court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the journal of said Court of the proceedings of the Common Pleas Court within and for said County and that said foregoing copy has been compared by me with the original entry on said journal and that the same is a correct transcript thereof. In testimony whereof, I do hereto subscribe my name officially and affixed the Seal of said Court, at the Court House in Marysville in said County, this 27th day of April, A.D. 1885.
{Seal}
J. Q. Burgner Clerk

Afterwards on the 2nd day of December A.D. 1886 an Entry was made on the journal of said Court which reads as follows, to-wit:-

A. Ferris
vs.
W. W. McMahon
35

This day came the parties by their attorneys and submitted this cause to the Court on the petition in error, bill of exceptions, original pleadings and arguments of counsel and the same was taken under advisement by the Court.

Afterwards on the 3rd day of December A.D. 1886, an Entry was made on the Journal of said Court, which reads as follows, to-wit:-

Entry
A. Ferris
vs
W. W. McMahon
35

This day again appeared the parties by their attorneys and this cause having been heretofore taken under advisement by Court now came on for decision. Whereupon the Court find that there is no error apparent upon the record of said Justice of the Peace and of the said Court of Common Pleas and the said judgment of the Court of Common Pleas is hereby affirmed at the costs of the said plaintiff in error. It is therefore considered ordered and adjudged by the Court that the said plaintiff pay the costs herein taxed at $ and in default thereof that execution issue therefor. To all of which decision and judgment of the Court plaintiff excepts. And it is further ordered by the Court that a special mandate be sent to the Court of Common Pleas to carry said judgment into execution.

Attest- J. Q. Burgner
By A R. Burgner

Petition
4138

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Common Pleas to

Pleas before the Honorable Thomas Beer, John J. Moore and Henry M. Siney, Judges of the Circuit Court within and for the County of Union of the third Judicial Circuit of the State of Ohio, begun and held at the Court House in the Town of Marysville on the 28th day of April A.D. 1885. Heretofore to-wit:

On the 27th day of November A.D. 1882 the following Petition was filed with the Clerk of the Court of Common Pleas for the County of Union, to-wit:

Petition 4138

George Corder, Plaintiff
Against
Nancy J. Mc. Fadden
Hugh Mc. Fadden
E. Hewston and
A. J. Whitney, Defendants.

Court of Common Pleas, Union County, Ohio.

The plaintiff says:

That on the 22d day of January A.D. 1877 the defendant, Hugh Mc. Fadden borrowed of Cornelia A. Taylor the sum of Two hundred Dollars and executed to her his note of that date for said sum, due in one year thereafter @ 8% interest from date and plaintiff at said Mc. Fadden's request, signed said note with him as his surety; said plaintiff getting no part of said money and in no way receiving any benefit therefrom. At the September Term of this Court A.D. 1881, said Cornelia A Taylor recovered a judgment on said note for $478.88 the balance due thereon and costs of suit against said Hugh Mc. Fadden and the plaintiff. Said Cornelia A Taylor afterwards caused execution to be issued upon said judgment against the property of said Hugh Mc. Fadden and the plaintiff, which execution for the want of goods, chattels, lands or tenements of said Hugh Mc. Fadden in his own name and for the want of goods and chattels of the plaintiff, the Sheriff of said County levied upon the real estate of the plaintiff. Plaintiff to save his lands from going to sale on said execution on the 20th day of November A.D. 1882, was compelled to and did borrow the money and pay to the Sheriff of said Courts in full satisfaction of the balance due and remaining unpaid upon said judgment interest and costs the sum of two hundred and eight $\frac{26}{100}$ Dollars ($508.$\frac{26}{100}$) and the plaintiff is therefore entitled to be surrogated to the rights of said Cornelia A. Taylor in said judgment &c. Plaintiff says that the defendant Nancy J. Mc. Fadden who is the wife of said Hugh Mc. Fadden, holds in her name the following lands and tenements, situate in the Township of Liberty, County of Union and State of Ohio, being part of U. M. Survey Nos 1270, 12403, 12393, & 12413 (originally for 1823 acres in the name of James Galloway et. al.) and bounded and described as follows: Beginning at a sugar tree, beech and ash, easterly corner to Richard Dorsey's heirs, Survey No. 12282, thence S. 38° E. 138 poles to a beech, hickory & Ironwood: thence S. 52° W. 124 poles to an elm, lynn & hickory: thence N. 30° W. 130 poles to two sugar trees and a beech in the line of said Dorsey's heirs Survey: thence with said line N. 52° E. 124 Poles to the beginning, containing One hundred acres more or less. Plaintiff says that said land was purchased by said Hugh Mc. Fadden on the 25th day of March A.D. 1882, while the above judgment and indebtedness existed unsatisfied and in full

force, and that said purchase was made with the money of said Hugh McFadden, and the title to the same was taken in the name of Nancy J. McFadden, wife of said Hugh McFadden, for the purpose of avoiding the payment of this and other indebtedness of said Hugh McFadden and for the purpose of delaying, hindering and defrauding the said plaintiff out of said claim, and other creditors of the said Hugh McFadden out of their just claims against him. That said Hugh McFadden now has no property of any kind, real or personal, out of which the amount of said judgment can be made, except the lands above described, which he holds in the name of his wife. Plaintiff says that the defendants A. J. Whitney and C. Houston have a lien upon said land for an unpaid balance of purchase money, which is a first lien thereon and plaintiff asks that they may be required to answer and set forth how much is due or remaining unpaid thereon. Plaintiff therefore prays that he may be subrogated to the rights of said Cornelia A. Taylor in the above recited judgment: that the above described lands may be subjected to the payment of said indebtedness that said conveyance to said Nancy J. McFadden be set aside, that an order of sale be granted by the said Court to sell said premises and that out of the proceeds of said sale the amount due to plaintiff by reason of his having paid said judgment interest and costs for said Hugh McFadden, be adjudged to be paid to him, next after the payment of the amount due to said A. J. Whitney and C. Houston for purchase money and for all proper relief.

A. T. Carpenter & Porter & Porter, Attys for Pltff.

The State of Ohio, }
Union County, ss. } George Coder, the above named plaintiff being sworn says that the facts stated and allegations contained in his foregoing petition are true as he verily believes.

George Coder

Sworn to by George Coder before me and signed by him in my presence this 27th day of November A.D. 1882.

J. L. Burgner, Clerk.

Praecipe To Clerk:

Issue summons for defendants in the above entitled case, returnable according to law. Indorse "Action for equitable relief."

A. T. Carpenter & Porter & Porter Attys for Pltff.

On the 27th day of November A.D. 1882, the following summons was issued by the Clerk of the Court of Common Pleas of Union County, Ohio, to wit:

Summons. The State of Ohio, }
Union County, ss. } To the Sheriff of the County of Union, Greeting:

We command you to notify Nancy McFadden, Hugh McFadden C. H. Houston and A. J. Whitney that they have been sued by George Coder in the Court of Common Pleas of Union County, and that unless they answer by the 30th day of December A.D. 1882, the petition of said George Coder against them filed in the Clerk's office of said Court, such petition will be taken as true, and judgment rendered accordingly. You will make due return of this summons on the 1st day of December A.D. 1882. Witness my hand and the seal of said Court, this 27th day of November A.D. 1882.

J. L. Burgner, Clerk.

Indorsed: In action for equitable relief.

Return

Answer 4138

Return

The State of Ohio, Union County, ss. Sheriff's Return. Received this writ November 27th A.D. 1882 at 2 o'clock P.M., and pursuant to its command, on the 1st day of Dec. A.D. 1882, I served the same by delivering a true copy of this writ with the endorsements thereon to each of the within named defendants.

Service -- 75
Mileage -- 3.20
Copy -- -80

Total Sheriff's fees $4.75

John Hershensack, Sheriff.

Answer
4138

On the 9th day of December, A.D. 1882, the following answer was filed in the office of the Clerk of the Court of Common Pleas of Union County, to wit:

George Coder, Plaintiff
vs.
Nancy A. McFadden, et als. Defts.

Common Pleas, Union County Ohio.

Now comes the said Nancy A. McFadden, defendant and for her separate answer to plaintiff's petition says: It is true she owns and holds the lands described in the petition and also that A. J. Whitney and C. Houston holds a mortgage thereon for part of the purchase money and she denies each and every other allegation in the said petition contained in reference to said land. She therefore prays that she go hence and recover of plaintiff her costs.

A. B. Cole & Son, Attys for Defendants.

State of Ohio, Union County, ss. Mrs. Nancy A. McFadden being sworn says that the facts stated and allegations in her foregoing answer are true as she believes.

Nancy A. McFadden.

Sworn to and subscribed before me this 9th day of December, 1882.

R. L. Woodburn, Notary Public.

Afterward on the 30th day of December A.D. 1882, the following answer was filed in the office of the Clerk of the Court of Common Pleas of Union County, to wit:

George Coder, Plaintiff
vs.
Nancy A. McFadden,
Hugh McFadden, et als. Defts.

Common Pleas, Union County, Ohio.

Now comes the said Hugh McFadden, deft. and for his separate answer herein says: He denies that said note was executed and judgment and execution therein as stated in the petition and that he has no property liable to execution and that the said Nancy A. McFadden is his wife. But he denies each and every allegation in said petition contained relating to him and not admitted as aforesaid. Further answering defendant, Hugh McFadden says: That by verbal agreement, on or about the spring or summer of 1877, as near as he can come at it, he, in consideration of the liability of plaintiff in said note and to secure plaintiff from loss from such liability, as his security on said note, sold and delivered to the plaintiff one hundred and ten head of sheep on the farm of Hugh McFadden, Sr., near Marysville, Ohio, and plaintiff then and there received said sheep on said account and agreed to assume said indebtedness and relieve said defendant thereof to the extent of the value of said sheep and a fair valuation and to pay the said value thereof on said note. Said sheep were then and there

worth at a fair valuation according to the market price of such sheep the sum of $3.25 per head and in all $357.50 and said amount should have been paid by plaintiff in said note without change to said defendant or allowance of costs. Further answering he says: That on or about the 27th day of August 1878 he filed his petition in Bankruptcy in the United States District Court of the Northern District of Ohio, together with full schedule of his property, a copy of which Schedule is hereto annexed; and that under the exemption laws of the United States and State of Ohio. A great part of said property was exempt and would have been set off to him in lieu of homestead and other exemptions in said Bankruptcy proceedings, but on or about the day of 1878 or 1879 at the solicitation of his creditors, including the plaintiff and upon their written agreement to give him receipts and releases in full on their several claims for the said property at its valuation, stated in schedules thereto attached, which were the same as the schedules hereto annexed, in all respects, he dismissed his said proceedings in Bankruptcy, waived all claim for homestead or other exemptions and turned over all his property without reservation to his said creditors, and they received the same agreeing as aforesaid: to give each a credit according to the amount of his claim for his pro rata share and of said property according to the amount of his claim at that time. The original writing witnessing said agreement was taken by said creditors and no copy furnished this defendant, also they have the list of creditors with amounts of their claims, included in said arrangement and this defendant is unable to furnish any copy thereof. No sufficient credits have been given by plaintiff on account of said last named transaction, and this defendant says that an account may be taken of said last transaction, the plaintiff required to furnish said writings, agreements and lists of creditors and their claims; and that he may have credit as of the dates of said transfer of sheep and other property against the claim of plaintiff in the premises, and for such other relief as may be equitable.

P.B. Cole & Son, Attorneys for Defendants.

State of Ohio, }
Union County ss. } Hugh McFadden being sworn says that the facts stated and allegations in his foregoing pleading are as he believes true.

Hugh McFadden.

Sworn to and subscribed before me this 30th day of December, 1882.

J.Q. Bruger, Clerk.

On the 20th day of February, 1883, the following Reply was filed with the Clerk of the Court of Common Pleas of Union County, to-wit:

George Corder, Plaintiff
vs.
Nancy A. McFadden et als. Defts.

Court of Common Pleas, Union County, Ohio.

Reply
#138

Plaintiff for reply to Hugh McFadden's answer filed herein says: That he admits that one hundred and eighty five dollars was at one time paid on said note and that at another time forty seven & 25/100 Dollars was paid, but says that both said payments were indorsed and credited on said note before judgment was rendered and judgment was only

taken for the unpaid balance, as will appear from the record of said case. Plaintiff denies each and every other allegation contained in said Hugh Mc. Fadden's answer, and prays as he in his petition has prayed. A. T. Carpenter & Porter & Porter, Attys for Pltff.

The State of Ohio, }
Union County, ss. } George Coder the above plaintiff being sworn says that the facts stated and allegations contained in his foregoing reply are true as he verily believes. George Coder.

Sworn to by George Coder before me and signed by him in my presence, this 20th. day of February A. D. 1883.

J. L. Swegney, Clerk.

On the 3d. day of May 1883, the following amended answer of Hugh Mc. Fadden, was filed with the Clerk of the Court of Common Pleas of Union County, to-wit:

George Coder, Plaintiff. } Common Pleas Union County.
vs.
Nancy A. Mc. Fadden and
Hugh Mc. Fadden, et als. Defts.

Now comes the defendant Hugh Mc. Fadden, and by leave of Court files this his amended separate answer, and says: He admits that said note was executed, and judgment and execution obtained as stated in the petition, and that he has no property liable to execution, and that the said Nancy A. Mc. Fadden is his wife. But he denies each and every allegation in said petition contained relating to him and not admitted as aforesaid. He further says that about May 1878 he sold and delivered to the plaintiff one hundred and thirty head of sheep on the farm of Hugh Mc. Fadden &c. near Marysville Ohio, for which plaintiff then verbally agreed with him to pay the market value - by paying the said amount on the note described in the petition, and to assume and pay said portion of said indebtedness. Said sheep were then worth $3.20 per head and said sum per head was then and there these market value. Total value of said sheep was $422.50 And said sum should have been paid by plaintiff on said note without charge to this defendant or incurrence of costs. This defendant also pastured said sheep for the plaintiff and at his request till Dec. 1878, which was worth $10.00 per Month = $70.00 which should be allowed as an offset against plaintiffs claim. Further answering he says that on or about the 27th. day of August 1878, he filed his petition in Bankruptcy in the United States District Court for the Northern District of Ohio, together with full schedules of all his property, a copy of which schedule is on file in this case; and that under the homestead and exemption laws of Ohio & the United States. All of said property would have been set off to him on demand, in said Bankruptcy proceedings, excepting only the $56 deposited as security for costs in said proceedings. But he says on or about December 1878 at the solicitation of said George Coder, and his creditors succeeding the said Cornelia A. Taylor, and upon their agreement to allow him credit on

their claims to the amount thereof at a given valuation he dismissed said proceedings in bankruptcy, and turned over to them a large part of his property and by consent of his wife some of her separate property, and the said creditors received the same at said valuation and agreed to forth with give the credits above mentioned on their claims. His total indebtedness at that time was considerable less than $1000. And the property was turned over at a valuation of over $600. The said agreement was witnessed as to part of the property by a writing, but no copy of it was furnished and he is unable to give a copy. The only copy was retained by the creditors. After getting said property the said creditors fraudulently put him off by false and frivolous excuses and failed and neglected, though often requested by him to give the credits agreed upon or any sufficient credits on account of said property. And the said Cornelia A. Taylor afterwards proceeded to take judgment as alleged in the petition without giving said proper credits as agreed. Her said proceedings were and are fraudulent to that extent, and said judgment ought not to be enforced. Said George Ender was instrumental and active in bring about said settlement and was fully aware and had full notice of all the above stated facts from and at the times they occured, and well knew of the above defenses to the claim of Cornelia A. Taylor at the time she took her said alleged judgment, but neglected to make any defense or claim as he might have done, and wrongfully allowed judgment to go against this defendant for debt which it was said Ender's duty to pay viz.: the balance due from him, Ender on account of sheep and pasture and the amount due this defendant as credits for goods turned over at said Ender's solicitation. Said creditors had a list of the creditors making said agreement and the amounts of their claims. Following is a list of said property turned over by this defendant with its valuation as far as he is able to state it.

20 acres of corn - valuation	$200.00
1 wagon	25.00
Harrow, Hayrack and mower	8.00
Set double harness	15.00
6 Tons hay	30.00
3 head of horses	130.00
2 cows	80.00
2 heifers	50.00
1 horse	60.00
Cash	75.00
3 plows	15.00
Total	$658.00

This defendant prays that the amounts of his said payments to the plaintiff and to the said Cornelia A Taylor may be ascertained and that plaintiff be required to account for the same, and that the amounts thereof with interest from the several dates thereof be allowed as set off against the claims of the plaintiff and for such other relief as equity requires in the premises. O.B. Coler Son, Attys for Hugh McFadden.

Entry 4138

Appeal Bond.

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State of Ohio,
Union County, ss. } Hugh Mc. Fadden being duly sworn says the facts stated and allegations in the foregoing pleading are as he believes true.

Hugh Mc. Fadden.

Sworn to and subscribed before me this 3d. day of May 1883.

J. D. Bingner, Clerk

On the 11th day of May, 1883, the following entry was made on the Journal by the Clerk of the Court of Common Pleas of Union County, to-wit:

George Coder

vs.

Entry 4138

Nancy Mc. Fadden et als. } And now came the said parties by their attorneys and thereupon this action came on for trial on the petition of said plaintiff and the answer and amended answer of Nancy Mc. Fadden and Hugh Mc. Fadden and the reply of plaintiff thereto and the evidence and was agreed by counsel; on consideration whereof the Court do find that said deed of conveyance to the said Nancy J. Mc. Fadden mentioned in said petition is fraudulent and void as against the rights and claims of the said plaintiff as the said plaintiff hath in his said petition averred; and the Court do further find that there is now due from the said Hugh Mc. Fadden to the said plaintiff on the judgment in the said petition mentioned, the sum of three hundred & twenty four 30/100 Dollars @ 8 per cent interest from this date and it is further ordered that in case the said sum is not paid in thirty days from this date that the Sheriff of this County proceed to cause the lands and tenements in the said petition described or so much thereof as is required to pay said sum to be appraised, advertised and sold according to law, and that he apply the proceeds of the said sale to satisfy to the said plaintiff the said sum of money so found due and owing to him as aforesaid. And it is further considered that the plaintiff recover of the defendant Hugh Mc. Fadden his costs herein expended, taxed to $ Thereupon defendants each gave notice of their intention to appeal this cause to the District Court of this County and the Court fixed the appeal bond at two hundred Dollars each.

On the 14th day of June A.D. 1883, the following Appeal Bond was filed with the Clerk of District Court, to-wit:

Appeal Bond.

Know all men by these presents, that we Nancy Mc. Fadden and J. R. Dixon are held and firmly bound unto George Coder in the penal sum of two hundred Dollars, to the payment of which, well and truly to be made we do hereby jointly and severally bind ourselves, our heirs, executors and administrators. Signed by us, and dated this 9th. day of May A.D. 1883. The condition of the above obligation is such, that, whereas, the said Nancy Mc. Fadden has taken an appeal from a certain judgment & decree rendered against her in favor of the said George Coder in the Court of Common Pleas within and for the County of Union in the State of Ohio, at the April Term thereof A.D. 1883, for the payment of costs and for the sale of certain land therein described, to pay judgment in favor of said George Coder against said Hugh Mc. Fadden to the District Court within and for the County aforesaid. Now if the said Nancy Mc. Fadden

shall abide and perform the order and judgment of said District Court and shall pay all moneys, costs and damages, which may be required of or awarded against her by said District Court then this obligation to be void; otherwise to remain in full force and virtue in law. (Signed) Nancy J. Mc. Fadden, J. R. Dixon.

I approve the above Bond with the sureties thereto, this 1st day of June A.D. 1883. J.D. Burgner, Clerk.

On the 1st day of March A.D. 1884, the following transcript was filed with the Clerk of District Court of Union County, to-wit:

George Linder, Plaintiff
Against
Nancy J. Mc. Fadden and Hugh Mc. Fadden, Defts.
Friday May 11th 1883.

The State of Ohio, Union County, ss.
Common Pleas Court, April Term, 1883.
Journal Vol. 12, page 637
Certified copy of Journal Entry.

And now come the said parties by their attorneys and thereupon this action came on for trial on the petition of the said plaintiff and the answer and amended answer of Nancy J. Mc. Fadden and Hugh Mc. Fadden and the reply of plaintiff thereto and the evidence and was argued by counsel. On consideration whereof the Court do find that said deed of conveyance to the said Nancy J. Mc. Fadden mentioned in said petition is fraudulent and void as against the rights and claims of the said Plaintiff as the said Plaintiff has averred in his petition. And the Court do further find that there is now due from the said Hugh Mc. Fadden to the said plaintiff on the judgment in the said petition mentioned the sum of three hundred twenty four and 3/100 Dollars with 8 per cent interest from this date. And it is further ordered that in case the said sum is not paid in thirty days from this date that the Sheriff of this County proceed to cause the lands and tenements in the said petition described or so much thereof as is required to pay said sum to be appraised advertised and sold according to law and that he apply the proceeds of said sale to satisfy to the said plaintiff the said sum of money so found due and owing to him as aforesaid, and it is further considered that the plaintiff recover of the defendant Hugh Mc. Fadden his costs herein expended, taxed to $
Thereupon defendants each gave notice of their intention to appeal this cause to the District Court of this County and the Court fixed the appeal bond at two hundred Dollars.

The State of Ohio,
Union County, ss. I, J.D. Burgner, Clerk of the Court within and for said County and in whose custody the files, Journals and Records of said Court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal of the proceedings of the said Court within and for said County, and that said foregoing copy has been compared by me with the original entry in said Journal, and that the same is a correct transcript thereof. In testimony whereof, I do hereto subscribe my name officially and affix the seal of said Court, at the Court House in Marysville Ohio in said County, this 1st day of March A.D. 1884. J.D. Burgner, Clerk.

Entry No. 7.

On the 11th day of March, 1885 the following Additional Appeal Bond was filed with the Clerk of the Circuit Court, to-wit:

Additional Appeal Bond. Circuit Court.

Know all men by these presents:

That Nancy Mc. Fadden and P. B. Cole are held and firmly bound unto George Coder, in the penal sum of two hundred Dollars to the payment of which well and truly to be made we do hereby jointly and severally bind ourselves, our heirs, executors and Administrators. Sealed with our seals and dated this 10th day of March, 1885. The condition of the above obligation is such that whereas the said Nancy A. Mc. Fadden has taken an appeal from a certain judgment rendered against her and in favor of the said George Coder in the Court of Common Pleas within and for the County of Union and State of Ohio at the April Term 1883 in Case No. 7138 entitled George Coder vs. Nancy Mc. Fadden, Hugh Mc. Fadden et als. for the payment of costs and for the sale of certain land therein described to pay a judgment in favor of said George Coder against said Hugh Mc. Fadden to the District Court of said County: Case No. 110 on the Docket of said District Court. Now, being desirous that said cause shall be transferred to the Circuit Court of said County, this additional bond is given so that if the said Nancy Mc. Fadden shall prosecute her appeal to effect without unnecessary delay and shall abide and perform the Order and judgment of said Circuit Court and pay all moneys, damages and costs which may be awarded against the said Nancy Mc. Fadden, then this obligation shall be void; otherwise it shall remain in full force and virtue in law. In presence of P. B. Cole

P. B. Cole (Seal)

The execution of the above undertaking and the sufficiency of the sureties therein approved by me, this 11th day of March A. D. 1885.

J. R. Burgner,
Clerk Common Pleas Court of said County.

On the 14th day of May, 1885, the following entry was made on the Journal by the clerk of the Circuit Court, to-wit:

Entry No. 7.

George Coder, Plaintiff
vs.
Nancy A. Mc. Fadden, Deft.

Union Circuit Court. On Appeal.
Action for Equitable Relief.

This day again came the parties by their Attorneys, and said cause having heretofore been taken under advisement by the Court do find on the issues joined for the defendant Nancy A. Mc. Fadden It is therefore considered that the petition be dismissed at the cost of the plaintiff, taxed at $ and that the said defendant Nancy A. Mc. Fadden go hence without day and recover of the plaintiff George Coder her costs herein expended, taxed to $ And it is further ordered that a special mandate be sent to the Common Pleas Court of Union County for execution. To said decree and decision the plaintiff then and there excepted.

Attest: John R Burgner, Clerk.

Pleas before the Honorable Thomas Bees, John J. Moore and Henry W. Seney, Judges of the Circuit Court within and for the County of Union of the Third Judicial Circuit of the State of Ohio was begun and held at the Court House in the Town of Marysville on the 28th day of April in the year of our Lord Eighteen Hundred and Eighty Five. Heretofore, to-wit:

On the 14th day of August A.D. 1880, the following Petition was filed with the Clerk of the Court of Common Pleas, to-wit:

William Smith, Plaintiff.
vs.
William Kerts, Frank Kerts, Defts

The State of Ohio, Union County, ss.
Court of Common Pleas.

1st Cause of Action:

The plaintiff says that he has a legal estate in and is seized in fee simple and is entitled to the immediate possession of the following described real estate: Situate in Jackson Township Union County, Ohio and being a part of Military Surveys Nos 10704 & 10705-, beginning at a stone and three Ironwoods at the north-east corner of said Survey; thence with the east line of said Survey, south 82° west 133 68/100 poles to a limestone and pieces of crockery in the centre of the Brown road; thence with the centre of said road north 81° 133 68/100 poles to a stone on the east line of said Survey and at the south west corner of N. O. Butler's land; thence with said Survey line N. 9° W. 130 50/100 poles to the place of beginning, containing one hundred and ten acres of land.

That the defendants ever since the 18th day of March A.D. 1878 have unlawfully kept him out of possession of the said premises.

2d Cause of Action:

The defendants whilst they have unlawfully kept the plaintiff out of possession of said premises as above stated and ever since the 18th day of March A.D. 1878 have received the rents and profits of said premises of the value of five hundred dollars and refuses to account for or pay the plaintiff any part of said rents and profits. The plaintiff asks judgment for the delivery of the possession of said premises to him. And also for the sum of five hundred dollars, on account of said rents and profits.

J. A. Alexander & E. B. Cole & Son, Attys for Plff.

The State of Ohio, Union County, ss. } William Smith, plaintiff being first duly sworn, deposes and says that the several allegations in the foregoing petition are true as he verily believes.

Wm Smith.

Sworn to by William Smith before me and by him subscribed in my presence this 13th day of August A.D. 1880.

E. E. Cole,
Justice of the Peace.

Wm Smith
vs
Wm Kerts et al.

Union Common Pleas.

Praecipe

To Clerk:

Issue summons to the Sheriff of Union County Ohio, for the defendants in the foregoing petition, returnable according to law. Amount damages claimed $500 and possession of real property prayed for.

J. A. Alexander & E. B. Cole & Son, Attys for Plff.

Summons

Return

Answer

Summons

On the 14th day of August A.D. 1880 the following Summons was issued by the Clerk of the Court of Common Pleas, to-wit:

The State of Ohio, }
Union County, ss. } To the Sheriff of the County of Union, Greeting:

We command you to notify William Kerts and Frank Butz that they have been sued by William Smith in the Court of Common Pleas of Union County, and that unless they answer by the 11th day of Sept. A.D. 1880, the petition of the said William Smith against them filed in the Clerk's Office of said Court such petition will be taken as true and judgment rendered accordingly. You will make due return of this Summons on the 26th day of August A.D. 1880.

Witness my hand and the seal of said Court, this 14th day of August A.D. 1880. W. M. Stringer, Clerk

Indorsed: In action for damages and possession of real property.

Return

The State of Ohio, }
Union County, ss. } Sheriff's Return.

Received this writ August 14th A.D. 1880 at 4 o'clock P.M. and pursuant to its command, served the same on the 19th day of Aug. 1880 by delivering a certified copy thereof with the endorsements thereon to the within named Frank Butz. The within named Kerts not found in our County.

Service - 25 }
Mileage - 2.20 } Total Sheriff's fees, $3.00
Copy - - 70 }
Return - 5 }

J. J. Miller, Sheriff.

Answer

On the 11th day of September, 1880, the following Answer was filed with the Clerk of the Court of Common Pleas, to-wit:

William Smith, Plaintiff } In the Court of Common Pleas of
vs. } Union County, Ohio.
William Kerts et al. Defendants }

The said defendants now come and for answer to the petition of said plaintiff say:

1st Defense: That they deny each and every allegation and averments in said petition contained.

2d Defense and Cross Petition: For a second and further defense and by way of Cross Petition the defendants say that the lands in the petition described were formerly owned by one John Evans, and that in the year A.D. 18[illegible] said John Evans departed this life leaving a will, by the provisions of which he devised all his property to his daughters Minerva C. Evans and Mary A. Boggs and his grand-children, Edward A. Stephenson to have the free use of the same during their lives, and provided further that all his property should be divided so that each of his devisees should control his or her portion in severalty. That said will was duly admitted to the probate and recorded by the proper authority and afterward said estate was divided accordingly to the provisions of said will and the lands in the petition described fell to the said Minerva C. Evans to have the use of during her life. It was further provided by said will that in the event of said Mary [illegible] Minerva both dying without leaving heirs of their bodies, then the one half of the estate of the one that died

last should go to the heirs of Robert and Daniel Evans, who were brothers of the said testator. The said Mary A. Briggs died in the year A.D. 1852 and left no heirs of her body. That afterward in the year A.D. 1862 the said Nancy A. Harris, being far advanced in life and not having any children, and the probability of her leaving heirs of her body having passed. One Nancy A. Harris (who was inter-married with Eliza Harris) and who was one of the daughters of Daniel Evans and heirs of John Evans deceased, and who in the event of said Nancy dying without issue would inherit as heir of John Evans by the provisions of said will, entered into negotiations with the plaintiff to see to have all his rights in the present and future which she has or might have under said will and to place said plaintiff in her stead as heir in present and expectancy of said John Evans. Said negotiations were successful and on the 8th. day of January A.D. 1862 the said Nancy A. Harris with her husband Eliza Harris for a good full and valuable consideration then paid by said plaintiff executed, signed, sealed and delivered to said plaintiff a writing in the nature of a deed of quit claim by which she conveyed and intended to convey to said plaintiff all her title and interest that she had or ever might have in the said estate of John Evans and to place plaintiff in her stead as heir of said John Evans. The estate conveyed and intended to be conveyed by the said writing is described therein as follows:

" "And all my Estate, right, title, interest, property, claims and demands, " whatsoever in law and in equity, present and contingent which I " or either of us have or may hereafter have by devise or by descent of into " or out of all and singular the lands tenements hereditaments, goods, " chattels, stocks, credits and real and personal property of every description " owned by said John Evans, deceased at the time of his death and de- " vised by the said John Evans by his last will and testament admitted " to Probate by the Court of Common Pleas of Ross County, Ohio on the 11th " day of January A.D. 1842 and recorded in said County of Ross to " which said will and the certificates of division to and between " Rezaneva C. Evans, Mary A. Briggs, Job C. Stevenson and Edward C. " Stevenson made by the Executors of said John Evans by direction and " the authority in said will and recorded on page 450, 451, 452, 453, " 454 and 455 of book 19 of the Records in the Recorder's office of Pickaway " County, Ohio, reference is hereby made for a more particular description " of said property, both real and personal are hereby intended to con- " vey to said William Smith all the interest of both and each of us " present and future in the estate of said John Evans (deceased) " through whatever source derived". Said conveyance was duly recorded in the Recorder's office of Brown County, Ohio on the 9th. day of February 1862 in Book No. 27 page 217-218. That on the 10th. day of January 1862 for a full and valuable consideration the plaintiff obtained a like conveyance to himself from one Ellen and her husband Joshua Kitchen, the said Ellen was a niece of John Evans, deceased and a daughter of Daniel Evans, deceased said deed contained a like description as the deed of Nancy A. Harris

with the following additional words: "It being the purpose of this deed
" to convey their interest in all the property of which the said Johnson
" Evans died seized"

The said deed from Ellen Ketchum and husband to the plaintiff was recorded in the office of the Recorder of Union County on the 8th day of February 1862 in Book 24 page 219-220 of the Records of deeds. The said William Smith on the 4th day of May 1868 believing he had a good and sufficient title to the estate and interest of said Nancy A. Harris as described in her deed to him for a good, full and valuable consideration then paid to him by one Alvan E. Randall, to-wit: for the sum of $2500 in cash executed, acknowledged and delivered to said Randall all the estates and right, which he obtained by the deed of Nancy A. Harris, which deed contained a like description of that of said Nancy A. Harris to him with the following words added: "He hereby intend to convey to the said
" Alvan E. Randall all the interest in said estate both in present and
" in future which we derive by virtue of a conveyance to William
" Smith by said Nancy A. Harris both present and in future, in the
" estate of John Evans, deceased, through whatever source claimed."

That on the 11th day of August 1869 the said plaintiff for a full good and valuable consideration to him paid by said Alvan E. Randall to-wit for the sum of $7000 in cash executed, acknowledged and delivered to said Alvan E. Randall a deed containing the same description as in the deed from said Nancy A. Harris to him with the following additional words: "He hereby intend to convey to the said Alvan E. Randall all the interest we said estate both in present and in future what we derive by virtue of a conveyance to William Smith by Joshua Ketchum and Ellen Ketchum and dated January 10th 1862.

The said plaintiff and Alvan E. Randall are the grantors through whom these defendants claim title to the premises in the petition described. That on the 13th day of April 1870 the said Alvan E. Randall for a good, valuable and full consideration to him paid by one Solomon P. Smith executed, acknowledged and delivered to said Solomon P. Smith a deed of conveyance for said premises, which deed contained a like description as that of the deed of Nancy A. Harris with the following additional work: "All the property real and personal
" to which I have derived any title or interest by virtue of two certain
" deeds or instruments, one bearing date May 4, 1868, and recorded
" in said Ross County June 5th 1868 in Vol. 71 page 441 and
" 443 and executed by William Smith and wife to said
" Alvan E. Randall and the other bearing date the 11th day a Aug.
" 1869 and recorded September 4th 1869 in Logan County Ohio
" in Book 44 page 286 & 287 and executed by said William Smith
" and wife to said Alvan E. Randall which deed from Solomon P.
" Smith to said Alvan E. Randall is recorded in Book No. 36 page
" 57 & 58 & 73 of the Records of Union County Ohio.

On the 20th of February 1871 said Olivia E. Randall and wife executed to said Solomon P. Smith another deed conveying all his interest in the present and future which he has or might have in the estate of John Evans, deceased. The last deed was upon a good consideration and was intended by the grantor to invest the grantee with all the rights titles and interest that said Nancy Harris and Ellen Ketchum would have if none of said deeds had been made so that at the event of the death of said Maneva C. Evans without leaving heirs of her body, the grantor should ask, demand and receive the possession that would otherwise if none of said deeds had been made and given to said Nancy and Ellen.

That on the 27th day of August 1875 the said Solomon P. Smith for a good, full and valuable consideration conveyed said premises all to me, Harvey J. King, which deed contained a like description as that of Solomon P. Smith's deed from Olivia E. Randall and which is recorded in book 75 page 166 & 167 of Union County Records of Deeds That afterward to-wit on the 18th day of March 1878 Harvey J. King and wife conveyed all said premises to these defendants by deed of general warrant. These defendants further say that all of the aforesaid transactions, deeds and conveyances were well known to the plaintiff and that he was well acquainted with the contents of the will of said John Evans deceased. And that when he conveyed to said Olivia E. Randall and when he executed the said instrument of writing to said Randall, he well knew that Maneva C. Evans was still alive and well, knowing that he had no other title than that derived from said Nancy A. Harris and Ellen Ketchum and that he received and accepted said large sum of money from the said Randall for no other consideration whatever than the title and interest he then conveyed to him in the estate of John Evans aforesaid. That at the time he so executed said instrument of writing he executed and intended to convey to said Randall all the title and interest that said Nancy ever would have in said estate if said deeds had not been made. Said plaintiff represented to said Randall that he had good right to convey to him all the interest of said Nancy either in the present or future, that his title was complete to place said Randall in lieu and stead of said Nancy, so that on the death of said Maneva without issue, the said Randall or his assigns could ask demand receive of the estates of said John Evans all that said Nancy could have done had none of said deeds and instruments of writing been made. That on or about day of 1875 said Maneva C. Evans died without leaving any heirs of her body. She died without issue and on the 17th day of August 1875 the said J. E. Stevenson filed in this Court a petition asking partition of the estate of said John Evans and in said petition made said Nancy A. Harris and husband parties as well as her unknown assigns. It was stated in said petition that said Nancy had conveyed her estate to parties unknown and thereupon such proceedings were had in said Court that in June 1876 partition was made of said land.

and the premises in the petition described was set off, the name Nancy Ann Hearris; but as between said Nancy and her assigns the questions where wholly undisposed of and the Court proceeded to its decree of partition these words to-wit: "Nothing herein to prejudice
" the right of any person or party hereto to either of the shares set apart
" to Rebecca Huthaway, Nancy Hearris, and Ellen Ketchem.
All of which proceedings the said plaintiff had full notice. That he knew all that was done in that behalf and well knew that in selling the said premises in the name of said Nancy A. Hearris the Court did not affect the right and title of her said grantee and assigns. That both the plaintiff and said Nancy A. Hearris have received the consideration and payment of and for all their interest in said estate and that these defendants and the grantors through and under whom they claim title have acted in good faith in the premises and that in justice and equity the plaintiff ought to be estopped now from denying that the interest of Nancy Hearris passed to him by her said deed and estopped from denying that said interest had from him to said Randall and thence down to these defendants by said several instruments of writing and conveyance. These defendants aver that since the death of said Rebecca G. Evans and since said partition the said plaintiff claims to have gotten from said Nancy A. Hearris another deed. These defendants do not know whether the same be so, but they aver that if the said Nancy A. Hearris has so executed to plaintiff another deed since said partition, that the plaintiff took the same, knowing all the foregoing facts and knowing all the equities of these defendants and that he paid no consideration therefor but to the same to wrong, vex and annoy these defendants and disquiet them in these estates; that whatever legal title said plaintiff may or might have acquired of said Nancy A Harris ought in equity to inure to the benefit of the defendants. These defendants say that said Nancy A. Hearris and her husband Elija Hearris are necessary party hereto and they ask they may be brought in by order of the Court and that a full and ample hearing may be had hereon. And upon said hearing said plaintiff and said Nancy A. Hearris and Elija Hearris may by the Court here be held to be estopped from claiming any further title to the premises in the petition described and that the title of these defendants may be quieted and they be put at rest in the enjoyment of their said estates, and that the said plaintiff and said Nancy A. Harris and all persons claiming through and under them may be forever and perpetually enjoined from disturbing or interfering with the defendants or those claiming through and under them or either of them and for all such other and further relief as may be equitable and just and to the Court seems just. Cameron & Benton, Attys for Defendants.

State of Ohio, }
Union County ss. } William Kirts being first duly sworn says that he is one of the defendants in the foregoing case and that the facts stated and allegations made in the foregoing answer are true as he verily believes.

William Kirts

Sworn to before me by said William Kirts and by him signed in my presence, this 11th. day of September 1880.

D. M. Dronget, Clerk.

On the 25th. day of April, 1881 the following Demurrer to Answer was filed with the Clerk of the Court of Common Pleas, to-wit:

William Smith, Plaintiff
vs.
William Kirts, Defendant.

Union Common Pleas.

Now comes the Plaintiff, William Smith and demurs to the second defense and Cross-Petition of defendant; because the facts therein stated do not constitute a defense to the action of the said plaintiff: and therefore prays judgment as to his said petition.

P. B. Cole & J. A. Alexander,
Attorneys for Plaintiff.

On the 21st. day of May, 1881, the following entry was made on the Journal by the Clerk of the Court of Common Pleas, to-wit:

William Smith
vs.
William Kirts et al.

Entry 3666.

This day came the parties by their attorneys and thereupon by consent of parties the entry in this case (striking out certain parts of the answer) made at a former time time and recorded on Journal 12 page 128 is set aside and held for naught and said motion to reform the defendants answer is withdrawn. Thereupon this cause was submitted to the Court upon the demur of the plaintiff to the answer of said William Kirts as originally made and was argued by counsel and submitted. On consideration thereupon the Court do overrule said demur to which ruling of the Court in overruling said demur the plaintiff by his counsel except. Thereupon the plaintiff asked and had leave to file reply in 20 days from rising of Court and cause continued

Demur 3666.

Entry 3666.

On the 8th. day of September, 1881, the following Reply was filed with the Clerk of the Court of Common Pleas, to-wit:

William Smith, Plaintiff
vs.
William Kirts, Defendant

The State of Ohio, Union County; ss.
Court of Common Pleas.

Entry 3666

Now comes the plaintiff and for reply to the answer and Cross Petition of the defendant says that the said defendant ought not to be maintained the same and have the relief therein demanded; because he further says Nancy Ann Kearns and Ellen Ketchum were on the day of 1877 seized in fee simple of such lands and that for a valuable consideration they paid them they conveyed the premises in the petition described. That on the 17th day of February 1879 by a verbal agreement and for a valuable consideration then paid to the said Solomon P. Smith, who at the time asserted that he was the owner of all the interest of said Nancy Ann Kearns and Ellen Ketchum sesold all such interest to this plaintiff and agreed to convey the same to him within a short time. The said plaintiff avers that the said Solomon

O. Smith took and retained the consideration therefor, and still retains the same. What it was of the value of ten thousand dollars or more. Wherefore this plaintiff says he is not estopped and the said defendant is not entitled to demand a conveyance for said premises. P.B. Cole, T. N. Alexander,
his attys.

William Smith being first duly sworn, deposes and says that the allegations in the foregoing answer are true as he verily believes.
William Smith.

Sworn to by William Smith before me and by him subscribed in my presence, this 23d day of April 1881.
Henry R Robinson, Notary Public,
Cuyahoga County Ohio.

On the 14th day of September, 1881, the following Demurrer was filed with the the Clerk of the Court of Common Pleas, to-wit:

Demurrer 3666.

William Smith, Plaintiff
vs.
William Kirts, et al. Defendant

State of Ohio Huron County ss.
To the Court of Common Pleas.

The defendant demurs to the reply of the said plaintiff and for grounds of reply say that facts sufficient to constitute a defense to the answer of the said defendant are not contained in said reply.
Cameron and Benton,
Attorneys for Defendant.

On the 14th day of October, 1881 the following entry was made on the Journal by the Clerk of the Court of Common Pleas, to-wit:

Entry 3666.

William Smith
vs.
William Kirts et al.

This day comes this cause on to be heard upon the demurr of the said defendant to the reply of the plaintiff. On consideration whereof the Court being fully advised in the premises do sustain said demurr, and the plaintiff has leave to file an amended reply in 30 days from the rising of the Court. Cause continued.

On the 3d day of February, 1882 the following Entry was made on the Journal by the Clerk of the Court of Common Pleas, to-wit:

Entry 3666

William Smith, Plaintiff
vs.
William Kirts et al. Defendants

This day came the parties by their Attorneys and thereupon this cause came on to be heard upon the answer and Cross Petition of the defendant, William Kirts and the reply of plaintiff and the evidence. On consideration whereof the Court being fully advised in the premises do find that the statements and allegations of said answer are true and that the statements and allegations in said reply are not true. The Court further finds that the statements and allegations of the said answer constitute a complete defense to the said plaintiff's petition.

It is therefore adjudged and decreed by the Court that the defendants title to said premises in the petition described be and the same is hereby declared and be a good and sufficient title

as against the said plaintiff and all persons claiming through or under him that said defendants title is hereby quieted and put at rest, and said plaintiff is enjoined from interfering with said defendant in the possession and enjoyment of said premises. It is further adjudged that the defendants recover of the said plaintiff their costs herein expended taxed to $\frac{}{}$

Thereupon said plaintiff gave notice of his intention to appeal this case to the District Court, and the Court fix the bond for appeal at One hundred and fifty dollars.

On the 26th day of February 1882 the following Appeal Bond was filed with the Clerk of the District Court, to-wit:

Appeal Bond.

Know all men by these presents, that we William Smith are held and firmly bound unto William Kirts in the penal sum of one hundred and fifty dollars, to the payment of which, well and truly to be made, we do hereby jointly and severally bind ourselves, our heirs, executors and administrators. Signed by us, and dated this 25th day of February A.D. 1882. The condition of the above obligation is such, that, whereas, the said William Kirts taken an appeal from a certain judgment and decree rendered against him in favor of the said William Kirts in the Court of Common Pleas within and for the County of Union in the state of Ohio, at the January Term thereof A.D. 1882, for the sum of the costs being, $16.88, to the District Court within and for the County aforesaid. Now if the said William Smith shall abide and perform the order and judgment of said District Court, and shall pay all moneys, costs and damages, which may be required of or awarded against him by said District Court, then this obligation to be void; otherwise to remain in full force and virtue in law.

(Signed) William Smith per R.B. Cole.

I approve the above bond with the sureties thereto, this 25th day of February A.D. 1882. J.D. Burgner, Clerk.

By W.W. Wright, Deputy.

On the 18th day of March, 1882 the following Entry was made on the Journal by the Clerk of the District Court, to-wit:

Entry

William Smith vs. William Kirts et al. — On Appeal. Union District Court. Entry of Demurrer to Answer.

This cause coming on for hearing upon the demurrer to the answer was argued by counsel and submitted. On consideration whereof the Court being fully advised in the premises do overrule said demurrer, to which overruling of said demurrer, the plaintiff then and there excepted. Thereupon plaintiff asked and obtained leave to reply by May 15th 1882.

On the 8th day of March 1883, the following Amended Reply was filed with the Clerk of the District Court, to-wit:

Reply

William Smith plaintiff vs. William Kirts et al. Defendants — The State of Ohio Union County, ss. In the District Court.

Now comes the said plaintiff and for reply to the second defense and cross-petition, says:

That he admits that the lands in the petition described were formerly owned by one John Evans.

That he admits that said John Evans died in the year 1841, leaving a will.

That he denies that the provisions of said will are correctly set forth in defendants answer. That he admits that the said Nancy A Harris and the said Ellen Ketchum are the persons named in said answer. That he admits that for a good and valuable consideration, they conveyed to him, the said plaintiff, the said premises in the year 1862 as stated in said answer and cross-petition. That he admits that the said deed to him by said parties are recorded as stated. That he admits that he made a title by quitclaim in form, to Oliver D. Randall on the 4th day of May 1868 and delivered the same to Oliver D. Randall. That he denies that the said Oliver D. Randall paid him in cash the sum of $2500, or any other sum; but he avers that the true consideration was an interest in a patented improvement called a horse hay rake, and no other consideration, which said invention was worthless and void for want of novelty and utility. That he admits that he afterwards executed to the said Oliver D. Randall a deed for a certain interest in said property at a stated consideration of $7000 - but he says that it was the same consideration, last above described. That he denies that on the 13th day of April or at any other time the said Solomon P. Smith paid to said Oliver D. Randall any consideration, either good or valuable for said premises. That he denies that on the 27th day of August 1875 or at another time the said Solomon P. Smith for any consideration, either good or valuable conveyed said premises to Harvey J. King. The plaintiff avers that on the day of February 1876 the said plaintiff for the consideration hereinafter named, the said plaintiff reconveyed to the said Solomon P Smith all of the interest in, and to said patent right property and in consideration whereof the said Solomon P. Smith wholly agreed to reconvey to him all his interest in said to the premises in the said answer averred. That he denies that any consideration was paid by the said Harvey J. King. That he denies that there existed at that time any title in or to said premises in either the said Solomon P Smith or the said Harvey J. King. But he says that the said Nancy A. Harris and Ellen Ketchum held a bare naked possibility in said premises until the death of the said Mariama Evans and that after the death of said Mariama Evans, both the said Ketchum and the said Harris conveyed to him, the said plaintiff, for a good and valuable consideration, said premises in fee simple and that he is now the owner and holder of the legal title thereto.

By I. A. Alexander, O. D. Cole.
his Attorneys.

The State of Ohio, }
Van Wert County ss. } William Smith being duly sworn says that the allegations in the foregoing reply contained are true as he verily believes.

William Smith.

Sworn to before me and subscribed in my presence by William Smith this 21st day of February A.D. 1883.

T. L. Hemmens, Notary Public,
Van Wert County, Ohio.

On the 11th day of March, 1885, the following Additional Appeal Bond was filed with the Clerk of the Circuit Court, to wit:

Additional Appeal Bond.
Circuit Court.

Know all men by these presents: That William Smith are held and firmly bound unto William Kerts in the penal sum of one hundred and fifty Dollars to the payment of which well and truly to be made we do hereby jointly and severally bind ourselves, our heirs, executors and administrators. Sealed with our seals and dated this 11th day of March 1885. The condition of the above obligation is such that whereas the said William Smith has taken an appeal from a certain judgment rendered against him and in favor of the said William Kerts in the Court of Common Pleas within and for the County of Union and State of Ohio at the January Term 1882 in case No. 3666 entitled William Smith vs William Kerts et al. for the sum of $16.88 costs to the District Court of said County: Case No. 93 on the Docket of said District Court. Now, being desirous that said cause shall be transferred to the Circuit Court of said County, this additional bond is given so that if the said William Smith shall prosecute his appeal to affect without unnecessary delay and shall abide and perform the order and judgment of said Circuit Court and pay all moneys, damages and costs which may be awarded against the said William Smith then the obligation shall be void; otherwise it shall remain in full force and virtue in law. In Presence of C. B. Cole, (Seal)

The execution of the above undertaking and the sufficiency of the sureties thereon approved by me, this 11th day of March A.D. 1885.

J. L. Burgner,
Clerk Common Pleas Court of said County.

On the 6th day of May 1885, the following Entry was made on the Journal by the Clerk of the Circuit Court, to-wit:

William Smith, Plaintiff
vs.
William Kerts et al. Defendants

Entry. 2.

This day again come the parties and their Attorneys and this cause at a former day of this Term having been submitted to the Court upon the Cross-Petition of the said William Kerts, the amended reply of the plaintiff thereto and the evidence, and taken under advisement by the Court coming on now for finding and decision and the Court being fully advised in the premises do find that all the deeds mentioned in said Cross-petition except the deed executed by Nancy Harris to the plaintiff, after the

death of Manerva C. Evans) were founded upon good, full and valuable considerations and that they contained the recitals and were executed and recorded as in said Cross-petition stated and that the statements and allegations contained in said Cross-petition are true and the Court finds the equities of the case to be with the defendant William Kerts and against the said plaintiff. That the said plaintiff is not entitled to the possession of the premises in the petition described or any part thereof, but that said defendant William Kerts is rightfully in possession of said lands. The Court further finds that said defendant William Kerts is entitled to the relief prayed for in his Cross-petition in having his title and possession and said premises quieted. It is therefore ordered adjudged and decreed that the title and possession of said William Kerts to all and singular the premises in the petition described to-wit: Situate in the County of Darke and State of Ohio, part of Surveys Nos 10704 and 10705 being also a part of tract No 4 and lot No. 2 of the subdivision of Manerva C. Evans land beginning at a stone and pieces of crockery in the north line of said Survey at the north west corner of William Kerts 1: beginning at a stone and three ironwoods corner to said Survey; thence with the north line of said Survey 82° west 133.68 poles to a limestone and pieces of crockery in the centre of the Brown road; thence with the centre of the said road north 8½°, 199.68 poles to a stone in the east line of said Survey and at the south west corner to W. A. Bliss land; thence with said Survey line north 9 west 130.50 poles to the place of beginning containing 102 acres of land be quieted as against the plaintiff and all persons claiming through or under him and that the plaintiff and all persons claiming under him be and he is hereby enjoined from setting up any claim to said premises or any part thereof adverse to the title of possession of said William Kerts or any person claiming under him thereto or in any manner interfering with his use and enjoyment of the same. It is further ordered that the plaintiff pay the costs of this suit, taxed to # And any default of payment execution is awarded therefor; of all of which the plaintiff excepts. It is further ordered by the Court that a special mandate be sent to the Court of Common Pleas of Darke County Ohio, to carry this judgment into execution.

Attest: John D. Burgner. Clerk.

Pleas before the Honorable Thomas Beer, John J. Moore, and Henry W. Seney, Judges of the Circuit Court, within and for the County of Union of the Third Judicial Circuit of the State of Ohio was begun and held at the Court House in the Town of Marysville on the 28th day of April A.D. 1885.

Heretofore, to-wit: On the 14th day of August 1880, the following Petition was filed with the Clerk of the Court of Common Pleas, to-wit:

William Smith, Plaintiff
Against
Elijah T. Reese, Defendant
Robert Ingraham "
Thomas R. Northrup "

The State of Ohio, Union County, ss.
In Court of Common Pleas.

First cause of Action:

The plaintiff says that he has a legal estate in and is seized in fee simple and is entitled to the immediate possession of the following described real estate, situate in Jackson Township Brush County Ohio and being a part of Virginia Military Surveys Nos 10704 and 10705 being also part of Tract No. 4 on plat No. 2 of the sub-division of Madeira C. Evans land beginning at a stone and pieces of crockery on the north line of said Survey at the north-west corner of Wm Kerts land; thence S. 82° W. 205 poles to a stake and stone witness a sugar and ironwood on said Survey line, thence S. 9° East 137½ poles to a stone and pieces of crockery at Wm Kerts, S.W. corner; thence N. 8° 40' W. 132 39/100 poles to the pieces of crockery at beginning, containing one hundred and seventy acres of land. That the defendants ever since the 12th day of November A.D. 1878, have unlawfully kept him out of the possession of said premises.

Second cause of action:

The defendants whilst they have unlawfully kept the plaintiff out of possession of said premises as above Stated and ever since the 12th day of November (as above stated) A.D. 1878, have received the rents and profits of said premises of the value of five hundred dollars and refuses to account for or pay the plaintiff any part of said rents and profits.

The plaintiff asks judgment for the delivery of the possession of said premises to him and also for the sum of five hundred dollars, on account of said rents and profits.

J. H. Alexander and O. B. Cole & Son,
Attorneys for Plaintiff.

The State of Ohio, Union County, ss. William Smith plaintiff, being first duly sworn deposes and says that the several allegations in the foregoing petition are true as he verily believes.

William Smith.

Sworn to by William Smith before me and by him subscribed in my presence, this 13th day of August, A.D. 1880.

O. O. Cole,
Justice of the Peace.

Praecipe

Summons.

Return.

Praecipe

William Smith
vs.
Elijah T. Reese et al.

Huron County Common Pleas.

To Clerk:

Issue summons to the Sheriff of Huron County, Ohio, upon the petition in the above entitled case for the defendants, returnable according to law. Annual damages claimed $100 and possession of real property prayed for. J. A. Alexander & C. B. Cole & Son,
Attorneys for Plaintiff.

On the 14th day of August, A.D. 1880, the following Summons was issued by the Clerk of the Court of Common Pleas, to-wit:

Summons.

The State of Ohio,
Huron County, ss. } To the Sheriff of the County of Huron, Greeting:

We command you to notify Elija T. Reese, Robert Morrison and Thomas R. Northrup that they have been sued by William Smith in the Court of Common Pleas of Huron County, and that unless they answer by the 11th day of September A.D. 1880, the petition of the said William Smith against them, filed in the Clerk's Office of said Court, such petition will be taken as true, and judgment rendered accordingly. You will make due return of this Summons on the 26th day of Aug. A.D. 1880.

Witness my hand and the seal of said Court, this 14th day of August, A.D. 1880. W. M. Winget, Clerk [Seal]

In action for damages and possession of real property.

Return

The State of Ohio,
Huron County, ss. } Sheriff's Return.

Received this writ August 14th A.D. 1880 at 4 o'clock P.M. and pursuant to its command, served the same on the 19th day of August 1880 by delivering a certified copy thereof with the endorsements thereon to each of the within named Elijah T. Reese, and Thomas R. Northrup and by leaving a certified copy thereof with the endorsements thereon at the residence of the within named Robert Morrison. J. J. Smiller, Sheriff.

On the 11th day of September, 1880, the following Answer was filed with the Clerk of the Court of Common Pleas, to-wit:

William Smith, Plaintiff
vs.
Elija T. Reese et al. Defendants } State of Ohio, Huron County, ss. In the Court of Common Pleas.

The said defendants now come and for answer to the petition of the said plaintiff say:

First Defense, That they deny each and every allegation and averment in said petition contained.

Second Defense and Cross-Petition:

For a second and further defense and by way of Cross-Petition the defendants say that the lands in the petition described were formerly owned by one John Evans, departed this life leaving a will by the provisions of which he devised all his property to his daughter Minerva C. Evans

and Mary A. Boggs and his grand-children, Edwards A. Stevenson and Job E. Stevenson to have the free use of the same during their lives and provided further that all his property shall be divided so that each of said devisees should control his or her portion in severalty. That said will was duly admitted to probate and recorded by the proper authority and afterwards said title was divided according to the provisions of said will and the lands in the petition described fell to Vanneva C. Evans to have the use of during her life. It was further provided by said will that in the event of said Mary and Vanneva both dying without leaving heirs of their bodies, then the one-half of the estate of the one that died last should go to the heirs of Robert and Daniel Evans, who were brothers of the said testator. The said Mary A. Boggs died A.D. 1852 and left no heirs of her body. That afterwards in the year A.D. 1862 the said Vanneva, being far advanced in life and not having any children and the probability of her leaving heirs of her body having past; one Nancy A. Harris (who was intermarried with Elija Harris) and who was one of the daughters of Daniel Evans and niece of John Evans, deceased and who in the event of the said Vanneva dying without issue would inherit as heir of John Evans, by the provisions of said will, entered into negotiations with the plaintiff to sell to him all her rights in the present and future, which she had or might have under said will, and to place said plaintiff in her stead as heir in present and expectancy of said John Evans. Said negotiations were successful and on the 8th day of January A.D. 1862 the said Nancy A. Harris with her husband Elija Harris for a good full and valuable consideration then paid by said plaintiff executed, signed, sealed and delivered to said plaintiff a writing in the nature of a deed of quit-claim, by which she conveyed and intended to convey to said plaintiff all her title and interest that she had or ever might have in the said estate of John Evans and to place plaintiff in her stead as heir of said John Evans, the title conveyed and intended to be conveyed by the said writing is described therein as follows. "For all our estate, right, title, interest property, claim and demand whatsoever in law and in equity vested and contingent, which we or either of us have or may hereafter have by devise or descent of into or out of all and singular the lands tenements hereditaments goods chattels stocks credit and real and personal property of every description owned by said John Evans, deceased at the time of his death and devised by said John Evans by his last will and testament admitted to probate by Court of Common Pleas of Ross County Ohio on the 11th day of January A.D. 1842 and recorded in said County of Ross to which said will and to the certificate of division to and between Vanneva C. Evans, Mary A. Boggs, Job E. Stevenson and Edward D. Stevenson made by the executors of said John Evans by direction and under the authority of said will and recorded on pages 456-457

" 452-453-454 & 455 of book 19 of the Records in the Recorders office
" of Pickaway County, Ohio, reference is hereby made for a more
" particular description of said property, real and personal. We
" hereby intend to convey to said William Smith all the interest
" of both and each of us; present and future in the estate of said
" John Evans, deceased, through whatever source derived."
Said conveyance was duly recorded in the Recorder's office of Union
County Ohio on the 7th day of February 1862. Book No. 24 page 217-218.
That on the 10th day of January 1862 for a fair and valuable
consideration the plaintiff obtained a like conveyance to him-
self from one Ellen Ketchum and her husband, Joshua
Ketchum the said Ellen was a niece of John Evans,
deceased and a daughter of Daniel Evans, deceased.
Said deed contained a like description as the deed of said Nancy
A. Harris with the following additional words "It being their (the
" grantors) intention to convey their interest in all the property of
" which the said John Evans died seized."
The said deed from said Ellen Ketchum and husband to
the plaintiff was recorded in the office of the Recorder of Union
County on the eighth day of February 1862 in Book 24 page 219-220
of the Records of deeds. That said William Smith on the 4th day
of May 1868 - he had a good and sufficient title to the estate
and interest of Nancy A. Harris as described in her deed to
him for good full and valuable consideration, then paid to him
by one Alvar E. Randall, to-wit: for the sum of $25.00 in
cash; executor acknowledged and delivered to said Randall
all the estate and rights which the obtained by the deed of said
Nancy A. Harris which deed contained a like description as
that of said Nancy A. Harris to him with the following words
added: "We hereby intend to convey to the said Alvar E. Randall
" all the interest in said estate, both in present and in future which
" we derive by virtue of a conveyance to William Smith by said
" Nancy A Harris both present and in future in the estate of John
" Evans deceased through whatsoever source claimed"
That on the 10th day of August 1869 the said plaintiff for a
good full and valuable consideration to him paid by said Alvar
E. Randall to-wit for the sum of $1,000 ~~00~~, executed, acknowl-
edged and delivered to said Alvar E. Randall a deed containing
the same description as in the deed from said Nancy A. Harris to
him with the following additional words: "We hereby intend to con-
vey to the said Alvar E. Randall all the interest in said estate
both in present and in future which we derive by virtue of a convey-
ance to William Smith by Joshua Ketchum and Ellen Ketch-
um and dated January 10-1862. The said plaintiff and
Alvar E. Randall are both grantors through which these de-
fendants claim title to the premises in the petition described.
That on the 13th day of April 1870 the said Alvar E. Randall
for a good full and valuable consideration to him paid by one
Silvian A. Smith executed, acknowledged and delivered

to said Solomon P. Smith a deed of conveyance for said premises, which deed contained a like description as that of the deed of Nancy A Harris with the following additional words:
" All the property, real and personal to which I have derived
" any title or interest by virtue of two certain deeds or instruments
" one bearing date May 4, 1868 and recorded in said Ross
" County June 5, 1868 in Vol. 71 page 441 and 442 and exe-
" cuted by William Smith and wife to said Olivar A. Randall
" and the other bearing date the 11th day of August 1867 and
" recorded September 4th 1867 in Logan County Ohio in Book 44
" page 286 & 287 and executed by said William Smith and
" wife to said Olivar A. Randall, which deed from said Solomon
" P. Smith to said Olivar A. Randall is recorded in Book No. 36,
" pages 574 and 575 of the Records of Union County Ohio".

On the 20th day of February 1871 said Olivar A. Randall and wife executed to said Solomon P. Smith another deed conveying all his interest in the present of future, which he had or might ~~or~~ have in the estate of John Evans, deceased. This last deed was upon a good consideration and was intended by the grantor and grantee to invest the grantee with all the rights, title and interest that said Nancy A Harris and Ellen Ketchum would have if none of said deeds had been made so that in the event of the death of said Manerva C. Evans without leaving heirs of her body, the grantor could ask, demand and receive the portion that would otherwise, if none of said deeds had been made, gone to said Nancy and Ellen. That on the 27th day of August 1875 the said Solomon P. Smith for a good, full and valuable consideration conveyed said premises all to one Heavey J. King, which deed contained a like description as that of Solomon P. Smith's deed from Olivar A. Randall and which is recorded in Book 45 page No. 466-467 of Union County Records of deeds. That afterwards to-wit on the 12 day of November 1878 the said Heavey J. King conveyed all said premises to this defendant by deed of general warranty. These defendants further say that all of the aforesaid transactions, deeds and conveyances were well known to the plaintiff and that he was well acquainted with the contents of the will of said John Evans deceased, and that when he conveyed to said Olivar A. Randall and when he executed the said instrument of writing to said Randall he well knew that Manerva C. Evans was still alive and well. Knowing that he had no other title than that derived from said Nancy A. Harris and Ellen Ketchum and that he received and accepted said large sum of money from the said Randall for no other consideration. Whatever then the title and interest be, then conveyed to him in the title of John Evans aforesaid. That at the time he so executed said instrument of writing, he expected and intended to convey to said Randall all the title and interest that said Nancy ever would have in said estate if said deeds have not been made. Said plaintiff represented to said Randall that he had just right to convey to him all the

right to convey to him all the interest of said Nancy, either in the present or future: That his title vest full and complete to place said Randall in lieu and stead of said Nancy so that on the death of said Vanneva without issue, the said Randall or his assigns could ask, demand and receive of the estate of said John Evans all that said Nancy could have done had none of said deeds and instrument of writing been made. That on or about the 29th day of July 1875 said Vanneva Evans died without leaving any heirs of her body. She died without issue and on the 17th day of August 1875 the said J. & E. Stevenson filed in this Court a petition asking partition of the estate of said John Evans and in said petition made said Nancy A. Harris and husband parties as well as her unknown assigns. It was stated in said petition that said Nancy had conveyed her estate to parties unknown and thereupon such proceedings were had in said Court. That in June 1876 partition was made of said lands and the premises in the petition described was set off to said Nancy Ann Harris but as between said Nancy and her assigns the questions were wholly undisposed of and the Court provided in its decree of partition these words to-wit: "Nothing herein to prejudice the right of any person or party hereto to either of the shares set apart to Rebecca Nathaway, Nancy Hearris and Ellen Ketchum". Of all of which proceedings the said plaintiff had full notice. That he knew all that was done in that behalf and well knew that in setting of said premises in the name of Nancy A. Hearris the Court did not affect the right and title of her said grantor and assignee. That both the plaintiff and said Nancy A. Harris have received the full consideration and payment of and for all their interest in said estate and that these defendants and the grantors through and under whom they claim title have acted in good faith in the premises and that in justice and equity the plaintiff ought to be estopped now from decrying that the interest of Nancy Harris passed to him by her said deed and estopped from decrying that said interest past from him to said Randall and thence in down to these defendants by said several instruments of writing and conveyance. These defendants aver that since the death of said Vanneva A. Evans and since said partition the said plaintiff claims to have gotten from said Nancy A. Harris another deed. These defendants do not know whether the same be so but they aver that if said Nancy A. Hearris has so executed to plaintiff another deed since said partation; that the plaintiff took the same knowing all the foregoing facts and knowing all the equities of these defendants and that he paid no consideration therefor but took the same to wrong, vex and annoy these defendants and dispossess them in their estate. That whatever legal title said plaintiff may or might have acquired of said Nancy A. Harris right in equity to inure to the benefit of these defendants. That these defendants took possession of said lands under their deeds and have made lasting and

valuable improvements on the same. The defendants say that Nancy A. Harris and her husband Elija Harris are necessary parties hereto and they ask that they may be brought in by Order of the Court and that a full and ample hearing may be had hereof and that upon said hearing said plaintiff and said Nancy A. Harris and Elija Harris may by the Court here be held and be estopped from claiming and further title to the premises in the petition described and that the title of these defendants may be quieted and they be put at rest in the enjoyment of their said estate and that the said plaintiff and said Nancy A. Harris and all persons claiming through and under them may be forever and perpetually enjoined from disturbing or interfering with the defendants or those claiming through and under them or either of them and for all such other and further relief as may be equitable and just and to the Court seems meet.

Cameron & Benton, Atty's for Defendants.

Reply.

State of Ohio, }
Union County ss. } J. L. Cameron being first duly sworn says that he is attorney for the said defendants; that they are non residents of said County of Union and that the facts stated and allegations made in the foregoing answer are true as affiant believes.

J. L. Cameron.

Sworn to before me by said J. L. Cameron and by him signed in my presence, this 10th day of September 1880.

H. M. Winget, Clerk.

On the 16th day of October, 1880 the following motion to strike our answer was filed with the Clerk of Court of Common Pleas, to-wit:

Motion to Strike out.

William Smith, Plaintiff
vs.
Elija T. Reese et al, Defendants

Now comes the plaintiff and moves the Court to strike from the second defense in the answer of defendant the following irrelevant and redundant matters, to-wit:

Beginning at the word "for" at the beginning of the 7th line and the 3d page of said answer including the residue of the said third page, all of the 4th page and including the first ten lines of the 5th page. Strike out beginning with line 18 on page 5 to and including line 23 of same page. Strike out beginning with line 28 page 5 including the balance of said pages, the whole of page 6, the whole of page 7 and the first 14 lines of page 8.

Strike out beginning at and including the word "that" next after the notice in line page 9 to and including line 23 of pag 9.

P. B. Cole & Son, Attys for Plaintiff.

Demurrer 3667.

On the 21st day of May 1881, the following entry was made on the Journal by the Clerk of the Court of Common Pleas, to-wit:

Entry 3667

William Smith
vs.
Elija T. Reese et al

This day came the parties by their attorneys

and thereupon by consent of parties the entry in this case striking out certain parts of the answer made at a former term and recorded on Journal 12 page 128 is set aside and held for naught and said motion to reform the defendants answer is with drawn.

Thereupon this Cause was submitted to the Court upon the demur of plaintiff to the answer of said Elija T. Reese as originally made and was argued by counsel and submitted. On consideration whereof the Court do overrule said demur to which ruling of the Court in overruling said demur the said plaintiff by his counsel excepts. Thereupon plaintiff asked and had leave to file reply in 40 days and cause continued.

Afterwards in September 1881 the following Reply was filed with the Clerk of the Court of Common Pleas, to-wit:

Reply.

William Smith, Plaintiff
vs.
D. T. Reese, Defendant
} Court of Common Pleas, Union County.

Now comes the plaintiff and for his reply to the answer and cross-petition of the Defendant says that the said defendant ought not to maintain the same and have the relief therein demanded because he further says that Nancy Ann Hearris and Ellen Ketchum were on the day of 1877 the owners and seized in fee simple of said lands and that for a valuable consideration then paid them they conveyed the premises in the petition described. That on the 17th day of February 1870 by a verbal agreement and for a valuable consideration then paid them paid to the said Solomon P. Smith, who at the time, asserted that he was the owner of all the interest of said Nancy Ann Hearris and Ellen Ketchum he sold all such interest to the plaintiff and agreed to convey the same to him, within a short time, the said that the said Solomon P. Smith took and retained the consideration therefor and still retains the same, that it was of the value of Two thousand dollars. Therefore this Plaintiff says that he is not estopped and the said defendant is not to demand a contingency for said premises.

C. B. Cole & I. N. Alexander.
Attorneys for Plaintiff.

William Smith being sworn says that the facts stated and allegations in his foregoing reply are true as he believes.

Sworn to before me and signed in my presence, this Sept. 1881.

On the 14th day of September, 1881, the following Demurrer was filed with the Clerk of the Court of Common Pleas, to-wit:

Demurrer.
3667.

State of Ohio, Union County, ss.
William Smith, Plaintiff
vs
Elija T. Reese, Defendant
} In the Court of Common Pleas.

The defendants demurs to the reply of the said plaintiff and for grounds of demurr says that facts sufficient to constitute a cause of defense to the defendants answer are not stated in said reply.

Cameron & Denton, Atto's for defendants.

On the 14th day of October 1881 the following Entry was made on the Journal by the Clerk of the Court of Common Pleas, to-wit:

William Smith
vs.
Elija T. Reese

Entry 3667.

This day came this cause on to be heard upon the demur of the said defendant to the reply of the plaintiff. On consideration whereof the Court being fully advised in the premises do sustain said demur and the sd plaintiff has leave to file an amended reply in 30 days from the rising of the Court. Cause continued.

2

On the 3d day of February 1882, the following entry was made on the Journal by the Clerk of the Court of Common Pleas, to-wit:

William Smith, Plaintiff
vs.
Elija T. Reese et al, Defendants.

This day came the parties by their attorneys and thereupon this cause came on to be heard upon the answer and cross-petition of the defendant Elija and the reply of the plaintiff and the evidence. On consideration whereof the Court being fully advised in the premises do find that the statements and allegations of said answer are true, and that the statements and allegations in said reply are not true. The Court further finds that the statements and allegations of the said answer constitute a complete defense to the said plaintiff's petition. It is therefore adjudged and decreed by the Court that the defendants title to said premises in the petition described be, and the same is hereby declared to be a good and sufficient title as against the said plaintiff and all persons claiming through or under him that said defendants title is hereby quieted and put at rest and said plaintiff is enjoined from interfering with said defendant in the possession and enjoyment of said premises. It is further adjudged that the defendant recover of the said plaintiff their costs herein expended, taxed to $
Thereupon said plaintiff gave notice of his intention to appeal this case to the District Court, and the Court fix the bond for appeal at One hundred and fifty dollars.

1

On the 13th day of January 1882, the following Reply was filed with the Clerk of the Court of Common Pleas, to-wit:

William Smith, Plaintiff
vs.
T. T. Reese Defendant

Union Common Pleas

Reply 3667.

Now comes the plaintiff and for reply to the answer and cross-petition of the defendant says that the said defendant ought not to maintain the same and have the relief therein demanded. This plaintiff further says that it is true that the said Nancy A. Harris and her husband Elija Harris did on the 8th day of January 1862 convey to him by quit claim deed all he prospective interest in the Estate of John Evans, deceased But plaintiff says that all the

interest the said Nancy A. Harris then had in said estate was a certified reversion to become vested upon the death of Manerva C. Evans without heirs of her body. And the plaintiff says that the said Manerva C. Evans was then in full life and did not die for thirteen years thereafter and that no title passed by said supposed deed. The plaintiff further says that after the said conveyance to him he did convey to Elias D. Randall by quit claim deed to the interest that he bought from said Nancy A. Harris and the said Randall conveyed to the said one Solomon P. Smith said interest. And that the said Solomon P. Smith did convey same to one Harvey L. King and by said King to the defendant O. T. Rose as alleged in defendants And this plaintiff says that is the claim of title under which the said defendant now claims to own said land in the petition described and plaintiff that said conveyance passed no title to said land to the defendant. This plaintiff further says that on the 17th day of February 1870 the said Solomon P. Smith for a valuable consideration to-wit ten thousand paid in full to him by this plaintiff by verbal contract agreed and promised to sell back to this plaintiff his entire interest that he held and owned in said estate of John Evans by virtue of the said supposed conveyance from Nancy A. Harris to the plaintiff and from this plaintiff to said Randall and from said Randall to said Solomon P. Smith; and this plaintiff further says that Solomon P. Smith then claimed to have the entire equitable and legal in said interest of Nancy A. Harris and then agreed to convey his said interest to this plaintiff within a short time. And he the said Solomon P. Smith then took and still retains the same consideration so paid this plaintiff. And the plaintiff says that the said Manerva C. Evans who owned the life estate in said land did die on the day of 1875 without heirs of her body and then and not until did the title to said interest in John Evans estate vest in said Nancy A. Harris. And the plaintiff says that after the death of said Manerva C. Evans to wit In April 1876 in a proceeding in partition in this Court in an action in which Job E. Stevenson was plaintiff and Edward A. Stevenson and others were defendants. The lands of the estate of the said John Evans were partitioned and the part described in the petition was then in that proceeding set off and assigned to the said Nancy A. Harris. This plaintiff says that the said Harvey L. King was a party defendant in said proceeding claiming the said land; but the court did set off & assign to the said Nancy A. Harris said land. This plaintiff says that afterward on the 17th day of June 1878, the said Nancy A. Harris and Elija Harris her husband conveyed to this plaintiff by quit claim their all title and interest in the land described in the petition metes and bounds. And this plaintiff says he is the owner of the entire title to said land both legal and equitable Therefore the plaintiff says he is not estopped and the defendant

is not entitled to leave a conveyance for said Janey.

O.B. Cole & Son & J. N. Alexander,
Attorneys for Plaintiff.

William Smith, Plff.
vs.
E.T. Reese Defts. } In Court Common Pleas.

William Smith being sworn says the facts stated and allegations in his foregoing reply are true as he believes.

William Smith.

Sworn to Before me and signed in my presence Jan. 13, 1882.

W. M. Wright, Clerk.

On the 25th day of February 1882, the following Appeal Bond was filed with the Clerk of the District Court, to-wit:

Appeal Bond.

Know all men by these presents that William Smith & E. Price are held and firmly bound unto Elija T. Reese in the penal sum of one hundred and fifty dollars, to the payment of which, well and truly to be made, we do hereby jointly and severally bind ourselves, our heirs, executors and administrators. Signed by us and dated this 25th day of February A.D. 1882. The condition of the above obligation is such, that whereas, the said William Smith taken an appeal from a certain judgment and decree rendered against him in favor of the said Elija T. Reese in the Court of Common Pleas within and for the County of Union in the State of Ohio, at the January Term thereof, A.D. 1882 for the sum of $17.86 being the costs in the case to the District Court within and for the County aforesaid. Now if the said William Smith shall abide and perform the order and judgment of said District Court and shall pay all moneys, costs and damages, which may be required of or awarded against him by said District Court, then this obligation to be void; otherwise to remain in full force and virtue in law.

(Signed) William Smith per P.B. Cole.
E. Price, Security

I approve the above bond with the sureties thereto, this 25th day of February 1882.

J.G. Burgner, Clerk
By W. M. Wright, Deputy Clerk.

On the 18th day of March, 1882 the following Entry on Demurrer was made on the Journal by the Clerk of the District Court, to-wit:

Entry 2667.

William Smith }
vs. } Annie District Court.
Elija T. Reese }

This cause coming on for hearing on demurrer to the answer of defendants was argued by counsel and submitted. Whereupon the Court being fully advised in the premises do overrule said demurrer and the plaintiff to the said overruling then and there excepted. Whereupon the plaintiff asked leave to file a reply to said answer and leave was granted to reply by May 15th 1882.

On the 11th day of March 1885, the following additional Appeal Bond was filed with the Clerk of the Circuit Court, to wit:

Additional Appeal Bond.

Circuit Court.

Know all men by these presents that William Smith and A. L. Price are held and firmly bound unto Elijah T. Reese in the penal sum of one hundred and fifty dollars, to the payment of which well and truly to be made we do hereby jointly and severally bind ourselves, our heirs executors and administrators. Sealed with our seals and dated this 11th day of March 1885. The condition of the above obligation is such that whereas the said William Smith has taken an appeal from a certain judgment rendered against him and in favor of the said Elijah T. Reese in the Court of Common Pleas within and for the County of Union and State of Ohio at the January Term 1882 in case No. 3667 entitled William Smith vs. Elijah T. Reese et al., for the sum of $17 26 Costs to the District Court of said County: Case No. 94 on the Docket of said District Court. Now being desirous that said cause shall be transferred to the Circuit Court of said County, this additional bond is given so that if the said William Smith shall prosecute his appeal to effect without unnecessary delay and shall abide and perform the order and judgment of said Circuit Court and pay all moneys damages and costs which may be awarded against the said William Smith then this obligation shall be void; otherwise it shall remain in full force and virtue in law. In presence of

O. B. Cole [Seal]

E. L. Price [Seal]

The execution of the above undertaking, and the sufficiency of the sureties thereon approved by me this 11th day of March A. D. 1885.

J. L. Burgner,

Clerk Common Pleas Court of said County.

On the 6th day of May 1885 the following Entry was made on the Journal by the Clerk of the Circuit Court, to wit:

William Smith, Plaintiff

vs.

Elijah T. Reese, et al. Defendants } This day again came the parties and their attorneys, and this cause at a former day of this term having been submitted to the Court upon the cross petition of the said Elijah T. Reese, the amended reply of the plaintiff thereto and the evidence and taken under advisement by the Court coming on now for finding and decision, and the Court being fully advised in the premises do find that all the deeds mentioned in said cross petition (except the deed executed by Nancy Harris to the plaintiff after the death of Minerva C. Evans) were founded upon good, full and valuable considerations, and that they contained the recitals and were executed and recorded as in said Cross petition stated, and that the statement and allegations contained in said Cross petition are true and the Court finds the equities

of the case to be with the defendant, Elijah T. Reese and against the said plaintiff. That the said plaintiff is not entitled to the possession of the premises in the petition described or any part thereof; but that said defendant, Elijah T. Reese is rightfully in possession of said lands. The Court further finds that said defendant Elijah T. Reese is entitled to the relief prayed for in his cross petition in having his title and possession of said premises quieted. It is therefore ordered adjudged and decreed that the title and possession of said Elijah T. Reese to all and singular the premises in the petition described, to-wit: Situate in the County of Union and State of Ohio, part of Surveys No. 10704 and 10705 being also a part of Tract No. 4 on plat No. 2 of the subdivision of Ingheva C. Evans land, beginning at a stone and piece of crockery in the north line of said survey at the north-west corner of William Kelts land; thence S. 82° W. 205 poles to a stake and stone, witness a sugar and ironwood, in said Survey line; thence S. 9 E. 137½ poles to a stone and pieces of crockery at William Kelts south-west corner; thence N. 8°40' W. 132 20/100 poles to the place of beginning, containing 170 acres, be quieted as against the plaintiff and all persons claiming through or under him and that said plaintiff and all persons claiming under him be and he is hereby enjoined from setting up any claim to said premises or any part thereof adverse to the title or possession of said Elijah T. Reese or any person claiming under him thereto or in any manner interfering with his use and enjoyment of the same. It is further ordered that the plaintiff pay the costs of this suit taxed to $ and on default of payment execution is awarded therefor, to all of which the plaintiff excepts. And it is further ordered by the Court that a special mandate be sent to the Court of Common Pleas of Union County Ohio to carry this judgment into execution.

Attest: John L. Burgner, Clerk.

Pleas before the Honorable Thomas Beer, John J. Moore and Henry W. Seney, Judges of the Circuit Court within and for the County of Union of the 3rd Judicial Circuit of the State of Ohio was begun and held at the Court House in the Town of Marysville on the 1st day of December A.D. 1885. Heretofore, to-wit:

On the 19th day of November, 1884 the following Petition was filed with the Clerk of the Court of Common Pleas, to-wit:

William Woodie, Plaintiff
vs.
Uriah Cahill, Luther Leggett and Nathan Howard as Board of County Commissioners of Union County, Ohio; George W. Peck as Auditor of Union County, Ohio; William Cary as Treasurer of Union County, Ohio: Defendants

In the Court of Common Pleas, Union County, Ohio.

The said William Woodie, plaintiff complains of the above named defendants and says that on the 7th day of July A.D. 1884 James Fullington presented to the said Board of Commissioners a petition praying that a certain ditch known as "Prairie Rose Ditch," No. One" in Union Township in said County might be cleaned out and if it was found necessary to have said ditch widened, deepened and straightened. And thereupon such proceedings were had upon said petition that the said Board of County Commissioners on the 25th day of July A.D. 1884 proceeded to view the line of the said ditch as described in the said petition and on the same day, made their report in writing and filed the same in said cause and then and thereby found that it was necessary to clean out said ditch but did not find that it was necessary to determine that said ditch should be either widened, deepened or straightened. And thereupon such proceedings were had by said Commissioners that F. J. Sager was appointed engineer and he immediately made and returned a schedule of all the lots and lands which would be benefited by said improvement and an apportionment of the lineal feet and cubic yards to each lot and an estimate of the cost of location and construction of said ditch and a specification of the manner in which the improvement should be made and completed and in said schedule said engineer apportioned to this plaintiff thirty one hundred and four lineal feet (3104) of said ditch and eleven hundred and twenty (1120) cubic yards in the construction of said ditch and also apportioned to this plaintiff as his estimated share of the cost of the location and construction of said ditch the sum of two hundred and forty three and sixty one-hundredth dollars ($243.60) and afterwards on the 8th day of September A.D. 1884 the said report of the said engineer of his apportionment came up for hearing before the said Board of Commissioners and after the same was examined and the said Board took off one hundred

lineal feet and forty cubic yards and eight dollars and forty one-hundredths ($8.40) of the estimated cost of the location and construction of said ditch as apportioned to this plaintiff by said engineer, leaving to this plaintiff under said apportionment three thousand and four lineal feet of said ditch, eleven hundred and twenty cubic yards in construction thereof and the sum of two hundred and thirty five and twenty one-hundredths ($235.20) dollars as his share of the cost of location and construction thereof and thereupon said Commissioners did approve and confirm the same and ordered the said appointment to stand against this plaintiff as last above stated. The plaintiff says that the whole number of acres of land owned by him in said County which is claimed will be benefited by said ditch is one hundred and twenty nine.

The plaintiff further says that on the 19th day of September A.D. 1884 the said Commissioners, Auditor and said Engineer proceeded to make sale of the work of constructing said ditch, to the lowest responsible bidder under the statute in such case made and provided, and the said work has all been sold and the work of constructing, cleaning out, widening and deepening said ditch will be immediately commenced and completed unless restrained by an order of this Court. The plaintiff says that all the proceedings had and taken before the Commissioners as here-in-before set forth are unjust and illegal and contrary to law and void in this to-wit:

First. That there was no finding by the said Commissioners or any one else that there was any necessity to have said ditch widened or straightened, and there was no petition for the same unless it was so found necessary and all proceedings taken to deepen, widen and straighten said ditch were without authority of law and void.

Second. The said defendants have ordered and are about to open and construct said ditch so that it will be from two to eighteen inches deeper and upon an average about three feet wider than it was as originally opened and constructed and no finding of the necessity for the same has ever been made or entered upon the Journals of the Commissioners and no compensation has ever been made plaintiff for the amount of his land so taken and plaintiff has never been paid or offered pay or any provision made for payment of the same by proceedings under the law in such case made or provided or in any other way.

Third. The plaintiff further says that the amount of said ditch and the number of cubic yards in the construction thereof as assigned and and apportioned to him is unjust and inequitable and many times more than his just and equitable share thereof and the amount of the cost of the location and construction thereof assigned and apportioned is also unjust and inequitable. That the assessments made on him and his lands are several times larger than those made upon any other person or any other person or any other lands receiving the like benefits and he avers that the same is oppressive

and made in violation of the rights of plaintiff. The plaintiff further avers that the said defendants, the said Board of Commissioners, are proceeding to construct said ditch and great and irreparable injury will be done plaintiff in the premises unless restrained by an order of this Court.

Wherefore he prays the Court here, that the said Board of Commissioners may be enjoined from deepening or widening said ditch, or from appropriating any more lands of plaintiff than was included in the said ditch as originally constructed and that the said defendant the said Auditor, may be enjoined from placing any assessments made for the construction of said ditch upon the tax duplicate of said County against plaintiff in his said lands and that the said Treasurer be enjoined from collecting or taking any steps to collect the same and that in the meantime he may have a provisional order of injunction in the premises and upon the final hearing of the cause a perpetual order of injunction against the same and that he may have all such further and other relief in the premises as may appear just and equitable.

By Powell and Ricketts & T. B. Fulton,
Plaintiff's Attorneys.

The State of Ohio, }
Franklin County. } William Swordie being first duly sworn says that he is the plaintiff in the above petition and that the facts stated and allegations in the foregoing petition are true.

William Swordie.

Sworn to before me, and subscribed in my presence this 11th day of November A.D. 1884. Saml S. Black,
Notary Public Franklin County, Ohio.

Injunction allowed as prayed for in the plaintiff's petition until otherwise ordered by the Court of Common Pleas or other competent authority on said plaintiff giving an undertaking to the said defendants, conditioned according to law with security to be accepted by the Clerk of the Court of Common Pleas of Union County Ohio in the sum of five hundred dollars.
Fees of Probate Judge $2 00 paid plaintiff.

Jason B. Coats, Probate Judge.

On the 19th day of November, 1884, the following Order of Injunction was filed with the Clerk of the Court of Common Pleas, to-wit:

William Swordie } Order of Injunction. Before the Probate Judge.
vs. } Motion for temporary injunction in the
Uriah Cahill et al. } Court of Common Pleas, Union County, Ohio.

And now on this 19th day of November 1884 came the plaintiff, by Powell & Ricketts and T. B. Fulton his attorneys; and it being made to appear that there is at this time no Common Pleas, Circuit or Supreme Judge within said County, the motion of the plaintiff for a temporary injunction came on and was heard upon the petition of the plaintiff and the verification thereto filed, and after hearing the argument of counsel, and being fully advised in the premises; it is considered and ordered that a temporary injunction

be and the same hereby is allowed in this case to restrain the said defendants. The Board of Commissioners may be enjoined from deepening or widening said ditch mentioned in said petition and from appropriating any more lands of plaintiff than was included in the said ditch as originally constructed and the defendant, the said Auditor is enjoined from placing any assessments made for the construction of said ditch upon the tax duplicate of said County against plaintiff or his said lands and that the said Treasurer is enjoined from collecting or taking any steps to collect the same as prayed for in said petition of plaintiff. It is further ordered that the Clerk of the Court of Common Pleas issue summons in this case endorsed injunction allowed on said plaintiff, giving an undertaking to the said defendants, conditioned according to law with security to be accepted by the said Clerk of the Court of Common Pleas, in the sum of $500. 00

John B. Oats, Probate Judge.

Journal 7651.

On the 19th day of November 1884, the following Undertaking was filed with the Clerk of the Court of Common Pleas, to-wit:

Undertaking by Plaintiff for injunction.

William Woodie vs Uriah Cahill et al

The State of Ohio, Union County, ss. Court of Common Pleas.

We bind ourselves to the said defendants Uriah Cahill Luther Liggett and Nathan Howard as Commissioners of Union County, Geo. McBeck as auditor and Wm. Leary as Treasurer of said County in the sum of five hundred Dollars, that the said plaintiff shall pay to the said defendant the damages they may sustain by reason of the injunction in this action, if it be finally decided that the said injunction ought not to have been granted.

Marysville, O. Nov. 19th 1884. William Woodie Henry Woodie.

This undertaking approved by me this 19th day of Nov. 1884.

J. L. Burgner, Clerk of said Court.

On the 19th day of November, A.D. 1884 the following summons was issued by the Clerk of the Court of Common Pleas, to-wit:

Summons. The State of Ohio, Union County, ss. } To the Sheriff of the County of Union, Greeting:

We command you to notify Uriah Cahill, Luther Liggett, Nathan Howard as Commissioners of Union County, Ohio, George M. McBeck as Auditor of Union County, Ohio and William Leary as Treasurer of Union County Ohio, that they have been sued by William Woodie in the Court of Common Pleas of Union County, and that unless they answer by the 20th day of December A.D. 1884, the petition of said William Woodie against them filed in the Clerks Office of said Court such petition will be taken as true, and judgment rendered accordingly. You will make due return of this summons on the 1st day of Dec. A.D. 1884. Witness my hand and the seal of said Court, this 19th day of Nov. A.D. 1884.

J. L. Burgner Clerk.

Entry 7651.

In action for injunction allowed.

Sheriff's Return.

The State of Ohio, }
Union County, ss. } Received this writ Nov. 19th A.D. and pursuant to its command, on the 24th day of November A.D. 1884, I served the same by delivering to each of the within named, Uriah Cahill, Luther Cahill and Nathan Howard as Commissioners of Union County Ohio and George McCluck as Auditor and Wm Berry as Treasurer of Union County, Ohio, a true copy of this writ with endorsements thereon.

Services -- 90
Mileage 3.20
Copies -- 80
Total Sheriff's fee $4.90

John Hershenack,
Sheriff, Union County, Ohio.

On the 8th day of December 1884, the following Notice to Dissolve Injunction was filed with the Clerk of the Court of Common Pleas, to-wit:

William Woodie, Plaintiff.
vs.
Uriah Cahill, Luther Liggett and Nathan Howard as Board of County Commissioners of Union County, Ohio, et al. Defendants

In Court of Common Pleas, Union Co. Ohio.

Writ in 7651.

Now comes the defendants and moves the Court that the foregoing injunction heretofore granted in this cause to-wit: on the 19th day of November 1884 - be dissolved for the following reasons to-wit: 1st That said plaintiff's petition does not contain a true statement of facts. 2d That plaintiff's statement of facts is not sufficient to sustain a restraining order of this Court in the premises.

Cordrick & McCampbell, Attys for Defendants.

On the 8th day of December 1884, the following Notice of Motion was filed with the Clerk of the Court of Common Pleas, to-wit:

William Woodie, Plaintiff
vs.
Uriah Cahill, Luther Liggett, and Nathan Howard as Board of County Commissioners of Union County Ohio, et al. Defendants.

In Court of Common Pleas, Union County, Ohio.

Plaintiff is hereby notified that on Thursday the 11th day of December 1884, the defendants will apply to Hon. John A. Price, Judge of the Court of Common Pleas of Union County, Ohio at the Court Room of said Court for an order dissolving an injunction heretofore granted in this cause to-wit, Nov. 19th 1884.
Dated 8th day of December, 1884.

Cordrick & McCampbell,
Attys for Defendants.

Service accepted this 8th day of December 1884.

Powell and Fulton,
Attys for Plaintiff.

On the 17th day of December, 1884, the following Entry was made on the Journal by the Clerk of the Court of Common Pleas, to-wit:

Entry 7651.

William Woodie vs. Uriah Cahill et al

This day this cause come on to be heard upon

motion of the plaintiff to file an amended petition herein and also upon the motion of the defendants to require the plaintiff to give additional security herein and the same were assigned by counsel and submitted to the Court. On consideration whereof the Court do sustain both of said motions and it is ordered that said plaintiff enter into a Bond herein payable to said defendants in the sum of one thousand dollars with surety to the approval of the Clerk of this Court within twenty five days from the entering of this decree and unless said bond be given then the temporary injunction heretofore granted herein is hereby dissolved and the defendants wholly released therefrom; but if said bond be given then said injunction to be and remain in full force until the further hearing hereof. And said plaintiff has leave to file an amended petition herein within thirty days from the date hereof. And this cause is continued until the next Term hereof.

On the 21st day of January 1885, the following Amended Petition was filed with the Clerk of the Court of Common Pleas, to-wit:

William Woodie, Plaintiff

vs.

Uriah Cahill, Luther Sigget, and Nathan Howard, as Board of County Commissioners of Union County, Ohio; George W. Peck, as Auditor of Union County, Ohio; and William Crary as Treasurer of Union County, Ohio, Defendants.

In the Common Pleas Court, Union County, Ohio.

This said William Woodie, plaintiff, complains of the above named defendants, and says that on the 7th day of July A.D. 1884, James Pullington presented to the said Board of Commissioners a petition praying that a certain ditch known as "Prairie Rose Ditch No. One" in Union Township in said County might be cleaned out, and, if it was found necessary to have said ditch widened, deepened and straightened. And thereupon such proceedings were had upon said petition that the said Board of County Commissioners on the 25th day of July A.D. 1884, proceeded to view the line of said ditch as described in the said petition and on the same day made their report in writing and filed the same in said cause, and therein and thereby found that it was necessary to clean out said ditch, but did not find that it was necessary so determined that said ditch should be either widened, deepened or straightened. And thereupon such proceedings were had by said Commissioners that F. J. Dager was appointed Engineer and he immediately made and returned a schedule of all the lands and lots which would be benefited by said improvement and an apportionment of the lineal feet and cubic yards to each lot and an estimate of the costs of location and construction of said ditch and a specification of the manner in which the improvement should be made and completed and in said schedule said Engineer apportioned to this plaintiff thirty one hundred and four lineal feet

of said ditch and eleven hundred and twenty cubic yards for the construction of said ditch and also apportioned to this plaintiff as his estimated share of the cost of the location and construction of said ditch the sum of two hundred and forty three and sixty one-hundredth dollars and afterwards the 8th day of September A.D. 1884 the said report of the said Engineers of his apportionment came up for hearing before the said Board of Commissioners and after the same was examined the said Board took off one hundred lineal feet and forty cubic yards and eight and forty one-hundredths dollars of the estimated cost of the location and construction of said ditch as apportioned to this plaintiff under said apportionment three thousand and four lineal feet of said ditch, eleven hundred and twenty cubic yards of construction thereof and the sum of two hundred and thirty five and twenty one-hundredths dollars as his share of the cost of location and construction thereof and thereupon said Commissioners did approve and confirm the same and ordered the said apportionment to stand against this plaintiff as last aforesaid. The plaintiff says that the whole number of acres of land owned by him in said County which is claimed would be benefited by said ditch is one hundred and twenty acres.

The plaintiff further says that on the 16th day of September A.D. 1884, the said Commissioners, Auditor and Engineer proceeded to make sale of the work of constructing said ditch to the lowest responsible bidder under the statute in such case made and provided and the said work has all been sold and the work of constructing, cleansing out, widening and deepening said ditch will be immediately commenced and completed unless restrained by order of this Court. The plaintiff says that all the proceedings had and taken before the said Commissioners as here-in-before set forth are unjust and illegal and contrary to and without authority of law and void in this to wit: First; Because a majority of the land owners whose lands are adjacent and are taxed for the improvement did not sign a petition asking for the same.

Second. That there was no finding by the said Commissioners or any one else that there was any necessity to have said ditch widened or straightened and there was no petition for the same unless it was so found necessary and all proceedings taken to deepen, widen and straighten said ditch were without authority of law and void.

Third. The said defendants have ordered and are about to open and construct said ditch so that it will be four feet to eight inches deeper and upon an average about three feet wider than it was as originally opened and constructed and no finding of the necessity for the same has ever been made or entered upon the Journals of the Commissioners and no compensation has ever been made plaintiff for the amount of his land so

taken and the plaintiff has never been paid or offered pay or allowed an opportunity to present his bill for damages for the land taken or has any provision been made for the payment of the same by proceedings under the law or such case made or provided or in any other way.

Fourth. The plaintiff further says that the amount of said ditch and the number of cubic yards in the construction thereof as assigned and apportioned to him is unjust and inequitable and many times more than his just and equitable and many times more than his just and equitable share thereof and the amount of the cost of the location and construction thereof assigned and apportioned to him is also unjust and inequitable. That the assessments made on him and his lands are several times larger than those made upon any other person or any other lands receiving the like benefits and he avers that the same is oppressive and made in violation of the rights of the plaintiff. The plaintiff further avers that the said defendants, the Board of Commissioners, are proceeding to construct said ditch and great and irreparable injury will be done plaintiff on the premises unless restrained by order of this Court. Wherefore he prays the Court here that the said Board of Commissioners may be enjoined from deepening or widening said ditch or from appropriating any more lands of plaintiff than was included in said ditch as originally constructed and that the said Auditor may be enjoined from placing any assessments made for the construction of said ditch upon the tax duplicate of said County against plaintiff or his lands and that the said Treasurer be enjoined from collecting or taking steps to collect the same and that in the mean time he may have a provisional order of injunction in the premises and upon the final hearing of the cause a perpetual order of injunction against the same and that he may have all such further and other relief in the premises as may appear just and equitable.

Ray Oswell & Ricketts & T. B. Fulton,
Plaintiffs Attorneys.

The State of Ohio, Auglaize County, ss.

William Woodie, the above named plaintiff being first duly sworn according to law says the facts stated and allegations of his foregoing amended petition are true.

Wm Woodie.

Sworn to before me and subscribed in my presence this 21st day of January A. D. 1885.

Edward A. Cole,
Notary Public.

On the 17th day of March, 1885, the following Entry was made on the Journal by the Clerk of the Court of Common Pleas, to-wit:

Entry #657.

William Woodie
vs.
Uriah Schaull et al.

This day this cause came on to be heard on the motion of defendants to dissolve the injunction heretofore granted herein and the same was submitted to the Court on the pleadings and evidence

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addyced by the parties and the same was agreed by counsel and submitted to the Court. On consideration whereof the Court do sustain said motion, dissolve the injunction and dismiss the plaintiffs petition and amended petition at the costs of said plaintiff. It is therefore considered and adjudged by the Court that the said plaintiff pay the costs herein taxed to $ and execution is awarded therefor. Thereupon the plaintiff gave notice of an appeal to the Circuit Court and the Court do fix the amount of the appeal bond herein at the sum of one hundred dollars.

On the 16th day of April 1885, the following Appeal Bond was filed with the Clerk of the Circuit Court, to-wit:

Appeal Bond to Circuit Court.

Know all men by these presents: That William Wardie and Henry Wardie are held and firmly bound unto Commissioners of Union County Ohio, in the penal sum of One hundred dollars to the payment of which well and truly to be made we do hereby jointly and severally bind ourselves, our heirs, executors and administrators. Sealed with our seals and dated this 16th day of April 1885. The condition of the above obligation is such that whereas the said William Wardie has taken an appeal from a certain judgment rendered against him and in favor of the said Commissioners of Union County, Ohio, in the Court of Common Pleas within and for the County of Union and State of Ohio at the February Term 1885 per case No. 4851 entitled William Wardie vs. Josiah Cahill et al. to the Circuit Court of said County: Now if the said William Wardie shall prosecute his appeal to effect without unnecessary delay and shall abide and perform the order and judgment of said Circuit Court and pay all damages and costs which may be awarded against said Appellant the said William Wardie then this obligation shall be void; otherwise it shall remain in full force and virtue in law.

In presence of

Wm Wardie (seal)
Henry Wardie (seal)

The execution of the above Undertaking and the sufficiency of the sureties thereon approved by me this 16th day of April A.D. 1885.

J.E. Burgner, Clerk.

On the 27th day of April 1885, the following Certified Copy of Journal Entry was filed with the Clerk of the Circuit Court, to-wit:

William Wardie, Plaintiff
vs.
Josiah Cahill et al. Defendants.

The State of Ohio, Union County, ss.
In the Common Pleas Court Sept. Term 1884.
Journal Vol. 13 Page 295.

In Vacation.

Order of injunction before the Probate Judge. Motion for temporary injunction in the Court of Common Pleas Court of Union County Ohio. And now on the 19th day of November 1884 came the plaintiff by Powell Ricketts & Fulton his attorneys and it being made to appear that there is at this time no Common Pleas Circuit or Supreme Judge within said County the motion of the plaintiff for a temporary

injunction be and the same hereby is allowed in this case to restrain defendants. The Board of Commissioners may be enjoined from deepening or widening said ditch mentioned in said petition and from appropriating any more lands of plaintiff than was enclosed in the said ditch originally constructed and the defendant the said Auditor is enjoined from placing any assessments made for the construction of said ditch upon the tax duplicate of said County against plaintiff on his said lands and the said Treasurer is enjoined from collecting or taking any steps to collect the same as prayed for in said petition of plaintiff. It is further ordered that the Clerk of the Court of Common Pleas issue summons in this case endorsed injunction allowed on said plaintiff's giving an undertaking to the said defendants, conditioned according to law with security to be accepted by the said Clerk of the Court of Common Pleas in the sum of $500.00. John B. Coats.
Probate Judge.

September Term 1884 Dec. 17th 1884. Journal 13 Page 918.

This day this cause came on to be heard upon motion of the plaintiff to file an amended petition herein and also on motion of the defendant to require the plaintiff to give additional security herein and the same were argued by counsel and submitted to the Court. On consideration whereof the Court do sustain both of said motions and it is ordered that said plaintiff enter into a bond herein payable to said defendants in the sum of one thousand dollars with surety to the approval of the Clerk of this Court within twenty five days from the entering of this decree and unless said bond be given then the temporary injunction heretofore granted herein is hereby dissolved and the defendants wholly released therefrom but if said bond be given then said injunction to be and remain in full force until the further hearing hereof and said plaintiff has leave to file an amended petition herein within thirty days from the entry hereof and this cause is continued until the next Term hereof.

February Term A.D. 1885. March 12, 1885. Journal 13, page 994.

This day this cause came on to be heard on the motion of the defendants to dissolve the injunction heretofore granted herein and the same was submitted to the Court on the pleadings and evidence adduced by the parties and the same was argued by counsel and submitted to the Court. On consideration whereof the Court do sustain said motions, dissolve the injunction and dismiss the plaintiff's petition and amended petition at the costs of said plaintiff. It is therefore considered and adjudged by the Court that the said plaintiff pay the costs herein taxed to $ and execution is awarded therefor. Thereupon the plaintiff gave notice of an appeal to the Circuit Court and the Court do fix the amount of the appeal bond herein at the sum of one hundred dollars.

The State of Ohio, }
Union County, ss. } I, J. L. Burgner, Clerk of the Common Pleas Court within and for said County, and in whose custody the Files, Journals and Records of said Court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal of said Court,

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of the proceedings of the Common Pleas Court within and for said County, and that said foregoing copy has been compared by me with the original entry in said Journal of said Court and that the same is a correct transcript thereof. In testimony whereof, I do hereto subscribe my name officially and affix the seal of said Court, at the Court House in Marysville, in said County, this 27th day of April A.D. 1885.

J.L. Snyder, Clerk.

On the 5th day of June 1885, the following Answer to Amended Petition was filed with the Clerk of the Circuit Court, to-wit:

Answer

William Woodie, Plaintiff
vs.
Uriah Cahill, Luther Liggett, Nathan Howard, as Board of County Commissioners of Union County Ohio, George W. Peck, as Auditor of Union County Ohio and William Leary as Treasurer of Union County, Ohio, Defendants.

In the Circuit Court of Union County O.
No. 3+.

And now come the said defendants and by leave of Court file this their Answer to plaintiffs Amended petition herein filed and say: That they admit the filing of the petition by James Fullington with said Board of County Commissioners and the necessary legal steps taken thereunder by said Board as set forth in said petition. Defendants admit that "a majority of the land owners whose lands are adjacent and are taxed for the improvement did not sign a petition asking for the same. Defendants deny "that there was no finding by the said Commissioners or any one else that there was any necessity to have said ditch widened or straightened and there was no petition for the same unless it was so found necessary and all proceedings taken to deepen widen and straighten said ditch were without authority of law and void."
Defendants admit that said Board of County Commissioners have widened and are about to open and construct said ditch by widening, deepening and straightening but defendants deny that "no finding of the necessity for the same has ever been made or entered upon the Journals of the Commissioners." Defendants admit that no compensation has ever been made plaintiff for the amount of his land so taken and plaintiff has never been paid or offered pay, but defendants deny that plaintiff was not "allowed an opportunity to present his bill for damages for the land taken" and defendants admit that no possession has been made for the payment of the same in any manner. Defendants deny that plaintiff has been assigned and apportioned any more than his just and equitable share for the location and construction of said ditch improvement, but defendants say that a full, fair and legal hearing was had upon said apportionment and assignment before the said Board of County Commissioners who had full and complete jurisdiction thereof and a final order was made as to said apportionment and that said

plaintiff neglected and omitted to appeal therefrom as provided by statute and that said order is still in force and unreversed and these defendants deny the right of said plaintiff to attack or bring in question said order of Apportionment as made by said Board of Infirmity Commissioners in this proceeding. Defendants deny each and every allegation in said amended petition contained, not herein admitted or specifically denied.

Bedrick & McCampbell, Attys for said Defts.

The State of Ohio, }
County of Union, ss. } George Jr. McCleck one of the abovenamed defendants being sworn makes oath that the facts stated in the foregoing answer are as affiant believes true.

Geo. M. McCleck.

Sworn to by said George M. McCleck before me and signed by him in my presence this 5th day of June A.D. 1885.

J.L. Bourgner, Clerk.

On the 4th day of December, 1885, the following entry was made on the Journal by the Clerk of the Circuit Court, to wit:

William Swadie, Plaintiff.

vs.

Uriah Leahill, et al., Defendants }

This day this cause came on for hearing and the same was submitted to the Court on the pleadings evidence and arguments of counsel, which on consideration whereof the Court do find the equities of the case to be with the said defendants. It is therefore considered and adjudged by the Court that the said plaintiff shall pay the costs herein expended and taxed at $ And the case is remanded to the Court of Common Pleas of Union County Ohio for execution which ruling, finding and judgment of the Court, plaintiff excepts.

Attest: John L. Bourgner, Clerk.

Pleas before the Honorable Thomas Bell, John J. Moore and Henry N. Sevey, Judges of the Circuit Court, within and for the County of Union of the third Judicial Circuit of the State of Ohio was begun and held at the Court House in the Town of Marysville on the twenty eighth day of April in the year of our Lord, Eighteen Hundred and Eighty Five. Be it of the to-wit:

On the 11th day of January 1884, the following Petition was filed with the Clerk of the Court of Common Pleas, to-wit:

Petition

Isaac Straley, Plaintiff
vs.
John C. Lemmell, Nancy J. Lemmell, Henry J. Lidey, Defendants.

Lessee of Common Pleas,
Union County, Ohio.

The plaintiff says,

That on or about the first day of September 1881, he entered into a written contract with the defendants, John C. Lemmell, Nancy J. Lemmell for the use and occupancy of certain real estate in Paris Township, Union County, Ohio, for the Term of three years from said first day of Septembers 1881 and also certain other Real estate for the term of two years from said first day of September 1881. That pursuant to the terms of said contract he entered upon the use and occupancy of said lands and continued to hold and use the same until about the 24th day of August 1882 when he and the said John C. Lemmell and Nancy Lemmell entered into a new agreement whereby the plaintiff released to said Lemmells that portion of said lands so as aforesaid, to be held by them for the period of two years and by which said new agreement he continued to hold the portion of said lands hereinafter described; and by the terms of said new contract the plaintiff was to occupy, use and control the said lands hereinafter described, till the 1st day of January 1885. The portion of said lands to be occupied by plaintiff as aforesaid, is described as follows: Being about ten acres of land off of the north end of a piece of land, containing about twenty acres, owned by said defendants John C. Lemmell and Nancy J. Lemmell and adjoining on the south the farm of the plaintiff. All situate in Paris Township Union County, Ohio, and being a part of Survey 5728. Plaintiff further says that he and the said John C. Lemmell and Nancy J. Lemmell understood to have their said contract as to the above described lands reduced to writing and with the exception hereinafter stated the same was reduced to writing and signed and sealed by the parties last aforesaid. That in reducing said contract to writing by mistake and oversight, the date of the expiration of said lease was made to read, "January 1st 1884" Whereas in truth and fact the same should have read "January 1st 1885" Plaintiff says that as soon as he discovered the said error and mistake he called the attention of the said John C. Lemmell to the same and he then (it being on the day said new article of agreement was written) promised

to correct the said written article of agreement so that the same would truthfully and in fact express their contract and read "January 1st 1885" Plaintiff further says that within a few days after said mistake was discovered, he called the attention of said Nancy J. Lemmell to said mistake and she likewise agreed to correct the said mistake. But he says that both said John G. Lemmell and Nancy J. Lemmell have since refused to correct said mistake, though requested to do so by this plaintiff. Plaintiff further says that at the time said contract was attempted to be reduced to writing and at the time the same was signed and sealed by plaintiff and said defendants, both the said defendants, John G. Lemmell and Nancy J. Lemmell knew of the said error and mistake and concealed the same from plaintiff fraudulently. A copy of said article of agreement is hereto attached marked "Exhibit A." Plaintiff says that on or about the 25th day of January 1884 the said John G. Lemmell and Nancy J. Lemmell commenced an action before one H. J. Long a Justice of the Peace, in said Township of Paris and County of Ionia to obtain possession of the premises above described. That by the mistaken terms of said written contract, hereto attached, this plaintiffs time for the use and occupancy of said premises, expired "January 1st 1884" whereas the same should have read "January 1st 1885". This plaintiff not being permitted to introduce evidence, to vary the terms of said written contract or agreement, and thereby being deprived of the right to show the said mistake and error in said written instrument, judgment of restitution of said premises was rendered against him and in favor of said defendants, John G. Lemmell and Nancy J. Lemmell. And that the said Lemmells are now about to issue execution for the restitution of said premises to them, via fraud and violation of the rights of this plaintiff. That unless restrained by the order of this Court, the said defendants will have issued and executed said execution against this plaintiff and do him great and irreparable injury as well as carry out great wrong and fraud upon his rights. The plaintiff has already, by reason of said action of defendants to obtain possession of said lands, been compelled to pay $35 costs viz the said action. That the said Lemmells are solely interested. The plaintiff therefore asks that an order of injunction issue against all of said defendants, restraining them from interfering with this plaintiffs use and possession of said premises, and that upon the final hearing hereof, an order and decree of this Court be granted, correcting the article of agreement, hereto attached, marked "Exhibit A", making the same to read "January 1st 1885" instead of "January 1st 1884" and that all of said parties may be restrained from in any way interfering with plaintiffs possession, occupancy and control of the said premises above described, before the first day of January A.D. 1885, and for judgment against said defendants John G. Lemmell and Nancy J. Lemmell for said sum of thirty five dollars, and for all other proper relief.

D. W. Ayers & T. Brighton,
Attorneys for Plaintiff.

State of Ohio
Union County, ss. } Isaac Staley, plaintiff, being duly sworn says, the allegations of the above petition are true, as he verily believes.

Isaac Staley.

Sworn to before me and signed in my presence this 15th day of March 1884, by said Isaac Staley.

Fred J. Hager, County Surveyer

"Exhibit A."

Article of Agreement, entered into this 24th day of August 1882, by Isaac Staley of the first part and Nancy Jane Lemmell and John E. Lemmell of the second part. Witnesseth,

Whereas the said party of the first part has heretofore to wit, on the 1st day of September 1881 leased of said parties of the second part about sixteen acres of land then cleared, for the term of two years and about ten acres not then cleared, but which said party of the first part has since cleared for the term of three years. And this agreement being intended to take the place of the one made on the 1st day of September 1881, said party of the first part hereby relinquished all claim to further use or possession of the above sixteen acres to the parties of the second part, except privilege to remove one half of the shock of the crops of corn now on the same. Said parties of the second part have the privilege to sow the said sixteen acres or any part thereof in wheat, taking good care not to destroy the corn or damage it. Said party of the first part is to have the exclusive use and control of the said ten acres of land till the first day of January 1884. Said first party is to build Lemmells half of the lines lane fence and to keep up the line fence between his own land and that of Lemmells, and is to keep up the cross fence between the new ground and the old. Said land is to be left in good farming condition at the expiration of said lease. Lemmells hereby agree to keep up the wood fence to the cross fence, and the cross fence from here to the. Neither party shall allow any stock to run in the field, of which the above ten acres forms a part. In witness whereof the said parties have hereunto set their hands and seals this 24th day of August 1882.

Isaac Staley (Seal)
John E. Lemmell his X mark (Seal)
Nancy Jane Lemmell her X mark (Seal)

Attest:
A. T. Beightler

Injunction allowed as prayed for in the petition until otherwise ordered on the plaintiff giving bond conditioned according to law in the sum of one hundred dollars with sureties to the acceptance of the Clerk of the Court of Union County Ohio March 11th 1884.

John B. Coats, Probate Judge.

Fee of P. J. $2. 00 paid

On the 11th day of March, 1884 the following Temporary Injunction was filed with the Clerk of the Court of Common Pleas, to-wit:

Isaac Staley, Plaintiff
vs.
John E. Lemmell, Nancy J. Lemmell & H. J. King, Defts

In Union County Common Pleas.
Before Probate Judge.
Temporary Injunction. March 11th 1884.

This day came the plaintiff by his attorneys and on his motion and affidavits herein filed, and on good cause shown and it appearing to me that at this time there is no Supreme or Common Pleas Judge in said County: It is ordered that an injunction be issued herein enjoining the defendant from interfering with the said plaintiffs use and occupancy of the lands described in plaintiffs petition, by execution for restitution or otherwise, as prayed for in said petition, until the further order of the Court of Common Pleas or a Judge thereof, or otherwise dissolved by due course of law, upon the plaintiff executing an undertaking in the sum of $100 conditioned according to law, with sureties to the approval of the Clerk of the Court of Common Pleas of Union County Ohio.

John B. Sloats, Probate Judge.

On the 11th day of March 1884, the following Undertaking was filed with the Clerk of the Court of Common Pleas, to-wit:

Undertaking by Plaintiff for Injunction.

Isaac Staley
vs.
John G. Connell et al.

The State of Ohio, Union County, ss.
Court of Common Pleas.

We bind ourselves to the said defendants, John G. Connell Nancy J. Connell and Henry J. King in the sum of One hundred dollars, that the said plaintiff Isaac Staley shall pay to the said defendants the damages they may sustain by reason of the injunction in this action, if it be finally decided that the said injunction ought not to have been granted. March 11th 1884.

Isaac Staley John A. Wood.

This undertaking approved by me this 11th day of March 1884.

J. J. Burgner, Clerk of said Court.

Summons. On the 11th day of March A. D. 1884 the following Summons was issued by the Clerk of the Court of Common Pleas, to-wit:

The State of Ohio,
Union County, ss. } To the Sheriff of the County of Union, Greeting:

We command you to notify John G. Connell, Nancy J. Connell and Henry J. King that they have been sued by Isaac Staley in the Court of Common Pleas of Union County, and that unless they answer by the 12th day of April A. D. 1884, Isaac Staley aforesaid his petition filed in the Clerks Office of said Court such petition will be taken as true and judgment rendered accordingly. You will make due return of this Summons on the 24th day of March A. D. 1884.

Witness my hand and the seal of said Court, this 11th day of March A. D. 1884.

J. J. Burgner, Clerk.

In action for injunction allowed as prayed for see the petition.

The State of Ohio. } Sheriffs Return.
Union County, ss. } Received this writ March 11th A. D. 1884, at 2 o'clock P. M. and pursuant to its command on the 11th day of March A. D. 1884, I served the same by delivering to the within named Henry J. King & Nancy J. Connell and by leaving at the usual place of residence the within named John G. Connell a true copy of this writ with endorsements thereon.

Sheriffs fees, $4.72

John Hershenrack, Sheriff Union Co. Ohio.

On the 12th day of April 1884, the following motion was filed with the Clerk of the Court of Common Pleas, to-wit:

Isaac Staley, Plaintiff
vs.
John G. Lemmell et al Defendants

In the Court of Common Pleas of Union County Ohio.

Jesse comes said Defendants, John G. Lemmell, Nancy Lemmell and H. J. Long and move the Court to dismiss this action for the reason that the petition in this case shows upon its face that the same case with the same issues have once been adjudicated and finaly settled before a Court of complete jurisdiction and cannot be brought before this Court.

John G. Lemmell et als.
By T. B. Benton, Atty for Defts.

On the 30th day of April 1884, the following Entry was made on the Journal by the Clerk of the Court of Common Pleas, to-wit:

Isaac Staley
vs.
John G. Lemmell et al.

Entry. 4482.

This day this cause came on to be heard upon the motion of the defendants to dissolve the injunction heretofore granted herein, was argued by counsel and the Court being fully advised herein do sustain said motion and order the said injunction dissolved and the petition dismissed at the costs of the plaintiff and judgment is given accordingly. Upon good cause shown the Court grants the plaintiff an appeal herein and the amount of the appeal bond herein is fixed at $200 and the Court suspends the operation of said order dissolving said injunction and dismissing said petition for a period of ten days so much as to enable the plaintiff to perfect his appeal and notice is hereby given by the plaintiff of his intention to appeal from the order dissolving said injunction and dismissing said petition.

On the 30th day of April 1884, the following Appeal Bond was filed with the Clerk of the District Court, to-wit:

Appeal Bond.

Know all men by these presents, that we, Isaac Staley and Joseph H. Wood are held and firmly bound unto Nancy J. Lemmell and John G. Lemmell in the penal sum of Two hundred Dollars, to the payment of which, well and truly to be made, we do hereby jointly and severally bind ourselves, our heirs, executors and administrators. Signed by us, and dated this 30th day of April A.D. 1884. The condition of the above obligation is such that, whereas the said Isaac Staley has taken an appeal from a certain decree rendered against him in favor of the said Nancy J. Lemmell & John G. Lemmell in the Court of Common Pleas within and for the County of Union in the State of Ohio, at the April Term thereof, A.D. 1884, to the District Court within and for the County aforesaid. Now, if the said Isaac Staley shall abide and perform the order and judgment of said District Court, and shall pay all moneys, costs and damages, which

may be required of me awarded against him by said District Court then this obligation to be void; otherwise to remain in full force and virtue in law. (Signed) Isaac Staley, John S. Wood.

I approve the above bond, with the sureties thereto, this 30th day of April A.D. 1884. J.C. Burgner, Clerk.

On the 10th day of April, 1885 the following Transcript was filed with the Clerk of the Circuit Court, to-wit:

Isaac Staley, Plaintiff
Against
John S. Connell, Nancy J. Connell and H.J. Long, Defendants.

The State of Ohio, Union County, ss.
In Common Pleas Court. Journal Vol. 13 page 169.
Certified Copy of Journal Entry.
Before Probate Court. Temporary Injunction. March 11, 1884.

This day come the plaintiff by his attorneys and on his motion and affidavits herein filed and for good cause shown, and it appearing to me that at this time there is no Supreme or Common Pleas Judge in said County;

It is ordered that an injunction be issued herein enjoining the defendant from interfering with said plaintiff's use and occupancy of the lands described in plaintiff's petition by execution or restraining in otherwise as prayed for in said petition until the further order of the Court of Common Pleas or a Judge thereof or otherwise dissolved by due course of law upon the plaintiff's execution an undertaking in the sum of $200 conditioned according to law with sureties to the approval of the Court of Common Pleas of Union County, Ohio.

John B. Monk, Probate Judge. Seal

This day this cause came on to be heard upon the motion of the defendants to dissolve injunction heretofore granted herein and was argued by counsel and the Court being fully advised in the premises do sustain said motion and order the said injunction dissolved and the petition dismissed at the costs of the plaintiff and judgment is given accordingly. Upon good cause shown the Court grants the plaintiff an appeal herein and the amount of the appeal bond herein is fixed at $200 and the Court suspends the operation of said order dissolving said injunction and dismissing said petition for a period of ten days to enable the to perfect his appeal and notice is hereby given by the plaintiff of his intention to appeal from the order dissolving said injunction and dismissing said petition.

The State of Ohio,
Union County ss } I, J.C. Burgner, Clerk of the Common Pleas Court within and for said County, and the custody the Files, Journals and Records of said Court, are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal of the proceedings of the Common Pleas Court within and for said County, and that said foregoing copy has been compared by me with the original entry on said Journal and that the same is a correct transcript thereof. In testimony whereof, I do hereto subscribe my name officially and affix the seal of said Court, at the Court House in Marysville, in said County this 3rd day of April A.D. 1885. J.C. Burgner, Clerk. By H.W. Monget, Deputy Clerk

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Vol. 13 page 169.

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On the 28th day of April 1885, the following Motion was filed with the Clerk of the Circuit Court, to-wit:

Isaac Staley, Plaintiff
Against
Motion No. 21 Spencer L. Lemmell and John E. Lemmell, Defendants

In the Circuit Court of Union County, Ohio.

And now comes the said defendants and move the Court to dismiss the appeal herein for the reason that said plaintiff has neglected to give a bond as required by law, to perfect said appeal and give the Court jurisdiction thereof.

T. B. Benton, Attorney for Defendants.

On the 2d day of May 1885, the following Entry was made on the Journal by the Clerk of the Circuit Court, to-wit:

This day appeared the plaintiff and his attorneys and submitted this cause to the Court upon motion and showing of plaintiff for leave to file a new appeal bond herein. Thereupon the Court being fully advised in the premises, dismisses the appeal herein at the cost of appellant Isaac Staley. It is therefore considered and adjudged by the Court that the plaintiff pay the costs herein, taxed at $ To all of which plaintiff excepts.
It is further ordered that a special mandate be sent to the Court of Common Pleas to carry this judgment into execution.

Attest: John D. Bumgarner Clerk.

Be it remembered that on the 28th day of April, A. D. 1885, before the Honorable Thomas Beer, John C. Owens and Henry M. Toney, Judges of the Circuit Court within and for the County of Union of the Third Judicial Circuit of the State of Ohio as begun and held at the Court House in the Town of Marysville on the 28th day of April in the year of our Lord, Eighteen Hundred and Eighty Five.

Thereafter, to-wit: On the 28th day of April, 1885, the following petition was filed with the Clerk of the Court of Common Pleas, to-wit:

James A. Lile, Isaac K. Warner, Benjamin Evans, Lois H. Warner, Wm. Bishop, Charles Warner, Orin M. Price, Enoch Lile, Joshua Warner, Emma Graham, Nettie Warner, Ezekiel Warner, Perintha Empke, Ada Warner and Albert E. Warner, Plaintiff
Against
David Bedford, Salathiel Ewing, Lil Ewing, Mary Shook and Evaline Sater, Defendants.

Court of Common Pleas
Union County, Ohio.

The said plaintiffs says that on the 11th day of December 1884 one Lyman L. Lemmell executed to and

of that date to James Ewing in fee simple the following real estate
situate in the County of Union in the State of Ohio, being part of Survey
No. 7073 described as follows, viz.: Beginning at a bur oak and
two hickories the beginning corner of the Survey; thence with a line of
Lyons Survey N. 36° 70' W. 166 poles to two ashes and a lynn down,
black walnut on the corner of Waters Survey; thence with Survey line
N. 53° 70' E. 112 poles to a buckeye, lynn and elm corner to lot sold to
Daniel Martin; thence with his line S. 36 E. 180 poles to two elms
and ash in the line of Crawford's Survey; thence with his line S 61½
W. 109 poles to the beginning containing 116 acres more or less. Also the
following in same County and part of Survey No. 1074 described as
follows, viz.: Beginning at a stake at two hickories; thence N. 61 E. 60½
poles, to a stake beech and ironwood; thence S. 37° E. with Isaac Work-
man's line 260 poles to the center of the post road between two elms and
ash, thence S. 75 W. 2 poles to a stake; thence N. 37 W. 138¼ poles to a
stake elm and lynn; thence S. 61 W. 59½ poles to a stake and maple;
thence N. 37 W. 12¾ poles to the beginning, containing 50 acres more or
less, which deed is recorded in Vol. 9 page 558-9 of Union County
Records of deeds. The plaintiffs say that said deed was so executed
to said Ewing in trust to enable him to emplete a trade of lands by
and between said Lowers and Elijah Warner, now deceased. That
afterwards the terms of the contract between said Lowers and Warner
aforesaid to which James Ewing was a party and interested to the ex-
tent of receiving the sum of $826 66/100 which said Warner owed said
Ewing, having been complied with the said Ewing undertook and at-
tempted to execute to said Elijah Warner a deed of release of said land
conveying to said Warner and his heirs and assigns in fee simple all
the interest and title which the said Ewing had obtained by and through
the said deed to him by said Lowers which paper was dated and
executed on the day of July 1846 and recorded on Vol. 11 page 274
of said Record of deeds. That by the mutual mistake of said Ewing
and Warner the deed so executed by said Ewing to said Warner for
said land it is claimed by the heirs of said Ewing failed to
convey to said Warner all the right and estate of said Ewing in
said land and conveyed to him the said Warner only a life estate
for the life of said Warner and reserving to said Ewing and his heirs
the remainder necessary in fee thereon the words in said deed being
"to the said Warner" and omitting the word "heirs" thereafter.
The plaintiffs say the intention of both the said Warner and said Ewing
was by said deed to invest in said Warner and his heirs and assigns
all the title and interest therein which said Ewing held therein and
the omission to clearly show such intention was the result of their
mutual mistake in the draft of said deed. The said Ewing
never had any interest in said land except to secure him in the
sum of $826 66/100 which said Warner owed him and he held the
same simply in trust for said Warner under a contract to release
to him said land as soon as said sum should be paid and which
was so paid to said Ewing and the said deed of Jan. 1846, was
executed by him for the purpose of carrying out said trust and

it was by the mistake of the said deed that his said interest was not clearly expressed. That said Warner during his life time sold a part of said land to said Pike and a part to his said son Isaac H. Warner and continued to occupy all that he had not sold and conveyed up to the time of his death which occurred on or about the 13th day of Nov. 1874. That said Ewing's deed intestate leaving Salathiel Ewing, Eva Barber Mary Sickles and Bill Ewings his only heirs at law and they as plaintiffs are informed and believe have conveyed to said Woolford an interest thereon under a contract that he will prosecute a civil action against the plaintiffs to recover said lands for them claiming that said deed to said Warner conveyed the land aforesaid to him for his life and that now since his death they have the title and right of the possession for the same and they are now threatening to bring such civil action against the plaintiffs for said land and will as plaintiffs are informed and believe do so unless enjoined by the restraining order of this Court. The plaintiffs say they own all of said 166 acres of land conveyed to said James Ewing and heirs and are in possession thereof holding by regular claim of title under and from said Warner under the said deed to him from said Ewing and being so united in a common interest join in the action to avoid a multiplication of actions and claim that they own the same in fee simple and that said defendants have no interest or title thereon whatever and that the said pretended title of said defendants is inequitable and unjust but the said claim is now operating as a cloud on the plaintiffs' title and right of possession and there is danger by delay that the evidence whereby plaintiff will establish the said claim of the plaintiffs may be lost by the death of the witnesses thereto.

Therefore the plaintiffs pray that the said defendants may be duly notified of this action and that they be restrained from bringing any action at law against plaintiffs for the possession of said land and that said mistake be corrected in said deed so that it shall clearly show that said Ewing conveyed to said Warner this lands and assigns all his right and interest in said land and that on final hearing that the title and possession of the plaintiffs in said land may be quieted in them and defendants enjoined from ever bringing suit against them for said land as heirs or assigns of said Ewing, who is long since deceased; and that plaintiff have such other further relief as law and equity require.

Robertson & Piper & Woodburn Lawyers,
Attorneys for Plaintiffs.

The State of Ohio, }
Union County, ss. } Benjamin Evans one of the plaintiffs being duly sworn says he believes the allegations of the foregoing petition are true.

Benjamin Evans.

Sworn to before me and signed in my presence this 24th day of April A.D. 1884.

J. L. Burgner, Clerk.

To the Clerk of Court.

Issue summons for the defendants and endorse "petition to correct mistake in deed and to quiet title to land and for other equitable relief."

Summons

On the 28th day of April A.D. 1884, the following Summons was issued by the Clerk of the Court of Common Pleas, to-wit:

The State of Ohio, } To the Sheriff of the County of Union, Greeting:
Union County, ss. }

We command you to notify David Mulford, Salathiel Ewing, Bell Ewing Mary Slecker and Evaline Barlow that they have been sued by James A. Kile, Isaac N. Warner, Benjamin Evans Lois Warner, William Bishop, Charles Warner, Orinda M. Price, Enoch Kile, Joshua Warner Emma Graham, Nella Warner, Hezekiah Warner, Permatha Embree ada Warner and Albert E. Warner in the Court of Common Pleas of Union County, and that unless they answer by the 31st day of May A.D. 1884, the petition of said Plaintiffs above named against them filed in the Clerk's Office of said Court, such petition will be taken as true and judgment rendered accordingly. You will make due return of this summons on the 12th day of May A.D. 1884.

Witness my hand and the seal of said Court, this 28th day of April A.D. 1884. J.L. Bunger, Clerk.

In action to correct mistake in deed and to quiet title to land and for other equitable relief.

The State of Ohio, } Sheriff's Return.
Union County ss. }

Received this writ April 28th A.D. 1884 and pursuant to its command on the 29th day of April A.D. 1884, I served the same by delivering to the within named D. Mulford a true copy of this writ with the endorsements thereon. And on the 12th day of May 1884 by delivering to the within named Barlow a true copy of this writ with endorsements thereon; the within named S. Ewing, B. Ewing and Mary Slecker not found in my County. John Hollensack,
Sheriff Union Co., Ohio.

Entry. 4528

On the 28th day of April 1884, the following Entry was made on the Journal by the Clerk of the Court of Common Pleas, to-wit:

James A. Kile et als. }
vs. }
David Mulford et als } It is ordered by the Court that notice of the pendancy of this cause be published in the Marysville Tribune for six weeks to Salathiel Ewing, Bell Ewing and Mary Stecker said to be non residents of the State of Ohio.

Entry No. 4528.

Answer and Cross Petition.

On the 8th day of September 1884, the following Proof of Publication was filed with the Clerk of the Court of Common Pleas, to-wit:

Legal Notice.

Salathiel Ewing, Belle Ewing and Mary Slecker, heirs at law of James Ewing, deceased, you are notified that James A. Kile and others have filed their petition against you and others in the Court of Common Pleas of Union County, Ohio, alleging that James Ewing conveyed to Elijah Warner by deed July 1846, the following Real estate to-wit: in said County of Union and being

parts of Surveys No. 7073 and 7074, fully described in the deed of Lyman D. Lawrence to James Ewing, dated December 11th 1844, recorded in page 538 of Vol. 9 of the Record of deeds in said County, and that a mistake was made in the said deed whereby an estate of inheritance was not given to said Warner as is claimed by the heirs of James Ewing deceased. The plaintiffs hold under said Warner who is now dead and claim the title to said land and allege in said petition that it was the intention of said Ewing to convey said lands to said Warner, his heirs and assigns forever in fee simple.

The prayer of said petition is to correct the said mistake in said deed and obtain the decree of said Court quieting the title to said land against said heirs and others claiming under them. Depositions will be taken in said cause by plaintiffs on the last Thursday of June, 1884, at the Mayors office in Plain City, Madison County, Ohio, between 8 a.m. and 9 p.m., and continue between the same hours on the following days till completed. The defendants are required to answer this petition on or before the last Saturday of June, 1884. Robinson & Piper & R. L. Woodburn,
April 28, 1884. 6-6 Attorneys for Plaintiffs
The State of Ohio, }
Union County ss. } The undersigned being duly sworn, says that a copy of the annexed notice was published for six consecutive weeks in the "Marysville Tribune", a newspaper of general circulation in the County of Union, the first publication beginning with —
Sworn to and subscribed before me, this 8th day of September, 1884.
Printer's fees, $14 00 J. L. Bongner, le Clerk.

On the 3d day of June, 1884, the following Entry was made on the Journal by the Clerk of the Court of Common Pleas, to-wit:

Entry. 4528

James A. Kile et al. vs. David Imlford et al. } This day comes the defendant, David Imlford and asked and obtained leave of Court to file answer herein on June 28th 1884 and cause continued.

Answer & Cross Petition.

On June 28th the following Answer was filed in the office of the Clerk of the Court of Common Pleas, to-wit:

James Kile et al, Plaintiffs vs. David Imlford, et. al. Defendants } In Union Court of Common Pleas. And now comes the said Defendants and for answer to plaintiffs petition say —

That they admit the conveyance dated Dec. 11th 1844 from one Lyman D. Lawrence to James Ewing referred to in said petition. That they admit a conveyance dated July 1846, from said James Ewing to Elijah Warner. That they admit the conveyances from said Elijah Warner to said James Kile and Isaac Warner and that said Elijah Warner died on or about November 13th 1874. That they admit the death and intestacy of said James Ewing and that said James Ewing left as his sole heirs at

law Sabathael and Bell Ewing Eva Barlow and Mary Blecker.
That they admit that said heirs have conveyed to said Daniel Deulford an undivided interest in the lands in said petition described but that they deny each and every other allegation in said petition contained. Defendants further answering and by way of cross-petition say that they have a legal estate in and are entitled to the possession of the real property in said petition described and that plaintiffs unlawfully keep defendants out of the possession thereof. Plaintiffs, while unlawfully keeping defendants out of possession as aforesaid, have ever since the 13th day of November 1874 excluded Defendants from the rents, issues and profits of said premises and refuse to account or pay to defendants any part of the value thereof. That the value of the rents, issues and profits from said date and the damages for withholding said premises from defendants, amount to $5000 00/100 Wherefore defendants ask judgment for the delivery of the possession of said property and for said sum of $5000 00/100.

Bordwick & Bro. Campbell,
Attorneys for Defendants.

The State of Ohio } ss
Lorain County } David Mulford one of the Defendants, being duly sworn says that the facts and allegations stated and made in the foregoing answer are as he verily believes, true.

D. Mulford.

Sworn to before me and subscribed by said David Mulford, in my presence this 28th day of June 1884.

J.D. Bruegger, Clerk

On the 4th day of March, 1885 the following Entry was made on the Journal by the Clerk of the Court of Common Pleas, to wit:

James A. Kile et al.
vs.
Daniel Mulford et al

Entry 45-28

This day came the parties and submitted this cause to the Court. Whereupon the Court being fully advised in the premises and heard the evidence and arguments in the case find for the plaintiffs on the issues formed and that the plaintiffs ought to be quieted in their possession and title to the lands in their possession respectively as alleged in their petition and that defendants might to be enjoined from bringing any action at law to disturb the possession of the plaintiffs. Therefore it is considered, ordered and decreed by the Court that the plaintiffs be and they are hereby quieted in their possession and title to said lands in said petition described and the defendants are enjoined hereby from bringing any actions or proceeding against the plaintiffs or either of them for said lands and that defendants pay the costs herein taxed to $ and in default of such payment for thirty days that execution issue therefor, and thereupon the defendants give notice of their intention to appeal to the Circuit Court and thereupon the Court fix the appeal bond at $200 00

On the 14th day of April, 1885 the following Appeal Bond was filed with the Clerk of the Circuit Court, to wit:

Appeal Bond to Circuit Court.

Know all men by these presents: That D. Mulford, G. W. Lenst and Wm. H. Cobb are held and firmly bound unto James A. Kile and others in the penal sum of Two hundred dollars to the payment of which well and

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truly to be made we do hereby jointly and severally bind ourselves our heirs executors and administrators.

Sealed with our seals and dated this day of April 1885.

The condition of the above obligation is such that whereas the said David Mulford and others have taken an appeal from a certain judgment rendered against them and in favor of the said James A. Kile and others in the Court of Common Pleas within and for the County of Darke and State of Ohio at the February Term 1885 thereof in case No. 4528 entitled James A. Kile et al. vs. David Mulford et al. in the Circuit Court of said County. Now if the said David Mulford et al. shall prosecute their appeal to effect without unnecessary delay and shall abide and perform the order and judgment of said Circuit Court and pay all damages and costs which may be awarded against the appellants the said David Mulford and others then this obligation shall be void; otherwise it shall remain in full force and virtue in law. In presence of

D. Mulford [seal]
G. W. Kerst [seal]
C. W. Southard [seal]
Wm. H. Robb [seal]

The execution of the above undertaking and the sufficiency of the sureties thereto approved by me this 14th day of April A.D. 1885.

J. L. Burgner, Clerk.

On the 27th day of April 1885, the following Transcript was filed with the Clerk of the Circuit Court, to-wit:

James A. Kile, et al. Plaintiffs
Against
David Mulford et al. Defendants

The State of Ohio, Darke County, ss.
In Common Pleas Court April Term 1885.
Journal Vol. 13. Page 194.
Certified Copy of Journal Entry.

It is ordered by the Court that notice of the pendency of this cause be published in the Greenville Tribune for six weeks to Salathiel Ewing, Belle Ewing, Mary Slecker, said to be non residents of the State of Ohio.

April Term 1884. June 3d 1884. Journal 13 Page 231.

This day came the defendant David Mulford and asked and obtained leave of the Court to file answer herein on June 28 1884 and cause continued.

February Term 1885. Journal 13 Page 367.

This day came the parties and submitted this cause to the Court. Whereupon the Court being fully advised on the premises and heard the evidence and arguments in the case find for the plaintiffs on the issues joined and that the plaintiffs ought to be quieted in the possession and title to the lands in their possession respectively as alleged in their petition and that defendants ought to be enjoined from bringing any action at law to disturb the possession of the plaintiffs.

Therefore it is considered ordered and decreed by the Court that the plaintiffs be and they are hereby quieted in their possession and title to said lands in said petition described and the defendants are enjoined hereby from bringing any action or proceeding against

the plaintiffs or either of them for said lands and that defendants pay the costs herein taxed to $ and on default of such payment for thirty days that execution issue therefor and thereupon the defendants give notice of their intention to appeal to the Circuit Court and thereupon the Court fix the appeal bond at $200.00.

The State of Ohio, }
Union County ss. } I, John D Burgner, Clerk of the Common Pleas Court within and for said County, and in whose custody the Files Journals and Records of said Court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal of said Court of the proceedings of the Common Pleas Court within and for said County, and that said foregoing copy has been compared by me with the original entry on said Journals of said Court and that the same is a correct transcript thereof.
In testimony whereof, I do hereto subscribe my name officially and affix the Seal of said Court, at the Court House in Marysville in said County, this 27th day of April A.D. 1885.

J.D. Burgner, Clerk.

On the 6th day of May, 1885 the following Entry was made on the Journal by the Clerk of the Circuit Court, to-wit:

Entry No. 93

James Tille et al
vs.
David Mulford et al

This cause having been submitted to the Court by the parties. Whereupon the Court being fully advised in the premises do find for the plaintiffs and against the defendants on the issues found between them and that the mistake sought in equity be corrected in said deed so as to make it express the true interest of the parties conveying to Elijah Warner said lands in fee simple and to vest herein forever and that plaintiffs' title and possession in said lands should be quieted against said defendants and their cross petition for the said possession be dismissed. It is considered ordered and decreed by the Court that said deed be corrected and operate as a deed in fee simple the same as if it had expressly conveyed said land to said Elijah Warner and his heirs and assigns and that the plaintiffs' be and they are quieted by the decree of this Court in their said title and possession against said defendants and that plaintiffs recover of the defendants their costs herein expended taxed to $ excluding the sum of one hundred dollars as damages which the Court assess against defendants in favor of plaintiffs, and the Court order a special mandate to issue to the Court of Common Pleas of Union County Ohio to execute this judgment

Attest: John D Burgner, Clerk.

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Pleas before his Honorable Thomas Beer, John J. Moore and Henry H. Emery, Judges of the Circuit Court within and for the County of Union of the 3d Judicial Circuit of the State of Ohio was begun and held at the Court House in the Town of Marysville on the 5th day of October A.D. Eighteen hundred and Eighty Six.

Be it remembered: On the 16th day of April 1885, the following Petition was filed with the Clerk of the Court of Common Pleas, to-wit:

W. H. Hill, Assignee of
S. M. & A. J. Blake, Plaintiff
vs.
Alexander Read and Lucinda
Read, his wife, Defendants

Court of Common Pleas Union County, Ohio.

The plaintiff W. H. Hill says he is the duly appointed and qualified assignee of S. M. & A. J. Blake under the insolvent laws of Ohio and as such duly authorized and empowered to collect all claims in favor of said firm of S. M. & A. J. Blake, and plaintiff says that said Defendants, Alexander Read and Lucinda Read are the owners and occupiers of a certain tract of land lying in York Township, Union County Ohio, bounded and described as follows, to-wit: Beginning at a stone in the Read and Jolliff gravel road and north-easterly corner to Ab Long's land; thence with said Long's north line, N. 81° W. 147 20/100 poles to a stone and Longs north-westerly corner and in the eastern line of Joseph Shipley's land; thence with said line N. 10¾° E. 32 50/100 poles to a stone; thence S. 80° E. 147 20/100 poles to a stone in said road and Jolliff road; thence with said road S. 10¾° W. 31 60/100 poles to the place of beginning containing 29 acres. Also the following tract of land in same Township. Beginning at a stone and brick south-easterly corner to A. H. Chandlee's land and in the road and Jolliff road; thence with said road S. 10¾° W. 27 20 poles to a stake; thence N. 80° W. 147 20 poles to a stone in the eastern line of Joseph Shipley's land; thence with said line N. 10¾° E. 27 20 poles to a stone in said line and southwesterly corner to said A. H. Chandlee's land; thence with said Chandlee's north line S. 80° E. 147 20 poles to the beginning, containing 25 acres and 95 poles - all in Survey No. 1846. That said lands were purchased solely by the individual means of the said Alexander Read and the Conveyance taken in the name of the said Lucinda Read, wife of said Alexander Read, for the purpose of defrauding the creditors of the said Alexander Read; and without consideration from her. The plaintiff further says that about the years 1882 and 1883, said Alexander Read with his own means and by his own labor purchased and prepared material and erected on said premises a good substantial dwelling house for the use and occupation of himself and family of the value of $600 or more, by means of which he obtained and still has an equitable interest in said real estate, that both the described tracts constitute one farm, now occupied by said Defendants as their home. That said Alexander Read in the Summer of 1883 purchased of S. M. & A. J. Blake pine lumber, doors, windows and other building material for said

dwelling house built by him on said land aforesaid and the same was used by said Read for said purpose. That said Read afterwards executed to said S. W. & A. J. Blake his certain promissory note for $110.00/100 in settlement for said lumber and on Jan. 22d 1885 said W. H. Hill as assignee as aforesaid obtained judgment thereon before T. W. McAdams, J. P. of Claiborne Township, Champaign County, Ohio for $117.65 and costs and thereupon filed a transcript of the same in the Clerk's office in Urbana Ohio and caused an execution to be issued thereon to Sheriff of said County, who made return thereon according to law and for want of goods and chattels whereon to levy said Sheriff levied upon the premises herein before described. Plaintiff says that said Read has no personal or real property on his own name on which to levy said execution except some lands by reason of the facts stated as aforesaid, that said judgment interest and costs are still wholly unpaid. Wherefore plaintiff prays that said judgment may by the Court be declared a lien upon said described real estate and that the same may be subjected to the payment thereof and that on failure of said defendants to satisfy said judgment interest and costs by a day to be named by the Court, that an order of sale issue to Sheriff of said County, commanding him to appraise, advertise and sell said premises in a sufficient portion thereof to satisfy said judgment and costs and payment thereof to be made from the proceeds of said sale.

O. R. Kerr, Atty for Plaintiff.

State of Ohio, } ss.
Union County } W. H. Hill the plaintiff being sworn says the statements and allegations in the foregoing petition are true as he believes.

W. H. Hill.

Sworn to before me and subscribed in my presence this 14th day of April 1885.

Wyatt J. Ruckes, Notary Public for Union County, Ohio

Praecipe — The Clerk will issue summons for the defendants directed to Sheriff of Union County and endorse thereon, "action for equitable relief. Amount claimed $117.65 interest and costs".

Summons — On the 16th day of April 1885 the following Summons was issued by the Clerk of the Court of Common Pleas, to-wit:

The State of Ohio, Union County ss: To the Sheriff of this County of Union Greeting:
You are commanded to notify Alexander Read and Luanda Read that they have been sued by W. H. Hill, Assignee of S. W. & A. J. Blake in the Court of Common Pleas, of Union County, and that unless they answer by the 16th day of May A. D. 1885 the petition of said plaintiff against them filed in the Clerk's office of said Court, such petition will be taken as true and judgment rendered accordingly. You will make due return of this summons on the 27th day of April A. D. 1885.

Witness my hand and the seal of said Court, this 16th day of April, A. D. 1885.

J. L. Burgess, Clerk.

Action for equitable relief. Amount claimed $117.65/100 Interest & costs.

Sheriffs Return — The State of Ohio, } Sheriff's Return.
Union County, ss. } Received this writ April 16th A. D. 1885 at 7 o'clock P. M.

Duration 1804

and pursuant to its Command, on the 23d day of April A.D. 1885; I served the same by leaving at the usual place of residence of the within named defendants a true copy of this writ, endorsements thereon. Service 45, Mileage 320 Copies 40. Total Sheriffs Fee $4.05

W. Hopkins, Sheriff.
By A. H. Goodwin, Deputy.

On the 7th day of May the following Answer was filed with the Clerk of the Court of Common Pleas, to-wit:

W. H. Hill, Assignee of
S. W. & A. J. Blake, Plaintiff
vs.
Alexander Read et al
Lucinda Read Defts

Common Pleas Summit County.
Separate Answer of Lucinda Read.

Now comes the said Lucinda Read, Defendant and for her separate answer to plaintiff's petition says that she is the sole owner in fee simple of the land described in plaintiff's petition. She denies the allegation therein that said Alexander Read with his individual means paid for said land. She further denies that the individual means of said Alexander Read were used to pay for any house erected on said lands. She also denies that said Alexander Read has any interest or title, legal or equitable in said lands further or other than he holds by virtue of his title as husband to this defendant. And this defendant denies all allegations of fraud wherewith she stands charged in the plaintiff's petition and having thus fully answered prays to be hence dismissed with her costs.

State of Ohio,
Summit County, ss. } Lucinda Read defendant being sworn says that the facts stated and allegations in the foregoing answer are true as she believes.

Lucinda Read.

Sworn to before me and signed in my presence this 25th day of April 1885.

R. L. Woodstock, Notary Public.

On the 6th day of November 1885, the following Motion was filed in the office of the Clerk of the Court of Common Pleas, to-wit:

W. W. Hall
vs.
Alexander Read et al.

Motion 4804

And now comes the plaintiff and moves the Court to require the defendant, Lucinda Read to make her answer more definite and certain, by stating more certainly whether she denies that the defendant, Alexander Read contributed in any amount to the erection of a dwelling house on the land described in the petition by his own means and labor or procuring material &c. Whether she denies that the lumber and other building material purchased by said Read of S. W. & A. J. Blake as mentioned in the petition or any part thereof was used in the erection of said house.

O. R. Kerr,
Atty for Plaintiff.

On the 22nd day of December 1885, the following Entry was made on the Journal by the Clerk of the Court of Common Pleas, to-wit:

Entry

W. H. Hill, Assignee
vs.
Alexander Read, et al

Now comes the plaintiff and moves the Court to order the defendant Lucinda Read to make her answer more definite and certain. And thereupon the Court being fully advised in the premises do overrule said motion.

On the 25th day of March 1886, the following entry was made on the Journal by the Clerk of the Court of Common Pleas, to-wit:

W. H. Hill, Assignee
vs.
Alexander Read et al.

This cause is continued at plaintiff's costs for this Term. It is therefore considered that said W. H. Hill as Assignee of A. J. & S. W. Blake pay the costs of this Term herein, taxed to #

On the 1st day of June, 1886 the following entry was made on the Journal by the Clerk of the Court of Common Pleas, to-wit:

W. H. Hill, Assignee
vs.
Alexander Read, et al.

This cause coming on for hearing on the petition of plaintiff, answer of Lucinda Read, and the said Alexander Read still failing to answer or demurrer and the evidence and was submitted to the Court. On consideration whereof the Court find the equity of the case with the defendants. It is therefore ordered, adjudged and decreed by the Court that the petition of the plaintiff be dismissed and that the defendants go hence without day and recover of the plaintiff their costs in this behalf expended taxed to # . Notice of Appeal by Plaintiff.

On the 24th day of June 1886, the following Transcript was filed with the Clerk of the Circuit Court, to-wit:

W. H. Hill, Assignee, Plaintiff
Against
Alex. Read et. al., Defendants

The State of Ohio, Huron County, ss.
In Common Pleas Court.
Oct. Term, 1885 Journal Vol 13 Page 581.
Journal Vol. 14 Page 237 & 53.
Certified Copy of Journal Entry.

Tuesday, December 22d A.D. 1885.

Now comes the plaintiff and moves the Court to order the defendant Lucinda Read to make her answer more definite and certain. And thereupon the Court being fully advised in the premises do overrule said motion.

Thursday, March 25th A.D. 1886.

This cause is continued at the plaintiffs costs for this Term. It is therefore considered that said W. H. Hill as assignee of A. J. & S. W. Blake pay the costs of this Term herein taxed to #

J. 13 P. 514.

J. 13 P. 530.

Tuesday, June 14th A.D. 1886.

This cause coming on for hearing on the petition of plaintiff answer of Lucinda Read, and the said Alexander Read still failing to answer or demurer, and the evidence and was submitted to the Court. On consideration whereof, the Court find the equities of the case with the defendants. It is therefore ordered, adjudged and decreed by the Court that the petition of the plaintiff be dismissed and that the defendants go hence without day, and recover of the plaintiff their costs herein behalf expended taxed to $ Notice of appeal by plaintiff.

On the 6th day of October 1886, the following Entry was made by the Clerk of the Circuit Court, to-wit:

Entry

D. H. Hill, Assignee
vs.
Alex. Read et al

This day appeared the parties by their attys and thereupon this cause came on to be heard upon the petition of plaintiff, the answer of Lucinda Read and the evidence. On consideration whereof the Court find the equities of the case with the defendants. It is therefore considered, ordered and decreed by the Court that the petition stand dismissed and the defendants go hence without day. It is further ordered and adjudged by the Court that D. H. Hill, as Assignee of G. W. & A. J. Blake pay all the costs of this proceeding, taxed to $ and that special mandate be sent to the Court of Common Pleas to carry this judgment into execution.

Attest: John L. Burgner, Clerk.

Be it remembered that at a session of the Court of Common Pleas before the Honorable Thomas Beer, John J. Moore and Henry Seney Judges of the Circuit Court within and for the County of Union the Third Judicial Circuit of the State of Ohio, which was begun and held at the Court House in the Town of Marysville on the fifth day of October in the year of our Lord, Eighteen Hundred and Eighty Six. Hereinafter to-wit:

On the 16th day of April 1886, the following Transcript was filed with the Clerk of the Circuit Court, to-wit:

The State of Ohio,
Union County, ss. In Common Pleas Court. October Term 1886
Andrew J. Smith, Plaintiff — Journal Vol. 13. Pages 514, 530, 534, 569
Against
George W. Longbrake, Defendant — Certified Copy of Journal Entry.

J. 13 P. 514. October Term 1885 To-wit: Oct. 20th 1885.
Leave to file Amended Petition by Saturday.

J. 13 P. 530. October Term 1885 To-wit. Oct. 3d 1885.
This day came on this cause to be heard on the demurrer of the plaintiff to the defendants answer. Whereupon the

Court being fully advised in the premises overrules said demurrer to
which ruling and judgment of the Court the plaintiff excepts. Whereupon
the plaintiff obtained leave to file reply to the defendants answer instanter.
J.13.O.537. October Term 1885 To-wit: Oct. 31st, 1885.

This day came the parties by their
attorneys and this cause came on to be tried and thereupon came a
Jury to-wit: James H. Kyle, R. Mayfield, S.R. Childs, Oliver Shaw, R.W. Boggs
J.A. Reed, A.L. Wightman, Glen Hendrix, John Tracy, J.R. Taylor, Jacob Knich-
ensee and Joseph Henderson, who being duly impanneled and sworn
to well and truly try the issue joined between the parties in this cause
and a true verdict render according to the evidence under instructions
by consent of parties discharged by the Court, and after hearing the
testimony, arguments of counsel and charge of the Court, the said
Jurors retired to their room to deliberate upon their verdict and after
due deliberation, returned into open Court and presented their verdict
in writing in the words and figures following, to-wit:
The State of Ohio, Huron County, ss. October Term A.D. 1885 To-wit Oct. 31st 1885.
Civil Action. Verdict.
A.J. Smith, Plaintiff vs. Geo. H. Longbrake, Defendant. We the Jury in this case
being duly impanneled and sworn do find and say that we find for
the plaintiff and assess his damages in the sum of $80.00
J.13.O.569 October Term, 1885. To-wit: Dec. 21st 1885. J.R. Taylor, Foreman.

This day this cause came on to be
heard upon the motion of Plaintiff for a judgment on the verdict here-
tofore herein and on motion of defendant to have the Court to order
each party to pay his costs herein on consideration whereof, and the Court
being fully advised in the premises overrule the motion of the defend-
ant to which overruling of the Court the defendant excepts and thereupon
the Court orders that judgment be rendered upon the verdict of the Jury
heretofore rendered herein and that the defendant pay the costs of this
action, taxed at $ for all of which execution is awarded to which
judgment defendant excepted.
The State of Ohio, }
Huron County, ss. } I, J.C. Burgner, Clerk of the Common Pleas Court, within
and for said County and in whose custody the files Journals and
Records of said Court are required by the laws of the state of Ohio to
be kept, hereby certify that the foregoing is taken and copied from the
Journal No. 13 pages, 514, 530, 534 & 569 of the proceedings of the Common
Pleas Court within and for said County and that said foregoing copy has
been compared by me with the original entry in said Journal No. 13 Pages
514, 530, 534 & 569 and that the same is a correct transcript thereof.
In testimony whereof, I do hereto subscribed my name officially and affix
the seal of said Court, at the Court House in the town of Norwalk in
said County, this 15th day of April A.D. 1886.
J.C. Burgner, Clerk.

On the 9th day of April 1886, the following Petition in error was filed with
the Clerk of the Circuit Court, to-wit:
Geo. H. Longbrake } Circuit Court
vs. } Huron County, Ohio.
Andrew J. Smith }

Entry

The plaintiff in error George W. Longbrake complains of the said defendant for this: that at the October Term 1885 of the Lenawee Common Pleas of said County of Lenawee the said Andrew J. Smith obtained a verdict of a jury in his favor against said Geo. W. Longbrake for the sum of $85 in an action pending in said Court of Lenawee Pleas, and afterwards on the 21st day of December 1885; the said Longbrake having paid said $85 to the satisfaction of said Andrew J. Smith the said Court rendered judgment against said Longbrake for the costs in said action taxed to $ which judgment was excepted to at the time and the same is unpaid and in full force.

There is error in said judgment and record in this: that the said Court erred in overruling the defendants demurrer to the plaintiffs petition. 2d. The said verdict being for less than $10 there was no law in such a case to authorize any judgment for costs. 3d. The said Court had no authority of law to render said judgment for costs against said plaintiff in error and he prays judgment of reversal of said judgment.

Robinson & Piper,
Attorneys for Plaintiff in Error.

Service of Summons waived and appearance of the defendant in error entered this 20th day of April A.D. 1886.

Andrew J. Smith
By W.B. Fulton his Attorney.

On the 6th day of October, 1886 the following Entry was made on the Journal by the Clerk of the Circuit Court to-wit:

Entry

George W. Longbrake
vs.
Andrew J. Smith

This day came on this cause for decision and the Court having heard the parties and considered the cause do find error in said record in this: that the Court of Common Pleas erred in rendering judgment against plaintiff in error for all of the costs and for that reason said judgment for costs is reversed at the costs of the defendant in error and further this Court render the judgment which said Common Pleas Court should have rendered to-wit: that each party pay his own costs in said Court. It is therefore considered and adjudged by this Court that each of said parties pay his own costs in said Court and in default for five days that execution issue therefor and that defendant in error pay the costs in this Court and in default that execution issue therefor and this cause is remanded for execution.

Attest: John D. Bourgman Clerk.

Pleas before the Honorable Thomas Beer, John J. Irvine, and Henry H. Emery, Judges of the Circuit Court within and for the County of Huron in the third Judicial Circuit of the State of Ohio, was begun and held at the Court House in the Town of Wakeville on the fifth day of October, in the year of our Lord, Eighteen Hundred and Eighty Six.

Be it remembered, to-wit: On the 29th day of September 1886, the following Transcript was filed with the Clerk of the Circuit Court, to-wit:

The State of Ohio, }
Huron County, ss. } In the Common Pleas Court. October Term 1886.

O. E. Sinclebe & Co., Plaintiff } Journal Vol. 13. Page 621.
Against } Journal Vol. 14 Pages 19, 52, 53 & 87.
E. P. Houghton, Admr &c. et al, Defts } Certified Copy of Journal Entry.

Oct. 6. 1886. This day this cause came on for hearing on motion of the defendant to require the plaintiff to secure the costs herein, and the same was submitted to the Court. On consideration whereof the Court do sustain said motion. Thereupon the costs were secured this day by indorsement on the petition of said plaintiff by Thomas Stillings which indorsement and surety was approved by the Clerk of this Court.

Mar. 25, 86 This day this cause came on for hearing on the demurrer of the plaintiff to the first defense set forth in the answer of said defendant, Michael O'Brien and the same was argued by counsel and submitted to the Court. On consideration whereof the Court do sustain said demurrer. To which ruling of the Court the said defendant by his attorneys then and there excepted. Thereupon on application by said defendant, leave was granted him to file an amended answer herein by April 1st 1886.

May 31, 86. And now came the said O. E. Sinclebe & Co., and the said Edward P. Houghton having failed to demur or answer to the petition of the said plaintiff the same is therefore taken to be true; and it is considered that the plaintiff might to recover the said sum of $1355 00 so demanded in its petition together with (8%) eight per cent interest thereon from June 1st 1886 as prayed for in said petition. It is therefore considered that the said plaintiff recover against the said defendant, Edward P. Houghton the said sum of $1355 00 with 8% interest from June 1st 1886 together with its costs in and about its suit expended, taxed to $

June 1, 86. This day came the parties by their Attorneys and this cause came on to be tried; and thereupon came a Jury to-wit: John Wiley, Nelson Kellar, W. D. Anderson, J. W. Cahill, J. C. McCormick, Levi Longbrake, A. T. Perry, Wm. Potts, E. K. Rex, Jas. M. McElroy, John L. Sparr, Scott Rice, who being duly impaneled and sworn to well and truly try the issue joined between the the parties in this cause, and a true verdict render according to the evidence unless withdrawn by consent of parties or discharged by the Court and after hearing the testimony, arguments of counsel and charge of the Court, the said jurors retired to their room to deliberate upon their verdict, and after due deliberation returned into open Court and presented their verdict in writing in the words and figures following, to-wit:

The State of Ohio, Huron County, ss. Court of Common Pleas. May Term June 1st 1886.
Civil Action. Verdict for Plaintiff.
O. E. Sinclebe & Co. Plaintiffs vs. Edward P. Houghton, Admr &c. et al. Defendants
We the Jury being duly impaneled and sworn find the issues in the case

in favor of the plaintiff and assess the amount due to the plaintiff from defendant Michael O'Brien at the sum of $1355.00
Seal Longbrake, Foreman.

July 19-86. This day this cause came on for hearing on the motion of the defendant Michael O'Brien for a new trial herein and the same was argued by counsel and submitted to the Court. On consideration whereof the Court do overrule said motion.
It is therefore considered and adjudged by the Court that the said plaintiff do recover of the said defendant Michael O'Brien the said sum of $1355.00 so found due from him to the Jury heretofore impaneled herein with eight per cent interest thereon from the 1st day of June A.D. 1886 together with its costs herein expended taxed to $ and execution is awarded therefor. To all of which orders, judgments and rulings of the Court the said defendant Michael O'Brien by his attorneys then and there excepted.

The State of Ohio, }
Union County, ss. } I, John L. Burgner, Clerk of the Common Pleas Court within and for said County and in whose custody the Files, Journals and Records of said Court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal of the proceedings of the said Court within and for said County and that said foregoing copy has been compared by me with the original entry on said Journal and that the same is a correct transcript thereof. In testimony whereof, I do hereto subscribe my name officially and affix the seal of said Court, at the Court House in Marysville Ohio in said County, this 28th day of September A.D. 1886.
J.L. Burgner, Clerk.

On the 7th day of September 1886, the following Petition in Error was filed in the Clerk's Office of the Circuit Court, to-wit:

Michael O'Brien, Plaintiff in Error }
vs. } In Union County Circuit Court
A.A. Lincoln & Co. Defts in error }

Plaintiff in error says that at the May Term A.D. 1886, of the Court of Common Pleas of Union County, Ohio, defendants in error recovered a judgment by the consideration of said Court against plaintiff in error in the action then pending therein, wherein defendants in error was plaintiff and plaintiff in error and one A.P. Haughton were defendant a transcript of the Docket and Journal entries together with the original papers is filed herewith. There is error said record and proceedings in this Court, to-wit: Said Court erred in sustaining the demurrer of defendant in error to the first defense in the answer of Plaintiff in error. Said Court erred in overruling the motion of plaintiff in error for a new trial. Plaintiff in error therefore prays that said judgment may be reversed, and that he be restored to all things he has lost by reason thereof.
Lawrence & Wood Bros.
Attorneys for Plaintiff in error.

The issuing and service of Summons in error is hereby waived and the appearance of defendant in error is entered.
Sept. 7th 1886. Bendrick & Wm. Campbell,
Attys for defendants in error.

On the 5th day of October 1886, the following Entry was made on the Journal by the Clerk of the Circuit Court, to-wit:
Michael O'Brien, Plaintiff in error
vs.
O.E. Lincoln & Co. Defendants in error

This day appeared the parties by their attorneys and submitted this cause to the Court upon the petition in error, original pleadings and arguments of counsel and the same was taken under advisement by the Court.

On the 6th day of October 1886, the following Entry was made on the Journal by the Clerk of the Circuit Court, to-wit:
Michael O'Brien, Plaintiff in Error
vs.
O.E. Lincoln & Co., Defendants in Error

This day again appeared the parties by their attorneys and this cause came on for decision, the same having been heretofore taken under advisement by the Court. On consideration whereof the Court do find that there is no error in the judgment of said Court of Common Pleas of Huron County, Ohio as complained of in said petition in error. It is therefore considered and adjudged by the Court that the said decision and judgment of said Court of Common Pleas be and the same hereby is affirmed and that said plaintiff in error herein pay the costs of this proceeding taxed at $ and execution is awarded therefor. To which ruling and judgment of the Court said plaintiff in error by his attorneys thereby excepts. It is ordered by the Court a special mandate be sent to the Court of Common Pleas of Huron County Ohio to carry this judgment and order into execution.

Attest: John L. Burgner, Clerk.

Pleas before the Honorable Thomas Barr, Isaac J. Moore and Henry D. Laney, Judges of the Circuit Court within and for the County of Union of the Third Judicial Circuit of the State of Ohio was begun and held at the Court House in the Town of Marysville, on the eighth day of February in the year of our Lord, Eighteen Hundred and Eighty Seven.

Heretofore to-wit: On the 13th day of March, 1885, the following petition was filed with the Clerk of the Court of Common Pleas, to-wit:

Court of Common Pleas,
Union County, Ohio.

Louden & Bright, Plaintiff
vs.
A. E. Degood and Lydia A. Degood and D. H. Ayers, Defts

The plaintiffs, Louden & Bright say they are a partnership firm doing business in the city of Columbus, Ohio, and not incorporated, under the firm name of Louden & Bright and that about the 1st of July 1884 said Lydia A. Degood, who is the wife of the said A. E. Degood was indebted to said plaintiff in the sum of $101.00 for which said A. E. Degood executed his promissory note, and that on the day of February 1885, said plaintiffs obtained judgment on said note against said A. E. Degood in the Docket of M. N. Hull, J. P. of Claybourne Township in said County of Union for $105.00 and costs taxed at $ and caused a transcript of said judgment duly certified to be filed with the Clerk of this Court February 1885. Plaintiffs further say that at the time said debt was contracted and said note executed. Said A. E. Degood was the owner in fee simple of about 35 acres of valuable land in Claybourne Township, Union County Ohio of the value of $2 000.00 and that afterwards, to-wit about the day of 1884, said A. E. Degood and wife sold and conveyed said land to one S. S. Gardiner and took in part payment therefor Lot No. 365 in Beaty's Addition to the Town of Richwood in said County at $700.00 and by the procurement of A. E. Degood said Lot was conveyed by said Gardiner to said Lydia A. Degood. That said conveyance was wholly without consideration on the part of said Lydia A. Degood; but the consideration of said conveyance of said land by said Defendants as aforesaid. Plaintiffs further say that said Lydia A. Degood, who was at the time said note was given by said A. E. Degood carrying on the millinery business in Richwood Ohio and who had herself purchased said goods of the plaintiffs in her own name moved her said millinery store to Bellefontaine, Ohio and was allowed to use in her said business a large portion of the proceeds of the sale of said lands and finally failed in business and became insolvent about January 1st 1885, and that said A. E. Degood had prior to said failure disposed of all his property, both real and personal, so that at the time of the taking of said judgment as aforesaid both of said defendants were helplessly insolvent and neither of them had any property except said Lot No. 365 which was in the name of the said Lydia A. Degood but not included in her deed of assignment Jan. 1st 1885 in Logan County, Probate Court.
Plaintiff says the defendant D. H. Ayers claims to have some interest in said Lot by virtue of mortgage executed by said Lydia A.

Degood, wife of the said A. L. Degood, which he is required to set up & likewise plaintiff prays that said judgment may be decreed and held by the Court to be a lien upon said Lot No. 365 and that an order of Sale issue by the Clerk to Sheriff of said County commanding him to sell said Lot No. 365 as upon execution and said judgment paid from the proceeds.

O. R. Kerr,
Atty for Plaintiffs.

State of Ohio, }
Union County, ss. } O. R. Kerr being sworn says he is the attorney for said Plaintiffs and that the facts stated in the foregoing petition are true as he believes and that said plaintiffs are now residents of said County.

O. R. Kerr.

Sworn to before me and subscribed in my presence this 18th day of March 1885.

J. B. Burgner, Clerk.

The Clerk will issue Summons to Sheriff of Union County for Defendants A. L. Degood and D. W. Ayers and to Sheriff of Logan County for Lydia A. Degood. Endorse, Equitable relief.

On the 18th day of March 1885, the following Summons was issued by the Clerk of the Court of Common Pleas, to wit:

Summons. Entry 4789.

Summons

The State of Ohio, Union County, ss.

To the Sheriff of the County of Union, Greeting:

We command you to notify A. L. Degood and D. W. Ayers that they and another has been sued by Souder and Bright in the Court of Common Pleas, of Union County, and that unless they answer by the 18th day of April A. D. 1885 the petition of said Souder & Bright against them filed in the Clerk's Office of said Court, such petition will be taken as true and judgment rendered accordingly.

You will make due return of this summons on the 30th day of March A. D. 1885. Witness my hand and the seal of said Court, this 30th day of March A. D. 1885.

J. B. Burgner, Clerk.
By W. W. Winget, Deputy.

In action for Equitable relief.

The State of Ohio, } Sheriff's Return.
Union County, ss. } Received this writ March 19 A. D. 1885, at 10 o'clock A. M. and pursuant to its command, on the 21st day of March A. D. 1885, I served the same by delivering to the within named defendants a true copy of this writ with endorsements thereon.

Service 45, Mileage 2 08, Copies 40: Total Sheriff's Fees $2.93

Warren Hopkins, Sheriff.
By A. H. Goodwine, Deputy.

On the 18th day of March, 1885, the following Summons was issued by the Clerk of the Court of Common Pleas, to wit:

Summons.

Summons

The State of Ohio, Union County, ss.

To the Sheriff of the County of Logan, Greeting:

We command you to notify Lydia A. Degood that she and others have been sued by Souder and Bright in the Court of Common Pleas

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Union County and that unless she answers by the 18th day of April A.D. 1885 the petition of said Souder and Bright against them filed in the Clerk's office of said Court, such petition will be taken as true and judgment rendered accordingly. You will make due return of this summons on the 30th day of March A.D. 1885.

Witness my hand and the seal of said Court, this 18th day of March A.D. 1885. J.L. Brugger, Clerk.

In action for equitable relief.

Return. The State of Ohio, } Sheriff's Return.
Logan County, ss. } Received this writ March 20th A.D. 1885, at 2 o'clock P.M. and pursuant to its command, on the 20th day of March A.D. 1885, I served the same by delivering a certified copy thereof with the endorsements thereon to the within named Lyford A. Degood, personally. Service 30 Mileage 16 Copy 16 Return & Postage 28. Total Sheriff's Fees 90. W.B. Lloyd, Sheriff,
Logan County, Ohio.

On the 17th day of June 1885, the following Entry was made on the Journal by the Clerk of the Court of Common Pleas, to-wit:

Souder & Bright
vs.
A.C. Degood et al } Entry #789.

This day this cause came on to be heard on motion for leave to file answers and cross-petitions of B. Degood and John Souder and on consideration whereof the Court sustained said motion and leave granted to B. Degood to file answer and cross-petition and also leave was granted to J. Souder to file answer and cross-petition. Pleadings to be filed instanter.

On the 26th day of October 1885, the following Answer of A.C. Degood was filed with the Clerk of the Court of Common Pleas, to-wit:

Souder & Bright
vs
A.C. Degood et al } Court of Common Pleas, Union County, Ohio.

And now comes the defendants, A.C. Degood and says that the allegations of the plaintiff's petition are true and asks that said premises be sold as prayed for in the petition and the proceeds thereof be applied, to the payment of plaintiff's claim and second, to the payment of said B. Degood's claim: and third to the claim of J. Sandon. A.C. Degood

State of Ohio, } A.C. Degood being sworn, says the statements in the foregoing answer are true as he believes. A.C. Degood.
Union County ss }

Sworn to before me, and subscribed in my presence this 26th day of October, 1885. F. M. McAdams, J.P.

On the 29th day of October 1885, the following Demurrer was filed with the Clerk of the Court of Common Pleas, to-wit:

Demurrer. Lowder & Bright, Plaintiff
vs.
A.A. Degood et al., Defendants

Court of Common Pleas.
Union County, Ohio.

The defendant, Lydia A. Degood now comes and demurs to the petition of the plaintiffs and cross-petition of Benjamin Degood herein and for cause says that the same does not state facts sufficient to constitute a cause of action.

D.W. Ayers, Atty for L.A. Degood.

On the 25th day of April 1885, the following Answer and Cross Petition of L. Degood was filed with the Clerk of the Court of Common Pleas, to-wit:

Cross Petition. Lowder & Bright, Plaintiff
vs.
Almon A. Degood, Lydia A. Degood, Benj. Degood et al.

Court of Common Pleas Union County Ohio.

Answer and Cross-Petition of Benj. Degood, who says that on the 17th day of March 1857 he signed a note as surety for said Almon A. Degood for $200 due in one year from date bearing 8 per cent interest payable to Cornelia Taylor. That since said note became due said plaintiff paid $85 out of his own means. That on the 25th of March 1865 said Almon A. Degood paid thereon $75 and on the 24th of April 1865, said plaintiff secured a judgment against said Almon A. Degood on said note for $142.25 on the docket of Wm. H. Hill a Justice of the Peace and has this day caused a transcript of said judgment to be filed with the Clerk of said Court as a lien upon the real estate of said Almon A. Degood in said County of Union and plaintiff further says that at the time said $200 note, said Almon A. Degood was the owner in fee of a certain farm in Claysville Township, Union County Ohio, known as the Adler Farm and in or about the month of September 1874 said Almon A. Degood sold said farm to D.S. Gardiner and agreed to take and did take in part payment therefor the following described premises. Being in Lot No. 365 in Beatty's Addition to the Town of Richwood. And while this note was wholly unpaid and without securing the payment thereof or reserving any property out of which said indebtedness could be collected, he caused the deed for said Lot No. 365 to be made in the name of said Lydia A. Degood, who was then his wife. That said conveyance was made to her without consideration and in fraud of his creditors. That said Almon A. Degood has become and is now wholly insolvent and without means to pay said judgment other than said Lot No. 365. That a large amount of the balance of the proceeds of said farm were by said Lydia A. Degood and her said husband invested in a millinery business in Bellefontaine Ohio, under the management and control of the said Lydia A. Degood. Which means have all been lost in said business. Wherefore plaintiff prays that said conveyance of said Lot No. 365 may be by the order of the Court set aside and held for naught and that said Lot may be decreed to be the property of said Almon A. Degood and that the said judgment of $142.25 against the said Almon A. Degood be declared a valid and subsisting lien against said above described Lot and that unless said judgment be paid by said Almon A. Degood by a time to be named then that said property be sold by order of the Court

Entry #789

to pay said claim, so in case said property is sold by any former order of this Court, then that said judgment be paid out of the proceeds of said sale remaining in the hands of the Sheriff, after all prior liens are fully paid. Defendant says he admits the claims of plaintiff.

P. R. Sears, for Benj. Degood.

State of Ohio. }
Lorain County ss. } Before me, a Justice of the Peace in and for said County personally came B. Degood, the defendant, who being sworn says the statements and allegations in the foregoing are true as he believes.

B. Degood.

Sworn to before me and subscribed in my presence this 24th day of April 1885.

Wm. H. Hill, Justice of the Peace.

On the 23d day of March the following Entry was made on the Journal by the Clerk of the Court of Common Pleas, to-wit:

Sauder & Bright }
vs
A. C. Degood et al. }

Entry
#789

This day this cause came on to be heard on the demurrer of defendant Sydia A. Degood to the petition of the plaintiff and cross-petition of Benjamin Degood. Whereupon the Court being fully advised in the premises doth overrule said demurrer to which ruling said defendant, Sydia A. Degood excepts. Leave is given defendants to plead in ten days from the rising of Court and cause continued.

On the 8th day of May 1886, the following Answer of Sydia A. Degood was filed with the Clerk of the Court of Common Pleas, to-wit:

Sauder & Bright, Plaintiff
vs
A. C. Degood et als. Defendants }

Court of Common Pleas.
Lorain County, Ohio.

The defendant, Sydia A. Degood for her answer to the petition of said plaintiff and the Cross-petition of B. Degood says that they ought not to have or maintain their said action against her for she says she knows nothing about the alleged proceeding and judgment against A. C. Degood and therefore, denies the same. And for further answer says it is not true that Lot No. 365 on Beatty Addition to the Town of Richwood, Ohio, was conveyed to this defendant without consideration. That at the time in 1854 as stated in plaintiff's petition A. C. Degood the husband of this defendant was the owner of about Thirty five (35) acres of valuable land in Claybourne Township of said County. That the said A. C. Degood desired to sell said lands and solicited this defendant to join him in the conveyance thereof, which this defendant declined to do. That it was agreed between the said A. C. Degood and this defendant that in consideration of this defendant joining her husband in the conveyance of the said lands and thereby parting with and conveying her protective power thereon to A. C. Gardner. That the said A. C. Degood was to have conveyed to this defendant the said Lot 365. This defendant says

that by reason of said agreement she signed the deed to said lands and that by reason of said act and in pursuance of said agreement A.B. Degood had said Lot conveyed to this defendant, the same being in part payment by said Grantees for the lands so conveyed to him. That she would not have joined in said conveyance but for the said agreement. This defendant asks that she may be allowed to recover her costs herein.

D.H. Ayers,
Atty for Lydia A. Degood.

State of Ohio, Union County, ss

D.H. Ayers being duly sworn says he is the attorney for Lydia A. Degood, duly authorized in the premises; that the said Lydia A. Degood is a non resident of Union County; that the facts stated and allegations in the foregoing answer are to the believe true.

D.H. Ayers

Sworn to before me and signed in my presence by D.H. Ayers this 8th day of May 1886.

J.L. Burgner, Clerk.

On the 8th day of May 1886, the following Demurrer to Answer was filed with the Clerk of the Court of Common Pleas, to-wit:

Lowder & Bright
vs.
A.B. Degood et al
} Court of Common Pleas
Union County, Ohio.

And now comes the plaintiff and demurs to the 2d ground in the answer filed by defendant, Lydia A. Degood and for grounds therefor says the said 2d grounds of defense is not sufficient to constitute a defense to the petition of the plaintiff.

A.R. Kerr, Atty for Plaintiff.

On the 15th day of November the following Supplemental Petition was filed with the Clerk of the Court of Common Pleas, to-wit:

Lowder & Bright
vs.
A.B. Degood et al.
} Court of Common Pleas
Union County, Ohio.

And now comes the plaintiff and by leave of Court files this their supplemental petition and says that since the filing of the original petition the real estate described therein has been sold in a mortgage lien in an action instituted by J. Finly against Micheal Tinguer et al. and that the proceeds of said sale after paying said mortgage claim and costs remain in hands of the Sheriff. Plaintiff therefore asks that their claim in this action be satisfied from said funds in the hands of the Sheriff.

A.R. Kerr, Atty for Plaintiffs.

State of Ohio, Union County, ss.

A.R. Kerr being sworn says he is the attorney for plaintiffs and that they are non residents of said County of Union and that the matters alleged in the foregoing supplemental petition are true. A.R. Kerr

Sworn to before me and subscribed in my presence, this 15th day of November 1886.

J.L. Burgner, Clerk.

On the 17th day of November 1886 the following Amended Answer was filed with the Clerk of the Court of Common Pleas, to-wit:

Lorden & Bright, Plaintiffs
vs.
A. E. Degood et al Sydia A. Degood

Union County, Ohio,
Court of Common Pleas.

The defendant Sydia A. Degood by leave of Court files this her amended answer and says: She is a resident citizen of the State of Ohio and the head of a family leaving one child, Bessie Degood, an infant residing with her, being the issue of her said marriage with said A. E. Degood; that neither she nor the said A. E. Degood nor none of their real estate or home stead except the said lot in Richwood, described in the said petition; that the same is her sole and separate estate and property and home-stead; that it is worth not to exceed $500 and that she has temporarily leased and rented the same, but has not relinquished or abandoned the same to which she expects and intends to return so soon as her said child recovers from the sickness now prostrate and which it is now prostrate and has been by reason unable to be removed for a year last past. This defendant further says that at and before the time said lot was conveyed to her by the said Gardiner, the said A. E. Degood was the owner of about 45½ acres of land of the value of more than $60 per acre, which he desired to convey to the said Gardiner; that this defendant declined to unite with him and release her expectancy of dower therein, except upon the condition that he cause and procure the said Gardiner to convey to her the said lot in consideration of her uniting with her said husband in the conveyance of said land; that she did unite with him in said conveyance to the said Gardiner, in consideration of which and to procure to her a home-stead, he the said A. E. Degood caused the said lot to be conveyed to her. She further says that the said A. E. Degood at the date of the said conveyance had other means, moneys and property amply sufficient to pay all his then indebtedness and much more and had means, moneys and property other than said lot ample sufficient and far more to pay all and singular his indebtedness set out in the pleadings in this case and she avers that she had a right to cause the said lot to be conveyed to her as a gift free and discharged from all claims of his creditors legal or equitable. She further says that the consideration paid to the said A. E. Degood by the said Gardiner for the said land was $ over and in excess of and in addition to the estimated price of the said lot so conveyed to her. This defendant admits the recovery of said judgment by plaintiff against the said A. E. Degood in the petition mentioned, admits her now insolvency except that she owns said lot admits the making of said assignment and says she has no knowledge or means of knowing whether the said A. E. Degood be or be not insolvent and therefore denies the same and denies that any part of the proceeds of said land came to her possession or was invested in her business as in the petition alleged or otherwise and avers that her said husband having become alienated from her is now conniving with the plaintiffs and others to wrongfully deprive her of her homestead

as aforesaid; the same being all that she has left upon which to support herself and her said sick child. And she denies that she is indebted to the plaintiffs and denies want or failure of consideration for the conveyance of said lot and denies each and every other allegation of the petition not herein before admited are denied.

W. H. West and D. W. Ayers.
Attorneys for Sydia A. Degood.

State of Ohio } ss
Union County } D. W. Ayers being duly sworn says he is one of the attorneys for Sydia A. Degood duly authorized in the premises; that said Sydia A. Degood is a non-resident of said County of Union and now absent therefrom; that the facts stated and allegations in the foregoing amended answer are as he believes true.

D. W. Ayers.

Sworn to before me and signed in my presence by D. W. Ayers this 17th day of November A. D. 1886. J. E. Bingham. Clerk.

Entry 4989.

On the 17th day of November, 1886, the following Motion was filed with the Clerk of the Court of Common Pleas, to-wit:

Motion 4789.

Souder & Bright
vs.
A. K. Degood et al.

And now comes the defendants and asks the leave to strike out all of the amended answer of Sydia A. Degood after the words last past in the 30th line of first page thereof to the words "to her" in the 13th line of second page. Also all after the words "further says" in the 19th line of second page to word equitable in the 31st line of said second page and all from said word to words "to her" in the 5th line of 3d page. Also all after the words "denies the same" in the 14th line of 3d page to the words "said lot" in 28th line of said 3d page.

C. R. Kerr, Atty for Plaintiff

On the 30th day of November, 1886. the following Reply was filed with the Clerk of the Court of Common Pleas, to-wit:

Reply.

Souder & Bright
vs
A. K. Degood et al.

Court of Common Pleas,
Union County, Ohio.

And now comes the plaintiffs and for reply to the amended answer of Sydia A. Degood says that said A. K. Degood and Sydia A. Degood did wed and have not for more than a years lived together as husband and wife, but are alienated and estranged from each other and that said parties never, either jointly or severally occupied the said lot No. 365, described in the petition as a homestead and neither of them ever had actual possession of the said premises. That said child Bessie Degood has been sick for a long time and has been cared for nursed and provided with medical treatment by the said A. K. Degood since her sickness and is still being provided for by him and they deny that said Sydia A. Degood is the head of a family and that said lot No. 365 was her sole and separate estate and therefore pray as in their supplemental petition that their judgment against the defendant A. K. Degood be paid from the

proceeds of the sale of said lot, now in hands of the Sheriff.
P. R. Kerr. Atty for Plaintiffs.

State of Ohio, Ottawa County, ss.

P. R. Kerr being sworn says he is the attorney for the plaintiffs in this action and that they are non residents of said County and that the statements in the foregoing reply are true as he believes.
P. R. Kerr.

Sworn to before me and subscribed in my presence, this 27th day of November 1886. W. J. Rucker, Notary Public.

On the 6th day of January 1887 the following Entry was made on the Journal by the Clerk of the Court of Common Pleas, to-wit:

Entry 4989.

Souder & Bright
vs.
A. E. Degood et al.

This day this cause came on to be heard, and was submitted on the pleadings, evidence and argument of counsel. On consideration whereof the Court find against the plaintiffs, Souder & Bright on their petition and supplemental petition herein and order the same dismissed. And the Court further find on the amended answer herein of Sydia A. Degood that she was the owner in fee of the real estate in the petition described and entitled to the moneys arising from the sale of said real estate and now in the hands of the Sheriff of Ottawa County, Ohio. It is therefore ordered and adjudged that the said Sheriff pay to Sydia A. Degood the money remaining in his hands after complying with the order of this Court in the case of J. J. Fawley vs. Michael Taugner et als. and that the plaintiffs pay the costs herein expended, taxed to $ And thereupon the plaintiffs gave notice of their intention to appeal this cause and the Court fixes the amount of the appeal bond in the sum of $100.00

On the 7th day of February 1887, the following Appeal Bond was filed with the Clerk of the Circuit Court, to-wit:

Souder & Bright
vs.
A. E. Degood et al.

Court of Common Pleas,
Ottawa County, Ohio.

Whereas in the trial of the above entitled case by the Court in the 5th day of January 1887 Sydia A. Degood one of the defendants obtained judgment against the plaintiffs for costs and the said plaintiffs have given notice of their intention to appeal from said judgment to the Circuit Court of said County. Now therefore we, Souder & Bright, George W. Sattimes and P. R. Kerr do hereby obligate ourselves to said Sydia A. Degood in the sum of one hundred dollars ($100.00) that said plaintiffs the appellants shall abide and perform the order and judgment of said appellate Court and shall pay all money costs and damages that may be required of or awarded against them by said Court and shall prosecute their said appeal to final effect, without unnecessary delay. Souder Bright & Bro. Geo. W. Sattimes
P. R. Kerr.

The motion bond approved by one this 4th day of February 1887.
J. R. Bruguier, Clerk.

On the 7th day of February, 1887, the following Transcript was filed with the Clerk of the Circuit Court, to-wit:

Sowden & Bright, Plaintiff
Against
A. B. Degood, Lydia A. Degood et al., Defendants

The State of Ohio, Union County ss.
In Common Pleas Court
Journal Vol. 13. Pages 438-469.
Journal Vol 14, pages 1-108-138-164.

Certified Copy of Journal Entry.

May 21-85 J. 13 p. 438 — Plaintiff ordered to secure costs by July 1st 1885 and on default thereof case to stand dismissed.

June 17-85 J. 13. p. 469 — This day this cause came on to be heard on motion for leave to file answer and cross-petition for B. Degood and John Sandon and on consideration whereof the Court sustained said motion and leave granted to B. Degood to file answer and cross petition and also leave was granted to John Sandon to file answer and cross-petition, pleadings to be filed instanter.

Nov. 23-86. J. 14-p 11. — This day this cause came on to be heard on the demurrer of the defendant, Lydia A. Degood to the petition of the plaintiff and cross-petition of B. Degood. Whereupon the Court being fully advised on the premises doth overrule said demurrer to which ruling said defendant and Lydia A. Degood excepts. Leave is given to defendants to plead within ten days from rising of the Court and cause continued.

Oct. 26-86 J. 14-p 103. — This day this cause came on to be heard on the demurrer to the 2d ground of defense in the answer of Lydia A. Degood. Whereupon the Court being fully advised in the premises do sustain said demurrer to which said defendant excepted and leave is granted her to amend her answer.

Nov. 16-86. J. 14. p 138. — Leave to file supplemental petition and same filed.
" " " Amended answer " " "
" " " Reply in ten days and for hearing Jan. 5th 1887.
Thursday Jan. 6th 1887.

J. 14 p. 164 — This day this cause came on to be heard and was submitted on the pleadings, evidence and arguments of counsel. On consideration whereof the Court find against the plaintiff, Sowden & Bright, on their petition and supplemental petition herein and order the same dismissed. And the Court further find on the amended answer herein of Lydia A. Degood that she owns the fee of the real estate in petition described and entitled to the moneys arising from the sale of said real estate and now in the hands of the Sheriff of Ashtabula County, Ohio. It is therefore ordered and adjudged that the said Sheriff pay to Lydia A. Degood the money remaining in his hands after complying with the order of this Court in the case of J. J. Finley vs. Michael Tongue et al. and that plaintiff pay the costs herein expended, taxed to $ and thereupon the plaintiff gave notice of their intention to appeal this cause and the Court fixes the amount of the appeal bond at $100.00

On the 9th day of February 1887, the following Entry was made on the Journal by the Clerk of the Circuit Court, to-wit:

Entry. — Petition #700 — Sowden

Entry.

Souder & Bright
vs.
Lydia A. Degood et als.

This day this cause came on to be heard upon the pleadings, was submitted on the evidence and argument of counsel. On consideration whereof the Court find that Lydia A. Degood was the owner of the said house and lot in Richwood Ohio, and that she is entitled to the money now in the hands of the Sheriff of Union County Ohio, resulting from the sale of said house and lot in case of J.C. Fenley vs. Jas. Faught et al and now in the hands of said Sheriff. It is therefore considered, ordered and adjudged that the said Lydia A. Degood recover said money and the said Sheriff is ordered to pay the money now in his hands, so resulting from said sale to Lydia A. Degood and that the plaintiffs pay the cost herein taxed to #

Attest: John D. Barrere, Clerk.

Pleas before the Honorable Thomas Beer, Henry H. Leavy and George R. Haynes, Judges of the Circuit Court sitting and for the County of Union the third Judicial Circuit of the State of Ohio, was begun and held at the Court House in the Town of Marysville on the 20th day of April in the year of our Lord, Eighteen hundred and eighty seven.

Be it remembered: On the 17th day of January 1885, the following Petition was filed with the Clerk of the Court of Common Pleas, to-wit:

Petition #700

William A. Ballinger, Plaintiff
Against
William Turpie and James Turpie, Defendants

In the Court of Commons Pleas of Union County, Ohio.

Plaintiff says: That the defendants are indebted to him on a verbal contract made by and between said plaintiff and said defendant William Turpie, who the plaintiff is informed and believes was a partner with said defendant James Turpie and doing business under the name of Turpie Bros. and said contract was in relation to property held in partnership by said defendants, said contract was in substance as follows: In the latter part of February about February 15th 1884, plaintiff agreed to and with said defendants as above stated, to furnish the materials and build them a stable on a farm owned by them in Allen Township, Union County Ohio, in consideration therefor said defendants by said William Turpie then and there agreed to pay said plaintiff the reasonable value thereof and the value was thereafter agreed upon between said plaintiff and defendants as $100 00. Plaintiff says that he fully performed on his part of said contract but defendants have neglected and refused to do so perform their said part of said contract although often requested so to do. Plaintiff therefore asks judgment against said defendants for said sum of one Hundred dollars with six per cent interest thereon from March 1st 1884.

Woodruff & Mc Campbell, Attys for Plaintiff

The State of Ohio } William A. Ballinger the plaintiff being sworn
County of Union ss } makes oath that the facts stated in the foregoing petition are as affiant believes true. Affiant further says that the claim sued upon is upon a contract for furnishing materials and building a stable on defendants land, that said claim is just. Affiant believes he ought to recover one hundred dollars and interest from March 1st 1884; that the defendant is a non resident of this State and by reason of said non residence that service of summons cannot be made within the State aforesaid. Affiant further says that this case is one of those mentioned in section No. 5043 of the Revised Statutes of Ohio as amended March 9th 1880.

William A. Ballingers.

Sworn to by said William A. Ballinger before me and signed by him in my presence this 17th day of January A.D. 1885.

J.L. Sprague, Clerk.

Clerk:

Issue order of attachment and summons on above case.

Bostwick & Mc Campbell,
Attorney for Plaintiff.

On the 17th day of January 1885 the following Attachment was issued by the Clerk of the Court of Common Pleas, to-wit:

Attachment.

The State of Ohio, } Court of Common Pleas of
Union County. } Union County.

W. B. Ballinger, Plaintiff,
vs.
Wm. Turpie & Jas. Turpie, Defts. } To the Sheriff of Union County.

You are commanded to attach and safely keep the lands, tenements, goods, chattels, stocks or interest in stocks, rights, credits moneys, and effects of the defendants Wm. Turpie and James Turpie not exempt by law first being applied to the payment of the claims of the plaintiff, William B. Ballinger or so much thereof as will satisfy his claims for $190.00 with 6 pr. interest from March 1st 1884, and also for one hundred dollars the probable cost of this action. You will make due return of this order on the 26th day of Jan. A.D. 1885. Witness my hand and the seal of said Court, this 17th day of Jan. A.D. 1885.

J.L. Sprague, Clerk.

Office Sheriff Union County, Ohio. January, 17th A.D. 1885.

Received this order on the 17th day of January A.D. 1885, and agreeably to the command thereof, I did, on the 17th day of January A.D. 1885, in the presence of H.C. Anderson and R.L. Petridge, two freeholders of said County attach the property described in the schedule marked "A" hereto attached and made part of this Return and having first administered to said freeholders the oath required by law, to make a true inventory and appraisement of said property we proceed to make such inventory and appraisement as will fully appear by reference to said schedule "A".

Schedule "A".

We, John Herbensack, Deputy Sheriff of Union County and two freeholders of said County, do truly inventory and appraise the property attached under the foregoing order as the property of William Turpie and hereinafter described as follows, viz:

Legal Notice

Situate in the County of Union and State of Ohio and in the Village of Marysville, Paris Township and bounded and described as follows: viz: In Survey No. 3357 and bounded and described as follows: Being all of the lot No. one hundred and eleven (111) and all of the lot No. one hundred and twelve (112) South of the Village of Marysville, Union County, Ohio. Also a part of lots No. one (1) twelve (12) and thirteen (13) of said Village bounded and described as follows; to-wit: Beginning at the north west corner of lot No. (1) one on the east margin of East Street of said Village; thence north the east margin of said East Street fifteen poles to the south-east corner of lot No. thirteen (13); thence east with the south line of lot (13) eight (8) poles to the south-east corner of said lot thirteen (13); thence south four (4) poles to the fence of the old cemetery grounds; thence west with the old cemetery ground fence to a corner thereof; thence north-westerly with the fence of said cemetery grounds fourteen poles to the north line of lot no. (1) one aforesaid; thence west with said north line to the place of beginning. Appraised at fifteen hundred dollars ($1500.00).

Given under our hands this 17th day of January A.D. 1885.

John H. Hoversack, Deputy Sheriff.
W. P. Anderson
R. L. Partridge.

Marion Hopkins, Sheriff By J. Hoversack, Deputy Sheriff.

On the 17th day of January A.D. 1885, the following Summons was issued by the Clerk of the Court of Common Pleas, to-wit:

Summons.

The State of Ohio, Union County, ss.:

To the Sheriff of the County of Union, Greeting:

We command you to notify Wm Turpie & James Turpie that they have been sued by Wm B. Ballinger in the Court of Common Pleas, of Union County, and that unless they answer by the 14th day of February A.D. 1885 the petition of said Wm B. Ballinger against them filed in the Clerk's Office of said Court, such petition will be taken as true and judgment rendered accordingly. You will make due return of this summons on the 26th day of January A.D. 1885.

Witness my hand and the seal of said Court, this 17th day of January A.D. 1885.

J. L. Sturgiss, Clerk.

The State of Ohio, Union County, ss. } Sheriff's Return.

Received this writ January 19th A.D. 1885, at 10 o'clock A.M. and pursuant to its command, I showed the same the within named Wm Turpie and James Turpie not found in my County.

Sheriffs fees 72 ¢. Marion Hopkins, Sheriff.

By John Hoversack, Deputy Sheriff.

On the 3d day of March 1885, the following Proof of Legal Notice was filed with the Clerk of the Court of Common Pleas, to-wit:

Legal Notice

William Turpie and James Turpie, who reside at Monon, White County, Indiana will take notice that on January 17th 1885, William A. Ballinger filed his petition in the Court of Common Pleas of Union County, Ohio, in Case No. 4700 against the above named parties, praying judgment against

said parties, in the sum of $100.00 with interest thereon at the rate of six per cent, from March 1st 1884, said amount being claimed in said petition as due the said William A. Ballinger from the parties aforesaid, by virtue of a contract for the construction of a stable on the lands of the parties aforesaid in Allen Township and in the County and State aforesaid. Said parties will also take notice that on January 19th 1885, a writ of attachment in the case aforesaid, issued out of said Court for the sum aforesaid and was levied on the following described real estate, as the property of said William Turpie, to-wit: All of In-Lots Nos. 111 and 112, both of the Village of Marysville, Union County, Ohio: also a part of Lots Nos. 1, 12 & 13 of said Village, bounded and described as follows, to-wit: Beginning at the north-west corner of Lot No. 1 on the east margin of East Street of said Village; thence with the east margin of said East Street 15 poles to the west corner of Lot No. 13; thence east with the south line of said line of Lot No. 13, 8 poles to the South-east corner of Lot No. 13; thence north 4 poles to the fence of the old cemetery grounds; thence west with the old cemetery grounds fence to a corner thereof; thence north-westerly with the fence of said Cemetery grounds 14 poles to the north line of Lot No. 1, aforesaid; thence west with said north line to the place of beginning. Said parties are required to answer on or before March 21st 1885, or judgment may be taken against them.

William A. Ballinger.

Bredrick & McCampbell, Attorneys for Plaintiff. Jan. 21, 1885. 6-w.

The State of Ohio, }
Union County, SS. } The undersigned, being duly sworn, says that a copy of the annexed notice was published for six consecutive weeks in the "Marysville Tribune" a newspaper of general circulation in the County of Union, the first publication beginning with January 21st 1885.

W. O. Shearer.

Sworn to and subscribed before me, this 3rd day of March 1885.

J. C. Burgner, Clerk.

On the 19th day of May 1885 the following Answer was filed with the Clerk of the Court of Common Pleas, to-wit:

William A. Ballinger
vs.
William Turpie and
James Turpie.

Court of Common Pleas,
Union County, Ohio.

The defendants for answer to the plaintiffs petition say they deny that they or either of them or as partners or in any other way made the contract for building a stable on or about the 15th of February 1884 or at any other time or agreed to pay plaintiff for building a stable on the farm of defendants the sum of $100.00 or any other sum and deny that they owe plaintiff any sum whatever and deny that plaintiff built on said farm a stable of any value for them and deny that plaintiff ever demanded payment of them or either of them.

Second. The defendants for further answer say the plaintiff is indebted to defendants for fifteen dollars advanced to the plaintiff which the plaintiff should allow as payment. Robinson & Piper, Attys for Defts.

The State of Ohio, }
Union County, ss. } L. Piper being duly sworn deposes and says from information and belief the allegations of above answer are true. That defendants are

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Agent from and non residents of the said County and he is one of the defendants attorneys in above case. L. Piper.

Sworn to and subscribed before me, May 18th 1885.
J. E. Stugner, Clerk.

On the 21st day of May 1885, the following Entry was made on the Journal by the Clerk of the Court of Common Pleas, to-wit:

Entry. | Wm A. Ballenger vs. Wm Turpie et al | Treasury Only.

And now came the defendants and moved the Court for leave to file answer in this cause instanter, and the Court being fully advised do grant such leave and answer filed.

On the 5th day of November 1885, the following Journal Entry - Jury Trial was made on the Journal by the Clerk of the Court of Common Pleas, to-wit:

Wm. A. Ballenger, Plaintiff vs. Wm. Turpie et al. Defendants | Jury Trial.

This day came the parties by their attorneys and this cause came on to be tried; and thereupon came a Jury, to-wit: Jacob Hutchinson, Joseph Hutchinson, John B. Taylor, James H. Kyle, Elson C. Price, John Moore, R. W. Evans, S. S. Childs, R. Mayfield, Oliver Shaw, John Henderson, A. K. Weinthorpe, who being duly impaneled and sworn to well and truly try the issue joined between the parties in this cause, and a true verdict render according to the evidence, came to the same by consent of parties, or discharged by the Court, and after hearing the testimony, arguments of counsel and charge of the Court, the said Jurors, retired to their room to deliberate upon their verdict, and after due deliberation returned into open Court and presented their verdict in writing, in the words and figures following, to-wit:

Civil Action. Verdict.

The State of Ohio, Union County, ss. | October Term, A.D. 1885. To-wit: November 5th 1885.

William A. Ballenger, Plaintiff, vs. William Turpie et al. Defendants.

We, the Jury, in this case, being duly impaneled and sworn do find for the plaintiff in the sum of $93.00. John Moore, Foreman.

On the 6th day of November 1885, the following motion for a new trial was filed with the Clerk of the Court of Common Pleas, to-wit:

Entry $90 | Wm A. Ballenger vs. Wm Turpie et al | Court of Common Pleas. Union County, Ohio.

The defendants now come and move the Court to set aside the verdict of the Jury and grant a new trial for the following reasons. 1st The said verdict has given for $93 for plaintiff, while in fact by the clear weight of the testimony it should not have been for more than $66 in any event. 2d The said verdict should have been for not exceeding the value of said stable less the $15 paid thereon, and the evidence clearly showed that the stable was not worth over $75 and as clearly showed

that defendant paid $15 thereon by the sale to plaintiff of corn and fodder taken as payment when the agreement to build the stable was made.
3d The verdict is excessive his amount and clearly against the weight of the evidence.
Robertson & Piper, attys for Defendants.

On the 6th day of November, 1885, the following Motion was filed with the Clerk of the Court of Common Pleas, to-wit:

Wm A. Ballinger, Plaintiff
vs
Motion
$700.
Wm Turpie & James Turpie, Defendants.
In the Court of Common Pleas of Union County, Ohio.

And now comes the plaintiff and moves the Court to strike the word "payment" as interlined, on the second ground of defense in defendants answer herein filed for the reason that the same is inconsistent with the first ground of defense and was not an issue upon which the trial was had herein and the same would not and could not have been allowed by the Court after the trial of this action and said answer was not re-verified after said word was interlined
Broderick & McCampbell, Attys for Plaintiff.

On the 15th day of November 1885, the following Entry was made on the Journal by the Clerk of the Court of Common Pleas to-wit:

Wm A. Ballinger
vs
Entry
$700
Wm Turpie et al.

This day came on this cause to be heard on the motion of the plaintiff filed after the rendition of the verdict to strike out the word "payment", which was by agreement inserted after the evidence was all in instead of counter claim or set off from the defendants second defense of their answer and the Court sustains said motion on the ground that it is inconsistent with the first defense of said answer or that the said second defense alleged part payment but found that the plaintiff had consented to the amendment of said answer being made without re-verification of the same. And thereupon the defendants to remove the claim of inconsistency between the two defenses, asked leave of the Court to amend the first defense by admitting the contract but denying that the stable built met the contract or was worth $700 as claimed, but the Court overruled said application on the ground that said amendment would substantially change said defense and sustained the said motion to strike out the plea of payment to all of which rulings and judgments of the Court the defendants except and pray a Bill of exception, which is allowed

Also on the 15th day of November 1885, the following Entry was made on the Journal by the Clerk of the Court of Common Pleas, to-wit:

Wm A. Ballinger
vs.
Entry.
$700
Wm Turpie et al.

This day this cause came on for hearing on the motion

of the defendants to set aside the verdict and for a new trial herein and the Court on consideration thereof does overrule the same, to which ruling and decision the Court, the defendants by their attorneys there and then except. It is therefore considered by the Court that the said plaintiff recover from the said defendants the said sum of ninety three and 00 Dollars as hereto fore, by the verdict of the Jury found due thereon with interest from November 5 th 1885 together with the costs herein expended taxed at $ To which judgment the said defendants by their attorneys there and then except and especially to the judgment for costs. And on motion of the said plaintiff it is ordered that the Sheriff proceed as upon execution to advertise and sell the real estate heretofore attached in this action and now in his hands remaining, or so much thereof as will satisfy the judgment and costs aforesaid and that he report his proceedings to this Court for confirmation. And the defendants pray the Court to allow sign and seal their Bill of exceptions which is accordingly done and the same are ordered to be made a part of the Record.

On the 15 th day of December 1885, the following Bill of Exception was filed with the Clerk of the Court of Common Pleas, to-wit:

Be it remembered that at the trial of the cause of Wm A Ballinger plaintiff against Wm Turpie and James L. Turpie, defendants in the Court of Common Pleas of Marion County Ohio at the October Term 1885, to-wit on the 6 th day of November, 1885 before the Honorable Caleb H. Norris, Judge of said Court, and before a Jury, the plaintiff to sustain the issue on the plaintiff's part became a witness herself and testified as follows, to-wit: One plaintiff - William Turpie came to my house after he bought the place. Can't fix the date. I was living on the place. He came in the evening and while we were putting up his horse he spoke about not being much of a stable, and said he wished he had a stable built on the place. I was using an old church for stable. I told him I would put up one if he wanted. The matter was spoken of several times in the evening. I had a saw mill on the place and told I would put up one cheap. He spoke of about what size it ought to be and said he did not know how much it ought to cost. I told him it would probably cost from $100 to $125. Just before he went to bed in the evening I said to him "I would like to know what he had concluded to do about the stable" and he said "you go on and build one a stable and I will pay for it." I never saw him after the next morning when he left there. We talked in the morning when to put the stable and he told me when to place it and he said among other things to put a board roof on it. After it was built I sent to him a statement of the cost which was I think $ or a little over $100 but I told him I would put at $100 — I asked him in the letter to said the pay for it. In the morning after he told me to build it and after he showed me where to put it we talked about 150 shocks of corn and fodder, which he had on the place. It was the year of the past. I wanted to buy 150 shocks of it of him and he asked me 15 cents a shock and I offered him 10 cents but he refused my offer and I accepted his offer of 15 cents a shock for 150 shocks and he

said "you may let the pay for the corn go on the stable" and I took the corn and used it. There were about 910 feet of stuff on the stable and it was worth on an average of $1.25 per hundred feet. The nails and hinges used were worth $3. to $3.70/100 and the carpenter work cost me $33.37/100. Blocks made at $2 and helping to raise it $2.50 making a total of $1.74.86/100 The stable was 16 feet by 24 & 12 feet to the square It had a board or plank roof. It was low old fashioned frame. Also to further maintain the issues on his part plaintiff called Lon Orvis, who testified that just before going to bed the plaintiff asked Wm Turpie "what about building the stable" and Wm Turpie said "you go on and build the stable and I will pay for it" I am a brother in law of the plaintiff. I was working there. Also for the purpose of maintaining the issues on his part plaintiff called Jno Ballinger his wife who testified that just before going to bed the night Wm Turpie stayed with us my husband asked Wm Turpie about the stable and he said in answer "you go on and build the stable and I will pay for it". Also for the same purpose plaintiff called Adam Wolford who testified that he was a carpenter and had seen the stable in controversy. He looked at it casually at the work and not much at the material. Think it was an old fashioned frame. The lumber was part oak and part chestnut stuff - good clear was worth $1.50 per hundred and poor clear cheaper. Good oak was worth $2.00 The carpenter work was worth about $45. I think without figuring it up, suppose the stable would cost from $115 to $125. The lumber on the average would be worth $1.25 per hundred I suppose. The whole could not be done for less than $100 On Cross examination the witness stated that it was two years ago, yellow oak was worth $2.00 per hundred. I should think the stable would add $100 to the value of the place. If the stable had a shingle roof it would be a pretty good stable. Also for the same purpose plaintiff called Alex. Cairns who testified that he was a carpenter; that he never used the stable in controversy; that from the description you give that it was 16 by 24 feet and an old fashioned frame properly built with good material. I should judge it would cost about $70 to do the work and the material worth about $1.25 per hundred. Also for the same purpose plaintiff called John Wadman who testified as follows. I am a carpenter by trade. I never saw the stable in controversy. If it was an old fashioned frame, it would $90 to $70 for that kind of a frame is no better than the modern style which for a stable of the description you give could be put up on the modern style for from $25 to $30, average lumber is worth about $1.25 per hundred feet. Alex Williamson Smith testified that he was a carpenter but never saw this stable. The work on such a stable as you describe 16 by 24 feet - 12 feet high and would be from $25 to $30. Also John Wadman Jr. testified that he is a carpenter but never saw this stable and never built such a stable and did not know much about it. Suppose the work would be worth $30. Also Neylas Wood testified that he was a carpenter never saw this stable but suppose from your description of it that the work would be about $30.00 for such a stable. The plaintiff further gave in evidence the deed to Turpie for the land on which this stable is built to fix the date and said date of deed is May 3rd 1883. Also the deed from Turpie to Mrs Olsen to show that he owned the land when the stable was built

and the date of said deed was May 15, 1884 and plaintiff gave
in this part called Daniel March who testified that he was a car-
penter and that at the request of Robinson & Piper visited the and
made a careful examination of it. It was 16 by 22 feet 12 feet to
square. Had a poor board roof on it. The stuff seemed to be of infe-
rior quality and it was not well built. I do not call it an old fashioned
frame. The work was not worth more than $20. I have in my mind a
stable we built lately about of that size though 26 feet long. It had a
shingle roof but no floor in it. We charged $26.25 for that. The whole sta-
ble in controversy I do not think is worth over $75. On cross examination
was asked if he did not think the lack of the floor would make the work
on the stable he built equal to the one in controversy and the witness
answered that it probably would make no estimate of the lumber alone,
his average lumber was worth about $1.25 per hundred if it was one half
hard and one half soft. Also for the purpose of maintaining the issue
on defendants part. Hosea Peach was called, who testified that he was
a carpenter and at the request of Robinson and Piper went with Daniel
March and examined this job in controversy. He saw not of the same
pieces but of different pieces. He examined the work and materials, much
of the stuff looked like culls – the work and materials were not over
$75. I call it a wooden style frame but a poor job. He made the ex-
amination of the job last June, at the request of Defendants attorneys.
Defendants gave no other evidence and plaintiff gave no evidence
except that he himself testified that the lumber used for the stable was
not culls. Whereupon the Court charged the Jury to deduct $15 for
the cost if they found for the plaintiff, and bring in a verdict for the
balance if what they found due plaintiff for the stable. Whereupon
the Jury having brought in a verdict for the plaintiff for $93.20 the
defendants moved the Court for a new trial, which the Court overruled
to which ruling of Court the defendant excepted for reasons stated
in said motion, and thereupon the Court rendered judgment against
said defendant for said $93.20 and costs to which judgment defendant
excepted, both as to the debt and as to said costs and especially to the
said judgment for the costs. And defendants prayed the Court to allow
sign and seal this their Bill of Exceptions and order the same to be
made part of the Record of the case which is accordingly done.

Witness my hand and seal this 7th day of December, 1885.

Caleb H. Norris, Judge (Seal)

On the 9th day of April 1886, the following Petition in Error was filed with
the Clerk of the Circuit Court, to-wit:

Wm Turpie et al.
vs.
Wm A. Ballenger

Circuit Court, Union County, Ohio.

The plaintiff Wm Turpie and James H. Turpie say
the said W. A. Ballenger obtained judgment in the Court of Common
Pleas of said County of Union against the Wm Turpie & James H. Turpie
in a certain action in said Court pending at its October Term 1885 for
the sum of $93.20, and $ costs which judgment remains unpaid

and no full face and of which a full transcript is attached.
The said plaintiff say there is error in said judgment and
Record and especially in said judgment for costs for this.
I The Court erred in overruling the motion for new trial for reasons
mentioned in said motion. II The Court erred in overruling the
motion of plaintiffs to amend their answer as shown on the said
Record III. The Court erred in rendering said judgment for costs.
IV. The judgment should have been for the plaintiffs in error instead of
for the defendant. Wherefore plaintiffs pray judgment of reversal of said
judgment and for said judgment for costs. Robinson & Capes
Attys for Plaintiff in Error.

On the 16th day of April 1886, the following Transcript was filed with
the Clerk of the Circuit Court, to-wit:
The State of Ohio,
Huron County, ss. } In Common Pleas Court
Wm A Ballenger, Plaintiff } Journal Ent. 13. Pages 535, 570, 546, 576.
Against
Wm Turpie et al, Defendants } Certified Copy of Journal Entry.
J. 13-P. 535. Term 1885 To-wit May 19th 1885.

And now come the defendants and move
the Court for leave to file Answer in this cause instanter and the Court being fully
advised do grant such leave and answer filed.
J. 13-P. 570 October Term 1885; To-wit: Nov. 5th 1885.

This day came the parties by their attorneys
and this cause came on to be tried; and thereupon came a Jury, to-wit:
Jacob Hutchinson, Joseph Hutchinson, John R. Taylor, James H. Kyle, John C. Pierce,
John Moore, A. W. Evans, S. Childs, A. Brayfield, Oliver Shaw, John Mendenhall, A. K.
Burnham, who being duly impaneled and sworn to well and truly try the
issue joined between the parties in this cause and a true verdict render according
to the evidence, unless withdrawn by consent of parties or discharged by the Court
and after hearing the testimony, arguments of counsel and charge of the Court
the said Jurors retired to their room to deliberate upon their verdict and after due
deliberation returned into open Court and presented their verdict in writing in
the words and figures following, to-wit:-

Civil Action Verdict.

The State of Ohio, Huron County, ss. October Term, A.D. 1885. To-wit: Nov. 5th 1885.
Wm A. Ballenger, Plaintiff vs. Wm Th. Turpie et al. Defendants.
We, the Jury in this case being duly impaneled and sworn do find for the plaintiff
in the sum of $93.00.
John Moore, Foreman.

J. 13-P. 576 to 578 October Term. November 11th 1885.

This day came on this cause to be heard on the
motion of the plaintiff filed after the rendition of the verdict to strike out the word
"payment" (which was by agreement inserted after the evidence was all in instead of
counter-claim as set off) from the defendants second defense of their answer;
and the Court sustains said motion on the ground that it is inconsistent with the
first defense of said answer in that the said second defense alleged part pay-
ment but find that the plaintiff had consented to the amendment of said answer
being made without a new verification of the same; upon the same the defendants
to remove the claim of inconsistency between the two defenses asked leave of the Court

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to amend the first defense by admitting the contract but denying that the stable built was the contract or was worth $150.00 as claimed but the Court overruled said application on the ground that said amendment would substantially change said defense and sustained the said motion to strike out the word "payment" to all of which rulings and judgments of the Court, the defendants except and pray a Bill of Exceptions which is allowed.

J.13-P.574 to 576. October Term 1885; Term: November 13th 1885.

This day this cause came on for hearing, on the motion of defendants to set aside the verdict and for a new trial herein, and the Court on considering same thereof does overrule the same, to which ruling and decision of the Court the defendants by their attorneys then and there except. It is therefore considered by the Court that the said plaintiff recover from the said defendants the said sum of ninety three and 7/100 dollars as heretofore by the verdict of the Jury found due him with interest from November 5th 1885, together with his costs herein expended, taxed to $ To which judgment the said defendants by their attorneys then and there excepted and especially to the judgment for costs. And on motion of the said plaintiff it is ordered that the Sheriff proceed, as upon execution, to advertise and sell the real estate heretofore attached in this action and now in his hands remaining or so much thereof as will satisfy the judgment and costs aforesaid and that he report his proceedings to this Court for confirmation. And the defendants pray the Court to allow sign and seal their Bill of Exceptions, which is accordingly done and the same are ordered to be made a part of the Record.

The State of Ohio,
Union County, ss. } I J.D. Burgner, Clerk of the Common Pleas Court within and for said County, and in whose custody the Files, Journals and Records of said Court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal No. 13 Pages 435; 540, 576, 576, of the proceedings of the Common Pleas Court within and for said County and that said foregoing copy has been compared by me with the original entry on said Journal No. 13 Pages 435; 540, 574 to 576 and that the same is a correct transcript thereof. In testimony whereof, I do hereto subscribe my name officially and affix the seal of said Court, at the Court House in the town of Marysville in said County, this 15th day of April A.D. 1886.

J.D. Burgner, Clerk.

On the 21st day of April the following Entry was made on the Journal by the Clerk of the Circuit Court, to wit:

Wm Turpie & Jas. H. Turpie
vs
Wm A. Ballenger

Circuit Court.

This day came the parties and submitted this cause to the Court. Whereupon the Court being fully advised on the premises do find error in said Record and Judgment in this that the Court of Common Pleas erred in sustaining the motion of said Ballenger to strike out the word "payment". Also erred in overruling the motion of plaintiffs to strike to amend their answer by dismissing the allegations denying the making

of a contract for the building of the barn with said Ballinger.
Whereupon the Court rendered and adjudge that said judgment be and it is reversed and set aside. Whereupon it is considered and adjudged by the Court that plaintiffs in error recover of the defendants in error their costs in this Court expended, taxed at $ Whereupon this Court entered the judgment which said Court of Common Pleas should have done on the said verdict. It is therefore considered, ordered and adjudged by this Court that said H. A. Ballinger recover of the said Wm. Turpie and James H. Turpie the said sum of $98 [illegible] and interest thereon from the 5th day of November 1885 the date of said verdict and that each party pay his own costs made in said Court of Common Pleas. Also the Court order that if said Turpies fail to pay said judgment and interest and their costs in said Court for five days that an order of sale of the attached property issue according to law and this cause is remanded to the Court of Common Pleas for award of execution.

Attest: John D. Burgner Clerk.

Pleas before the Honorable Thomas Acton, Henry H. Seney and George R. Haynes, Judges of a Circuit Court within and for the County of Darke of the Third Judicial Circuit of the State of Ohio was begun and held at the Court House in the town of Greenville on the 2 8th day of April, in the year of our Lord, Eighteen Hundred and Eighty Six. Heretofore, to-wit:

On the 6th day of May 1882, the following Petition was filed with the Clerk of the Court of Common Pleas, to-wit:

George W. Rickard, Plaintiff
Against
James B. Wolfley, Nathan Howard, and Uriah Cahill, as Board of County Commissioners of Darke County, Ohio; William L. Curry as Auditor of Darke County Ohio; and Frederick J. Sager as Surveyor and Engineer of Sager Mill Road; Defendants.

Court of Common Pleas,
Darke County, Ohio.

The said plaintiff, George W. Rickard complains of the above named defendants and says that he is the owner in and seized in fee simple of the lands and tenements hereinafter described, situate in the County of Darke, and State of Ohio and in Greenville Township, and in Surveys Nos. 3686, 3484, 3238, 7209, 10704, 7830, 12125 and 7390, containing in all five hundred and sixty two acres of land more or less. And located on the waters course of Darby Creek and which are adjacent to the road commonly called and known as the Sager Mill Road and which is proposed to be improved as hereinafter stated. The said plaintiff further says that on the 6th day of February 1882 a petition signed by John

T. McKeelough and others was presented to the said Board of Commissioners of said County requesting them to improve the said Sager Mill Road, which is described as follows, to-wit: Beginning on the Sager Mill Road where it intersects the Weaver road near the residence of Jacob Wantsock; thence south easterly with the Sager Mill Road past George Harris, Peter Blankenship, John Douglass, Hiram Robinson and others to a point at or near an angle in said road south westerly from the residence of John T. McKeelough; thence across said McKeelough's land crossing Big Darby creek and through the lands of plaintiff terminating in the angle of the Plain City and Galena gravel road, south of the residence of this plaintiff, and said petition requested said Commissioners to improve said road by grading, graveling culverting, bridging and draining the same under the Levee, Chapter Eight of the Revised Statutes of Ohio and the amendments thereto. And thereupon on said 6th day of February 1882 the said Commissioners appointed Wesley Smallwood, E. H. Smith and William H. Perkins, viewers and said defendant, Frederick J. Sager, Engineer and issued their order to them accordingly to proceed on the 16th day of March 1882 to make actual view and examination of said road and to make report in writing to the said Commissioners at their next regular Session showing the public necessity of the proposed improvement and estimate the expense thereof and to include petition of the lots of lands which on their opinion would be benefited thereby, lying within two miles of said proposed turn pike, and which ought to be assessed for the purpose of constructing the same. Thereupon the said viewers made such view, and on the 20th day of March 1882 the said viewers and engineer made their report and filed the same in the auditors office of said Darby County estimating the cost of said proposed improvement at the sum of $1353.23 and also filed with said report an abstract of the lots and lands which they reported would be benefited, and ought to be assessed for the expense of making said improvement, among which lands the said tracts of land owned by this plaintiff as hereinbefore described were included. The said plaintiff further says that afterwards on the 13th day of April 1882 the said Commissioners after finding that in their opinion public utility required that said improvement be made, did order that the said report of said viewers and engineer to be approved and confirmed and did further order that said road improvement be made and established a free turnpike road and that the same be constructed and established through and across the lands of this plaintiff hereinbefore described and did further order that the lots and lands returned in said report be assessed for the costs and expenses of constructing said improvement. And it was thereupon further ordered by said Commissioners that said Frederick J. Sager be appointed engineer and directed to complete said improvement as prayed for in said petition and as ordered and established by said Commissioners. And thereupon it was further ordered by said Commissioners that Wesley Smallwood, E. H. Smith and William H. Perkins be appointed a committee to make actual view of said road and ascertain the estimated expense of said improvement upon the real estate embraced in the order aforesaid according to the benefits to be

derived therefrom and report the same to the auditor of said County.
The said plaintiff further says that the said Commissioners and
the said Frederick L Sager as engineer by their order and under their
direction are preparing to and is about to build and construct the said
road through the above described lands of plaintiff, a distance of
about 129 rods. And the said parties, Commissioners and engineer
are proceeding to make contracts for the completion of said improvement
and the construction of said turnpike, and are about to carry forward
the work of building said road and assessing the lands of this plain-
tiff for the purpose of paying the costs and expenses of said improve-
ment and are about to carry the same through the lands of plaintiff
and appropriate the same for the whole of the distance above named
in order to complete the road improvement as ordered. The said plaintiff
further says that the said Commissioners had no jurisdiction over the
subject matter in said proceedings and that all their orders and proceedings
in the matter of constructing said improvement through the lands of this
plaintiff are unauthorized illegal and void, because he says First.
That there has never been any road, highway or turnpike laid out
or established through his said lands along the line or over the route upon
which it is now proposed to build said turnpike improvement and the
said petitioners who prayed for the said improvement as heretofore stated
did not ask or petition to have any road laid out or established through
the said lands of plaintiff and did not petition to have any existing
road changed, altered or straightened and there has never been any
proceedings had to condemn or appropriate the said lands of plaintiff
for the purpose of constructing a road or turnpike. And the said peti-
tioners in the said petition so filed by them only petitioned to have the
Sager Brice Road improved by grading, gravelling, culverting, bridging
and draining the same and said road as laid out and established
does not pass upon or through the said lands of plaintiff. Second. The
said plaintiff further says that the said defendants have never ob-
tained his consent to construct said proposed improvement through his
lands and has never obtained authority to do so by act of law or other-
wise and have never in any legal proceeding appropriated or condemned
his said lands for that purpose and have never paid him or secured to
him the value of said lands which they now propose to use and appro-
priate in constructing the said improvement. Third. The said plain-
tiff further says that at the time the said Commissioners granted
the said petition and at the time of ordering the view of said road and
at the time of making the order for the improvement of the same and
at the time of all proceedings and orders in said matter as herein before
set forth. The said Commissioners had not the written consent of a ma-
jority of the resident land owners within the bounds of said road and
who ought to be assessed according to the laws under which said improve-
ment was made for the expenses of the same. But on the contrary the
majority of said resident land owners within the bounds of said road
and who will be benefited and ought under the law to be assessed for
making said improvement have always been opposed to the said
improvement and to the construction thereof. The said plaintiff further

says that the said Frederick J. Sager as engineer of said road improvement has under order of said Commissioners advertised the work of making said improvement at public sale on the 31st day of May A.D. 1882 and propose to let the contract therefor on said day to the best bidder therefor and to proceed at once with the work of said improvement and great and irreparable injury will be done plaintiff in the premises unless the said defendants are restrained from taking any further steps or proceedings in the matter of the said proposed road and the plaintiff therefore prays the court here for an order of injunction restraining each and all of the said defendants from taking any further proceedings whatever in the matter of opening the said proposed road through the lands of this plaintiff or from taking or appropriating any of his lands for the purpose of constructing said road or from locating, building or constructing said proposed turnpike or any part thereof through or across any of his said lands and he further asks the court to enjoin and restrain each and all of said defendants from taking any further or other steps in the matter of building said road over and through his said lands or from making any assessment upon his lands for that purpose or from placing any assessment upon the duplicate of said County against him or his said lands and that in the meantime that he may have a temporary order of injunction restraining each and all of said defendants from doing any of the acts herein complained of and for all other and proper relief in the premises.

By Powell & Faulkner, Plaintiff's Attorneys.

The State of Ohio, }
Huron County, ss } George W. Rickard the above named plaintiff being first duly sworn upon his oath says the facts stated and allegations in the above and foregoing pleading are true.

George W. Rickard

Sworn to before me and subscribed in my presence by said George W. Rickard this 5th day of May, A.D. 1882.

Emery L. Hoskins (Seal)
Notary Public, Huron Co., Ohio.

Said petition is endorsed as follows, to-wit:

Injunction allowed as prayed for in petition so far as it relates to the laying out and constructing a new road through the lands of the plaintiff, on said plaintiff giving an undertaking to the defendants, conditioned according to law in the sum of twenty five hundred dollars to be approved by the Clerk of the Court of Common Pleas of Huron County, Ohio. July 25th 1882.

Fee $2.00
To Clerk.

John B. Coats, Probate Judge.

Issue summons upon the above petition directed to the Sheriff of Huron County, Ohio, for the within named defendants, returnable according to law. Endorsed for injunction and other relief.

On the 6th day of May 1882 the following Summons was issued by the Clerk of the Court of Common Pleas, to-wit:

The State of Ohio, } Summons.
Union County, ss. } To the Sheriff of the County of Union, Greeting:
You commanded upon to notify James B. Whelpley, Nathan Howard and Uriah Leahill, as Commissioners of Union County, Ohio; W. L. Curry, as auditor and Frederick J. Sagen as Engineer and Surveyor of Sagen Mill Road of Union County Ohio, that they have been sued by George W. Rickard in the Court of Common Pleas of Union County and that unless they answer by the 3d day of June A.D. 1882 the petition of George W. Rickard against them filed in the Clerks office of said Court such petition will be taken as true and judgment rendered accordingly. You will make due return of this Summons on the 15th day of May A.D. 1882. Witness my hand and the seal of said Court, this 6th day of May, A.D. 1882. J. D. Prugen, Clerk.
Endorsed: For action for Injunction and other relief.

The State of Ohio, } Sheriffs Return.
Union County, ss. } Received this writ May 6th A.D. 1882 at 10 o'clock A.M. and pursuant to its command, I served the same by delivering a certified copy thereof with the endorsements thereon to each of the within named defendants on the 8th day of May 1882. Service 90, Mileage 5 ea copies 90 Total Sheriffs fees – $6 80 John Rosensack, Sheriff.

On the 23d day of June 1882, the following Demurrer was filed with the Clerk of the Court of Common Pleas, to-wit:

George W. Rickard, Plaintiff. } In Court of Common Pleas, Union County, Ohio.
vs.
James B. Whelpley, et al. Defendants

And now come the defendants, and demur to the plaintiffs petition, and for grounds of demurrer say: 1 That said petition does not state facts sufficient to constitute a cause of action.
Porter & Porter & Broderick,
Attorneys for Defendants.

On the 29th day of July 1882, the following Order of Injunction was filed with the Clerk of the Court of Common Pleas, to-wit:

George W. Rickard, Plaintiff
vs.
James B. Whelpley, Nathan Howard and Uriah Leahill as Board of Commissioners of Union County Ohio, William L. Curry as Auditor and Frederick J. Sagen as Engineer } Before the Probate Judge, Union County, Ohio.
Motion for Temporary Injunction in the Court of Common Pleas, Union County, Ohio.

And now on this 28th day of July A.D. 1882 came the plaintiff by Powell & Fulton his attorneys, and defendants by attorneys Porter & Porter; and it being made to appear that there is at this time no Common Pleas, District or Supreme Judge within said County, the motion of the plaintiff for a temporary injunction came on and was heard upon the petition of the plaintiff and after hearing the argument of counsel and being fully advised in the premises it is considered and ordered that a temporary injunction be, and the same hereby is allowed in this case to restrain the said defendants and that they

be restrained from taking any further steps or proceedings in the matter of the said proposed road mentioned in the petition so far as the same relates to the laying out and constructing a new road and from taking any further steps or proceedings whatever in the matter of running the said proposed road through the lands of plaintiff or from taking or appropriating any of his lands for the purpose of constructing said road or from locating, building or constructing said proposed road through or across any of his said lands and that each and all of said defendants be restrained from taking any further steps in the matter of building said road through or across his said lands for that purpose and from placing any assessment upon the duplicate of said County against him or his said lands for the purpose of building the said proposed new road through or across the lands of the said plaintiff and affecting no other matter or thing or person in relation to said road improvement as prayed for in said petition of plaintiff. It is further ordered that the Clerk of the Court of Common Pleas issue summons in this case endorsed no further allowed on said plaintiff giving an undertaking to the said defendants, conditioned according to law with security to be approved by the said Clerk of the Court of Common Pleas, in the sum of $ 25.00 cts.

John C. Evans, Probate Judge.

On the 29th day of July 1882 the following undertaking was filed with the Clerk of the Court of Common Pleas, to wit:

Undertaking by Plaintiff for Injunction.

The State of Ohio,
Union County, ss. } Court of Common Pleas.

George W. Rickard, Plaintiff.

vs

James B. Whidden, Nathan Howard and Uriah Cahill as Board of Commissioners of Union County Ohio, William S. Curry as Auditor of Union County Ohio, and Frederick J. Sager as Engineer of Sager Mill Road, Defendants

The said plaintiff to the said defendants, James B. Whidden, Nathan Howard and Uriah Cahill as Board of Commissioners of Union County Ohio, William S. Curry as Auditor of Union County Ohio and Frederick J. Sager as Engineer of the Sager Mill Road, in the sum of Twenty five hundred dollars, that the said plaintiff, George W. Rickard shall pay to the said defendants the damages they may sustain by reason of the injunction in this action, if it be finally decided that the said injunction ought not to have been granted.

Marysville, O. July 28th 1882.

George W. Rickard.
T. F. Kilbury.

This undertaking approved by me this 29th day of July 1882

J. D. Burgner
Clerk of said Court.

On the 20th day of December 1882, the following Entry was made on the Journal by the Clerk of the Court of Common Pleas, to-wit:

George W. Rickard, Plaintiff
Against
James B. Whelpley, et al. Defendants

In the Court of Common Pleas of Union County Ohio.

Entry 4031.

This day this cause came on for hearing upon the demurrer of the defendants to the petition of plaintiff herein filed and the same was argued by counsel and submitted to the Court. On consideration whereof the Court do sustain said demurrer. Thereupon came the said plaintiff by his attorneys and asked and obtained leave of the Court to file an amended petition herein by the first day of January A.D. 1883, and this cause is continued to the next term of this Court.

On the 30th day of December 1882, the following Amended Petition was filed with the Clerk of the Court of Common Pleas, to-wit:

George W. Rickard, Plaintiff
vs.
James B. Whelpley, Nathan Leonard and Uriah Cahill, as Board of Commissioners of Union County, Ohio, and William L. Curry as Auditor of Union County Ohio and Frederick J. Sager as Engineer and Surveyor of Sager Mill Road, Defendants

Amended Petition.

The State of Ohio Union County
Court of Common Pleas.

The said plaintiff George W. Rickard complains of the above named defendants and for his amended petition herein says that he is the owner of and seized in fee simple of of the lands and tenements hereinafter described situate in the County of Union and State of Ohio and in Jerome Township and six Surveys Nos. 3686, 3484, 5238, 7209, 10708, 7830, 12125 and 7390, containing in all five hundred and sixty two acres of land more or less and located on the water course of Darby Creek and which are adjacent to the road commonly called and known as the Sager Mill Road and which is proposed to be improved as hereinafter stated. The said plaintiff further says that on the 6th day of February 1882 a petition signed by John T. Vanscoyoc and others was presented to the said Board of Commissioners of said County requesting them to improve the following described road to-wit: Commencing on the Sager Mill Road near the residence of Jacob Swartzcope; thence southerly with the Sager Mill Road, passing the residence of George Harris, Peter Blumenshine, John Douglas, Hunter Robinson and others to a point at or near an angle in said road north-westerly from the residence of John T. Vanscoyoc, thence across the lands of George W. Rickard terminating on the Clarin City and California Gravel Road at or near an angle in said road south of the residence of said George W. Rickard which said road is commonly called the Sager Mill Road. and said petition requested said Commissioners to improve said road by grading, gravelling, culverting, bridging and draining the same under title seven, Chapter eight of the revised statutes of Ohio and the amendments

thereto. And thereupon on said 6th day of February 1882, the said Commissioners appointed Wesley Southard, C. W. Smith and William H. Perkins viewers and said defendant Frederick J. Sager surveyor and engineer and issued their order to them accordingly to proceed and on the 16th day of March 1882 to make actual view and examination of said road and to make report in writing to the said Commissioners at their next regular session, showing the public necessity of the proposed improvement and estimate the expense thereof and to make return of the lots of lands which in their opinion would be benefited thereby lying within two miles of said proposed turnpike and which might to be assessed for the purpose of constructing the same. Thereupon the said viewers made such view and on the 20th day of March 1882 the said viewers and engineer made their report to and filed the same in the Auditors office of said County estimating the cost of said proposed improvement at the sum of 13593 dollars and also filed with said report an abstract of the lots and lands which they reported would be benefited and might to be assessed for the expense of making said improvement, among which lands the said tracts or lots owned by this plaintiff as hereinbefore described were included. The said plaintiff further says that afterwards on the 13th day of April 1882 the said Commissioners after finding that in their opinion public utility required that said improvement be made did order that the said report of said viewers and engineer be approved and confirmed and did further order that said road improvement be made and established a free turnpike road and that the same be constructed and established through and across the lands of this plaintiff hereinbefore described and did further order that the lots and lands returned in said report be assessed for the costs and expenses of constructing said improvement. And it was thereupon further ordered by said Commissioners that said Frederick J. Sager be appointed Engineer and directed to complete said improvement as prayed for in said petition and as ordered and established by said Commissioners And thereupon it was further ordered by said Commissioners that Wesley Southard, C. W. Smith and William H. Perkins be appointed a committee to make actual view of said road and apportion the estimated expense of said improvement upon the real estate embraced in the order aforesaid, according to the benefits to be derived therefrom and report the same to the Auditor of said County. That said plaintiff further says that the said Commissioners and the said Frederick J. Sager as engineer by their order and under their direction is preparing to and is about to build and construct the said road through the above described lands of plaintiff, a distance of about 29 rods and the said parties the said Commissioners and engineer are proceeding to make contracts for the completion of said improvement and the construction of said turnpike and are about to carry forward the work of building said road and assessing the lands of this plaintiff for the purpose of paying the costs and expenses of said improvement and are about to carry the same through the of this plaintiff and appropriate the same for the whole distance above named no

order to complete the said improvement as ordered. The said plaintiff further says that the said Commissioners had no jurisdiction over the subject matter in said proceedings and that their orders and proceedings in the matter of constructing said improvement through the lands of this plaintiff are unauthorized, illegal and void, because he says, First, That there has never been any road, highway or turnpike laid out or established through his said lands along the line or over the route upon which it is now proposed to build said turnpike improvement and the said petitioners who prayed for the said improvement as herein before stated did not ask or petition to have any road laid out or established through the said lands of plaintiff and did not petition to have any existing road changed altered or straightened and there has never been any proceedings had to condemn or appropriate the said lands of plaintiff for the purpose of constructing a road or turnpike: and the said petitioners in the said petition so filed by them only petitioned to have the above described road improved by grading, graveling, culverting, bridging and draining the same and said road as layed out and established does not pass upon or through the said lands of plaintiff and there has never been any proceedings had or taken in any manner whatever, to lay out or establish a road highway or turnpike through and over the lands of said plaintiff along the line or over the route upon which it is proposed to construct said turnpike improvement as hereinbefore set forth.

Second. The said plaintiff further says that the said defendants have never obtained his consent to construct said proposed improvement through his lands and has never obtained authority to do so by act of law or otherwise and never have in any legal proceeding appropriated or condemned his said lands for that purpose and have never paid him the value of the said lands which they now propose to use and appropriate in constructing the said improvement.

Third. The said plaintiff further says that at the time the said Commissioners granted the said petition and at the time of ordering the view of said road and at the time of making the order for the improvement of the same and at the time of all proceedings and orders in said matter as herein before set forth. The said Commissioners did not have the written consent or petition of a majority of the resident land holders of the County, whose lands were reported by the viewers as benefited and assessed for the purpose of building said road. But on the contrary the majority of the resident land holders of the County, whose land were reported by the viewers as benefited and assessed, had at all times been opposed to said improvement and at the time said order was made for said improvement instead of being in favor of the same were opposed to the construction of said turnpike.

Fourth. The plaintiff further says that in order to create an apparent majority of resident land holders in favor of the said improvement the said viewers and engineer did not report all the lots and lands within the bounds of said road and within the assessing district and which were as much benefited thereby as any of the lands

which were reported for assessment; but on the contrary the said viewers and engineer at the instance of and for the benefit of the petitioners for said improvement purposely and in fraud of the plaintiffs rights in the premises omitted from their report a large number of lots and tracts of land lying near said improvement and within the assessing district and which were as much benefited as any of the lands reported for assessment. The same being done for the sole purpose of making a majority in favor of said improvement.

Fifth. The said plaintiff further says that the said Commissioners had before the said proceedings for the said improvement made a division of territory between the said Sager Mill road and what is known as the "post road" and had set off to build the said post road a large number of lots and tracts of land in and near the village of Plain City. And the said viewers and engineer reported a large number of lots and lands lying in and near the said village of Plain City and which had been so set off as territory to build said post Road and assessed upon them the nominal sum of one and two dollars each and the same was done for the sole purpose of getting a large number of land-owners who were assessed a nominal amount only within the bounds of said road and who would therefore favor the said improvement and thus wrongfully and in fraud of plaintiffs rights create an apparent majority in favor of said improvement, when in fact upon a fair and impartial view of said road the majority of resident land-holders within the bounds thereof were opposed thereto.

Sixth. The said plaintiff further says that the said proceedings of the viewers and engineer were all irregular, illegal and void. That they were appointed on the 6th day of February A.D. 1882 and ordered to view said road on the 15th day of March A.D. 1882. And according to the Statutes in such cases made and provided they were not authorized and had no power to make a report of their said proceedings before the June session A.D. 1882 of said Commissioners and the report made by the said viewers on the 20th day of March A.D. 1882 at the said March session of said Commissioners was therefore illegal and void. The said plaintiff further says that the said Frederick J. Sager as engineer of said road improvement has under order of said Commissioners advertised the work of making said improvement at public sale on the 3rd day of May A.D. 1882 and proposes to let the contract therefor on said day to the best bidder therefor and to proceed at once with the work of said improvement and great and irreparable injury will be done plaintiff in the premises unless the said defendants are restrained from taking any further steps in proceedings in the matter of the said proposed road and the plaintiff therefore prays the Court here for an order of injunction restraining each and all of the said defendants from taking any further proceedings whatever in the matter of running the said proposed road through the lands of this plaintiff or from taking or appropriating any of his lands for the purpose of constructing said road or from

locating building or constructing said proposed turnpike or any part thereof through or across any of the said lands. And he further asks the Court to enjoin and restrain each and all of said defendants from taking any further or other steps in the matter of building said road over and through his said lands or from making any assessment upon his lands for that purpose or from placing any assessment upon the duplicate of said County against him or his said lands and that in the meantime that he may have a temporary order of injunction restraining each and all of said defendants from doing any of the acts herein complained of and for all other and proper relief in the premises.

By Sowers Gill & Fraleon,
Plaintiff's Attorneys.

The State of Ohio, }
Union County ss. } George W. Rickard, the above named plaintiff being first duly sworn upon his oath says the facts stated and allegations in the above and foregoing pleading are true. George W. Rickard.

Sworn to before me and subscribed in my presence by said George W. Rickard, this 30th day of Dec. A.D. 1882. J.L. Burgner, Clerk.

On the 2d day of January the following Answer was filed with the Clerk of the Court of Common Pleas, to wit:

Answer. 4031.

George W. Rickard, Plaintiff.
Against
James B. Whelpley, Nathan Hayward and Josiah Cahill as Board of Commissioners of Union County, Ohio, and William Henry as Auditor of Union County Ohio, and Frederick J. Sager as Engineer and Surveyor of Sager Mill Road, Defendants

In the Court of Common Pleas of Union County, Ohio.

And now come the said defendants and for answer to the allegations of plaintiff's amended petition herein filed say: That they admit that said Commissioners, defendants, are proceeding to construct the road improvement described in plaintiff's said amended petition, and deny each and every other allegation therein contained. Defendants therefore ask that they may go hence without day and recover of said plaintiff their costs herein expended and for all proper relief.

Porter & Porter & John M. Goodrick,
Attorneys for Defendants.

The State of Ohio, }
Union County, ss. } William L. Curry, one of the defendants herein being sworn makes oath that the facts stated in the foregoing answer are as affiant believes true. W. L. Curry.

Sworn to by said W. L. Curry before me and signed by him in my presence, this 2d day of January, A.D. 1883.
J.L. Burgner, Clerk.

On the 2d day of February 1883, the following Entry was made on the Journal by the Clerk of the Court of Common Pleas, to wit:

Entry. 4031.

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Report. 4031.

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Entry.
4031.

George W. Rickard,
vs.
James B. Whelpley et al.

This day by the agreement of the parties to this action A.T. Carpenter Esqr. was appointed by the Court a Special Master Commissioner to take testimony in writing and report the same to the Court, and therewith his conclusions on the law and facts involved on the issues joined between the parties in the aforesaid action.

Report.
4031.

On the 11th day of September 1883, the following Repot of Referee was filed with the Clerk of the Court of Common Pleas, to wit:

George W. Rickard
vs.
James B. Whelpley et al.

Court of Common Pleas, Union County, Ohio.

To the Honorable, the Court of Common Pleas in and for the County of Union and State of Ohio.

The undersigned to whom by an order of the Court bearing date February 2d 1883, the above entitled action was referred to hear and determine certain issues therein as will appear by the order of reference, a copy of which is hereto attached, respectfully represents that in pursuance of said order of reference he has been attended from time to time by the parties to this action and their counsel; that he has heard their proofs, allegations and arguments and that having duly considered the same he finds, reports and decrees as follows: Section 4829. Revised Statutes of Ohio, empowers County Commissioners in proceedings under said Act "To improve any State, County, or Township road or any part thereof × × × × by straightening or altering the same" as well as "By grading and graveling" and the succeeding sections prescribe the manner in which it shall be done. The petition under which the proceedings complained of were had prayed for the improvement across the lands of J.T. McCullough, Big Darby Creek and the lands of the plaintiff, as finally ordered. It appears from the evidence and exhibits submitted that the plaintiff made written demand for compensation for land taken and for damages and that both compensation and damage was allowed him. I am of the opinion that the County Commissioners had jurisdiction and full authority under the law to do what they did do and that the First and Second objections raised by plaintiff are not well taken.

Second. I find that a majority of the resident land owners within the territory reported as benefitted did sign the petition asking for said improvement and that the third objection of plaintiffs is not sustained by the evidence.

Third. As to the last objection made by the plaintiffs to the proceedings herein. Under Section 4835, Revised Statutes of Ohio, all lands benefited if within two miles of the road to be improved should be reported by the viewers. (See Wakeman vs. Kauffman 35 O. S. R. 568 & 575).

It is upon this report that the County Commissioners act and if in their opinion public utility requires it and a majority of the resident land holders of the County, whose lands are reported as benefited and ought to be assessed have subscribed the petition an order that the improvement be made

will be entered on their Records. I have already found that a majority of the resident land holders, within the territory reported by the viewers as benefited, did sign the petition asking for said improvement. This gave the County Commissioners authority to make the order for the improvement. It does not appear that the question of the manner in which the viewers had reported was raised before the Commissioners; but it is raised here, and requires consideration. Section 4835 does not authorize the viewers to omit from their report any lands in their judgment benefited by the improvement. It is no part of their duty to take into consideration what assessments may have been levied for other road improvements or to divide or recognize a division of territory between two or more roads. The only questions for viewers appointed under this Section to decide are 1st Are the lands within two miles of the road? 2d Will the lands be benefited by the improvement? If both questions are decided in the affirmative it is the plain duty of the viewers to report the land. It is evident both from the map of territory submitted and the evidence of the viewers themselves as drawn out on Cross examination that they did not report all the lands in their opinion benefited, but that they omitted from their report several lots and tracts of land, which will in their opinion be benefited by the improvement. Some seems to have been omitted by the viewers because it had already been assessed its share on other road and some seems to have been omitted to build other roads in recognition of a division of territory between roads. A practice quite common, but not authorized by law seems to have been the guide of the viewers in this case and to have led them to follow the example of other viewers rather than the course marked out by law. The apportionment committee appointed under Section 4842, a committee entirely independent of the viewers, apportions the costs of the improvement and in doing so take into consideration both the extent of the benefits and the amount of former assessments paid, and with these questions the viewers have nothing to do. In this case it appears that the same persons who were appointed and acted as viewers were also appointed and acted as the Committee to assess and apportion the costs. I am unable to determine whether the framers of the Pike law contemplated such a proceeding and am not called upon to say whether it is advisable since that I do not find that the law itself forbids it but in any event it can not change the rule or excuse the viewers from reporting all the lands in their opinion benefited, because upon their report depends primarily the question of granting the improvement. If a majority of the land holders reported have petitioned for it, there being no other reasons against it the road will be granted In this case all the lands benefited were not reported. If they had been it might have turned out that a majority of those benefited did not sign the petition and did not desire the improvement. The viewers did not comply with the law and report all lands in their opinion benefited, as they should have done and it is quite likely if they had done so it would have been found a majority did not desire the improvement. I am of the opinion and so find that the fourth objection is sustained by the evidence. As to the fifth objection while I do not find that the County Commissioners had anything to do with it, the map and evidence satisfies me that the viewers recognized a division of territory and acted upon and was governed by it in making their report

Exceptions.

and that for some reason best known to them, they left out quite a number of lots and tracts of land known by them to be benefited by the improvement and some of those fully as much benefited as some tracts reported. As to the sixth and last objection made by the plaintiff in the absence of any authorities - none having been cited - and seeing no way in which plaintiff was or could have been prejudiced by the Commissioners granting the prayer of the petition at any adjourned time of the same session instead of at the "next regular session" to follow the language of the statutes, I find the objections not to be well taken. In view of all the foregoing and after a careful examination of the evidence and of the authorities bearing upon the case and cited by the parties I am of the opinion the plaintiff is entitled to the relief prayed for and that as to him an injunction should be granted and I so find.

Respectfully submitted.

A.T. Carpenter.

On the 13th day of September, 1883, the following exceptions to Report were filed with the Clerk of the Court of Common Pleas, to-wit:

George W. Rickard vs. James B. Whipley et al. — Exceptions.

The State of Ohio, Clinton County, Court of Common Pleas.

And now comes the plaintiff and excepts to Report of the Master Commissioners filed herein in the following particulars, to-wit:

1st In finding that the first and second objections of the plaintiff to the jurisdiction of the Commissioners was not well taken and in finding that the Commissioners had jurisdiction to do what they did.

2d In finding that a majority of those reported by the Veiwers as benefited, signed the petition for the improvement of said road.

3d In finding that the sixth objection of plaintiff to his petition was not well taken.

The said plaintiff would therefore ask that the said Report be modified in the foregoing particulars because as found they are contrary to the facts and the law. Powell & Fulton for Plaintiff.

On the 14th day of September 1883, the following Exceptions were filed with the Clerk of the Court of Common Pleas, to-wit:

George W. Rickard, Plaintiff
Against
James B. Whipley, Defendant

Court of Common Pleas,
Clinton County, Ohio.

The defendants now come and except to the Report of the special Master Commissioners and ask the same to be modified for the following reasons to-wit:

First. The finding of the facts made by said special master were all in favor of the defendants and in favor of said improvement That is to say the master found that there was a majority of the resident land-holders of the County, whose lands were reported by the viewers as benefited and might to be assessed, who had subscribed the petition for said improvement.

Second. The special master found that the Commissioners had jurisdiction and full authority to order said improvement.

Third. From the evidence and the issues made the master commissioner found that "it does not appear that the question of the manner in which the viewers had reported was raised before the County Commissioners."

But the special master commissioner as a conclusion of law upon these facts holds that nevertheless the plaintiff did not take the legal remedy given him by statute to have any error of judgment corrected which the viewers might have committed in their omission of certain lots and lands &c., that the judgment should be for the plaintiff and the defendants enjoined from proceeding with the improvement as against the plaintiff and his lands. The special master is incorrect in his finding from the facts, that the viewers did not report all the lands, which in their opinion would be benefited by said improvement; and to their finding defendants except.

We therefore ask that said report be so modified that the law may be applied to the facts so found and that the judgment of this Court upon the facts so found by the special master commissioner be for the defendants.

Porter & Porter & John M. Braddick
Attorneys for Defendants.

On the 3d day of October 1883, the following Entry was made on the Journal by the Clerk of the Court of Common Pleas, to-wit:

George M. Rickard
vs.
James B. Wolfley et al

Entry

This day this cause came on to be heard on the motion of the defendants to modify the report of the master Commissioner filed herein as in said motion stated and was argued by counsel. On consideration whereof and the Court being fully advised in the premises finds that said motion is not well taken and overrules the same. And the Court thereupon doth confirm the report of the said master commissioner and orders that the said master be paid for his services the sum of $150. No action was taken by the Court on the exceptions filed by the plaintiff to said Master's Report. The Court further orders that the defendants be perpetually enjoined as prayed for in the petition of the plaintiff and that the plaintiff recover of the defendants his costs taxed at $ and that defendants pay their own costs taxed at $ for all of which execution is awarded, to all of which rulings, decisions orders and judgment of the Court the defendants then and there and at the time excepted. And thereupon the defendants gave notice of their intention to appeal this cause to the District Court and the Court fixed the amount of the Appeal Bond at $300 00.

"4031"

On the 22d day of October 1883, the following Appeal Bond was filed with the Clerk of the District Court, to-wit:

Appeal Bond.

Know all men by these presents, that we Nathan Howard, Noah Scahill and Luther Liggett as Commissioners of Union County Ohio, and William M. Liggett are held and firmly bound unto George M. Rickard in the penal sum of three hundred dollars, to the payment of which, well and truly to be made, we do hereby jointly and severally bind ourselves, our heirs, executors and adminis-

istrators. Signed Sealed and dated this 22d day of October A.D. 1883.
The conditions of the above obligations is such, that whereas the said
Nathan Howard, Uriah Bachill and Luther Liggett as Commissioners
of Huron County have taken an appeal from a certain decree ren-
dered against them in favor of the said George W. Rickard in
the Court of Common Pleas within and for the County of Huron in
the State of Ohio, at the September Term thereof A.D. 1883 for the sum
of $ costs to the District Court within and for the County aforesaid.
Now if the said Commissioners of Huron County shall abide and per-
form the order and judgment of said District Court, and shall pay all
moneys, costs and damages, which may be required of or awarded
against them by said District Court, then this obligation to be void;
otherwise to remain in full force and virtue in law. (Signed)

Nathan Howard
Uriah Bachill
Luther Liggett
William M. Liggett

I approve the above Bond with the sureties thereto, this 22d day of
October, A.D. 1883. J.D. Burgess, Clerk.

On the 4th day of March 1884 the following Transcript was filed with
the Clerk of the District Court, to-wit:

The State of Ohio, } In Common Pleas Court,
Huron County, ss. } January Term, 1884.

George W. Rickard, Plaintiff
Against
"4031" James B. Whelpley, Nathan Howard
and Uriah Bachill, Board of Commis-
sioners of Huron County Ohio, H. L.
Berry Auditor of Huron County Ohio,
and F. J. Sager, Engineer, Defendants

Certified Copy of Journal Entry.
In vacation, before Probate Judge.
Petition for Temporary Injunction in
the Court of Common Pleas Huron
County, Ohio.

Journal 12. Page 442.

And now on this 28th day of July A.D. 1882 come the plaintiff by
Powell & Fulton his Attorneys and defendants by Porter & Porter their Attorneys
and it being made to appear that there is at this time no Common Pleas,
District or Supreme, within said County, the motion of plaintiff for a
Temporary Injunction came on and was heard upon the petition of the
plaintiff and after hearing the arguments of counsel and being fully
advised in the premises it is considered and ordered that the Temporary
Injunction be and the same hereby is allowed in the case to restrain the
said defendants and that they be restrained from taking any further
steps or proceedings in the matter of the said proposed road mentioned
in the petition so far as the same relates to the laying out and con-
structing a new road. from taking any further steps or proceedings what-
ever in the matter of running the said proposed road through the
lands of the plaintiff or from taking or appropriating any of his lands
for the purpose of constructing said road or from locating, building
or constructing said proposed road through or across any of his
said lands and that each and all of said defendants be restrained

from taking any further steps in the matter of building said road through or across his said lands for that purpose and from pleading any assessment upon the duplicate of said County against him or his said lands for the purpose of building said proposed new road through or across the lands of said plaintiff and affecting in other matter or thing or person in relation to said road improvement as prayed for in said petition of plaintiff. It is further ordered that the Clerk of the Court of Common Pleas issue summons in this case endorsed injunction allowed the said plaintiff giving an undertaking to said defendants conditioned according to law with security to be approved by the Clerk of the Court of Common Pleas in the sum of $250.00

John B. Lewis, Probate Judge (Seal)

Journal 12. Page 366.

October 4th A. D. 1882.

This day this cause came on for hearing upon the demurrer of the defendants to the petition of plaintiff herein filed and the same was argued by counsel and submitted to the Court. On consideration whereof the Court do sustain said demurrer. Thereupon came the plaintiff by his attorneys and asked and obtained leave of the Court to file an amended petition herein by the first day of January 1883 and this cause is continued to the next term of this Court.

Journal 12. Page 369.

February 2d A. D. 1883.

This day by agreement of the parties A. T. Carpenter was appointed by the Court a special master commissioner to take the testimony in writing and report the same to the Court, and therewith his conclusions of the law and facts involved in the issues joined between the parties in the aforesaid action.

Journal 13. Page 14.

October 3d A. D. 1883.

This day this cause came on to be heard on the motion of the defendants to modify the report of the master commissioner filed herein, as in said motion stated and was argued by counsel. On consideration whereof the Court being fully advised in the premises finds the said motion is not well taken and overrule the same. And the Court thereupon doth confirm the report of said master commissioner and order that the said master be paid for his services the sum of one hundred dollars ($100.00). No action was taken by the Court on the exceptions filed by the plaintiff to said master's report. The Court further orders that the defendants be perpetually enjoined as prayed for in the petition of the plaintiff and that the plaintiff recover of the defendants his cost taxed at $ and that defendants pay their own costs taxed at $ for all of which execution is awarded. To all of which rulings, decisions, orders and judgments of the Court the defendants then and there excepted. And thereupon the defendants gave notice of their intention to appeal this cause to the District Court and the Court fix the amount of the appeal bond at $300.00

On the 10th day of February 1885, the following Additional Appeal Bond was filed with the Clerk of the Circuit Court, to-wit:

Additional Appeal Bond. Circuit Court.

Know all men by these presents: That we Nathan Howard, Uriah Seahill Sutton Liggett as Commissioners of Darke County Ohio and George Mc. Peck are held and firmly bound unto George W. Rickard in the penal sum of three hundred dollars to the payment of which well and truly to be made we do hereby jointly and severally bind ourselves, our heirs, executors and administrators. Sealed with our seals and dated this 15th day of March 1885. The condition of the above obligation is such that whereas the said Commissioners of Darke County have taken an appeal from a certain judgment rendered against said Commissioners and in favor of the said George Rickard in the Court of Common Pleas within and for the County of Darke and State of Ohio at the September Term 1883 in case No. 4831 entitled George W. Rickard vs. James B. Whelpley et al. for the sum of $ costs to the District Court of said County. Vol 16 on the docket of said District Court. Now, being desirous that said cause shall be transferred to the Circuit Court of said County, this additional bond is given so that if the said Commissioners of Darke County shall prosecute their appeal to effect without unnecessary delay and shall abide and perform the order and judgment of said Circuit Court and pay all moneys, damages and costs which may be awarded against the said Commissioners of said County, then this obligation shall be void; otherwise it shall remain in full force and virtue in law.

Board of Commissioners, (Seal)
Uriah Seahill (Seal)
George W. Mc. Peck. (Seal)

The execution of the above undertaking, and the sufficiency of the sureties thereon approved by me this 15th day of February A.D. 1885.

J.D. Burgess, Clerk Common Pleas.
Court of said County.

On the 4th day of December 1885 the following Entry was made on the Journal by the Clerk of the Circuit Court, to-wit:

George W. Rickard, Plaintiff
vs.
James B. Whelpley et al, Defendants

Entry

This day came the parties by their attorneys and thereupon this cause came on to be heard upon all the issues joined between the parties, except the issue as to whether a majority of the resident land owners, who were reported by the viewers as benefited and ought to be assessed, had signed the petition asking for the said improvement and was argued by counsel. On consideration whereof the Court find on all the issues thus joined and heard in favor of the defendants. The Court finds that the said viewers acted honestly, in good faith and were not guilty of any fraud; that they did leave off and not report several tracts of land in the assessing District which in their opinion were benefited but which in their opinion ought not to be assessed for said improvement, because such land so omitted lay along the line of another road and not on the line of this road; which said former road was about to be improved in proceedings then pending before the Commissioners and for which said improvement said lands would be assessed and the Court

further find that the plaintiff was before the Commissioners at the time of hearing and had full and complete knowledge of the entire proceedings in reference to said improvement. To all of which finding and ruling and judgment of the Court the plaintiff at the time excepted, and the remaining issue as to whether a majority of the resident land owners, whose lands were reported by the viewers as benefited and ought to be assessed had signed the petition for the improvement is continued until the next term of this Court.

On the 14th day of June 1856, the following Entry was made on the Journal by the Clerk of the Circuit Court, to-wit:

Entry

George M. Rickard, Plaintiff
Against
James B. Whelpley et al, Defendants

This day came the parties by their attorneys and thereupon this cause came on to be heard upon the issue joined between the parties as to whether a majority of the resident land-owners reported by the viewers as benefited and who ought to be assessed to build the road, had signed the petition to Commissioners asking for said improvement, all the questions having been disposed of at a former time of this Court. And thereupon by an agreement between the counsel of the plaintiff and defendants, an agreed statement of facts was submitted to the Court and argued by counsel. And thereupon the Court being fully advised in the premises finds from the agreed statement of facts that there are 121 resident land-owners, whose lands are reported by the viewers as benefited and who ought to be assessed to build said road, and that of these 121 resident land-owners 64 had signed the petition for said improvement and that there is no dispute between the parties as to the above facts.
The Court further find from said agreed statement of facts that one Margaret Mc Cullough was the owner of a dower estate, which had been set off to her by metes and bounds, and which she owned at the time of all the proceedings had herein before the Commissioners and was a resident of Clinton County Ohio and did not sign the petition for the improvement. That said land on which she had her dower estate assigned was reported by the viewers in the name of John T. Mc Cullough, who owned the fee in this dower estate and who also owned other lands in the territory reported for assessment, and of which this dower estate formed a part; that as estate or interest of Margaret Mc Cullough in said land was reported as against her for assessment by the viewers and no assessment was made against her for the improvement, but the only assessment against said tract was against the fee-simple owned by J. T. Mc Cullough; that said John T. Mc Cullough signed the petition for the improvement; that said dower estate was not counted by the Commissioners. The Court find that said Margaret Mc Cullough gave her written consent to the same. It is the opinion of the Court that said dower estate should be counted as a tract of land owned by a resident land-owner, making the number of resident land-owners 122. The Court further finds that Levi and Matilda Taylor were the owners jointly of a tract of land, reported by the viewers as benefited and which ought to be assessed; that said Levi and Matilda Taylor were both residents of the County at the time

of all the proceedings had before the Commissioners herein; that Lew Taylor signed the petition and was properly counted as a petitioner and that Matilda Taylor did not sign the petition; that Lew Taylor owned another tract of land reported by the viewers as benefited and which ought to be assessed. The Court find that the tract owned by Lew Taylor and Matilda Taylor jointly was not counted by the Commissioners, as a tract of land owned by resident land-owners. It is the opinion of the Court that said tract of land owned by said Lew Taylor and Matilda Taylor should be counted as a tract of land owned by resident land-owners and be added to the 122, making the total number of land-owners 123. The Court further finds from said agreed statement of facts that Bruce Robinson and Susanna Robinson owned a tract of land jointly; that O. C. McClure and J. P. McClure owned a tract of land jointly; and that S. B Linville and David Linville owned a tract of land jointly, and that each of the above named parties were residents of the County at the time of all the proceedings had herein before the said Commissioners and the said tracts of land were reported by the viewers as benefited and ought to be assessed; that Bruce Robinson, O. C. McClure and S. B. Linville signed the petition asking for said improvement but that Susanna Robinson, J. P. McClure and David Linville did not sign said petition. The Court find that Susanna Robinson J. P. McClure and David Linville gave no written consent to said improvement. It is the opinion of the Court that the said Bruce Robinson, O. C. McClure and S. B. Linville ought not to be counted as petitioners; and that those being counted by the Commissioners as petitioners should be taken from the 67, thus reducing the number of petitioners to 61. It is therefore considered and adjudged by the Court that a majority of the resident land-owners reported by the viewers as benefited and who ought to be assessed did not sign the petition asking for said improvement and that the said defendants be perpetually enjoined from taking further steps to carry out and construct said road through the lands of plaintiff or from placing any assessment against him or his lands for the making of said improvement to all of which rulings, decisions and judgments the defendants at the time excepted. It further ordered considered and adjudged by the Court that the defendants pay the costs of these proceedings, taxed at $

Attest: John L. Burgess Clerk.

Pleas before the Honorable Thomas. Beer, John J. Moore and Henry W. Seney, Judges of the Circuit Court within and for the County of Union of the Third Judicial Circuit of the State of Ohio, begun and held at the Court-House in the town of Marysville on the 4th day of October in the year of our Lord one thousand eight hundred and eighty seven.

Heretofore, the Appeal Bond and Transcript and original Pleadings from the Court of Common Pleas were filed with the Clerk of the Circuit Court. Said Appeal Bond was filed on the 17th day of Jany 1887, and reads as follows, to-wit:-

Appeal Bond to Circuit Court.

Perry Douglass et.al.
vs.
James B. Whelpley et.al.

6-8

Know all Men by these presents: That we Uriah Cahill, John K. Dodge, T. W. Brannon, George W. McPeck and A. B. Robinson are held and firmly bound unto Perry Douglass et.al. in the penal sum of Three Hundred Dollars to the payment of which well and truly to be made we do hereby jointly and severally bind ourselves, our heirs, executors and administrators.

C.P. No. 4042

Sealed with our seals and dated this 17th day of January 1887

The condition of the above obligation is such that whereas the said Commissioners of said Union County, O, to-wit: Uriah Cahill John K. Dodge and Thomas W. Brannon and the other defendants have taken an appeal from a certain judgment rendered against defendants and in favor of the said Perry Douglass et. al plaintiffs in the Court of Common Pleas within and for the County of Union and State of Ohio at the October Term 1886 in case No 4042 entitled Perry Douglass et.al. vs. James B. Whelpley et.al. to the Circuit Court of said County: Now if the said Commissioners of said County and said other defendants shall prosecute their appeal to effect without unnecessary delay and shall abide and perform the order and judgment of said Circuit Court and pay all damages and costs which may be awarded against them the said defendants then this obligation shall be void; otherwise it shall remain in full force and virtue in law

(In Presence of.)

Uriah Cahill {Seal}
John K. Dodge {Seal}
T. W. Brannon {Seal}
Geo. W. McPeck {Seal}
A. B. Robinson {Seal}

The execution of the above Undertaking and the sufficiency of the sureties therein approved by me this 17th day of January A.D. 1887.

John L. Burgner, Clerk.

Afterward, on the 7th day of February A.D. 1887, the following Transcript was filed with the Clerk of said Circuit Court, to-wit:-

Transcript-

The State of Ohio
Union County, ss. } In Common Pleas Court. Certified Copy of Journal Entries.
Perry Douglass et.al Plaintiffs
vs.
James B. Whelpley et.al. Defendants

6-8

Journal Vol. 12, Page 507, & Journal Vol 14 page 134
Oct. 4th 1882. This day this cause came

Amended Answer

Nos. 5-8

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on for hearing upon the demurrer of the defendants to the petition of plaintiff herein filed and the same was argue by counsel and submitted to the Court for consideration whereof the Court do sustain said demurrer. Thereupon came the plaintiffs by their attys and asked and obtained leave of the Court to file amended petition herein by Jany 1st 1883, and this cause is continued

Nov. 12th 1886, This day this cause came on to be heard upon the issues joined between the parties and the evidence and was argued by counsel on consideration whereof and the Court being fully advised in the premises finds all the issues in the favor of the defendants except the issue as to whether a majority of the resident land owners had signed the petition asking for the said improvement and as to that issue the Court finds in favor of the plaintiffs and that a majority of the resident land owners whose lands were benefited and ought to be assessed did not sign the petition asking for the said improvement.

It is therfore considered adjudged and decreed by the Court that the said defendants be perpetually enjoined from proceeding further in construction of said road or from placing any assessment against the lands of the said plaintiffs for the construction and building of the said road in and by virtue of the said proceedings, that said plaintiff at the time excepted to the finding of the Court so far as said finding found in favor of defendants and the said defendants at the time excepted to the finding of the Court so far as said finding found in favor of the plaintiffs and thereupon came the defendants and gave notice of their intention to appeal this cause to the Circuit Court and the Court fix the bond therefor at the sum of $300 00

The State of Ohio }
Union County, ss. } I, J. Q. Burgner, Clerk of the Common Pleas Court within and for said County, and in whose custody the files, journals and Records of said Court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the journal of the proceedings of the said Common Pleas Court within and for said County, and that said foregoing copy has been compared by me with the original entry on said journal and that the same is a correct transcript thereof

Seal

In testimony whereof, I do hereto subscribe my name officially and affixed the Seal of said Court, at the Court House in Marysville Ohio in said County, this 7th day of Feb A.D. 1887

J. Q. Burgner Clerk.

On the 31st day of January A.D. 1887, the following Amended Answer was filed with the Clerk of said Court.

Perry Douglass et al Plaintiffs
vs.
James B. Whelpley et al. Defendants

Amended Answer

No. 5-8

In the Circuit Court, Union Co. Ohio

Amended Answer.

The defendants by leave of the Court, amend their answer to the amended petition of plaintiffs and say

I. That they admit that said defendants had ordered said improvement and were proceeding to construct and improve the road described in plaintiffs petition beginning in the Sager Mill Road and through the territory described in plaintiffs petition, and

that they were carrying forward the work of making said improvement and at the estimated expense as alleged by plaintiffs. But defendants deny that the petitioners for said road improvement required the improvement of the "Sager Mill Road" merely but asked for the improvement of a road commencing in the Sager Mill Road as aforesaid. Defendants deny each and every other statement and allegation made and contained in said petition.

II. For second ground of defense defendants say: That on said 13th day of April 1882, the said Commissioners found that a majority of the resident land-holders of said County whose lands were reported by the viewers as benefited and ought to be assessed for the expense of said improvement, had signed the petition asking for the same, and being of the opinion that public utility required that said improvement be made, it was ordered that said improvement be made and they proceeded immediately to take the necessary steps to build and complete said road. That the whole length of said proposed improvement was 5.67/100 miles, and the expense of building the same was estimated at $13,593.75;

That said Commissioners on the 21st day of July 1882, let the Contract to build that part of said road beginning at a point at an angle in said road (which angle leads to the Plain City and California Gravel Road) north westerly from the residence of John T. McCullough then across the lands of said John T. McCullough crossing Big Darby Creek and across the lands of said George M. Rickard, terminating in the Plain City and California Gravel Road, at or near an angle in said last named road, and South of the residence of said George M. Rickard for the sum of $1.189.00 But on the 28th day of July 1882, said George M. Rickard in action No 4031 in the Court of Common Pleas of said County obtained a temporary injunction against the defendants, enjoining them from taking any future steps toward building or constructing said road through or across his land. That afterwards the Court of Common Pleas granted a perpetual injunction in favor of said Rickard, and which was duly appealed to the Circuit Court by these defendants and the Circuit Court at its April Term in 1886, perpetually enjoined defendants from constructing said road through the lands of said Rickard. The length of said improvement so enjoined was only 4/100 of a mile. That on the 21st day of August 1882, the Commissioners let the contract for building the balance of said road, to-wit: That part commencing in the Sager Mill Road near the residence of Jacob Swartzcopf; thence South easterly with the Sager Mill Road passing the residence of George Harris, Peter Bloomershine John Douglass, Hunter Robinson and others to a point at or near said angle in said road, north westerly from the residence of John T. McCullough and terminating where the contract let on the 21st day of July 1882 began. This last described territory is the territory in which all the plaintiffs reside and are assessed for such improvement that is to say the lands assessed are within two miles of said improvement, the length of said improvement is 5.2/100 miles

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and said contract was let for the sum of $12.701.00 and said Commissioners issued the bonds of the County to the amount of $11.700.65 for the building of that part of said road. The first bonds were issued to the contractors on the first day of September 1882 for $2.200, upon estimate for work done prior to that time. The value of the work done by said contractors prior to October 4th 1882, was $3.437.50 and the work was then far advanced towards completion and County Bonds had been issued prior to that time on said improvement to the amount of $2.871.15 The contractors immediately went to work upon said improvement, to-wit:- about said 21st day of August 1882, and continued to work upon the same until the said improvement was fully completed and finished and said improvement was fully completed by October 1st 1883, and accepted by said Commissioners and thereon open to the public and traveled by it.

That the plaintiffs well knew that said improvement was being made and that their said lands would be assessed for the expense of making said improvement and they had full knowledge of all the proceedings had by said Commissioners relating to the making of said improvement. And yet plaintiffs permitted defendants to commence, proceed and complete said improvement without obtaining, or ever applying for an injunction or other process to restrain defendants from making said improvement.

The defendants therefore aver that plaintiffs are estopped from denying their liability to pay said assessments for the construction and completion of said improvement &c. Defendants therefore ask that said petition be dismissed and that defendants be allowed to go hence without day.

Brodrick, Porter & Porter
Attys for Defendants

Uriah Cahill, one of the defendants herein being sworn makes oath that the facts stated in the foregoing petition are true as he believes

Uriah Cahill

Sworn to by Uriah Cahill before me and signed by him in my presence this 31st day of January A.D. 1887.

Seal

J. Q. Burgner Clerk.

Afterwards on the 8th day of February A.D. 1887, the following Demurrer was filed with the Clerk of said Court, to-wit:-

Perry Douglass et al.
vs.
James B. Whelpley et al.

No. 5'8

State of Ohio, Union County Circuit Court.

Demurrer

And now comes the plaintiffs and demur to the second defense of defendants' amended answer for the reason that said same does not state facts sufficient to constitute a defense to plaintiffs' amended petition.

Powell & Fullon for Plaintiff

2nd

Afterwards on the 9th day of February A.D. 1887, the following Entry was made on the journal by the Clerk of said Court, to-wit:-

Perry Douglass et al.
vs.
James B. Whelpley et al

No. 5'8

This day on the motion of the defendant leave was given to the defendants to file an Amended answer and thereupon came the plaintiffs and filed a demurrer to the second ground of defense in said amended answer; and thereupon this cause came on to be heard upon said demurrer and was argued by counsel. On consideration whereof and the Court

Entry

being fully advised in the premises find that said demurrer is well taken.
It is therefore considered and adjudged by the Court that said demurrer be and the same is hereby sustained, to which ruling of the Court defendants at the time excepted, and thereupon on motion of plaintiffs leave was given to plaintiffs to file amended or supplemental petition by April 2d 1887, and leave was given to defendants to plead thereto by the 4th day of May 1887 and in case said amended petition is not filed by plaintiff then leave is granted to defendants to amend their amended answer by May 4th 1887,

1st On the 8th day of February A.D. 1887, an Entry was made on the Journal by the Clerk of said Court which reads as follows, to-wit:-

Perry Douglass et al.
vs.
No. 5·8 James B. Whelpley et al.
Entry

This day appeared the parties and their attorneys and submitted this cause to the Court upon the demurrer of the plaintiff to answer of the defendants herein filed and the same was taken under advisement by the Court.

Afterwards on the 31st day of March 1887, the following Supplemental Petition was filed with the Clerk of said Court, to-wit:-

Perry Douglass et al.
vs.
No. 5·8 James B. Whelpley et al.
Supplemental Petition

State of Ohio, Union County Circuit Court
Supplemental Petition

And now come the plaintiffs, leave of Court having first been had and for Supplemental Petition herein say; that since the filing of the original petition herein, to-wit; on the 21st day of July 1882, the contract was let by the defendants the Commissioners of Union County Ohio, to build the following part of the said road described in the petition herein; beginning at a point an angle in said road north westerly from the residence of John T. McCullough, thence across the lands of said John T. McCullough, crossing Big Darby Creek, and across the lands of said George M. Rickard, terminating in the Plain City and California Gravel Road, at or near an angle in said last named road and south of the residence of said George M. Rickard: that on the 28th day of July 1882, said George M. Rickard in action No. 4031, pending in the Court of Common Pleas of Union County Ohio against said Commissioners and others obtained a temporary injunction against the said Commissioners and others enjoining them from taking any further steps towards building or constructing said road through or across his land, that afterwards on the 21st day of August A.D. 1882, the said Commissioners, while said injunction was in full force, let the contract for building the remainder of the said road described in said petition "Commencing in the Sager Mill Road near the residence of Jacob Swartscope, thence South easterly with the Sager Mill Road passing the residence of George Harris, Peter Blumershine, John Douglass, Hunter Robinson and others to a point at or near an angle in said road northwesterly from the residence of John T. McCullough" and terminating where the contract let on 21st day of July 1882 as aforementioned, began. That said contractors immediately commenced work upon the contract let to them to build said part of said road, on the 21st day of August 1882 and that they fully completed the said contract and built the said road from the beginning

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point to the point north-westerly from the residence of John T. McCullough, and the point where the contract let on said 21st day of July 1882 began by the 3rd day of October 1883 on which said day the Commissioners Auditor, Treasurer and Engineer were perpetually enjoined from taking any steps toward building said road through or across the lands of the said George W. Rickard, and relief was granted said George W. Rickard as asked in his petition in said case No. 4031. That said commissioners and others appealed the said case No. 4031 from the said Court of Common Pleas to the Circuit Court of said Union County, which said was heard in said Circuit Court at the April Term thereof 1886, at which said term a perpetual injunction was granted by said Court prohibiting the said Commissioners and others defendants in said action from laying out and constructing said road through or across the lands of the said George W. Rickard, which said order and judgment of said Circuit Court is now in full force. the said plaintiffs further say that the said part of said road described in said petition beginning at a point north-westerly from the residence of said John T. McCullough crossing Big Darby Creek and across the lands of George W. Rickard, terminating in the Plains City and California Gravel Road at or near an angle in said road South of the residence of the said George W. Rickard, has not been completed, nor can the same be constructed or built as prayed for by the petitioners who asked to have said Sager Mill Road improved as stated in said petition for the reason that the said Commissioners have been perpetually enjoined from building the same as above stated. The said plaintiffs further say that the part of said road not builded and which is enjoined as aforesaid, is an important and material part of said improvement, and upon the faith of the construction of which a large part of the signers, who petitioned to have said improvement made as aforesaid, were obtained, and that the part of said road not constructed is about one half of a mile in length. Wherefore plaintiffs pray that by reason of the facts stated in this supplemented petition as well as the facts stated in said amended petition the said Commissioners and other defendants may be enjoined as prayed for in the said amended petition.

Powell & Fulton Attys for Plaintiff

The State of Ohio, }
Union County, ss } Perry Douglass one of the above named plaintiffs being first duly sworn according to law says the facts stated and allegations of the foregoing supplemental petition are true as he verily believes.

P. Douglass.

Sworn to before me and subscribed in my presence this 30th day of March A. D. 1887

Seal

W. W. Merchant Notary Public

Afterwards on the 30th day of April A. D. 1887, the following Demurrer was filed with the Clerk of said Court, to-wit:-

No. 5'8

Perry Douglass et. al. Pltffs
vs.
James B. Wheelpley et. al. Defts

In the Circuit Court Union County, Ohio.

Demurrer

Demurrer

The defendants demur to the supplemental petition filed by plaintiffs on the 31st day of March

A.D. 1887, and for ground of demurrer say: That said supplemental petition does not state facts sufficient to constitute a cause of action or a supplemental cause of action against defendants or either of them

Brodrick and Porter & Porter Attys for Defendants

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Afterward on the 5th day of Oct. A.D. 1887, an Answer was filed with the Clerk of said Court which reads as follows, to-wit:-

No. 5-8

Answer.

Perry Douglass et. al. Plaintiffs

vs.

James B. Whelpley et. al. Defendants

In the Circuit Court, Union County Ohio

Answer.

The defendants, by leave of the Court, answer to the Supplemental petition filed by plaintiffs on the 31st day of March 1887, and to plaintiffs amended petition filed Dec. 30th 1882 and say:-

I. First cause of defense: That defendants admit, as set forth in said amended petition, that defendants had ordered said improvement and were proceeding to construct and improve the road described in plaintiffs petition beginning in the Sager Mill Road, and through the territory described in plaintiffs petition and that they were carrying forward the work of making said improvement and at the estimated expense as alleged by plaintiffs. But the defendants deny that the petitioners for said road improvement, required the improvement of the Sager Mill Road merely, but asked for the improvement of a road commencing in the Sager Mill road as aforesaid. Defendants deny each and every other statement and allegation made and contained in said amended petition filed on December 30th 1882.

III Second ground of defense: The defendants further answering said supplemental and amended petitions say: That on the 13th day of April 1882, the said Commissioners found that a majority of the resident land holders of said County whose lands were reported by the viewers as benefited and ought to be assessed for the expense of said improvement, had signed the petition asking for the same, and being of the opinion that public utility required that said improvement be made, and they proceeded immediately it was ordered that said improvement be made
to take the necessary steps to build and complete said road. That the whole length of said proposed improvement was 5 67/100 miles, and the expense of building the same was estimated at $13,593.75. The defendants admit, as stated in said supplemental petition, that said Commissioners on said 21st day of July 1882, (there being no restraining order to prevent such action) let the contract to build that part of said road which crossed the lands of said George W. Rickard as stated in said supplemental petition, and said George W. Rickard in an action in his own name, and for himself alone set said proceedings of the Commissioners aside as to him. The whole distance in length of the proposed road across the lands of said Rickard, so enjoined and set aside was only 4/100 of a mile and the cost of building the same under said letting, was to be $118.00 and defendants admit that said restraining order in favor of said Rickard is still in force as alleged by plaintiffs. That on the 21st day of August 1882, there being no restraining order in favor of these plaintiffs, and no part of said proceedings to build said road being enjoined, or set aside as to the plaintiffs or any of them, the commissioners of said County let the contract for building

all the remainder of said road, to-wit:- that part commencing in the Sager Mill Road near the residence of Jacob Swartzcope; thence Southeasterly with the Sager Mill Road, passing the residence of George Harris, Peter Bloomershine, John Douglass Hunter Robinson and others to a point at or near said angle in said road, northwesterly from the residence of John T. McCullough, and terminating where the contract let on the 21st day of July 1882 began. This last described territory is the territory in which all the plaintiffs reside and are assessed for such improvement that is to say; their lands assessed are within two miles of this last named improvement. The length of said last named road improvement is 5 7/100 miles and said contract was let for the sum of $12.701.00 and said Commissioners issued the bonds of the County to the amount of $11.700.00 for the building of that part of said road. The first bonds were issued to the contractors on the first day of September 1882 for $2.200.00 upon estimate for works done prior to that time.

The value of the work done by said contractors prior to October 4th 1882, was $3.437.50 and the work was then far advanced towards completion, and County bonds had been issued prior to that time on said improvement to the amount of $2.871.15. The contractors immediately went to work upon said improvement, to-wit about said 21st day of August 1882, and continued to work upon the same until the said improvement was fully completed and furnished, and said improvement was fully completed by October 1st 1883, and accepted by said Commissioners, and thrown open to the public, and traveled by it. Said improvement is of special benefit and of great value to the plaintiffs and is the only direct road for plaintiffs to travel to their County seat. Said improved road connects with the Plain City and California Gravel Road by another Gravel Road which leads to Plain City making an entire improved and graveled road leading from Marysville, the County Seat of Union County, through the County to Plain City, and on into the County of Madison.

That the plaintiffs well knew that said improved gravel road was being made and that their said lands would be assessed for the expense of making said improvement, and they had full knowledge of all the proceedings had by said Commissioners relating to the making of said improved road and yet plaintiffs stood by and permitted defendants to commence, proceed and complete said improvement without objection or protest, and without obtaining, or applying to have said road proceedings set aside as to them, or for a restraining order or other process to prevent defendants from making said said improvement.

The defendants therefore aver that plaintiffs are estopped from denying their liability to pay said assessments for the construction and completion of said improvement &c. Defendant therefore ask that said petition be dismissed and that defendants be allowed to go hence without day.

Brodrick, Porter & Porter, Attys for Defendants

State of Ohio
Union County } Uriah Cahill, one of the Defendants herein being sworn makes oath that that the facts stated in the foregoing answer are true as he believes

Uriah Cahill

Sworn to by Uriah Cahill, before me and signed by him in my presence this 4th day of October 1887

Seal

John D. Burgner Clerk

Afterwards, on the 5th day of October A.D. 1887, a demurrer was filed with the Clerk of said Court which reads as follows, to-wit:-

5-8.

Perry Douglass et-al.
vs.
James B. Whelpley et-al.

The State of Ohio, Union County Circuit Court.

Demurrer

Demurrer

And now comes the plaintiffs and demur to the second defense in the answer of defendants filed October 5th 1887, for the reason that said second ground of defense does not state facts sufficient to constitute a defense.

Powell & Fullon, Attorneys for Plaintiffs

Afterward on the 5th day of October A.D. 1887, the following Agreed Statement of Facts was filed with the Clerk of said Court, to-wit:-

Circuit Court. Union County, Ohio.

Agreed statement of Facts. — 5-8. —

Perry Douglass et-al. Plaintiffs
Against
James B. Whelpley et-al. Defendants

Agreed Statement of Facts.

The parties hereto agree to the following facts in this case touching the question whether a majority of all the resident land-holders whose lands were reported by the viewers as benefited and ought to be assessed, had signed the petition for said improvement before the same was finally ordered. The parties agree that there were 121 resident land owners whose lands were reported by the viewers as benefited and who ought to be assessed &c. That of these 121 resident land owners, 64 had signed the petition for said improvement but the right of some of some of the 64 to count as signers is questioned as hereinafter stated. It is further agreed that one Margaret Mc Cullough was the owner of a dower estate which had been set off to her metes and bounds, and which she owned at the time of all the proceedings had herein before the Commissioners, and was a resident of Union County Ohio, and did not sign the petition for the improvement. That said land in which she had her dower estate assigned was reported by the viewers and was assessed in the name of John T. Mc Cullough who owned the fee in this dower estate, and who also owned other lands in the territory reported for assessment and of which this dower estate formed a part; that no estate or interest of Margaret Mc Cullough in said land was reported for assessment by the viewers as against her and no assessment was made against her for the improvement, and no apportionment of the assessment on said land reported in the name of John T. Mc Cullough was made between said Margaret Mc Cullough and the said John Mc Cullough, that the said Margaret Mc Cullough was in favor of said improvement, but gave no written consent thereto. And the assessment against said tract of land was only against John T. Mc Cullough. That said John T. Mc Cullough signed the petition for the improvement and was properly counted for the same. That said dower estate was not counted by the Commissioners either for or against the improvement. The parties further agree that Levi Taylor and Matilda Taylor were the owners jointly of a tract of land reported by the viewers as benefitted and which ought to be assessed; that said Levi and Matilda Taylor were both residents of the County at the time of all the proceedings had before the Commissioners herein; that Levi Taylor signed the petition and was properly counted as a petitioner, and that Matilda Taylor did not sign the petition or give any written consent to the same, but entered no protest and made no objection to the improvement; that Levi Taylor owned another

Motion

No. 5-8.

tract of land reported by the viewers as benefited and which ought to be assessed.
It is further agreed that Bruce Robinson and Susannah Robinson owned a tract of land jointly; that O. C. McCune and J. P. Cune owned a tract of land jointly and that S. B. Linville and David Linville owned a tract of land jointly and that each of the above named parties were residents of the County at the time of all the proceedings had herein before the said Commissioners, and the said tracts of land were reported by the viewers as benefited and ought to be assessed that Bruce Robinson, O. C. McCune and S. B. Linville signed the petition asking for said improvement, but Susannah Robinson, J. P. McCune and David Linville did not sign said petition. That Susannah Robinson and J. P. McCune were both in favor of said improvement, and that David Linville entered no protest and made no objection to the same, but neither of the last three named gave any written consent to the improvement, or signed any petition asking for the same. That if said Margaret McCullough should be counted on the improvement as a resident land holder whose lands were reported &c. then the number of resident land holders would be 122, and if said Matilda Taylor or the tract of land owned jointly by her and Levi Taylor should be counted on said improvement, and against the same, then the number would be 123 resident land holders and the court would then be 64 for and 59 against the improvement. And we further agree that if said Bruce Robinson shall not be counted as a petitioner, but he and said Susannah Robinson counted against the improvement, then the Court would be 63 for and 60 against and if O. C. McCune should not be counted as a petitioner, but he and J. P. McCune counted against the improvement, then the Court would be 62 for and 61 against, and if S. B. Linville should not be counted as a petitioner but he and David Linville counted against the improvement then the court would be 61 for and 62 against the improvement. The above are the facts and all the facts submitted to the Court on the hearing of this cause.

Powell & Fulton Attys for Pltffs. Brodrick, Porter & Porter Attys for Defts.

Afterward on the 5th day of Oct. A.D. 1887, a motion was filed with the Clerk of said Court, which reads as follows, to-wit:-

Motion
No. 58.

Perry Douglass et.al. Plaintiffs
vs.
James B. Whelpley et.al. Defendants

In the Circuit Court, Union County Ohio

And now comes the said defendants by Brodrick, Porter & Porter their Attorneys and move the Court for a new trial in this action for the following reasons to-wit:-
1st The Court erred in Counting Margaret McCullough against the improvement.
2d The Court erred in counting Matilda Taylor against the said improvement as to the tract of land owned by her and Levi Taylor jointly.
3rd The Court erred in counting Bruce Robinson and Susannah Robinson together against the said improvement and in not counting Bruce Robinson for the improvement and both as one for the same.
4th The Court erred in counting O. C. McCune and J. P. McCune together against the improvement and not counting O. C. McCune for the improvement and both as one for the same.
5th The Court erred in counting S. B. Linville and David Linville together

against the improvement and not counting S. B. Linville for the same, and both as one for the improvement.
6th The Court erred in finding that a majority of the resident land holders whose land were reported as benefited by the viewers and ought to be assessed for the improvement, had not signed the petition therefor.
7th The Court erred in finding for the plaintiffs and in rendering the judgment and decree in their favor and not in favor of defendants.
Therefore defendants ask that said judgment and decree be set aside and a new trial awarded.

Brodrick, Porter & Porter Attys for Defendants.

Afterwards, on the 5th day of October A.D. 1887, the following Entry was made on the Journal by the Clerk of said Court, to-wit:-

Perry Douglass et al.
vs.
James B. Whelpley et al.

Entry
5 8.

This day this cause came on to be heard upon the demurrer of the defendants to the Supplemental petition of plaintiffs and was argued by counsel; on consideration whereof and the Court being fully advised in the premises finds that said demurrer is not well taken, and therefore overrules the same, to which ruling of the Court the defendants at the time excepted. And thereupon said defendants asked leave to file an answer instanter which leave was granted by the Court and said answer was filed. Thereupon came the said plaintiffs and filed a Demurrer to the second defense in said Answer Stated, which demurrer was argued by counsel, and submitted to the Court; on Consideration whereof and the Court being fully advised in the premises finds that said demurrer is well taken and therefore sustains the same, to which ruling of the Court the defendants at the time excepted. Said defendants not desiring to further amend their answer, this cause came on further to be heard upon the issues made by the pleadings and the agreed statement of facts. Whereupon the Court being fully advised in the premises finds all the facts stated in the Supplemental petition to be true, and that the facts therein stated entitle the plaintiffs to an injunction as prayed for in the amended petition filed December 30th 1882. The Court further find all the issues made by the said amended petition and the answer thereto in favor of the defendants, except the issue as to whether a majority of the resident land owners reported by the viewers as benefitted and who ought to be assessed to build said road, had signed the petition to the Commissioners asking for said improvement; as to this issue the Court find on said agreed statement of facts that there are 121 resident land owners whose lands are reported by the viewers as benefitted and who ought to be assessed to build said road, and that of these 121 resident land owners, 64 had signed the petition for said improvement. The Court further find that one Margaret Mc Cullough was the owner of a dower estate which had been set off to her by metes and bounds, and which she owned at the time of all the proceedings had herein before the Commissioners, and was a resident of Union County, Ohio and did not sign the petition for the improvement, that said land in which she had her dower estate assigned was reported by the viewers in the name of John T. Mc Cullough who owned the fee in

this dower estate, and who also owned other lands in the territory reported for assessment and of which this dower estate formed a part; that no estate or interest of Margaret Mc Cullough in said land was reported as against her for assessment by the viewers, and no assessment was made against her for the improvement, but the only assessment against said tract was against the fee simple owned by John T. Mc Cullough; that said John T. Mc Cullough signed the petition for the improvement; that said dower estate was not counted by the Commissioners. the Court find that said Margaret Mc Cullough gave no written consent to the same.

It is the opinion of the Court that said dower estate should be counted as a tract of land owned by a resident land owner making the number of resident land owners 122. The Court further find that Levi and Matilda Taylor were the owners jointly of a tract of land reported by the viewers as benefited and which ought to be assessed; that said Levi and Matilda Taylor were both residents of the County at the time of all the proceedings had before the Commissioners herein that Levi Taylor signed the petition and was properly counted as a petitioner, and that Matilda Taylor did not sign the petition; That Levi Taylor owned another tract of land reported by the viewers as benefitted and which ought to be assessed; the Court find that the tract owned by Levi Taylor and Matilda Taylor jointly was not counted by the Commissioners as a tract of land owned by resident land-owners. It is the opinion of the Court that said tract of land owned by said Levi Taylor and Matilda Taylor should be counted as a tract owned by resident land owners and be added to the 122, making the total number of resident land owners 123. The court further finds that Bruce Robinson and Susannah Robinson owned a tract of land jointly; that O. C. Mc Cune and J. P. Mc Cune owned a tract of land jointly; and that S. B. Linville and David Linville owned a tract of land jointly; and that each of the above named parties were residents of the County at the time of all the proceedings had herein before the said Commissioners and the said tracts of land were reported by the viewers as benefitted and ought to be assessed: that Bruce Robinson, O. C. Mc Cune and S. B. Linville signed the petition asking for said improvement, but that Susannah Robinson, J. P. Mc Cune and David Linville did not sign the petition. The Court find that Susannah Robinson, J. P. Mc Cune and David Linville gave no written consent to said improvement. It is the opinion of the Court that the said Bruce Robinson, O. C. Mc Cune and S. B. Linville ought not to be counted as petitioners; and that these being counted by the Commissioners as petitioners should be taken from the 64 thus reducing the number of petitioners to 61. And the Court is of the opinion and decide that the fact that said Susannah Robinson and J. P. Mc Cune were in favor of said improvement and the fact that said Matilda Taylor and David Linville entered no protest or objection to the same is of no legal effect and would be incompetent as evidence to change or vary said Court no consent being given in writing, to which decision defendants at the time excepted.

It is therefore considered and adjudged by the Court that a majority of the resident land owners reported by the viewers as benefitted and who ought to be assessed did not sign the petition asking for said improvement, and that for that reason, as well as for the reason of the facts stated in said supplemented petition, said defendants be perpetually enjoined from placing any assessment against the lands

of either of the said plaintiffs for the making of said improvement, to all of which rulings, decisions and judgments the defendants at the time excepted.

And thereupon came the defendants and filed a motion for a new trial for the reasons therein stated, which was argued by counsel; on consideration whereof and the Court being fully advised in the premises finds that said motion is not well taken and therefore overrules the same to which ruling of the Court the defendants at the time excepted. It is further ordered considered and adjudged by the Court that the defendants pay the costs of these proceedings taxed at $

Attest- John Q. Burgner, Clerk.
By A.R. Burgner, Deputy.

Pleas before the Honorable Thomas Beer, John J. Moore and Henry W. Seney Judges of the Circuit Court within and for the County of Union of the Third Judicial Circuit of the State of Ohio, begun and held at the Court House in the town of Marysville on the 4th day of October in the year of our Lord one thousand eight hundred and eighty seven. Heretofore, the Appeal Bond, and Transcript and the original pleadings from the Court of Common Pleas were filed with the Clerk of said Court and read as follows. Appeal Bond filed October 22nd 1884 and reads as follows, to-wit:-

Appeal Bond

Appeal Bond

No. 26.

Know all men by these presents, that we, James Hoover and A.D. Hoover are held and firmly bound unto Obadiah Holmes in the penal sum of one hundred dollars, to the payment of which, well and truly to be made, we do hereby jointly and severally bind ourselves, our heirs, executors and administrators. Signed by us, and dated this 22nd day of October A.D. 1884. The condition of the above obligation is such, that, whereas, the said James Hoover has taken an appeal from a certain judgment and decree rendered against him in favor of the said Obediah Holmes in the Court of Common Pleas within and for the County of Union in the State of Ohio, at the September Term thereof A.D. 1884, for the sum of $ to the District Court within and for the County aforesaid.

Now if the said James Hoover shall abide and perform the order and judgment of said District Court and shall pay all moneys, costs and damages which may be required of or awarded against him by said District Court, then this obligation to be void; otherwise to remain in full force and virtue in law. (signed)

James Hoover
A.D. Hoover.

I approve the above Bond with the sureties thereto, this 22nd day of Oct. A.D. 1884.

J. Q. Burgner, Clerk.

Afterwards on the 11th day of March A.D. 1885, the following Additional Appeal Bond to the Circuit Court was filed with Clerk of said Court.

Additional Appeal Bond No. 26.

Additional Appeal Bond
Circuit Court

Know all men by these presents: that James Hoover and P.B. Cole

are held and firmly bound unto Obadiah Holmes in the penal sum of One Hundred Dollars to the payment of which well and truly to be made we do hereby jointly and severally bind ourselves, our heirs, executors and administrators. Sealed with our seals and dated this 11th day of March 1885: The condition of the above obligation is such that whereas the said James Hoover has taken an appeal from a certain judgment and decree rendered against him and in favor of the said Obadiah Holmes in the Court of Common Pleas within and for the County of Union and State of Ohio at the September Term 1884 in case No —— entitled James Hoover vs. O Holmes et al for the sum of $ and $ costs to the District Court of said County: Case No— on the docket of said District Court. Now, being desirous that said cause shall be transferred to the Circuit Court of said County, this additional bond is given so that if the said James Hoover shall prosecute his appeal to effect without unnecessary delay and shall abide and perform the order and judgment of said Circuit Court and pay all moneys, damages and costs which may be awarded against the said James Hoover then this obligation shall be void; otherwise it shall remain in full force and virtue in law.

P. B. Cole {Seal}

The execution of the above undertaking and the sufficiency of the sureties therein approved by me this 11th day of March A. D. 1885

J. Q. Burgner

Clerk Common Pleas Court of said County

Afterwards on the 28th day of November A. D. 1885, the following Transcript was filed with the Clerk of said Court, to-wit:-

The State of Ohio
Union County, ss. } In Common Pleas Court — May Term 1885 ——

James Hoover Plaintiff
Against
O. Holmes et al Defendants

Transcript

Journal Vol. 13. Page 492
Certified Copy of Journal Entry.

26

On motion of plaintiff and it appearing to the satisfaction of the Court that a judgment and decree were rendered by the Court in this case on the 26th of September 1884, in favor of the defendants and against the plaintiff that the plaintiff did then give notice of his intention to appeal from said decision and that the Court did fix the amount of the Appeal Bond at $100.00. The Court further finds that on the mutual mistake of both parties no entry was made of said judgment and decree on the journal of this Court and that such entry should have been made.

It is now therefore ordered and adjudged that the such entry be now placed upon the Journal of this Court as of the 26th of September 1884, Nunc pro tunc and in substance as follows, to-wit: This 26th day of September 1884, this cause came on to be heard on the petition of the plaintiff, Answer of the defendants and reply thereto of plaintiff and was argued by counsel on consideration whereof the Court finds the equity of the case with the defendants and also found for the defendants on the question of "Res Adjudicata." It is therefore ordered and adjudged by the Court that the petition of the plaintiff be and the same is hereby dismissed and the defendant recover of the plaintiff his costs herein expended taxed at $ Thereupon the plaintiff gave notice of his intention to appeal and the Court fixed the

Appeal Bond at $.100.00

The State of Ohio, Union County, ss.

I, J. Q. Burgner, Clerk of the Common Pleas Court within and for the said County, and in whose custody the files, Journals and Records of said Court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal – No. 13 – of the proceedings of the Common Pleas Court within and for said County, and that said foregoing copy has been compared by me with the original entry on said Journal — No 13 — and that the same is a correct transcript thereof. In testimony whereof, I do hereto subscribe my name officially and affix the Seal of said Court, at the Court House in the town of Marysville in said County, this 27th day of November A.D. 1885.

Seal

J. Q. Burgner Clerk
By A. R. Burgner Deputy

Afterwards on the 1st day of Dec. A.D. 1885, an Entry was made on the Journal by the Clerk of said Court which reads as follows, to-wit

Entry 26.

James Hoover
vs.
O. Holmes et al.

This day appeared the parties and their attorneys and submitted this cause to the Court on motion to dismiss the same for want of a good and sufficient Bond herein as required by law, and the Court being fully advised in the premises overrules said motion

Afterwards on the 3rd day of December A.D. 1885, the following Entry was made on the Journal by the Clerk of said Court, to-wit:-

Entry 26.

James Hoover
vs.
O. Holmes et al.

This cause came on to be heard on motion of plaintiff for a continuance and the Court being fully advised in the premises sustains said motion at the costs of plaintiff. It is therefore considered and adjudged by the Court that the plaintiff pay the costs herein of this term of Court taxed at $ And it is further ordered that a special mandate issue to the Court of Common Pleas of Union Co. Ohio to carry said judgment into execution.

Afterwards on the 15th day of April A.D. 1886, the following Transcript was filed with the Clerk of said Court, to-wit: State of Ohio Union County ss. In Common Pleas Court – October Term 1885 Journal Vol. 13 – Page 573. Certified Copy of Journal Entry.

Transcript 26.

James Hoover Plaintiff
vs.
Obadiah Holmes et al. Defendants

On motion to the Court by the plaintiff and it appearing to the satisfaction of the Court that previous to the trial had in said Court of said case a motion was made by the plaintiff and sustained by the Court granting the plaintiff leave to amend his petition by striking out the prayer for judgment on the note described in the petition and leaving the only relief prayed for by the plaintiff the equitable relief asked for and the mortgage described for in said petition.

And the Court further find that order was not entered upon the Journal at the time it was made and that the same was omitted by

Amended Petition 26.

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mistake and should have been then made. It is further ordered that said entry be now, this 21st day of December A.D 1885, placed upon the Journal of this Court as of the 17th of September 1884, nunc pro tunc, in substance and form as follows: "On motion to the Court by the plaintiff it is ordered that the plaintiff have leave to amend his petition by striking out the prayer for judgment on the note leaving the only relief asked by the plaintiff the equitable relief prayed for on the mortgage which amendment is made accordingly.

The State of Ohio, Union County, ss:-

I, J. Q. Burgner, Clerk of the Common Pleas Court within and for said County, and in whose custody the Files, Journals and Records of said Court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal Number 13, Page 573 of the proceedings of the Common Pleas Court within and for said County, and that said foregoing copy has been compared by me with the original entry on said Journal No. 13 page 573 and that the same is a correct transcript thereof.

In testimony whereof, I do hereto subscribe my name officially and affix the Seal of said Court, at the Court House in the town of Marysville in said County this 14th day of April A.D. 1886

Seal

J. Q. Burgner. Clerk.

Afterwards on the 20th day of April A.D. 1886 the following Amended Petition was filed with the Clerk of said Court, to-wit:-

Amended Petition

James Hoover Plaintiff
vs.
Obadiah Holmes et al Mary A. Holmes et. al. Defendants

Circuit Court Union County Ohio
Amended Petition

26.

Now comes the plaintiff and by leave of the Court files this his amended petition and says: on the 27th day of December A.D. 1879 the defendant Obadiah Holmes made and delivered to the plaintiff his promissory note of that date and thereby promised to pay to the plaintiff or order the sum of three hundred and twenty-five dollars in one year after the date thereof with interest thereon at 6 per cent from date.

III The defendants Obadiah Holmes and Mary A. Holmes his wife on the 27th day of December A.D. 1879 to secure the payment of said note executed and delivered to the plaintiff their mortgage deed and thereby conveyed to the plaintiff his heirs and assigns the following lands and tenements situate in the County of Union and State of Ohio commencing at a stone in the center of the road leading from Richwood to Essex, the said stone being the South West corner to a lot owned by Sarah A. Wells, thence N. 88° E with the line of said Wells' lot 25 44/100 poles to a stone in the West line of the A + G. W. R.R.; thence S. 29° 35' W. with the line of said Rail Way 14 2/11 poles to a stone; thence N. 84 1/2° W. 19 7/33 poles to the center of said road from Richwood to Essex; thence N. 3° 50' E 10 14/33 poles to the place of beginning containing 1, 29/40 acres more or less, the condition contained in said mortgage deed was in substance that if said note above described shall be paid at maturity according to the terms thereof, then these presents shall be void. On the 23rd

day of January A.D. 1880 at 1½ P.M. said mortgage was delivered to the Recorder of said County to be by him entered on record, and was recorded January 30th 1880 in Union County Records of Mortgages Vol 16. page 144. The said deed has become absolute. There is due and remaining unpaid upon said indebtedness the sum of three hundred and twenty five dollars with interest thereon from Dec. 27th 1879 at 6 per cent. The following named persons have or claim some lien or interest in said premises, but the plaintiff avers that the same is subordinate to plaintiffs claim. and plaintiff asks that they be compelled to set the same up or be forever cut off from asserting the same, viz: Elizabeth Wells, George Davis, Elizabeth Delessen, W. W. Hill Admr. estate of W. J. Wood decd and C. E. Hill Admr. de bonis non Estate of E. Morris decd. The plaintiff asks that said mortgage may be foreclosed said premises ordered to be sold and the proceeds applied to the payment of said debt and execution awarded for the balance.

P. B. Cole & Son Attys. for Plaintiff

State of Ohio } ss
Union County } James Hoover being sworn says the facts stated and allegations in his foregoing pleading are as he believes true.

James Hoover

Sworn to and subscribed before me this 20th day of April 1886

John Q. Burgner Clerk (Seal)

Copy of Note referred to in Amended petition

" Richwood Dec. 27th 1879"

" One year after date I promise to pay to the order of James Hoover the sum "
" of three Hundred and Twenty-five dollars with interest at 6 per ct. from date "
" value received O. Holmes. "

Afterwards on the 21st day of April A.D. 1886, the following Entry was made on the Journal by the Clerk of said Court, to-wit:-

Entry

James Hoover plaintiff
vs.
Obadiah Holmes & Mary A Holmes et. al. Defts. } Circuit Court. Union County Ohio.

26.

This cause coming on for hearing was submitted to the Court on motion and showing of the defendants Obadiah Holmes and Mary A. Holmes for a continuance, on consideration whereof the Court do sustain said motion, and said cause is continued at the cause of the said moving defendants for this term and continuance and judgment is rendered against said moving defendants for the said costs taxed to $ said continuance is with leave to plaintiff to amend his petition, which is done and same on file, and defendants are to plead by June 26th 1886, and plaintiff to reply by July 24th 1886

Afterwards on the 4th day of Oct. A.D. 1886, the following Answer was filed with the Clerk of said Court, to-wit:-

Answer

James Hoover Plaintiff
vs.
O. Holmes & Mary A. Holmes Defendants } Circuit Court of Union County, Ohio.

26. Answer of O. Holmes and Mary A. Holmes to the Amended petition of Jas. Hoover

Now comes O. Holmes and Mary A. Holmes and for Answer to the amended petition of said plaintiff say that said plaintiff ought not maintain his

action against said defendants for the following reasons to-wit:-
First Defense. For a first defense the defendants say there was no consideration for the said mortgage mentioned in the plaintiffs petition and further say that said note and mortgage was obtained from them under the following circumstances to-wit: That about a year before the date of said note and mortgage, said plaintiff and one John Israel were operating in patent Rights, and said Israel obtained from said O. Holmes and his son Charles a note of about $325-00 for a certain patent right and patent right territory consisting of the Counties of Crawford Richland and Marion in the State of Ohio, and the State of West Va. the said Israel when he obtained said original note made false representations about the same and agreed and promised that if said note was made, then in consideration thereof he the said Israel would help sell half of said territory and that he had offers for and could sell one half of said territory for more than enough to pay said note, and that he would furnish the said patent invention, which was a patent Burglar Alarm, and would not call on the said Holmes for any money until he had made more for him than would pay said note; that said Israel failed to keep any part of his agreement with said defendants and said pretended patent right and proved entirely useless and worthless and the said Israel when he made said representations knew them to be false and fraudulent and did not intend to keep his agreement, whereby said note and the consideration thereof wholly failed. that afterwards said Hoover the plaintiff, who was also operating with said Israel in the same patent and who knew of the agreement and arrangement between said Israel and these defendants, and who knew said note was given for a patent right, came to these defendants and represented that he was the owner and holder of said note and wanted to make some arrangements for its collection, thereupon these defendants refused to pay the same and claimed as a defense to the same that said note was given for a patent which was worthless and that said note was without consideration, thereupon and in said connection and at the same time said Hoover represented to these defendants that he could handle said territory and that he had ample knowledge of said territory and that he had ample knowledge of said patent and that it was of great value and that if these defendants would execute the note and — mentioned in the petition so that he, said Hoover could deposit the same as collateral security then he could and would raise money and manufacture said patents and that before said note and mortgage became due he could and would dispose of said patent right territory for much more than enough to pay said note and satisfy said mortgage and would return said note and cancel said mortgage and not require these defendants to pay any part thereof, that all he wanted of said note and mortgage was to deposit as collateral security to borrow money and he could and would — wholly free these defendants from any further trouble in regard to said original transaction and avoid trouble and litigation. Therefore without any consideration whatever and for no other purpose or reason than as above stated these defendants made and delivered said note and mortgage to said Hoover.

Further answering the defendants say that said James Hoover the plaintiff never performed any part of his agreement with these

defendants and the consideration for said note and mortgage has wholly failed that said plaintiff never had any legal claim against these defendants and that he procured the said note and mortgage by reason of the representations and promises aforesaid.

Second Defense. And for a further and second defense herein the defendants say that on the 11th day of January A.D. 1883, the said James Hoover by a contract and agreement with one James W. Robinson sold and assigned to said James W. Robinson all his right title and interest in said note and mortgage for a good and valuable consideration. That afterwards and on the 2nd day of August 1882, the said assignee James W. Robinson filed his petition in the Court of Common Pleas of Union County, Ohio, against the said O. Holmes and Mary A. Holmes as the makers of said note and mortgage and against James Hoover as the indorser of said note and mortgage. That on the 21st day of August said James Hoover for himself filed an answer and cross petition which was intended for and was an answer and cross petition to the answer and cross petition of O. Holmes and wife which answer of O. Holmes and wife was filed on the 14th day of August 1882, and in which answer of the said James Hoover took issue with the said Holmes and wife, that in the February Term of the Court of Common Pleas A.D. 1883, said cause came on for trial on the petition of James W. Robinson as the assignee of James Hoover and upon the answer of said Holmes and wife to said petition and also upon the issues joined between said Hoover and said Holmes and wife so made by the answer and cross petition of the said James Hoover to the amended answer of said Holmes and wife, that said James Hoover appeared by himself and his attorney and said cause was tried by the Court. A full fair and complete trial was had by and between said James W. Robinson as assignee and James Hoover on the one part the said James W. Robinson as the owner and holder of said note and mortgage and James Hoover as the assignor of the same, and O. Holmes and wife on the other hand and upon the trial of said case said plaintiff and his assignor had witnesses examined and took the testimony thereof upon the issues so joined and the said James W. Robinson was the assignee and the owner of the same note and mortgage now sued upon by the said James Hoover and said note and mortgage then sued upon by the said James W. Robinson was the same as sued upon by the said James Hoover in this suit and the said James W. Robinson and James Hoover were the parties to that action and the said O. Holmes and wife were the defendants in that action of James W. Robinson vs O. Holmes and Mary A Holmes and James Hoover that after hearing all of the testimony for the plaintiff and defendant and the arguments of counsel and having given due consideration the Court did find for the defendants O. Holmes and Mary A Holmes and did dismiss the petition of the said James W. Robinson and the answer and cross petition of James Hoover at the costs of the said James W. Robinson by a finding and judgment that said James W. Robinson was not an innocent purchaser before due of said note and mortgage and that the same was fraudulently obtained from said Holmes and wife and therefore void. From which judgment and finding of the Court of Common Pleas said James W. Robinson or

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26.

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James Hoover have neither of them appealed and have failed to file a petition in error within the prescribed by law, to reverse or modify the same and all of said judgments and findings of the said Court remain unreversed and unchanged and the plaintiff James Hoover is therefore estoped from having and maintaining his said action against said defendants.

Third Defense:- Further answering and for a third defense to the plaintiffs petition the said O. Holmes and Mary A. Holmes say they have not the means of knowing whether the said James Hoover is the owner of said note and mortgage and therefore for the purpose of this suit deny that he is the owner thereof and demand full proof. Wherefore these defendants pray that the said James Hoover be estopped from the further prosecution of this suit and that a decree be entered herein cancelling said note and mortgage and that the plaintiffs petition be dismissed and that they go hence and recover their costs herein expended and for all proper relief in the premises.

Cameron & Woodburn and
J. M. Kennedy Attys for Defendants

The State of Ohio }
Union County, ss. } O. Holmes one of the above defendants being duly sworn says the facts and allegations in the foregoing answer are true as he verily believes.

O. Holmes.

Sworn to and subscribed by the said O. Holmes before me this 30th day of September A.D. 1886. H. J. Rucker Notary Public, [Seal]

Afterwards on the 5th day of Oct. A.D. 1886, the following Entry was made on the Journal by the Clerk of said Court, to-wit:-

James Hoover Plaintiff
vs.
O. Holmes et.al. Defendants

Entry 26.

At appearing to the Court that the Defendants herein are in default for answer to plaintiffs amended petition on motion of defendants leave is granted them to file their answer herein instanter which is done accordingly and the plaintiff has leave to plead to said answer by the 6th day of Nov. 1886 and this cause is continued at the costs of the defendants. It is therefore considered ordered and adjudged by the Court that the defendants pay the costs herein made at this term of Court taxed at $ and in default execution issue therefor

Afterwards on the 8th day of February A.D. 1887, the following Entry was filed with the Clerk of said Court, to-wit:-

James Hoover Plaintiff
vs.
O. Holmes et.al. Defendants

Entry 26

Leave to reply by March 12th 1887 and cause continued

Afterwards on the 12th day of March A.D. 1887, the following Reply was filed with the Clerk of said Court, to-wit:-

James Hoover Plaintiff
vs
O. Holmes & Mary A Holmes Defendants

Reply 26.

Circuit Court-Union County Ohio
Reply
Now comes the plaintiff and by leave of the Court files this his reply to the answer filed by Defts

on Oct-4th 1886- And for his reply to the 1st alleged defense therein says he denies each and every allegation in said defense excepting the execution of the note for said paleit-right territory, and that he continued to own and demanded payment thereof- and the execution of the note and mortgage in the petition described in payment thereof. He further says that he had nothing to do with, was not interested in, nor in any way a party to or concerned in the transaction or agreement in which said original note was executed. And he says he secured said original note in good faith and in the ordinary course of business before it was due and without notice of any objection or defense thereto and as collateral security for an amount much larger than its face. It was given to him as collateral security by said John Israel for the performance of an agreement of said John Israel with him to deliver him certain goods and perform for him certain work for which plaintiff then in consideration of said security advanced the pay to said John Israel and other services and advances of money done and made by him for said John Israel prior to that time. And that before said original note fell due said John Isral by reason of a fire and other misfortunes in business became wholly insolvent and made default in the performance of said agreement on his part and the time for the performance of said agreement had passed and said plaintiff had demanded and called upon said Israel to perform the same but said Israel wholly failed and refused to comply with said agreement and plaintiff became entitled to the whole proceeds and avails of said old note and was informed by said Israel that he would have to look to said note for his indemnity and reparation of his losses. And plaintiffs title to said note having thereby became absolute he accepted said new note and mortgage in payment thereof and in further consideration gave an extension of time for the payment of said indebtedness.

For reply to the 2nd alleged defense set up in defendants answer plaintiff says said suit was dismissed by the Court as to him without prejudice and he denies the existance of the record therein alleged. And says there is no such record. And says the finding was general only for the defendants against J. W. Robinson only and that one of the allegations of defendants was that said J. W. Robinson was not the owner or holder of the note and had no interest therein. And the rights and claims of said James Hoover were not adjudicated in said suit. Said James Hoover made no answer or reply to the amended answer of said defendants in said suit and the Court decided that he was not a proper party in said suit. And therefore plaintiff prays as in his last-amended petition herein.

P. B. Cole & Son Pltff's Attys.

State of Ohio
Union County, ss. } J. B. Cole being sworn says that he is one of the attorneys of the plaintiff in the above entitled cause duly authorized and that the facts stated and allegations in the foregoing pleading are as he believes true.

J. B. Cole.

Sworn to and subscribed before me this 12th day of March 1887

E. E. Cole
Notary Public

Seal

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State of Ohio
Union County ss } James Hoover plaintiff in this Reply being sworn says the facts stated and allegations therein are as he believes true.

James Hoover

Sworn to and subscribed before me this 9th day of September A.D. 1887.

John B. Coales Probate Judge

Afterwards on the 4th day of Oct. A.D. 1887 the following Entry was made on the Journal by the Clerk of said Court, to-wit:-

Entry
26

James Hoover Plaintiff
vs.
O. Holmes et.al. Defendants

This day came the parties and their attorneys and submitted this cause to the Court upon the pleadings evidence and the argument of counsel and the same was taken under advisement by the Court.

Afterwards on the 5th day of Oct. A.D. 1887, the following Entry was made on the journal by the Clerk of said Court, to-wit:-

Entry
26.

James Hoover Plaintiff
vs.
O. Holmes et.al. Defendants

This day came the parties and this cause being called and it appearing to the Court that the answer of the defendant contained among other things the defense of "Res Adjudicate" which was set up in the 2nd defense in defendants answer and the Court on the suggestion of the defendant directed the evidence first to that issue. Thereupon this cause was heard upon the petition the 2nd defense set up in defendants answer and reply thereto together with the evidence, on consideration whereof the Court being fully advised in the premises on application of plaintiff for finding of facts, find as a conclusion of fact "that after the note and mortgage in the petition mentioned was executed, to-wit: on the 11th day of January 1883, the plaintiff James Hoover for a good and valid consideration sold and delivered the same to one James W. Robinson at the time guaranteeing the payment of a part of said note. That afterwards said James W. Robinson being the owner and holder of said note and mortgage brought suit thereon in the Common Pleas Court of said County to foreclose said mortgage making as parties defendant thereto the defendant herein and said Hoover but asking no relief against said Hoover. That said Hoover filed his answer alleging among other things that he sold said note and mortgage to said Robinson at the request of the defendant herein. The defendants herein filed their answer in that case and set up several defenses, and among others same defense as is contained in the first count of the answer in this case, also alleging that they did not know whether the said Robinson was the owner of the note and mortgage and demanding proof thereof: that at the April Term 1883 of said Court said case was tried and the equities found against the said James W. Robinson and the following entry was made on the journal of said Court, to-wit:-"No. 4041-" "James W. Robinson vs O. Holmes et.al. This day this cause came on to be heard upon the petition and answer of the defendant and the reply of the plaintiff and the Court find from the testimony for the defendants Obadiah Holmes and wife Mary J. Holmes and it appearing that James Hoover is not a proper party hereto and that Charles Holmes who was interested in said claim

is not a party hereto: It is ordered by the Court that said James Hoover be dismissed without prejudice to any right he may have under said mortgage and it is ordered by the Court that this petition be dismissed at plaintiffs cost without prejudice to the right of James Hoover to bring his action on said note and mortgage and the Court order plaintiff to pay the costs herein within thirty days and in default of payment execution issue therefor as upon judgment at law. The Court further find that at the time of said suit said Robinson was the owner of said note and mortgage and that subsequently thereto the said Robinson sold said note and mortgage back to the said James Hoover who brings and prosecutes this action thereon, that the judgment and decree of said Court of Common Pleas in the suit brought by said Robinson has never been appealed from and is still in full force and effect. From these facts the Court find that this action of James Hoover on the same note and mortgage is barred by the former trial and decree and find for the defendant: It is therefore considered and decreed by the Court that the defendants go hence without day and recover their costs herein expended taxed to $ And it is further ordered by the Court that a special mandate issue to the Court of Common Pleas of Union County Ohio to carry said judgment for costs into execution

Attest, J. D. Burgner Clerk
By A. B. Burgner Deputy.

Entry

49

Pleas before the Honorable John J. Moore and Henry W. Seney Judges of the Circuit Court within and for the County of Union of the third Judicial Circuit of the State of Ohio begun and held at the Court House in the town of Marysville on the 5th day of October in the year of our Lord one thousand eight hundred and eighty six. Heretofore, to-wit:- On the 23rd day of May A. D. 1886, the following Petition in Error was filed with the Clerk of said Court, To-wit:

Petition in Error

49

The Western Union Telegraph Company,
Plaintiff in Error,
vs.
Samuel McAlister, Defendant in Error.

State of Ohio, Union County,
Circuit Court.
Petition in Error.

The plaintiff in error, the Western Union Telegraph Company, complains of the defendant in error Samuel McAlister, for that in the October Term, 1885, of the Court of Common Pleas in and for Union County, Ohio, on the 6th day of November in said Term at the trial then and there had, of an action numbered 4846, on the Docket of said Court, in which said defendant in error was plaintiff and this plaintiff in error was defendant, such proceedings were had as resulted, a jury being waived, in the finding of the Court upon the issues joined in the pleadings, in favor of said defendant in error and in the assessment of his damages thereupon in the sum of Seventy-nine and 18/100 Dollars, and in a judgment thereupon in said sum in favor of defendant in error, and against this plaintiff in error. And in said finding, assessment of damages and

judgment there was manifest error to the prejudice of plaintiff in error as will more at large appear in the certified transcript of docket and journal entries and the original papers of said action filed herewith. And said error was in the following particulars, viz:-

1. Said finding, assessment and judgment were not sustained by sufficient evidence.
2. Said finding, assessment and judgment were against the law.
3. The damages assessed were excessive.
4. The Court erred in overruling the motion for a new trial.
5. There were other errors of law and irregularities at said trial and in said proceedings which are apparent in said transcript and original papers.

Wherefore this plaintiff prays that said judgment be reversed.

Ramsey, Maxwell & Matthews.
Attorneys for Plaintiff in Error.

I hereby waive issuance and service of summons in error, and enter appearance for the defendant in error.

Edward E. Cole.
Atty. for Defendant in Error

Afterwards on the 6th day of October A.D. 1886, the following Entry was made on the journal by the Clerk of said Court, to-wit:-

Western Union Telegraph Co.
vs.
Samuel McAllister

Entry

49

This day appeared the parties by their attorneys and submitted this cause to the Court upon the petition in error, bill of exceptions, original pleadings and papers and arguments of counsel and the same was taken under advisement by the Court.

On the 6th day of October A.D. 1886, the following Entry was made on the journal by the Clerk of said Court, to-wit:-

Western Union Telegraph Co. Plff. in Error.
vs.
Samuel McAllister, Deft. in Error.

Entry

49

This day again came the parties by their attorneys and this cause having been heretofore taken under advisement by the Court now came on for decision, on consideration thereof the Court find error in the judgment of the Court of Common Pleas of Union County Ohio and the same is therefore reversed at the costs of the defendant.

It is therefore considered, ordered and adjudged by the Court that said judgment be and the same hereby is reversed and remanded to the said Court of Common Pleas for further proceedings and that the plaintiff in error recover of the defendant in error its costs herein expended taxed to $ To all of which said McAlister defendant in error excepts. It is further ordered that a special mandate be issued to the Court of Common Pleas to carry said judgment and order into execution.

Attest- J. D. Burgner, Clerk
By A. R. Burgner, Deputy

Pleas before the Honorable John J. Moore, Henry W. Seney and Thomas Beer Judges of the Circuit Court within and for the County of Union of the Third Judicial Circuit of the State of Ohio, begun and held at the Court-House in the town of Marysville on the 4th day of October in the year of our Lord one thousand eight hundred and eighty-seven. Heretofore, to-wit:-

On the 18th day of August A.D. 1887 a Petition in Error was filed with the Clerk of said Court which reads as follows, to-wit:-

Petition in Error 61

Charles Phellis surviving partner of the firm of Fullington & Phellis, Plaintiff in Error
Against
Ann Fogarty, Defendant in Error

In Circuit Court
Union County Ohio,
Petition in Error

The plaintiff says that the defendant at the May Term of the Court of Common Pleas A.D. 1887, for said County of Union recovered a judgment and final order of sale by the consideration of said Court against the plaintiff in error, in a certain action then pending in said Court wherein the said Ann Fogarty was plaintiff and the said Charles Phellis surviving partner as aforesaid was defendant. A transcript of the docket and journal entries in said cause together with the original papers in the same are herewith filed and made a part of this petition.

Said journal entries, and original papers being the record of said judgment, order and proceedings. The said Charles Phellis avers that there is error in said record and proceedings in this to-wit:-

I. The said Court erred in overruling the demurrer of the said Charles Phellis to the petition of said Ann Fogarty.

II. The said Court erred in sustaining the demurrer of the said Ann Fogarty to the answer of said Charles Phellis to said petition.

III The Court erred in rendering said judgment and in making said order of sale against the said Charles Phellis as surviving partner &c. and in favor of said Ann Fogarty.

IV The said judgment was given for the said Ann Fogarty when it ought to have been given for said Charles Phellis according to the law of the land.

The said Charles Phellis surviving partner &c. therefore prays that said judgment and final order be reversed and annulled and the said Charles Phellis be restored to all things he has lost by reason thereof

Porter & Porter Attorneys for Plaintiff in Error

I hereby waive the issuing and service of Summons in Error in the case and enter my appearance in said Court. Aug 18th 1887

T. B Fullon of Counsel for Defendant in Error.

Afterwards on the 3rd day of October A.D. 1887, the following Transcript was filed with the Clerk of said Court, to-wit:-

Transcript 61

Ann Fogarty Plaintiff
vs.
Charles Phellis Survivor of Fullington & Phellis, Defendant

State of Ohio Union County, ss.
In Common Pleas Court.
May Term 1887. Journal Vol. 14 Page 275
Certified Copy of Journal Entry.

June 9th A.D. 1887. This day this cause came on to be heard upon the demurrer of the defendant to the petition of the plaintiff and was argued by counsel. On consideration whereof and the Court being fully advised in the premises finds that said

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demurrer is not well taken and therefore overrules the same to which ruling and decision of the Court the defendant then and there and at the time excepted and on motion leave was given to defendant to file his answer instanter.

June 9th A.D. 1887.

This day this cause came on to be heard upon the demurrer of the plaintiff to the answer of the defendant and was argued by counsel: On consideration whereof and the Court being fully advised in the premises find that said demurrer is well taken and therefore sustains the same, to which ruling and decision of the Court the said defendant then and there and at the time excepted, and the said defendant not desiring to amend his answer or further plead, the Court on hearing finds that all the facts stated in plaintiffs petition are true, and that the plaintiff is entitled to have said premises described in her petition sold to satisfy said judgment of $485-00 with interest thereon from said 2nd day of March 1887 and the costs in said cause No. 3044. It is therefore considered and adjudged that unless the defendant pay to said plaintiff said sum and interest as aforesaid and to the Clerk the costs of said cause No 3044 together with costs herein within five days from the entry hereof, that an order issue to the Sheriff of Union County, Ohio, commanding him to cause said premises to be appraised, advertised and sold according to law and that he bring the proceeds into Court for further order. To all of which rulings decisions and judgments of the Court the defendant then and there and at the time excepted.

The State of Ohio,
Union County, ss. } I, John D. Burgner, Clerk of the Common Pleas Court within and for said County, and in whose custody the files journals and Records of said Court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal of the proceedings of the said Common Pleas Court within and for said County, and that said foregoing copy has been compared by me with the original entry on said Journal and that the same is a correct transcript thereof.

In testimony whereof, I do hereto subscribe my name officially and affix the Seal of said Court, at the Court House in Marysville Ohio in said County this 27th day of September A.D. 1887. J. D. Burgner Clerk

{Seal.}

Afterwards on the 4th day of October A.D. 1887, the following Entry was made on the Journal by the Clerk of said Court, to-wit:-

Entry

61.

Charles Phelps Plaintiff in Error.
vs.
Ann Fogarty, Defendant in Error.

The parties appeared by their attorneys and thereupon this cause was submitted to the court upon the petition in error original papers, transcript, exhibits and arguments of Counsel and the same was taken under advisement by the Court.

Afterwards on the 5th day of October A.D. 1887 an Entry was made on the Journal by the Clerk of said Court which reads as follows, to-wit:- (over)

Entry

Charles Phillis, Plaintiff in Error.
vs.
Ann Fogarty, Defendant in Error.

This cause having been heretofore taken under advisement by the Court now came on for decision and judgment wherefore the Court being fully advised in the premises do find that in said record and proceedings there is error apparent therein to the prejudice of the plaintiff in error. Therefore said judgment and order of said Common Pleas Court is hereby reversed with costs and it is ordered that this cause be remanded to said Common Pleas Court for further proceedings. It is therefore considered and adjudged by the Court here that the plaintiff in error recover of the defendant in error his costs herein expended It is further ordered that a special mandate issue to the Court of Common Pleas of Union County O. to carry said order and judgment into execution.

61.

Attest J. Q. Burgner Clerk.
By A. R. Burgner Deputy

Pleas before the Honorable John J. Moore, Henry V. Seney and Thomas Beer Judges of the Circuit Court within and for the County of Union of the Third Judicial Circuit of the State of Ohio, begun and held at the Court House in the town of Marysville on the 28th day of April in the year of our Lord one thousand eight hundred and eighty-five: Heretofore, to-wit

On the 9th day of February A.D. 1885, a Petition in Error was filed with the Clerk of said Court which reads as follows, to-wit:-

Petition in Error

Lydia A. Morris
vs.
S. W. Van Winkle et. al.
Andrew J. Richardson

District Court, Union County, Ohio.
Petition in Error.

30

Plaintiff in error says that at the September Term 1884 of the Court of Common Pleas of Union County Ohio, defendant in error recovered a judgment by the consideration of said Court against plaintiff in error in an action then pending therein, wherein plaintiff in error was plaintiff and defendants in error were defendants. A transcript of the docket and journal entries whereof is filed herewith. There is error in said record and proceedings in this that said Court erred in sustaining the demurrer of the defendants in error to the 2nd amended petition of the plaintiff in error.

Plaintiff in error therefore prays that said judgment may be reversed and that she be restored to all things she has lost by reason thereof.

Robinsons & Piper and J. M. Kennedy
Attorneys for Plaintiff in Error

Waiver of Summons

Lydia A. Morris
vs.
S. W. Van Winkle et. al.

Union County, District Court

30

Issuing and service of Summons in error hereby waived in this case. Marysville Ohio, Dec. 26th 1884

A. T. Carpenter Atty for
Defendant in Error

Transcript

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Afterwards on the 10th day of April A.D 1885, the following transcript was filed with the Clerk of said Court, to-wit :-

The State of Ohio
Union County ss. } In Common Pleas Court-December Term 1883. Journal 13 page-

Lydia Morris Plaintiff

Transcript- vs

S. W. Van Winkle et.al. Defendant- } Certified Copy of Journal Entry.

30. February 4th A.D 1884. This day the plaintiff took leave of the Court to file an amended petition within 30 days from the rising of the Court and cause continued.

May. 17th A.D. 1884

This day this cause came on for hearing upon the demurrer of defendants to plaintiffs amended petition and was argued by counsel and submitted. Whereupon the Court being fully advised in the premises sustained said demurrer. Thereupon plaintiff asked and obtained leave to file second amended petition within 30 days and this cause was continued.

Monday October 6th A.D. 1884.

This day this cause came on to be heard upon the demurrer of the defendants to the 2nd amended petition of the plaintiff and the Court being fully advised in the premises does find for and sustain said demurrer, to all of which rulings of the Court the plaintiff excepts. It is therefore considered ordered and adjudged that plaintiffs petition be dismissed at her costs taxed at $

The State of Ohio,
Union County ss. } I, J. Q. Burgner, Clerk of Common Pleas Court within and for said County, and in whose custody the Files, Journals and Records of said Court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal of the Proceedings of the said Court within and for said County, and that said foregoing copy has been compared by me with the original entry on the said Journal and that the same is a correct transcript thereof.

In testimony whereof, I do hereto subscribe my name officially and affix the Seal of said Court, at the Court House in Marysville in said County, this 10th day of April A.D. 1885-

Seal

J. Q. Burgner Clerk.

Afterwards on the 6th day of May A.D. 1885, the following Entry was made on the Journal by the Clerk of said Court, to-wit :-

Lydia A. Morris, Pltff.

Entry vs.

S. W. Van Winkle et.al. Defts. } This cause came on for hearing upon the petition in error, the transcript and the

30. original papers and pleadings from the Court of Common Pleas of Union County and was argued by counsel; on consideration whereof the Court find there is no error apparent on the record in said proceedings and judgment. It is therefore considered by the Court that the judgment aforesaid be and the same is hereby affirmed; and that the defendants in error recover from the plaintiff in error their costs herein taxed to $

And the Court being of the opinion that there was reasonable ground for proceedings in error allow no penalty. It is therefore ordered that plaintiff's petition be dismissed and that a special mandate be sent to the Court of Common Pleas of Union County for execution upon said judgment.

Attest- J. Q. Burgner Clerk
By A. R. Burgner Deputy

Pleas before the Honorable John J. Moore, Henry W. Seney and Thomas Beer, Judges of the Circuit Court within and for the County of Union of the Third Judicial Circuit of the State of Ohio, begun and held at the Court-House in the town of Marysville on the 8th day of February in the year of our Lord one thousand eight hundred and eighty-seven. Heretofore, to-wit:-

On the 7th day of Dec. A.D. 1886, the following Appeal Bond was filed with the Clerk of said Court, to-wit:-

Appeal Bond

Appeal Bond to Circuit Court.

5-6. Know all Men by these presents: that the undersigned is held and firmly bound unto Emil Swarts, Elmer Crane, Willie Crane, Allie Crane and Thomas Huggart in the penal sum of one hundred dollars to the payment of which well and truly to be made we do hereby jointly and severally bind ourselves our heirs, executors and administrators. Sealed with our seals and dated this 6th day of December 1886. The condition of the above obligation is such that whereas the said Rebecca S. Gabriel has taken an appeal from a certain judgment or decree rendered against her and in favor of the said Emil Swarts, Elmer Crane, Willie Crane, Allie Crane and Thomas Huggart in the Court of Common Pleas within and for the County of Union and State of Ohio, at the October Term 1886, in Case No. 5090 entitled Sarah P. Wood vs John A. Phillips et.al. to the Circuit Court of said County Now if the said Rebecca S. Gabriel shall prosecute her appeal without unnecessary delay and shall abide and perform the order and judgment of said Circuit Court and pay all damages and costs which may be awarded against said appellant the said Rebecca S. Gabriel then this obligation shall be void; otherwise it shall remain in full force and virtue in law.

In Presence of
S. R Gabriel } James Gabriel Seal

The execution of the above undertaking and the sufficiency of the sureties thereon approved by me this 7th day of Dec. A.D 1886

J. D. Burgner Clerk.

Afterwards on the 7th day of February A.D. 1887, the following Transcript was filed with the Clerk of said Court, to-wit:-

The State of Ohio }
Union County, ss. } In Common Pleas Court Journal Vol. 14 pages-41. 62, 103, 119, 142, 144, 147, 167

Sara P. Wood, Plaintiff
vs.
John A. Phillips et.al. Defendants } Certified Copy of Journal Entry.

Transcript
5-090
5-087

May. 24th 1886, Leave given Rebecca Gabriel to answer
June 8th 1886, This cause is consolidated with case No. 5087 and under this (5090) number.
5-6 October 24th 1886.

This day came the parties and it appearing to the Court that since the last Term of this Court S. S. Gardiner has been by the Probate Court of Union County Ohio duly appointed and qualified as guardian of William Crane, Allie Crane, and Elmer Crane and that James Huggart has been by the said Probate Court duly appointed guardian of Thomas Huggart on motion of said Emil Swarts the said guardians of said wards are made parties hereto and thereupon came said guardians and filed their answer herein and on behalf of said wards waived the issuing & service of Summons

Nov. 4th 1886. This day came this cause on to be heard upon the demurrer of the said Ervil Swarts to the answer and cross-petition of the said Rebecca Gabriel and was argued by counsel and submitted to the Court. On consideration whereof the Court being fully advised in the premises do sustain said demurrer To which ruling of the Court in sustaining said demurrer the said Rebecca Gabriel excepts and asked and had leave to file amended answer and cross petition and same filed.

November 18th 1886.

This day came this cause on to be heard upon the demurrer of the said Ervil Swarts to the amended answer and cross petition of the defendant Rebecca S. Gabriel and was argued by counsel and submitted on consideration whereof the Court being fully advised in the premises do sustain said demurrer to which ruling of the Court in sustaining said demurrer the said Rebecca S. Gabriel excepts and not wishing to plead further gave notice of appeal and bond was fixed at $100.00

November 19th 1886.

This cause having been heretofore consolidated with the case of Rebecca S. Gabriel vs. Ervil Swarts et-al No. 5087 was this day submitted to the Court upon the pleadings of the parties. On consideration whereof the Court being fully advised in the premises do find that the said Ervil Swarts is seized in fee simple of the undivided one half of the lands in the petition described.

The said William Crane is seized in fee simple of the undivided one twelfth part of said premises. The said Allice Crane is seized in fee simple of the undivided one twelfth part of said premises. The said Thomas Huggart is seized in fee simple of the undivided one twelfth part of said premises. The Court finds that all the defendants have had due and legal notice of the pendency and demand of the cross petition of said Ervil Swarts. The Court finds that said Ervil Swarts is entitled to have partition of said lands as prayed for in his cross petition and that none of the other plaintiffs or defendants have any estate or interest in said lands except as herein stated and that neither the said Rebecca S. Gabriel or Eliza Swarts have any right of dower in said lands. It is therefore ordered adjudged and decreed that partition of said estate be made in favor of all parties in interest and James Cutler, W. H. Conkright and T. J. Williams three judicious and disinterested freeholders of the vicinity are hereby appointed commissioners to make the same. And it is ordered that a writ of partition issue to the Sheriff of Union County Ohio commanding him that by the oaths of the Commissioners above named he cause to be set off and divided to each of the above named parties the part and proportion of said estate to which they are severally above found entitled and of his proceeding said Sheriff is ordered to make due return. The said Rebecca S. Gabriel gave notice of her intention to appeal this case to the Circuit Court and Bond fixed at $100.00

November 20th 1886

This cause came on for hearing upon the return of the Sheriff and the report of the Commissioners heretofore appointed herein and on motion to confirm the same and it appearing from said report that said estate can not be divided by metes and bounds without manifest injury to the value thereof and that said Commissioners have made and returned their appraisement of said estate, seventy-five dollars per acre amounting to $4,012.50. The Court find the return and proceedings

in all respects correct and in conformity to law. and do therefore approve and confirm the same, and thereupon neither of said parties electing to take the said estate at its appraised value on motion of the said Orril Swarts it is ordered that said estate be sold at public auction and that an order issue therefor to the Sheriff of Union County and the Sheriff is ordered to return his proceedings to this Court without unnecessary delay.

January 7th 1887.

And now comes the said Orril Swarts by Cameron and Woodburn his counsel and on his motion and on his producing the report of the Sheriff of the sale made under the former order of this Court and the Court being satisfied on examination that said sale has been made according to law it is ordered that the said proceedings and Sale be and the same is hereby approved and confirmed and the said Sheriff is ordered by deed duly executed to convey said premises to the said purchaser in fee simple and it appearing that Rebecca Gabriel has taken an appeal from the former decision of this Court in this case which appeal is now pending in the Circuit Court of this County the sum of $200 00 of the purchase money herein is ordered to remain in the hands of the Sheriff until after said appeal is decided and to await the further order hereof. And it is further ordered that of the balance of the proceeds of said sale the Sheriff pay first such taxes as may be a lien upon said premises taxed to $ 2nd that he pay the costs of this action including a counsel fee of $100 to Cameron + Woodburn, third, that he pay the balance of the cash payment and of the notes for deferred payments to Orril Swarts one half thereof, to Thos. Huggart one fourth part thereof, To Wm Crane one twelfth part thereof, To Allie Crane one twelfth part thereof and to Elmer Crane one twelfth part thereof.

The State of Ohio
Union County, ss. } I, J. Q. Burgner, Clerk of the Common Pleas Court within and for said County, and in whose custody the Files, Journals and Records of said Court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal of the proceedings of the said Common Pleas Court within and for said County and that said foregoing copy has been compared by me with the original entry on said Journal and that the same is a correct transcript thereof.

Seal

In testimony whereof, I do hereto subscribe my name officially and affix the Seal of said Court at the Court House in Marysville Ohio in said County, this 5th day of Feb. A.D. 1887

J. Q. Burgner Clerk

Afterward on the 8th day of February A.D. 1887, the following Entry was made on the journal by the Clerk of said Court, to-wit:-

Entry 5-6.

Sara P. Wood Plaintiff
vs.
John A Phillips et al. Defendants

This day appeared the parties and their attorneys and submitted this cause to the Court upon the pleadings, evidence and arguments of counsel and the same was taken under advisement.

Afterwards on the 9th day of February A.D. 1887, an Entry was made on the journal by the Clerk of said Court which reads as follows, to-wit:-

Entry

Petition in Error

43

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Sara P. Wood.
vs.
John A. Phillips et.al.

Entry
5-6

This day again came the parties by their attorneys and this cause came on for decision upon the amended answer and cross petition of the said Rebecca S. Gabriel and the demurrer of the said Arad Swarts thereto the same having at a former day been argued and submitted.

On consideration whereof the Court do sustain said demurrer and and the said Rebecca S. Gabriel not desiring to further plead the Court find the equities of the case against her and order that that the appeal in this case be dismissed and that the costs on appeal be paid out of the money remaining in the hands of the Sheriff arising from sale of land and the balance of money be destributed under the former order of the Court of Common Pleas. To all which finding, rulings and decision of the Court the said Rebecca S. Gabriel by her counsel there and there excepted.

Attest- John D. Buegner Clerk
By A. R. Buegner, Deputy

Pleas before the Honorable Thomas Beer, Henry W. Seney and George R. Haynes Judges of the Circuit Court within and for the County of Union of the Third Judicial Circuit of the State of Ohio begun and held at the Court House, in the town of Marysville on the 20th day of April in the year of our Lord one thousand eight hundred and eighty-six. Heretofore, to-wit

On the 9th day of April A.D. 1886, a Petition in Error was filed with the Clerk of said Court which reads as follows, to-wit:-

Petition in Error
43

George Smith Plaintiff
vs.
Bowers & Howe, Defendants

Circuit Court Union County Ohio
Petition in Error.

George Smith plaintiff in Error says that at the October Term 1885 of the Court of Common Pleas of the said County of Union in a certain action therein then pending the said Bowers & Howe recovered a judgment in said Court against the said George Smith for the sum of $47.75/100 damages and $ costs which judgment remains unpaid and in full force in law. A full transcript of said Record is hereunto attached and made part hereof.

The plaintiff in error avers that there is error in said judgment & record as follows.

I. The said Court of Common Pleas erred in overruling the demurrer of the defendant below to the plaintiffs petition.

II. The said Court erred in the admission of evidence offered at the trial by said Bowers & Howe to which the said Smith objected & to which he excepted.

III. The said Court erred in ruling out evidence offered by said Smith at said trial to which ruling he excepted.

IV. The said Court erred in its charge of the law to the jury.

V. The said Court erred in refusing to charge the law to the jury as requested by the said Smith and to which he excepted.

VI. The Court erred in overruling the motion for new trial.

VIII. The Court erred in rendering the judgment for said Bowers & Howe when it should have rendered judgment for said Smith.

Wherefore plaintiff prays judgment of reversal of said judgment of said Court of Common Pleas.

Robinson & Piper Attys for Geo. Smith

The defendants in error hereby enter their appearance and waive notice on us.

P. R. Kerr Atty for
Defendants in Error.

Transcript

4/3

On the 16th day of April A.D. 1886 the following Transcript was filed with the Clerk of said Court, to-wit:-

The State of Ohio } In Common Pleas Court.
Union County ss. } Journal Vol. 13 Pages 466, 507, 527, 530, 557.
Bowers & Howe Plaintiff } Certified Copy of Journal Entry.
vs.
George Smith Defendant.

May Term 1885, To-wit June 17th 1885. This day this cause came on to be heard upon the demurrer of defendant to the petition, was argued by counsel and the Court being fully advised in the premises do overrule said demurrer and thereupon the defendant asked and obtained leave to file answer in thirty days and cause continued Overruling of demurrer excepted to by defendant.

October Term 1885, To-wit: Oct 19th 1885

Leave to file answer and same filed.

October Term 1885, To-wit: Oct. 28th 1885,

This day came on this cause to be heard on the motion of plaintiff to reform the defendants answer. Whereupon the Court sustain the motion as to the first and second grounds and over-rule the same as to the 3rd ground. Whereupon the defendant amended the first defence by striking out "nothing" and inserting in its stead "anything".

Entry 43

October Term 1885, To-wit: Oct 30th 1885.

This day came the parties by their attorneys and this cause came on to be tried, and thereupon came a jury, to-wit: Jacob Hutchinson Joseph Hutchinson, John Moore, J. W. Kyle, R. Mayfield, S. B. Childs, Oliver Shaw, R. W. Evans, J. Q. Head, A. K. Minthorn, Phillip Haver, John Hendrix who, being duly impaneled and sworn to well and truly try the issue joined between the parties in this cause and a true verdict render according to the evidence, unless withdrawn by consent of parties or discharged by the Court and after hearing the testimony, arguments of counsel and charge of the Court, the said jurors retired to their room to deliberate upon their verdict, and after due deliberation returned into open Court and presented their verdict in writing in words and figures following, to-wit:-

Entry 43

Civil Action. Verdict

The State of Ohio, Union County, ss. October Term A.D. 1885, To-wit: Oct. 30th 1885

Bowers & Howe Plaintiff vs. George Smith Defendant.

We, the jury in this case being duly impaneled and sworn do find and say that we find for the plaintiff and assess their damages at $47 78

A. K. Minthorn Foreman.

October Term 1885, To-wit Nov. 13th 1885

This day this cause came on further to be heard upon the motion of defendant to set aside the verdict and grant a new trial, was

argued by counsel and submitted to the Court and upon consideration thereof the Court over ruled said motion wherefore it is ordered and adjudged by the Court that the plaintiffs recover of the defendant the sum of forty-seven and 78 dollars with interest from date of verdict and recover his costs herein expended taxed to $ To all of which ruling and judgment defendant excepts and prayed the Court to sign and seal his Bill of exceptions and make the same a part of the record which is accordingly done.

The State of Ohio }
Union County ss. } I, J. L. Brugner Clerk of the Common Pleas Court within and for said County and in whose custody the Files, Journals and Records of said Court are required by the laws of the State of Ohio to be kept hereby certify that the foregoing is taken and copied from the Journal No. 13 Pages 466, 507, 527, 530 & 557 of the proceedings of the Common Pleas Court within and for said County, and that said foregoing copy has been compared by me with the original entry on said Journal N. 13 pages 466, 507, 527, 530 & 557 and that the same is a correct transcript thereof.

In Testimony whereof, I do hereto subscribe my name officially and affix the seal of said Court, at the Court House in the town of Marysville in said County this 16th day of April A. D. 1886. J. L. Brugner Clerk.

{Seal}

Afterwards on the 20th day of April A. D. 1886, an Entry was made on the Journal by the Clerk of said Court which reads as follows, to-wit:-

George Smith Plaintiff in Error
vs
Bowers & Howe Defendants in Error

Entry
43

This day appeared the parties by their attorneys and submitted this cause to the Court upon the petition in error, the Bill of exceptions, the original pleadings and papers and the arguments of the counsel and the same was taken under advisement by the Court.

Afterwards on the 21st day of April A. D. 1886, the following Entry was made on the Journal by the Clerk of said Court, to-wit:-

George Smith
vs.
Bowers & Howe

Entry
43

This day again came the parties by their attorneys and this cause having been heretofore taken under advisement by the Court now came on for decision and judgment. Whereupon the Court being fully advised in the premises do find error in the said record and judgment in this that the Court of Common Pleas erred in overruling the demurrer of the defendant Smith to the petition of the plaintiff Bowers & Howe. Wherefore the Court considered and adjudged that the said judgment and record be reversed at defendants costs and the cause be remanded to the Court of Common Pleas for further proceedings. It is therefore considered ordered and adjudged by the Court that said judgment be reversed, verdict set aside and demurrer to petition sustained and said cause remanded at costs of defendants to be taxed by the Clerk. Defendants in Error except.

Attest J. L. Brugner Clerk.
By A. R. Brugner Deputy

Pleas before the Honorable John J. Moore, Henry W. Seney and Thomas Beer, Judges of the Circuit Court within and for the County of Union of the third Judicial Circuit of the State of Ohio, begun and held at the Court House in the town of Marysville on the 4th day of October in the year of our Lord one thousand eight hundred and eighty seven.

Heretofore, to-wit: On the 26th day of September A.D. 1887, a Petition in Error was filed with the Clerk of said Court which reads as follows, to-wit:-

Silas S. Snodgrass, Plaintiff in Error,

vs.

Joseph W. Cartmell and William L. Cartmell Executors of the Estate of Samuel M. Cartmell dec'd. Defendants in Error.

The State of Ohio Union County Circuit Court.

Petition in Error.

Petition

63.

Plaintiff in error says that at the April Term, 1887, of the Court of Common Pleas of Union County, Ohio, defendants in error, recovered a judgment, by the consideration of said Court, against plaintiff in error, in an action therein pending wherein defendants in error were plaintiffs, and plaintiff in error was defendant, a transcript of the journal entries whereof is filed herewith: there is error in the record and proceedings in this, to-wit:-

I. Said Court erred in sustaining the demurrer of the defendant in error to the answer of the plaintiff in error.

II. Said judgment was given for said defendant in error, when it ought to have been given for said plaintiff in error. Plaintiff in error therefore prays that said judgment may be reversed, and that he be restored to all that he has lost by reason thereof.

J. L. Cameron and T. B. Fulton

Attorneys for Plaintiff in Error.

We hereby waive the issuing and service of Summons in error herein and enter our appearance in said action.

Joseph W. Cartmell and William Cartmell Ex'rs &c.

By Robinson & Piper their Attorneys.

Afterwards on the 3rd day of October A.D. 1887, the following transcript was filed with the Clerk of said Court, to-wit:-

Transcript

The State of Ohio
Union County, ss. } In Common Pleas Court. Journal Vol. 14 pages 236 271 & 291

Joseph W. & Wm L. Cartmell Ex'rs &c of Sam'l M. Cartmell, dec'd, Plaintiffs

vs.

Robert Snodgrass et. al. Defendants } May 16th 1887.

Certified Copy of Journal Entries.

63

This day came the plaintiff and made due notice of the proof of the pendency of this cause on the defendant, and the Court being fully advised in the premises do find for the plaintiff against the defendant Robert Snodgrass and that there is due plaintiff from said defendant as alleged in said petition the sum of $178.72. It is therefore considered ordered and adjudged by the Court that plaintiff recover of said defendant said sum of one hundred and seventy-eight and 72/100 dollars with interest from the first day of this term of Court. And the Court find that the writ of attachment issued properly in this case but there being

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some dispute as to what interest said Robert Snodgrass has in the real estate attached and whether Silas Snodgrass owns any interest in said Robert Snodgrass' share of said land attached, therefore on motion of said Silas Snodgrass he is allowed to become a party and file his answer setting up any interest he may claim in said property (and that the entry of the above shall in no way prejudice or affect the rights of Silas Snodgrass) within ten days to which time this cause is passed for further order.

June 9th 1887

This day came the parties by their attorneys and this cause came on to be heard upon the demurrer of plaintiff to the answer of Silas S. Snodgrass, was argued by counsel and submitted to the Court. Whereupon the Court being fully advised in the premises and upon full consideration of the same do sustain the said demurrer and defendant then asked leave to July 1st next to file amended answer herein and the Court do grant such leave.

July 11th 1887

This day came the parties and by consent the continuance is opened up and the said Silas Snodgrass withdraws his request to file amended Answer and submits the cause to the Court; whereupon the Court sustains the demurrer to the answer of Silas Snograss to which he excepts and he not desiring to plead further it is considered, ordered and decreed by the Court that unless the said Robert Snodgrass pay within thirty days the amount of the judgment and costs and interest rendered herein against him in the plaintiffs favor, that an order of sale issue on plaintiffs application to the Clerk commanding the Sheriff to appraise, advertise and sell clear of any claim of Silas Snodgrass the interest which said Robert Snodgrass received by virtue of the will of George Snodgrass in the real estate described in the Sheriff's return to the Writ of Attachment in this case, and which is described in said Answer of Silas Snodgrass which interest the Court find to be one undivided sixth thereof after a legacy of Fifty Dollars shall be deducted from the whole thereof and after two hundred dollars shall be deducted from said one sixth which interest shall be sold clear of any pretended claim of said Silas Snodgrass and be applied so far as need be to the satisfaction of said judgment and costs and the balance brought into Court for further distribution. To all of which findings orders and judgments and rulings of the Court the said Silas Snodgrass excepts.

The State of Ohio
Union County, ss. } I, John D. Burgner, Clerk of the Common Pleas Court within and for the said County, and in whose custody the files Journals and Records of said Court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal of the proceedings of the said Common Pleas Court within and for said County, and that said foregoing copy has been compared by me with the original entries in said Journal and that the same is a correct transcript thereof.

In testimony whereof, I do hereto subscribe my name

officially and affix the the Seal of said Court, at the Court-House in Marysville Ohio in said County, this 27th day of September A.D. 1887

Seal

John Q. Burgner Clerk

Afterward on the 4th day of October A.D. 1887, the following Entry was made on the Journal by the Clerk of said Court, to-wit:-

Entry

Silas S. Snodgrass, Plaintiff in Error.

vs.

Joseph W. Cartmell et.al Exs. &c Defendants in Error

63

The parties appeared by their attorneys and submitted this cause to the Court upon the petition in error, original papers, transcript and argument of Counsel and the same was taken under advisement by the Court.

Afterwards on the 5th day of October A.D. 1887, the following Entry was made on the Journal by the Clerk of said Court, to-wit:-

Entry

Silas S. Snodgrass, Plaintiff in Error

vs.

Joseph W. Cartmell et.al. Defendants in Error

63

This day again appeared the parties by their attorneys and this cause having been heretofore taken under advisement by the Court now came on for decision and judgment. Whereupon the Court being fully advised in the premises do find that there is no error apparent upon the record of said proceedings in the Court of Common Pleas of Union Co. Ohio, to the prejudice of said plaintiff in error and the Court do therefore approve and affirm said judgment at the costs of plaintiff in error. It is therefore considered and adjudged by the Court that the defendants in error recover of the plaintiff in error their costs in this Court expended taxed to $ It is ordered by the Court that a special mandate issue to the Court of Common Pleas to carry said judgment into execution.

Attest John Q. Burgner Clerk.
By A. R. Burgner, Deputy

Pleas before the Honorable John J. Moore, Henry W. Seney and Thomas Beer Judges of the Circuit Court within and for the County of Union of the Third Judicial Circuit of the State of Ohio begun and held at the Court House in the town of Marysville on the 4th day of October in the year of our Lord one thousand eight hundred and eighty seven. Heretofore, to-wit:- On the 26th day of September A.D. 1887, the following Petition in Error was filed with the Clerk of said Court, to-wit:-

Petition

Silas S. Snodgrass, Plaintiff in Error.

vs.

R. L. Woodburn, Admr of the estate of R. L. Brown decd, Defendant in Error

64

The State of Ohio, Union County
Circuit Court.
Petition in Error.

Plaintiff in error says, that at the April Term, 1887, of the Court of Common Pleas of Union County, Ohio defendant in error recovered a judgment, by the consideration of said Court, against plaintiff in error, in an action therein pending, wherein defendant in error was plaintiff, and plaintiff in error was defendant

Transcript

64

A Transcript of the Docket and Journal entries whereof is herewith filed.
There is error in the record and proceedings in this, to-wit:-
I Said Court erred in sustaining the demurrer of the defendant in error to the answer of the plaintiff in error. Said judgment was given for the defendant in error, when it should have been given for the plaintiff in error
Plaintiff in error therefore prays that said judgment may be reversed, and that he be restored to all things he has lost by reason thereof.
J. L. Cameron and T. B Fulton Attorneys for Plaintiff in Error
We hereby waive the issuing and service of summons in error hereon and enter our Appearance in said action
R. L. Woodburn Admr. By Robinson & Piper his Attorneys

Afterwards on the 3rd day of October A. D. 1887, the following Transcript was filed with the Clerk of said Court, to-wit:-

Transcript 64

R. L. Woodburn, Admr of
R. L. Broome dec'd. Plaintiff
vs.
Robert Snodgrass et. al. Defendants

State of Ohio Union County, ss.
In Common Pleas Court, May Term, 1887.
Journal Vol. 14 page 235, 271 & 290
Certified Copy of Journal Entry.

May 16th 1887 Now came on this cause to be heard and the Court being satisfied that due notice has been given to the defendant and that the allegations of the petition are true do find for the plaintiff against the defendant Robert Snodgrass and that there is due the plaintiff as such Administrator from said defendant the sum of six hundred and thirty-two and 92/100 dollars at 8 % int as claimed in his petition. It is therefore considered ordered and adjudged by the Court that plaintiff recover of defendant Robert Snodgrass said sum of six hundred and thirty-two and 92/100 dollars with 8 % int from the first day of this term of this Court. And the Court find that the writ of Attachment properly issued in the case but there being some dispute as to what interest said Robert Snodgrass has in the real estate attached and whether Silas Snodgrass owns any part of the said interest of said Robert Snodgrass and therefore on motion of Silas Snodgrass he is allowed to become a party and file his answer setting up any interest he may claim in said property (and that the entry of the above shall in no way prejudice or effect the rights of Silas Snodgrass) within ten days to which time this cause is passed for further order.

June 9th 1887.

This day this cause came on to be heard upon demurrer of plaintiff to the answer of Silas Snodgrass, was argued by counsel and submitted to the Court, whereupon the Court being fully advised in the premises and upon full consideration of the same do sustain said demurrer and defendant then asked leave to July 1st to file Amended Answer herein and the Court accordingly grant such leave.

July 11th 1887

This day came the parties and by consent the Continuance is opened up and the said Silas Snodgrass withdraws his request to file Amended Answer and submits the cause to the Court whereupon the Court sustains the demurrer to the answer of Silas Snodgrass to which he exepts and he not desiring to plead further it is considered

ordered and decreed by the Court that unless the said Robert Snodgrass pay within 30 days the amount of the judgment and costs and interest rendered herein against him in the plaintiffs favor that an order of sale issue on plaintiffs application to the Clerk commanding the Sheriff to appraise advertise and sell clear of any claim of Silas Snodgrass the interest which said Robert Snodgrass received by virtue of the will of George Snodgrass in the real estate described in the Sheriffs return to the writ of Attachment in this case and which is described in the said answer of Silas Snodgrass which interest the Court find to be one undivided sixth thereof after a legacy of Fifty Dollars shall be deducted from the whole thereof and after two hundred dollars shall be deducted from said one sixth which interest shall be sold clear of any pretended claim of said Silas Snodgrass and be applied so far as need be to the satisfaction of the said judgment and costs and the balance brought into Court for further distribution. To all of which findings and orders and judgment and rulings of the Court the said Silas Snodgrass excepts

The State of Ohio,
Union County, ss. } I, John Q. Burgner, Clerk of the Common Pleas Court within and for said County, and in whose custody the files journals and records of said Court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal of the proceedings of the said Common Pleas Court within and for said County, and that said foregoing copy has been compared by me with the original entry on said Journal and that the same is a correct transcript thereof.

In testimony whereof, I do hereto subscribe my name officially and affix the Seal of said Court, at the Court House in Marysville Ohio in said County, this 27th day of September A.D. 1887.

Seal

John Q. Burgner Clerk.

Afterwards on the 4th day of Oct. 1887, the following Entry was made on the Journal by the Clerk of said Court, to-wit:-

Entry 64

Silas S. Snodgrass, Plaintiff in Error
vs.
R. L. Woodburn Admr. Defendant in Error

The parties appeared by their attorneys and submitted this cause to the Court upon the petition in error, original papers, transcript and arguments of counsel and the same was taken under advisement by the Court.

Afterwards on the 5th day of October A.D. 1887, the following Entry was made on the Journal by the Clerk of said Court, to-wit:-

Entry 64

Silas S. Snodgrass Plaintiff in Error
vs.
R. L. Woodburn Admr. Defendant in Error.

This day again appeared the parties by their attorneys and this cause having been heretofore taken under advisement by the Court now came on for decision and judgment Whereupon the Court being fully advised in the premises do find that there is no error apparent upon the record of said proceedings in the Court of Common Pleas of Union County Ohio, to the prejudice of said plaintiff in error, and the Court do therefore approve and

affirm said judgment at the costs of Plaintiff in Error. It is therefore considered and adjudged by the Court that the defendant in error recover of the plaintiff in error their costs in this Court expended taxed to $ It is ordered by the Court that a special mandate issue to the Court of Common Pleas to carry said judgment into execution.

Attest John L. Bumgner Clerk
By A. R. Bumgner, Deputy.

Pleas before the Honorable John J. Moore, Henry N. Seney and Thomas Bee Judges of the Circuit Court within and for the County of Union of the Third Judicial Circuit of the State of Ohio, begun and held at the Court House, in the town of Marysville on the 7th day of February in the year of our Lord one thousand eight hundred and eighty eight. Heretofore, to-wit:- On the 30th day of Nov. A. D. 1887, the following Petition in Error was filed with the Clerk of said Court-

A. B. Witter, Plaintiff in Error
vs.
H. H. Witter & E. E. Witter as Execution of the last will of Elijah Witter deceased and Susan Witter, Defendants in Error

Petition

Circuit Court, Union County, Ohio

Petition in Error.

66.

Plaintiff in error says that at the October Term 1887 of the Common Pleas Court of said County defendants in error H. H. Witter and E. E. Witter as such executors of Elijah Witter deceased, recovered a judgment by the consideration of said Court against plaintiff in error in an action then pending therein wherein said H. H. Witter and E. E. Witter as such executors were plaintiffs and plaintiff in error and said Susan Witter his wife were joint defendants

A Transcript of the Docket and Journal Entries whereof is herewith filed together with the original papers and pleading of record therein and made a part of this petition. There is error in the said record and proceeding in this, to-wit:-

I. The said Court erred in sustaining the demurrer of the said H. H. Witter and E. E. Witter Executors defendants in error to the Amended Answer of plaintiff in error therein.

II. The said judgment was for defendants in error H. H. & E. E. Witter Executors for the full amount claimed, whereas by the law of the land it should have been for plaintiff in error as to all he claimed in his Amended Answer- And for said Executors as to a small amount of interest only, to-wit: interest on $100 from January 18th to Feb. 8th 1886, and not for their costs.

III. The said Court erred in rendering said judgment and leaving the action to proceed against the co-defendant in said action of plaintiff in error. His said co-defendant having then an Answer on file praying for such equity relief by annexing to said note by way of reformation the condition alleged in the Amended Answer of plaintiff in error, as ought if granted to inure as well for his benefit-

as for hers and clear him of all liability on said note except for said interest, and setting forth good equitable defenses to said note as to both makers thereof. and good grounds for the relief asked.

IV. The amount of said judgment is excessive.

V. The said Court erred in sustaining the demurrer of said Executors, defendants in error to plaintiff in error's original answer.

VI The said Court erred in finding a default for want of second amended answer against plaintiff in error And in refusing leave to file second Amended Answer and in rendering judgment on the petition.

Plaintiff in Error therefore prays that said judgment may be reversed and that he be restored to all things he has lost by reason thereof or if not wholly reversed that it be nullified as may be just.

P. B. Cole & Son Attorneys for Plaintiff in Error.

December 3rd 1887

I hereby waive the issuing and service of Summons and enter my appearance as defendant in within case in error.

Susan Witter.

Afterwards on the 6th day of Dec. A.D. 1887, the following Summons in Error was issued by the Clerk of said Court, to-wit:-

Summons in Error 66

State of Ohio } Summons in Error
Union County, ss. } Circuit Court.

To the Sheriff of the County of Union:-

Petition. 5442.

You are hereby commanded to notify H. H. Witter and E. E. Witter Executors of Elijah Witter deceased that A. B. Witter has filed a petition in the Clerks Office of the Circuit Court of Union County asking the reversal of a judgment against said A. B. Witter rendered at the October term of the Court of Common Pleas, A.D. 1887 of said County and that unless the said H. H. Witter and E. E. Witter Ex'rs &c attend on the first day of the next term of said Circuit Court, said judgment may be reversed. You will make due return of this summons, on the 19 day of Dec. 1887.

Witness my hand and seal of said Circuit Court at Marysville Ohio this 6th day of Dec. A.D. 1887.

Seal

John D. Burgner Clerk.

Said Writ returned and filed Dec. 19th A.D. 1887, indorsed as follows, to-wit:-

Sheriff's Office, Union County, Ohio:-

Received this writ on the 6th day of December A.D. 1887 and on the 14th day of Dec. A.D. 1887, I served the same by handing a true copy thereof with the endorsement thereon to said D. M. Ayers Attorney for H. H. Witter and E. E. Witter Ex'rs &c. of Elijah Witter deceased. Fees:- Copy 40, Service 45- Mileage 1.60 Total $2.45-

M. Hopkins, Sheriff.

Afterward on the 7th day of February A.D. 1888, the following Entry was made on the Journal by the Clerk of said Court, to-wit:-

A. B. Witter Plaintiff in Error

vs.

H. H. & E. E. Witter Ex'rs &c. Defendants in Error

Entry 66

Circuit Court of Union County, Ohio.

This day again came

the parties by their attorneys and this cause now came on for decision and judgment wherefore the Court being fully advised in the premises do find that there is no error apparent upon the record to the prejudice of the plaintiff in error and do therefore approve and affirm said judgment at the costs of the plaintiff in error without penalty. To all of which plaintiff in error excepts.

It is therefore considered ordered and adjudged by the Court that the plaintiff in error pay the costs herein taxed at $

It is further ordered by the Court that a special mandate be sent to the Court of Common Pleas to carry said judgment for costs into execution.

Attest, J. R. Burgner Clerk
By J. R. Burgner Deputy

Pleas before the Hon. John A. Bruce, one of the Judges of the 3rd Subdivision of the Tenth Judicial District of the State of Ohio, at a term thereof begun and held at the Court House in the Town of Marysville, Union County, Ohio, on the 27th day of February, A.D. 1888. Be it therefore remembered, that heretofore, to-wit: On the 29th day of October, A.D. 1887, plaintiff filed his petition, which reads in the words and figures as follows, to-wit:

Petition.

John Robinson, Plaintiff
vs
Samuel Bruce Robinson and Irena Robinson his wife, Susannah Robinson and John Taylor her guardian, James Black, Assignee for the benefit of the creditors of Bruce Robinson, Defendants.

In the Court of Common Pleas, Union County, Ohio.

5442.

On the 2nd day of November, A.D. 1872, James Robinson did, together with his wife, Susannah Robinson, defendant, who released her Dower therein, duly execute and deliver to one Charles Mitchell, his certain mortgage deed, conveying the premises herein after described. Said conveyance contained a condition that if said James Robinson should cause to be paid to the order of said Charles Mitchell, his certain promissory note, of even date for $1026.00 due in one year after date with interest at 8 per cent. per annum, then said conveyance to be void. Said mortgage was on the 27th day of November, 1872, at 1 o'clock P.M. duly recorded in Mortgage Book 9, Page 480, Novmber 30th Union County Recorder's Office. On December 29th, 1882, said Charles Mitchell having died, said note was by his executor William Graham, duly assigned (but without recourse to the plaintiff John Robinson, together with said mortgage to secure the same. Said note is wholly unpaid excepting interest which is paid and thereon credited to December 29th, 1886. And there is due plaintiff on said note and mortgage the sum of One Thousand and Twenty six dollars, with interest at 8 per cent. per annum thereon from December 29th, 1886. Said Samuel Bruce Robinson inherited said

land from his father, said James Robinson and his sister, Robinson deceased. And the said James Black, assignee of Samuel Bruce Robinson, now holding title to it under said assignment by such assignee in trust for the creditors of said Samuel Bruce Robinson.

The following is a description of the said land conveyed by said mortgage deed, to-wit: Being Virginia Military Survey; Beginning at Hickory, Sugar and Elgin upper corner on the bank to John Harry's Survey, No. 881, running N. 53° E. 137 poles to two red oaks, and a White Oak in the center of the original Survey; Thence N. 37° W. 95 poles to a stake White Oak and Maple in the South line of a lot of land, owned by John Robinson; Thence S. 50° W. 361½ poles to a blue ash and sugartree, corner to Thomas Robinson's land on the bank. Thence down the bank, S. 12. E. 12 poles, Thence S. 50° E 110 poles; Thence N. 53° E 180 poles, to the beginning.

On the day of October, 1887, said Samuel Bruce Robinson under the name of Bruce Robinson, duly assigned all his property to James Black, defendant, for the benefit of his creditors, which assignment was then duly filed in the Probate Court of Madison County, Ohio, the place of his (S. B. Robinson's) residence, and thereupon said James Black, duly qualified and entered upon his duties as such assignee.

Second Cause of Action: On the 29th day of March, 1879, the defendant, Samuel Bruce Robinson did, together with his wife, the defendant Irena Robinson, who released her dower therein duly execute and deliver to plaintiff his certain Mortgage deed, conveying the lands above described in the first cause of action herein. Said conveyance contained a condition that if said Samuel Bruce Robinson should cause to be paid to the order of said John Robinson, plaintiff, his certain promissory note of March 17th, 1879, for Fifteen Hundred Dollars, with interest at 8 per cent. per annum. then said conveyance to be void. Interest to March 17th, 1886 has been fully paid on said note. Said mortgage was on the 15th day of September, 1879, at ___ o'clock ___ on ___ duly recorded in Mortgage Book 16, Page 93, Union County Recorder's Office. Said note is matured and wholly unpaid, excepting the interest aforesaid, and there is due plaintiff on it the sum of $1500.00 with interest from the 17th day of March 1886, at 8 per cent. per annum.

Third Cause of Action: On the 5th day of August 1881, one Susannah Robinson, defendant, did duly execute and deliver to Charles Mitchell her certain mortgage conveying all her interest in the lands described in the first cause of Action above. Being the undivided one half of said land and her Dower right therein of widow of James Robinson deceased above mentioned. Said conveyance contained a condition that if said Susannah Robinson, should cause to be paid to the order of said Charles Mitchell, her certain promissory note of even date for $1200.00 due in one year after date with interest at 8 per cent. from date, then said conveyance to be void. Said mortgage was on the 9th day of September, 1881, at 1 o'clock A.M. duly recorded in Book 18, Page 172, Union County Recorder's Office.

On the day of said note and mortgage was by William Graham, the executor of the last will said Charles Mitchell duly assigned to this Plaintiff (but without recourse on said Graham) and at the same time of said assignment, said Bruce Robinson guaranted

by his certain writing signed by him on the back of said note, the payment thereof. Said note is due, the interest to August 5th, 1887, has been paid thereon. There is due plaintiff on said note and mortgage, the sum of $1200.00 with interest at 8 per cent. per annum from August 5th, 1887.

The said defendant, John Taylor is the duly appointed and qualified guardian of the said Susannah Robinson, by the Probate Court of Union County, Ohio, and as gaurdian is made defendant herein.

4th Cause of Action:-

On the 29th day of December, A.D. 1851, the defendant Susannah Robinson duly executed and delivered to the plaintiff John Robinson, her certain mortgage deed, conveying all her interest, right and title in said to the lands described in foregoing first cause of action, being the undivided one-half of said land in fee and her dower right as widow of James Robinson deceased, in the other undivided one half thereof.

Said conveyance contained a condition, that if said Susannah Robinson should cause to be paid to the order of said John Robinson, his certain promissory note of even date for $500.00 due in two years from date, with interest at 8 per cent. per annum paid annually till paid. Then said conveyance to be void. The interest has been paid on said note to December 29, 1886. Said mortgage was on the 30th day of December, 1851, at o'clock M. duly recorded in Mortgage Book 17, Page 248, Union County Recorder's Office. Said note is matured, and there is due plaintiff on it and unpaid, the sum of $500.00 with interest at 8 per cent from December 29th, 1886, payable annually.

5th Cause of Action:- On the 5th day of January, A.D. 1883, the defendant Samuel Bruce Robinson, under the name of Bruce Robinson, did together with his wife Irena Robinson, defendant, who released her dower therein, duly execute and deliver to plaintiff his certain mortgage deed conveying the premises in foregoing first cause of action described. Said conveyance contained a condition, that if said Bruce Robinson should cause to be paid to the order of said John Robinson, his certain promissory note of even date for $2600.00 and due in one year with interest at 8 per cent per annum from date, then said mortgage should be void. Said mortgage was on the 18th day of January, 1883, at 12 o'clock M. duly recorded in Mortgage Book 20, Page 63, Union County Recorder's Office.

Said note is matured. Interest has been paid thereon to January 5th, 1887, and there is due plaintiff and unpaid on it the sum of Twenty six hundred dollars, with interest from the 5th day of January, 1887, at 8 per cent per annum.

Plaintiff asks that in default of payment of the amount now payable or that may come payable before judgment herein, said mortgages may be foreclosed and said premises sold, free of all claims of defendants, and the proceeds applied to the payment of the debts due plaintiff on said several mortgages respectively in their order and for such other relief as is proper.

P. Block & Son,
Plaintiff's Attys.

State of Ohio, Union County, ss.

John Robinson, plaintiff, being duly sworn says the facts stated and allegations in the foregoing petition are as he believes true.

John Robinson.

Sworn to and subscribed before me this 29th day of October, 1887.

Seal

John L. Burgner, Clerk.

To the Clerk:

Issue summons on this petition to the sheriff of Madison County, Ohio, for Samuel Bruce Robinson, Irena Robinson, his wife, James Black, assignee for the benefit of the creditors of Bruce Robinson. And to the Sheriff of Union County, Ohio, for Susannah Robinson and John Taylor, her guardian, returnable according to law. Equity relief.

P. B. Cole and Son, Pltff's Attys

Afterward, on the 29th day of October, A.D. 1887, a summons was issued which reads as follows, to wit:

Summons. The State of Ohio, Union County, ss:

To the Sheriff of the County of Union, Greeting:

We command you to notify Susannah Robinson and John Taylor her guardian, that they, et. al. have been sued by John Robinson in the Court of Common Pleas of Union County, and that unless they answer by the 26th day of November, A.D. 1887, the petition of said plaintiff against them filed in the Clerk's Office of said court, such petition will be by taken as true, and judgment rendered accordingly.

You will make due return of this summons, on the 7th day of November, A.D. 1887.

Witness my hand, and the seal of said Court, this 29th day of October, A.D. 1887.

Seal

John L. Burgner, Clerk.

The State of Ohio, }
Union County, ss } Sheriff's Return.

Received this Writ October 29th A.D. 1887, at 2 o'clock, P.M. and pursuant to its command, on the 2nd day of November, A.D. 1887, I served the same by leaving a certified copy of this writ with the endorsements thereon at the usual place of residence of the within named defendant Susannah Robinson, and by handing a certified copy of the same to the within named John Taylor, Guardian of the said Susannah Robinson.

Sheriff's Fees		
Service,		45
Mileage,	1.76	
Copy,		40
Total	$ 2.61	

M. Hopkins, Sheriff Union Co. O.

Indorsed: In action for equitable relief.

P. B. Cole and Son, Plaintiff's Atty.

Answer of James T. Black.

John Robinson, Plaintiff. vs Samuel Bruce Robinson, et. al. defendants } In the Court of Common Pleas Union County, Ohio.

And now comes the said James T. Black, and

Seperate Answer of John Taylor.

says that he was duly appointed assignee of Samuel Bruce Robinson, commonly known as Bruce Robinson, on the 10th day of October, A.D. 1887, by the Probate court of Madison County, Ohio: that he thereupon accepted said trust and gave bond as such assignee and is now and since said 10th day of October, 1887 has been the duly appointed and legally qualified and acting assignee of the said Bruce Robinson. Since his said appointment this assignee has been making due diligence to convert property so assigned into cash and will still so continue to use all diligence to that effect. This defendant admits that the said John Robinson has a first and prior lien upon said premises of the said Bruce Robinson as set forth in his petition and by virtue thereof is entitled to have his claim paid in full as far as proceeds of sale of said real estate will go. This defendant alleges that he is about to make application to the proper court for leave to sell all the real estate of the said Bruce Robinson at private sale believing that such real estate at private sale would sell for a much greater sum and much more advantageously for said estate than if forced to sale as upon execution.

Wherefore, said assignee asks that this action be dismissed or proceedings herein be stayed until (he) defendant as such assignee can take the necessary legal steps to effect the sale of said real estate described in plaintiff's petition.

Howard C. Black and
McClelland & Dawson.
Attys for J.S. Black.

James S. Black, being duly sworn says that the facts set forth in the foregoing answer are as he verily believes, true.

J.S. Black,
Assignee B. Robinson.

Sworn to before me and subscribed in my presence, this 23rd day of November, 1887.

E. Pitcher, Justice of Peace.

Separate Answer of John Taylor

John Robinson, Plaintiff
vs
Samuel Bruce Robinson, Irena Robinson, Susannah Robinson and John R. Taylor her guardian, and James Black, assignee, &c. Defendants.

Court of Common Pleas,
Union County, Ohio.

The defendant John R. Taylor, now comes by the leave of the Court, first had and obtained and for his separate answer herein, says - He is the duly appointed and qualified Guardian of the above named Susana Robinson, and has been such Guardian since about 1884.

That he denies that said Susana Robinson is in any way indebted to the plaintiff on the first cause of action set forth in his petition herein and says - that on the date of November, 2nd, 1872, James Robinson was the husband of the said Susana Robinson, and

was the mortgagor named in said first cause of action, and that the said Susana Robinson signed said mortgage as the wife of said James Robinson, duly releasing her dower in the lands described in said mortgage and did not receive any part of the consideration for said mortgage or in any way bind herself to pay the same. That said James Robinson died intestate on or about the day of 1873, leaving the said Susanna Robinson, his widow and the said Samuel B. Robinson and Fredonia Robinson his heirs at law. That afterwards about 1875, Fredonia Robinson died leaving the said Samuel B. Robinson his only surviving heirs at law. That after the execution of the mortgage by James Robinson deceased in 1872 as aforesaid, the said Susanna Robinson commenced an action in the said Union Common Pleas to recover a portion of the aforesaid lands; and afterwards, to-wit: On the 2nd day of November A.D. 1874, the following decree was rendered by said Court: This day this cause came on to be heard upon the petition of the plaintiff and the answer of the defendants. And the testimony introduced in the case and the Court being fully advised in the premises, do find the equity of the case to be with the plaintiff. And that she is entitled to the undivided four sevenths part of said Two Hundred and Forty acres described in plaintiff's petition lying in Union County, Ohio. It is therefore ordered, and decreed that said defendants within Sixty days from the rising of this term of court convey by a good and sufficient Deed to said plaintiff, said one undivided four sevenths part of said tract of land in said county of Union. And that in default of such conveyance that this decree operate as such conveyance of title. And it is further adjudged that the defendant pay the costs of this action taxed to * † - notice of Appeal by defendants. Bond *200 W Journal 9, P. 404. The defendants to said action were the said Samuel B. Robinson and the said Fredonia Robinson. And that the Deed so ordered by the said Court as aforesaid was never made by the defendants in said action. Now was there any appeal from the decree of said Court or other procedings had in the case. And the same ever since has remained in full force and virtue in law.

This defendant further answering says that all the other mortgages described in the plaintiff's causes Nos 2, 3, 4 and 5, were mortgages made to him by the said Susanna Robinson and Samuel B. Robinson subsequent several years to the rendition of the decree aforesaid, and that the mortgage described in the first cause of action was purchased by the plaintiff in 1882 as stated in his petition, with a full knowledge that the said Susanna Robinson by said decree was the owner of in fee of the one undivide Four Seventhsl of the lands described in the petition herein. This defendant admits the execution of the notes and mortgages described in actions 3 and 4, in plaintiffs petition. That this defendant on the 9th day of November, A.D. 1887, commenced an action in partition asking that the One Four Sevenths of said lands be set off to the said Susanna Robinson. That the indebtedness in said actions 3 and 4, amount to about *

That this defendant believes and avers that to subject the said

Reply to Answer to First Cause of Action

lands of his said ward to public sale now would result in a great sacrifice and injury of her rights and interests in said lands.

That the plaintiff had no claims by mortgage or otherwise against said lands until long after the said Susanna Robinson became the owner in fee of the one undivided Four Sevenths thereof as aforesaid. And this defendant avers that the plaintiff herein purchased in 1882, the mortgage made to Charles Mitchell in 1872, and knew at the time of taking the other mortgages from Samuel B. Robinson, described in Actions Nos 2 and 5 that the said Samuel B. Robinson owned by inheritance the Three (3/7) Sevenths and that Susanna Robinson owned in fee the remaining Four Sevenths. The said Susanna Robinson has still a Dower in said Three Sevenths after the payment of the said Charles Mitchell's mortgage described in plaintiff's first Cause of Action, and asks the court herein to protect her rights in that behalf in the decree in causes of Actions Nos Two and Five set forth in plaintiff's petition.

This defendant therefore desiring that the said Susanna Robinson hold her Four Sevenths of said land in severalty, asks the court to decree the causes of Action Nos one, two, and five, liens against the Three Sevenths of said lands and causes of Action in Plaintiff's petition Nos Three and Four, liens against the said Susanna Robinson's Four Sevenths, and that said decrees be made to take effect after an order of partition has been made, and partition had of said lands. This defendant says his said ward is aged, feeble in mind and body, and that her interests in said lands subject to said mortgage, and a small house and lot in Magnetic Springs is her only means of subsistance. That as soon as partition is had, this defendant will within a very reasonable time, procure a loan of money on her said interest in said lands and fully satisfy the said claim in Causes of Action Nos 3 and 4 and for all further and proper relief, which equity and justice may require.

D. U. Ayers, Atty for Def't.
John R. Taylor, Guardian

State of Ohio
Union County, ss } John R. Taylor being duly sworn says the facts stated and allegations in his foregoing answer are as he believes true.

J. R. Taylor.

Sworn to before me and signed in my presence this day of February, A.D. 1888.

R. McCrory, Clerk.

Seal

Reply to Answer to First Cause of Action

John Robinson, Plaintiff
vs
Samuel Bruce Robinson, Irena Robinson, John R. Taylor, Guardian, James Black, Assignee of Samuel B. Robinson.

In the Court of Common Pleas.

The plaintiff came and for reply to the answer of John R. Taylor, guardian of Susannah Robinson to the First Cause of Action to plaintiff's Petition. Plaintiff says that at the time said mortgage was

executed and delivered to the said Charles Mitchell, mortgagee, the legal title to ou said land was then in said James Robinson. And the mortgage was executed by both the said James Robinson and the said Susannah Robinson his wife without any reserve and that her claims of ownership to a share of the land above her claim for dower, had never been asserted and the said mortgage covred the whole of the land including the right of Dower. And the plaintiff avers that said mortgage being the first cause of Action herein is entitled to a full and first lien on the whole of said land, and the plaintiff prays as in his petition.

P. B. Cole and Son,
Attys for Pltff.

John Robinson, plaintiff, being sworn says that the facts stated and allegations therein made in his foregoing reply are true as he believes.

John Robinson.

Sworn to and subscribed before me this 27th day of February A.D. 1885.

R. McCrory, Clerk.

Notice to appoint a Reciver

in the
reciver
in. Le
Pleas
on the

Motion.

John Robinson, Plaintiff
vs
Samuel B. Robinson, et al.
Defendants.

Afterwards on the 24 day of March 1888 the following motion was filed by P. B. Cole & Son for plaintiff -
Court of Common Pleas,
Union County, Ohio.

Plaintiff moves, this court that a reciver be appointed in this case on the grounds, 1st A large amount of taxes are in arrears, on the lands described in the petition, to-wit: $648.25. The rents of said land are not being collected or if collected, are not being applied to paying said taxes. And heavy taxes and assessments for gravel roads, ditching &c are levied and accumulating on said lands. And the portion thereof covered by the mortgages given by S. B. Robinson is probably insufficient to pay the mortgage debt to plaintiff, being of only about $4000 cash value.

The rents of said land for this year will be required to meet the increase of plaintiffs claims by reason of delay caused by appeal.
2nd - The security for appeal is inadequate.
3rd - The portion of the land covred by mortgages made by said Susannah Robinson is heavily incumbered with taxes and assessments which are rapidly accumulating and not being paid, and the interest on plaintiffs claims is in arrears for nearly two years, and his security for his said claim is rapidly decreasing in value by running down of the property and accumulation of interest, taxes and assessments.
4th - This is an action to foreclose mortgage against Samuel B. Robinson Defendant and Susannah Robinson by the plaintiff who is a mortgagee. The condition of the mortgage herein has been fulfilled, and property probably insufficient to pay the mortgage debts

P. B. Cole and Son, Attys for Pltff.

Entry

5442.

Notice.

John Robinson, Plaintiff
vs
Samuel B. Robinson, et al. Defts.

In the Court of Common Pleas
Union County, Ohio.

The defendants will take notice that the plaintiff

in the above entitled case has filed a motion for the appointment of a reciver to take charge of the land covered by his mortgages sued on herein. The said motion will be for hearing before the Court of Common Pleas of Union County, Ohio, on March 21st, 1888. Affidavits will be read on the hearing thereof.

Respectfully

P. B. Cole and Son, Attys for Pltff.

Notice to appoint a Reciver

You are hereby notified that a motion has been filed and is now pending in the Court above named for the appointment of a Reciver to take charge of the lands described in the petition in said case, rent the same and apply the rents under the orders of the Court; causes assigned for the appoint of a Reciver.

1st There is a large amount of Delingient tax on said land to-wit: $684.25 and the rent of same has not been, and are not being applied to their payment thereof. The cost and interest are accumulating by reason of the delay caused by an appeal taken in the case by Defendants.

2nd The surety on the appeal bond is insufficient.

3rd The partition of the land covered by the mortgages made by said Samuel B. Robinson is hereby incumbered by taxes and assessments which are accumulating, and not being paid.

4th The action is to foreclose mortgages against the said Samuel B. Robinson and Susannah Robinson by the Plaintiff who is the mortgagee. The conditions of said mortgage have not been fulfilled. And the said mortgaged property is probably insufficient to pay the mortgage debts, interest, costs and taxes.

This motion will be for hearing on Thursday, the 5th day of April, 1888, at 1 o'clock, P. M. in said Court, or as soon thereafter as may be.

To James Black, Esq.
Assignee v Defendant.

P. B. Cole and Son, Attys for Pltff.

State of Ohio
Union County, ss }

John Robinson, being sworn says he served a true copy of the foregoing motion on James Black, Assignee v Defendant on the 2nd day of April, 1888.

John Robinson.

Sworn to and subscribed to before me this 5th day of April, 1888.

Seal

R. McCrory, Clerk.

Afterward on the 7th day of July, 1888, the following Entry was made on the Journal by the Clerk of said Court, to-wit:

Entry

5442.

John Robinson, Plaintiff
vs
Samuel B Robinson, et.al. Defendants } Court of Common Pleas Union County, Ohio.

And now this cause comes on to be heard on the motion John Robinson, plaintiff for the appointment of a Reciver herein, and thereupon the Court find that this action was brought to foreclose five several mortgages all described in the petition;

one of those mortgages was made by James Robinson, since deceased, and joined in by his wife Susannah Robinson, defendant, and covers the whole of the land in petition described. And two others of said mortgages were made by said Susannah Robinson, since the death of her said husband, and cover one undivided one half of said land. And the Court find that said three mortgage debts are probably sufficiently secured. But the Court find that said Samuel B. Robinson made the other two mortgages described in the petition on one undivided half of said land namely , but really only one undivided three seventh (3/7) is held for the security of said debt. And the Court further find that said land so mortgaged by said Samuel B. Robinson is probably insufficient to discharge said mortgage debt, and said mortgages having been forclosed by order of this court, and an order of sale entered in favor of the plaintiff, from which orders an appeal has been taken to the Circuit Court.

It is therefore ordered by the Court that Cyrus Zimmerman, be, and he is hereby appointed a Receiver to take charge of said land so formerly owned by the said Samuel B. Robinson, but recently assigned by him to the said James Black, who now holds it as such assignee for the benefit of Creditors. That said Receiver rent said land and otherwise protect it from waste and tresspass during the pendency of said Appeal, and under the orders of this court.

And the said parties here, and all other persons, having possession of said land or under their control, are hereby ordered to deliver the possession of same to said Cyrus Zimmerman as such Receiver on demand made by him. And it is ordered that before entering on his duties as such Receiver, he execute to the State of Ohio an undertaking, conditioned according to law in the sum of one thousand dollars ($1.000)

And now came the said Cyrus Zimmerman and was duly sworn as such Receiver and gave bond with D. F. P. Pennington and Andrew Brown his sureties in the sum of $1000, to the acceptance by the Clerk.

The foregoing entry is correct and the Clerk will enter the same on the Journal.

John A. Price, Judge.

Entry. 5442.

Pleas before the Hon. Thomas Beer, John J. Moore and Henry W. Seney, Judges of the Circuit Court within and for the County of Union of the 3rd Judicial Circuit of the State of Ohio, begun and held at the Court House in the town of Marysville, on the 25th day of September in the Year of our Lord, One thousand Eight hundred and eighty eight.

Heretofore, the Appeal Bond and Transcript and original pleadings from the Court of Common Pleas were filed with the Clerk of the Circuit Court. Said Appeal Bond was filed on the 28th day of March, 1888, and reads as follows, to wit:

Appeal Bond

Appeal Bond 69.

Know all men by these presents:

That John Robinson and James Woodburn are held and firmly bound unto J. R. Taylor, Guardian in the penal sum of Five Hundred ($500.00) Dollars, to the payment of which well and truly to be made we do hereby jointly and severally bind ourselves, our heirs, executors and administrators.

Sealed with our seals and dated this 28th day of March, 1888.
The condition of the above obligation is such that whereas the said John Robinson has taken an appeal from a certain judgment rendered against and in favor of the said John R. Taylor, Guardian, in the Court of Common Pleas within and for the County of Union and State of Ohio at the February Term 1888 in case No. 5442, entitled John Robinson vs. Samuel Bruce Robinson, et. al. to the Circuit Court of said County: Now if the said John Robinson shall prosecute his appeal to affect without unnecessary delay and shall abide and perform the order and judgment of said Circuit Court and pay all damages and Costs which may be awarded against him the said John Robinson, then this obligation shall be void; otherwise it shall remain in full force and virtue in law.

In presence of

John Robinson, {seal}
J. Woodburn. {seal}

The execution of the above Undertaking and the sufficiency of the sureties therein approved by me this 28 day of March A.D. 1888.

A. McCrory, Clerk of Courts.

Afterward, on the 7th day of July, A.D. 1888, an entry was made on the Journal, by the Clerk of said Circuit Court, which reads, as follows, to-wit:

State of Ohio } In Common Pleas Court.
Union County } ss October Term, 1887.
John Robinson, Plaintiff.
vs.
Samuel B. Robinson, Defendant.

Entry. Journal Vol. 14. Page 379.
5442. Journal Entry.
Leave to Guardian to answer in 30 days.
Friday, March 16th, 1888. February Term 1888.

This cause now coming on for hearing was submitted to the Court on the petition of the plaintiff, the answer of James Black, assignee, the answer of John R. Taylor, Guardian of Susannah Robinson, and the reply of the plaintiff thereto. And on consideration thereof, the court find on the issue joined for the plaintiff as follows: The court finds there is due to the said plaintiff on the note set forth in the first cause of action in his petition with interest at 8% to the first day of this term, the sum of Eleven hundred and twenty three dollars ($1123.)

And the Court further find that in order to secure the payment of said note, James Robinson and Susannah Robinson, his wife, executed and delivered to one Charles Mitchell their certain mortgage: She relinquishing her prospective right of dower in the premises as described in plaintiff's first cause of action. And the said mortgage was duly recorded in Book 9, Page 480 of the record of Mortgages of Union County, Ohio, and is a good and valid first lien on said premises, and that the plaintiff is now and was at the commencement of

this suit the bonafide and real owner of note and said mortgage by assignment for a valuable consideration on note in plaintiff's first cause of action so set forth; and that the conditions of said mortgage have been broken. That the said James Robinson is dead, and his interest in said land decended to the defendant Samuel B. Robinson, who is his only heir at law, and that the balance of the interest in said land is owned by the defendant Susannah Robinson subject to the mortgage, described in the first cause of action, and also the other mortgage herein described as executed by her. And the Court further find that there is due from the said Samuel B. Robinson to the plaintiff on the promissory note described in the second cause of action with 6% interest to the first day of this term the sum of seventeen hundred and thirty ($1730). And in order to secure the payment of the said note that Samuel B. Robinson and Irena, his wife, executed and delivered to the plaintiff, their certain mortgage as in the second cause of action described on the undivided three sevenths (3/7) of said premises described in plaintiff's first cause of action. But the said Samuel B. Robinson only owned three sevenths of said land named. Mortgage was duly recorded in Book 16 - Page 23, of the Mortgage Record of Union County, Ohio, and is a good and valid lien on said one undivided (3/7) three sevenths of edid premises, subject to the sum found due plaintiff in first cause of action, and that the conditions of said mortgage have been broken.

And the Court further finds that there is due from the defendant Samuel B. Robinson to the plaintiff on the promissory note described in his fifth cause of action, with interest at 6% to the first day of the term, the sum of twenty eight hundred and twenty five and 33/100 dollars. And the Court further finds that in order to secure the payment of the said note set forth in plaintiff's fifth cause of action, the said Samuel B. Robinson and Irena, his wife, executed and delivered to the plaintiff, his certain mortgage as in the fifth cause described on one undivided half of the said premises ds described in fifth cause of action. But said Samuel B. Robinson only owned 3/7 of said land. That the last named mortgage was duly recorded in Book 20, Page - - of the Record of Mortgages of Union County, Ohio, and is a good and valid lien on the premises described in the fifth cause of action, subject to the other mortgages herein declared to be prior thereto. And to secure the payment of said note, the said Samuel B. Robinson, who signed his name as Bruce Robinson only and his wife Irena executed and delivered to the plaintiff their certain Mortgage as in the petition described and on the whole of said land. But he only owned the three sevenths thereof of the premises therein described. And said mortgage was duly recorded in Book 20, Page 63 of the Record of Mortgages of Union County, Ohio, and is a good and valid lien on the undivided three sevenths of said premises, subject to the said Mortgages before described, and that the conditions in said mortgage have been broken.

And the Court further find that is due to the plaintiff from Susannah Robinson on the promissory note set forth in the third cause of action in plaintiffs petition with interest to the first day of this term at 8%, the sum of Twelve hundred and forty eight dollars ($1248)

The Court further finds that in order to secure the payment of said note, the defendant Susannah Robinson executed and delivered to Charles Mitchell, her certain Mortgage as in the third cause of action described in plaintiff's petition, and on the one undivided four sevenths of said premises in the said petition described subject to the said mortgage set forth in the first cause of action, that said mortgage was duly recorded in Book 18- Page 171 of the Record of Mortgages of Union County, Ohio, and is now, and was at the commencement of this action the real owners, and holder of the same, and it being the undivided four sevenths of said premises, subject to the first cause of action in plaintiff's petition.

The Court further finds that there is due to the plaintiff from said Susannah Robinson on the note and mortgage described in the fourth cause of action described in plaintiffs petition with interest at 8% to the first day of this term, Five hundred and forty five and $\frac{80}{100}$ dollars. And the Court further finds that in order to secure the payment of said note, the said Susannah executed and delivered to the plaintiff, her certain mortgage described as fourth cause of action in plaintiff's petition and on the one undivided one half of the premises in the first cause of action, described. Said mortgage is duly recorded in Book 17, Page 248 of the Record of Mortgages in Union County, Ohio, and is a good and valid lien on said premises and the consideration of said mortgage has been broken.

And the Court further find that the said Susannah Robinson defendant as the widow of James Robinson is entitled to dower in 3/7 of the money that remains after paying the costs, and to the plaintiff the mortgage set up in the first cause of action to-wit: Eleven hundred and twenty three dollars ($1123.$\frac{00}{100}$) out of the entire procuds of the sale of all the lands described in first cause of action. The amount of said dower to be ascertained and assigned according to the rules of the annuity tables.

That the said Susannah Robinson is the owner in fee of the four sevenths of the land described in plaintiffs first cause of action and that Samuel B. Robinson as the only heir of at law of James Robinson deceased is entitled to three sevenths thereof, and that the said Susannah Robinson is the widow of James Robinson, entitled to dower in the said three sevenths of said lands after paying costs of suit and satisfying the first mortgage in the petition described and that said Mortgage

in the first cause of action described is a first lien on all of said lands.

It is therefore adjudged and decreed, that unless the said defendant Samuel B. Robinson, and Susannah Robinson within five days from the entry of this decree, pay to the Clerk of this Court the costs in this case, and to the plaintiff herein the sum so found due him as aforesaid in the first cause of action with interest from the first day of this term, with 8% interest, the said defendants equity of redemption be foreclosed and said premises sold, and that an order of sale issue to the Sheriff of Union County, directing him to appraise, advertise and sell said premises as upon execution, and report his proceedings to this Court for further order.

And it is further adjudged and decreed that unless the said Samuel B. Robinson defendant, shall within five day from the entry of this decree pay to the Clerk of this Court the cost of this case, and to the plaintiff herein the sum so found due him in the second and fifth causes of action herein with interest at 8% from the first day of this term, the said defendants equity of redemption in, to-wit: The undivided three seventhst of the premises described in his first cause of action, and said premises be sold, and an order of sale issue to the Sheriff of Union County directing him to appraise advertise and sell said premisis and to report his proceedings to this Court for further order.

And it is further ordered that unless the said defendant Susannah Robinson within five days from the entry of this decree pay to the Clerk of this Court the costs in this case and to the plaintiff the sum so found due from her to plaintiff on the 3rd and 4th causes of action herein with interest from the first day of this term at 8% the defendants equity of redemption in the premises described in the 3rd and 4th causes of action to-wit: The undivided four sevenths of the premises described in the first cause of action, and that four sevenths of said premises be sold, and that an order of sale therefor be issued to the Sheriff of Union County, directing him to appraise, advertise and sell said premises as upon execution at law, and report his proceedings to this court for further order.

To all of which rulings and decessions of the court, the defendant, Susannah Robinson then and there excepted and gave notice of appeal on consideration whereof the Court fixed the amount of her appeal bond at $500.00

Upon the execution of which the former orders herein, are and will be suspended.

State of Ohio
Union County, ss } I, Robt McCrory, Clerk of the Common Pleas Court within and for said County, and in whose custody the Files, Journals and Records of said Court are re-

J. 14
Page 571

5-5-73

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quired by the laws of the State of Ohio to be kept hereby certify that the foregoing is taken and copied from the Journal of the Procedings of the Common Pleas Court within and for said County, and that said foregoing copy has been compared by me with the original entry on said Journal 14, Pages 413 414 and 415, and that the same is a correct transcript thereof.

In testimony whereof, I do hereto subscribed my name officially and affix the seal of said Court at the Court House in Marysville in said County, this 12th day of July, A. D. 1888.

Seal

R. M. Hickory, Clerk.

Pleas before the Honorable Thomas Beer, John J. Moore, and Harvey W. Scovy Judges of the Circuit Court within and for the County of Union of the Third Judicial Circuit of the State of Ohio begun and held at the Court House the 22 day of January in the year of our Lord one thousand eight hundred and eighty nine. On the 14th day of January 1889 Certified Copy of Journal Entry was filed with the Clerk of the Court

The State of Ohio,
Union County s.s.
William H. Crary
vs
James Sweney

In Common Pleas Court

Journal Vol. 14 & 15, Page 571, : Pages Vol. 15
Certified Copy of Journal Entry.

J. 14
Page 571

December 7th A. D. 1888.

This day this cause came on to be heard on the motion of Robert Smith to be substituted plaintiff instead of William H. Crary, and it appearing that said W. H. Crary has ceased since the commencement of this action to be the Treasurer of this County, and that Robert Smith is now the Treasurer of this County.

It is ordered and adjudged by the Court that he be substituted as Treasurer instead of the said William H. Crary.

December 8 A. D. 1888.

5-5-73

William H. Crary.
vs
James Sweney.

Journal 14 — Page 571

This cause is set for hearing on January 7th 1889.

Wednesday January 9th A. D. 1889.

This day came Robert Smith Treasurer of Union County Ohio, now substituted as plaintiff in this case also came defendant by his counsel, and this cause was submitted to the Court on the pleadings without any evidence. Whereupon the Court find on the pleadings for the defendant.

Wherefore it is ordered and considered by the Court that the plaintiffs petition be dismissed and the defendant recover his costs taxed at $-- from plaintiff. Thereupon plaintiff gave notice of his intention to appeal this cause to the Circuit Court thereupon fixed the appeal bond at one hundred dollars.

The State of Ohio
Union County, ss I, R. McCrory, Clerk of the Common Pleas Court within and for said County, and in whose custody the Files, Journals and Records of said Court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal Vol. 14 & 15 of the proceedings of the Common Pleas Court within and for said County, and that said foregoing copy has been compared by me with the original entry on said Journal and that the same is a correct transcript thereof.

In testimony whereof, I do hereto subscribed my name officially and affix the Seal of said Court, at the Court House in Marysville in said County, this fourteenth day of January A.D 1889. R. McCrory. Clerk.

Entry. William H. Crary Treasurer &c. vs. James Sweeney. Entry. Filed. January 22nd 1889. Journal. 1, Page 81.

This day came by the parties in person and by counsel and submitted this cause to the Court on the pleadings, the evidence and arguments of counsel whereupon the Court being fully advised in the premises do over rule the demurrer to the petition to which judgment of the Court in over-ruling the demurrer the defendant excepts and find for the plaintiffs on the issues joined in the petition, answer and reply.

Thereupon the Court find that the sum for which the defendant is liable by reason of the premises is four hundred and ninety four dollars and six cents which sum defendant ought to pay as prayed for to plaintiff.

It is therefor considered, ordered and adjudged by the Court that said plaintiff, the present Treasurer, as Treasurer recover of said defendant said sum of four hundred and ninety four dollars and six cents and his costs herein expended taxed $ and in default of payment in ten days the Court considered order and adjudge that an order of sale issue to the Sheriff of this County commanding him to appraise, advertise and sell the land in said petition described according to law to satisfy said judgment and costs and interest from this date.

And it is further ordered that a mandate issue remanding this cause to the Court of Common Pleas to carry this judgment and decree into execution. To all of which findings rulings judgments and decrees the defendant excepts.

Pleas before the Honorable Thomas Beer, John J. Moore and Henry W. Savy, Judges of the Circuit Court within and for the County of Union of the Third Judicial Circuit of the State of Ohio, begun and held at the Court House in the Town of Marysville on the 22 day of January in the year of our Lord, one thousand eight-hundred and eighty nine.

Nos. 5062 Page 7.

Page 157 Nos. 5062

Page 260 Nos. 5062

Page 312 Nos. 5062

Page 489 Nos. 5062

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The State of Ohio
Union County, ss
George W. Mackling
vs
John Norvlove and Mary M. Norvlove.

In Common Pleas Court.
February Term 1886.
Journal Vol. 14 - Pages 7-157-260-312 and 489. Filed August 16th, 1888.
Certified Copy of Journal Entry.

No. 5062
Page 7.

On application of the plaintiff herein and a proper showing being made, an order of attachment is allowed to issue in this case in the sum of $1457, with interest from the 1st day of May A.D. 1884, on the plaintiff giving the undertaking as provided by law in the sum of $3500.00

John A. Price Judge of Court of Common Pleas.

Page 157
No. 5062

This day this cause came on for hearing upon the motion of the defendants to dissolve the attachments, heretofore granted in this case and the Court being fully advised in the premises and upon a full investigation of the facts upon the affidavits offered in support of said motion and against the same does overrule said motion, to which ruling of the Court, the defendant excepts.

Page 260
No. 5062

This day this cause came on to be heard upon motion to attach copy of note to his petition and the same being sustained by the Court plaintiff thereupon asked leave of the Court to attach copy of the note within which was granted by the Court, and this cause was thereupon continued.

Page 312
No. 5062

Leave to file answer and the same filed.
Leave to file amended petition.

George W. Mackling
vs
John Norvlove and Mary M. Norvlove.

Page 489
No. 5062

This day came this cause on to be heard upon the pleadings of the parties and upon the evidence. And was argued by counsel and submitted on consideration whereof, the Court being fully advised in the premises, finds in favour of the defendant Mary M. Norvlove and against the said plaintiff upon the issue joined between them.

And that at the time of signing said note the said Mary M. Norvlove did not intend to, and did not bind herself for the payment of the same, and that the lands in the petition described are not charged with the payment of the same.

It is therefore adjudged by the Court that the attachment heretofore issued in this case be and the same is hereby discharged, and this cause dismissed. And it is further ordered and decreed that the said Mary M. Norvlove recover of the plaintiff her costs herein, taxed at $.

Therefore the plaintiff gave notice of his intention to appeal this cause to the Circuit Court, and the Court here fixed the bond for appeal at $200.00

The State of Ohio
Union County, ss

I, R. McCrory, Clerk of the Common Pleas

Court within and for said County, and in whose custody the files, Journals and Records of said Court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal ---- of the Proceedings of the Common Pleas Court within and for said County and that said forgoing copy has been compared by me with the orignal entrys on said Journal No 14, Pages 7-15-7-260-312-and-3489 and that the same is a correct transcript therof.

In testimony whereof, I do hereto subscribed my name officially and affix the Seal of said Court, at the Court House in Marysville in said County, this 16th day of August, A.D. 1888.

seal

R. McCrory. Clerk.

Transcript

Entry.

74.

J. Vol. 1.

P. 77

Filed September 26th, 1888.

George W. Mackling

vs

John Newlove & Mary M. Newlove

This day came the parties and their attorneys and thereupon this cause came on to be heard upon the pleadings of the parties and the evidence and was argued by counsel and submitted to the Court

On consideration whereof the Court being fully advised in the premises find in favor of the defendants Mary M. Newlove and against the plaintiff upon the issues joined between them and that at the time of signing said note the said Mary M. Newlove did not intend to, and did not bind herself or her separate property for the payment of the same and that the land in the petition discribed is not charged with the payment of said note or any part thereof.

It is therfore adjudged by the Court that the attachment issued in this case be and the same is hereby discharged and this cause is dismissed at the cost of the plaintiff. It is adjudged and decreed that the said Mary M. Newlove recover of the plaintiff her costs in this action expended, taxed to $.

To which ruling and judgment of the Court the plaintiff excepts and moves the Court here for a new trial of this case which motion for new trial was over ruled by the Court to which ruling of the Court the plaintiff excepts and the Clerk of the Court is directed to keep the records of said Court open for thirty days from this date for the purpose of allowing the plaintiff to file his Bill of Exceptions herein.

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Olas continued and held at the Court House in Marysville within and for the County of Union, in the Third Judicial Circuit of the Circuit Court of the State of Ohio, before the Honorable Thomas Beer, John J. Moore, and Henry W. Seney Judges of said Court, of the term of September, to-wit, on the 24th day of September in the year of our Lord one thousand eight hundred and eighty-nine.

Be it remembered that, heretofore, to-wit, on the 27th day of July A. D. 1889, the following Transcript was filed with the Clerk.

Transcript The State of Ohio
Union County, ss

V. S. Hills
vs
John Moore et al

In Common Pleas Court, May Term, A. D. 1889

Journal Vol. 15, Page 125 and 130.
Case No. 5796
Certified Copy of Journal Entry

Thursday, June 20th, 1889.

Now comes the Marysville Saving Building and Loan Company and upon motion, leave is granted by the Court, to file answer and cross-petition, and the same is filed.

Friday, June 21st, A. D. 1889.

This day came this cause to be heard on the motion filed by the defendant J. S. Moore, to reform plaintiff's petition and the demurrer to Sprague and Orrfield's cross-petition; whereupon the Court being fully advised in the premises, do overrule said motion and demurrer, to which ruling said Moore excepts.

Wherefore the said John S. Moore and Marietta Moore being in default for answer and not desiring to file any answer, this cause came on to be heard by the Court, a jury being waived, it is found by the Court that there is due to the plaintiff on said notes mentioned in the plaintiff's first three causes of action, the sum of nine hundred and ninety-one and 69-100 dollars. Therefore it is considered ordered and adjudged by the Court that the plaintiff recover of the said John S. Moore said sum of nine-hundred and ninety-one and 69-100 dollars and interest from the first day of this term of Court, and his costs therein expended taxed at - - - $.

And it is further found that said sum is a lien on the real estate in said petition described, as in said fourth cause of action set forth from January 14th, 1887. It is therefore ordered and decreed by the Court that said defendant pay said sum and interest and cost within three - - -, and in default thereof that an order of sale issue to the Sheriff of this County, commanding him to appraise, advertise and sell real estate according to law, to satisfy said judgment and decree, and report to this Court his proceedings therein.

And thereupon came on this cause to be further heard on the cross-petition of Sullington and Ohellis, whereupon the Court find that

the said $141.50 and the interest thereon all amounting to $178.29 mentioned in said cross-petition, should be credited on said mortgage, as of this date, and that there remains due said Fullington & Shellie after said credit the sum of two hundred and nineteen and 70-100 dollars which is a lien on said lot No. 313 from February 2nd, 1889; and therefore the Court order and decree that said John S. Moore and Marietta Moore, pay said sum and interest at eight per cent. to said Fullington & Shellie, and in default thereof for three days, that an order of sale issue to the Sheriff of said County, commanding him to appraise, advertise & sell said premises according to law.

And further the Court find on the cross-petition of said Sprague & Orfict, that there is due to said Sprague & Orfict on the mortgage set up in their cross-petition the sum of one hundred and ninety-four & 58-100 dollars which is a lien on the premises therein described from ---------- which is also on eight per cent

It is therefore by this Court ordered and decreed that said defendant J. S. Moore and Marietta Moore pay said Sprague & Orfict said sum and interest within three days, and in default thereof that an order of sale issue to the Sheriff for the sale thereof according to law; and as to all other matters, this cause is passed for further action. And thereupon, upon the motion of John S. Moore the Court fixed the Supercedias Bond in the case at two hundred dollars conditioned that he will pay the costs and the reasonable rents of said premises in case petition in error is filed in the Circuit Court.

The State of Ohio.
Union County, ss I, Robert McCreary, Clerk of the Common Pleas Court, within and for said County, and in whose custody the files, journals & Records of said Court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal Vol. 15, Pages 125 & 130 of the Proceedings of the Common Pleas Court within and for said County, and that said foregoing copy has been compared by me with the original entry on said Journal and that the same is a correct transcript thereof.

In testimony whereof, I do hereto subscribed my name officially and affix the Seal of said Court, at the Court House in Marysville in said County this 27th day of July A. D. 1889.

seal

R. McCreary, Clerk.

Petition in Error

Afterward, at the 27th day of July, 1889, Petition in Error was filed with the Clerk of said Court.

83 John S. Moore, Plaintiff in Error
vs
V. S. Hills, Fullington & Shellis, Sprague & Orfict, Defendants in Error

Circuit Court,
Union County, Ohio.

Plaintiff in error, says, that at

the May Term, 1889, of the Court of Common Pleas of Union County defendant in error V. S. Hills recovered a judgment by the consideration of said Court against plaintiff in error in an action then pending therein in which V. S. Hills defendant in error was plaintiff, and plaintiff in error was defendant and in the same action the defendants in error Sullington & Ohellis and Sprague & Corfect were defendants with said John S. Moore and at said May Term of 1889 obtained judgments in said action on their several cross-petitions in said cause against said plaintiff in error John S. Moore, a transcript of the docket and journal entries whereof is filed herewith.

Wherein is error in the said record and proceedings in this to-wit: First.--- The said Court erred in overruling the motion of plaintiff in error to reform the petition of the defendant in error V. S. Hills.

Second. The facts set forth in the petition of V. S. Hills are not sufficient in law to maintain said action against plaintiff in error.

Third. The facts set forth in each of the 1st, 2nd, 3rd, & 4th, causes of action in said petition of V. S. Hills are insufficient in law to maintain said action against plaintiff in error.

Fourth. The amount of said judgment in favor of V. S. Hills is excessive more than was due on the claim.

Fifth. Said judgment was given for said V. S. Hills when it ought to have been given for said John S. Moore.

Sixth. The said judgment in favor of Sullington & Ohellis is excessive and for more than their cross-petition demands.

Seventh. The said Court erred in overruling the demurrer of plaintiff in error to the cross-petition of Sprague & Corfect and in giving Judgment for said Sprague & Corfect on same.

Plaintiff in error therefore prays that said judgment in favor of V. S. Hills and said Judgments in favor of Sullington & Ohellis and said Judgment in favor of Sprague & Corfect may be reversed, and that he be restored to all things he has lost by reason thereof.

J. B. Cole. Attorney for Plaintiff in Error.

Waiver

We hereby waive the issuing and service of summons in error and severally enter our appearance as defendants in error in the case within of John S. Moore vs V. S. Hills & Others in Circuit Court Union County, Ohio. (not signed)

Summons in Error

Afterward on the 26th day of July 88 Summons in Error was filed with the Clerk of said Court.

State of Ohio
Union County, ss

To the Sheriff of the County of Union.

You are hereby command to notify V. S. Hills, Sullington & Ohellis & Sprague & Corfect that John S. Moore has filed a petition in the Clerks Office of the Circuit Court of Union County

asking the reversal of a Judgment against said John S. Moore at the May term of the Court of Common Pleas, A. D. 1889 of said County and that unless the said V. S. Hells, Sullington & Shellis and Sprague & Orrfet attend on the first day of next term of said Circuit Court, said judgment may be reversed.

seal

You will make due return of this summons on the 5th day of August, 1889.
Witness my hand and the seal of said Circuit Court at Marysville, Ohio, this 26th day of July, 1889.

R. McElroy, Clerk.

Appearance of Sprague & Orrfet entered and service of process acknowledged July 27th, 1889.

Jas. S. McCampbell, Attorney for Sprague & Orrfet.

Appearance of V. S. Hells entered and service of summons & notice acknowledged July 27th, 1889

Entry

Afterward on the 24th day of September the following Entry was made on the Journal by the Clerk of said Court.

83 John S. Moore & Wife
vs
V. S. Hells et al

Circuit Court, Union County, Ohio

This day came the parties in this cause and submitted this cause to the Court. Whereupon the Court having heard the arguments of counsel and on due consideration thereof the Court find no error in said record and judgment in said record set forth.

Wherefore it is considered ordered and adjudged by the Court that said record, proceedings and judgment be affirmed with costs and that defendants recover of the said plaintiff in error their costs herein expended taxed to $---.

And the Court order that a special Mandate issue by the Clerk remanding this cause to the Court of Common Pleas to carry into effect this judgment of the Court.

And the Court being of the opinion that there was reasonable ground for proceedings in error allow no penalty.

Olras continued and held at the Court House in Marysville within and for the County of Union, in the Third Judicial Circuit of the Circuit Court of the State of Ohio, before the Honorable Thomas Beer, John J. Moore and Henry W. Seney Judges of said Court, of the term of September, to-wit, on the 24th day September in the year of our Lord one thousand eight hundred and eighty nine.

Be it remembered that heretofore, to-wit, on the 5th day of June 1889, a Transcript was filed with the Clerk of said Court.

Transcript. The State of Ohio,

Union County ss In Common Pleas Court, March Term, 1889.

A. Middlesworth	Journal 15, Vol. 15, Page 31, 50 and 77
vs	Case No. 5598
William Whitley et al	Certified Copy of Journal Entry.

March Term, A. D. 1889. Wednesday, March 6th, 1889.

This day this cause came on to be heard upon the motion and showing of defendants for postponement of the trial of said case, and was argued by Counsel, and the Court being fully advised in the premises, granted said postponement until the 19th day of March; and it is ordered that the defendant pay the costs of the proceedings of the case for this day.

March Term, A. D. 1889. Tuesday March 19th, A. D. 1889.

This day this cause came on to be heard upon the motion of the plaintiff for leave to amend his petition by substituting Jackson Township instead of Washington Township in the description of lands in said petition; was argued by counsel and the Court being fully advised in the premises, grant leave to make said amendment by erasing the word Washington and inserting Jackson, whereupon the defendant moved the Court for the regularities for answering said petition, and the Court finding that the defendants were not taken by surprise by said amendment, overruled the motion.

March Term A. D. 1889. Wednesday April 3rd, A. D. 1889

This day this cause came on for hearing, was submitted to the Court on the pleadings and the evidence, on consideration whereof, the Court find the issues joined for the plaintiff and that the conveyance of the property described in plaintiff's petition, to-wit: From William Whitley to C. E. Fields, and from C. E. Fields to Molly J Spring and others (children of the said William Whitley) was without consideration, and made to hinder and delay the creditors of said Whitley as the said plaintiff has in said petition alleged.

It is therefore considered by the Court that said deed of conveyance from William Whitley to C. E. Fields and from

E. L. Fields & Wife, be and the same are hereby set aside, vacated and declared to be of no force or effect in law, to affect or convey the title of said described premises to the said Fields or to said grantees from Fields & Wife; it is therefore ordered by the Court that the said real estate described in the said petition be subjected to the payment of said judgments against the said William Whitley, as described in said petition, and that said William Whitley pay the costs of this suit, except the witness fee of J. C. Fields and the costs of the attachment against him, which costs shall be taxed against the plaintiff; whereupon the defendants gave notice of appeal and the appeal bond was fixed at $100.00

The State of Ohio,
Union County, ss, I, R. McCrory, Clerk of the Common Pleas Court within and for said County and in whose custody the Files, Journals and Records of said Court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal of the Proceedings of the Common Pleas Court, within and for said County, and that said foregoing copy has been compared by me with the original entry on said Journal 15, Pages 31, 50 and 77, and that the same is a correct transcript thereof.

Transcript "A."

seal

In testimony whereof, I do hereto subscribed my name officially and affix the Seal of said Court, at the Court House in Marysville in said County, this 5th day of June A. D. 1889.

R. McCrory, Clerk.

Afterward, on the 24th day of September, Motion to dismiss Appeal was filed with the Clerk of said Court.

Motion to dismiss Appeal

Anthony Middlesworth
vs
William Whitley

In Circuit Court,
Union County, Ohio.

And now comes the plaintiff and moves the Court to dismiss the appeal in this case - for the reason that no appeal bond was filed herein within thirty days after the adjournment of the term of Court at which the Judgment was entered against the defendant.

O. R. Kerr, for Plaintiff.

78

Entry

Afterward, on the 24th day of September, 1889, the following Entry was made on the Journal by the Clerk of said Court.

78

Anthony Middlesworth
vs
William Whitley

In Circuit Court,
Union County, Ohio.

This day this cause came on to be heard upon the motion of the plaintiff, Anthony Middlesworth, to dismiss the appeal - was argued by counsel - and the Court being fully advised in the premises do sustain said motion and the appeal is hereby dismissed and the Clerk of this Court is hereby required to

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issur a special Mandate to the Common Pleas Court of said County for xecution upon the Judgment and that the defendant pay the costs in this Court taxed at $---. Defendant xcepts.

Pleas continued and held at the Court House in Marysville within and for the County of Union in the Third Judicial Circuit of the Circuit Court of the State of Ohio, before the Honorable Thomas Barr, John J. Moore 2d Henry W. Seney, Judges of said Court of the Term of September, to-wit, on the 24th day of September in the year of our Lord one thousand eight hundred and eighty nine. Be it remembered that heretofore, on the 27th day of August, 1888, a Transcript was filed with the Clerk of said Court.

Transcript "A."

The State of Ohio,
Union County,

In Common Pleas Court.

March Term, 1888.

John Robinson
vs
Samuel B. Robinson
Irene Robinson, John R. Taylor
Guardian of Susannah Robinson,
James Black, assignee) and
Cyrus Zimmerman, Receiver

Journal Vol. 15, Page 80

Journal Vol. 14, Page 442

Certified Copy of Journal Entry

Thursday, April 4th, A. D. 1889.

This day this cause came on to be heard on the Sheriff's report on an order of sale issued in this case; also upon the pleading and evidence, and upon a written agreement entered into, and signed by all the parties to this action; and the Court being fully advised in the premises, find as follows:

First. That at the September Term 1888, of the Circuit Court of said County, the said John Robinson, by the consideration of said Court, recovered a decree, and order of sale on foreclosure of five mortgages on the James Robinson farm, so called; that the said decree was remanded to the Court of Common Pleas for further proceedings on execution.

That said Susannah Robinson was the owner of four-sevenths of the James Robinson farm in fee simple and that Samuel B. Robinson was the owner of three-sevenths (3/7) thereof in fee simple

That two of the said mortgages were made by the said Samuel B. Robinson on his undivided interest and amount, principal and interest to the sum of $1936.74, on the 6th day of February, 1889. That the said Samuel B. Robinson land was bound for the other three mortgages, aggregating at the rendition of the said decree the sum of $5930.82 bearing eight per cent interest. That at the March Term 1888 of this Court partition

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was made of said land alloting to said Susannah Robinson 123, 41-100 acres, and to S. B. Robinson 123; 41/100 acres also assigning dower amounting to 40 acres in share of S. B. Robinson, which partition was confirmed by the Court at its March Term, 1888 from which Judgment and appeal was taken.

The Court further find that on the 6th day of February, 1889 a written agreement of compromise was entered into and signed by all the parties hereto, and is as follows:

John Robinson
&
John R. Taylor Guard.
of Susannah Robinson

Circuit Court, Union County, Ohio.
Also
Common Pleas Court, Union County Ohio

In the partition case it is agreed that the partition already made of the James Robinson farm, shall stand as made in the Common Pleas Court, and the appeal is to be dismissed. The Guardian of Susannah Robinson to pay all the partition costs.

Second. The foreclosure proceedings are to be modified as follows, viz: Said Susannah Robinson is to pay cash now the two mortgage given by her dower, now amounting to, with 8 per cent. interest to $1936.74 and one-half the costs, and is to relinquish by the decree all her dower interest in the 123 41/100 acres set off to Samuel B. Robinson in said farm; and Second; said John Robinson is to assign to William Moody all of said claim of $1936.74, and all interest he has in the 123 41/100 acres set off to her the said Susannah Robinson, and the parties consent to the modification of the order of foreclosure made in said Court, as to confirm this agreement, and allow the sale of the 123 41/100 acres set off to Samuel B. Robinson, for the benefit of John Robinson's mortgage, for the satisfaction of his decree therein.

This Agreement is to be confirmed by John Robinson on his part by John R. Taylor, Guardian of Susannah Robinson, by James Black, assignee of S. B. Robinson and by Cyrus Zimmerman receiver, and the whole carried into effect by the decree of the Court, in said cause, at the March Term, 1889, and the money on said $1936.74 is to be paid to John Robinson whenever the papers is signed by him. John R. Taylor, Guardian is to pay 4/7 of the land tax of the whole of the James Robinson farm and said John Robinson 3/7 of the land tax of said farm.

February, 6th, 1889.

John Taylor Guard
John Robinson
J. S. Black, Assignee
(per H. C. Black.)
Cyrus Zimmerman Receiver

It is therefore considered, ordered and decreed by the Court, that the said agreement be and the same is hereby confirmed.

And it appearing that said sale to said John Robinson, of the premises set off by said partition to S. B. Robinson has been in all respects regular, the same is hereby approved and confirmed, and the Sheriff is ordered to execute to said purchaser a deed

in fee simple according to law, conveying to him the interest therein of all the defendants, including the dower of said Susannah Robinson. And of the costs made herein, the one half, viz; $17.83 of the costs, up to the time the order of sale issued, and all the costs since the issuing of the order of sale, to-wit; $32.25, be taken out of the purchase money of S.B. Robinson's lot, and 3/7 of all the tax and assessments on said farm, including delinquent and simple tax and bridge assessments to and including the June payment 1889, and amounting in the aggregate to $412.49 and also the whole of the unpaid assessments on the Sager Mill Road, amounting to $13.41 be paid out of the purchase money, total amount $425.90; and that the residue of the purchase money be applied as follows:

First. On the decree, on the first cause of action herein, of John Robinson vs S.B. Robinson the sum of $1216.42; and that the remainder of said purchase money being $2009.70 be applied as a credit on the decree on the 3rd and 5th cause of action herein, being a balance due and unpaid of $2941.72 on said decree as against S.B. Robinson and in favor of John Robinson.

It is considered that the said John Robinson recover the same from the said Samuel B. Robinson, and execution is awarded therefor.

And as to the remaining costs amounting to $19.33, it is ordered that the said John R. Saylor as Guardian of Susannah Robinson pay the same to the Clerk of this Court within ten days from the entry hereof and in default that execution issue therefor; and as to the balance of the taxes and assessments on said farm, being 4/7 thereof, the said John R. Saylor, as such guardian, is ordered to pay the same as it may be required by the Treasurer of Union County.

George M. McCrory, who was appointed by the Court as a Special Master Commissioner in this case, made his report herein, and he is allowed $3.00, as his fees in the case, which is to be paid out of the purchase money in this case.

And Cyrus Zimmerman, herein appointed Receiver in this case this day made his report, showing a balance in his hands as such, the sum of $123.00 which report is confirmed and he is ordered after reserving his commission as such Receiver, to pay the balance to said John Robinson, to be credited on his decree against the said Samuel B. Robinson.

To the order and decision of the Court, as to assessments on the lands above referred to and described, the said John R. Saylor, Guardian excepts, and give notice of appeal from the same, and his bond is fixed at $100.00.

The State of Ohio,
Union County ss

I, R. McCrory, Clerk of the Common Pleas Court, within and for said County, and in whose custody the files, Journals and Records of said Court are required by the

laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal of the proceedings of the Common Pleas Court within and for said County, and that said foregoing copy has been compared by me with the original entry on said Journal 15, Page 80 and that the same is a correct transcript thereof.

seal

In testimony whereof, I do hereto subscribed my name officially and affix the seal of said Court at the Court House in Marysville in said County, this 2d" day of August, 1888.

R. M." Crory, Clerk.

"B". Afterward, on the 27" day of August, 188?, the following Transcript was filed with the Clerk.

Writ of Partition and Dower

Sheriff's Return.

As commanded by the foregoing writ of partition and dower I have executed the same by the oaths of Wm. H. Robb, Cyrus Zimmerman and A. S. Mowery, causing dower to be assigned to Susannah Robinson, widow James Robinson deceased, and partition to be made of the premises in said writ described; all of which will more fully appear by reference to the report of the said Commissioners, herewith returned.

Given under my hand this 4" day of April, A. D. 1888.

M. Hopkins, Sheriff.

Commissioner's Report.

John R. Taylor Guardt.
vs
Samuel B. Robinson et al

Union County Court of Common Pleas
In Partition and Dower.

According to the command of the Writ of Partition and Dower in this case issued, and on call of the Sheriff of said County, we, the undersigned Commissioners, after being first duly sworn, and upon actual view of the premises, do set off and assign to the said Susannah Robinson as her dower estate in the said lands, in said petition described, the following tract, to-wit; Situated in Union County, Ohio, and part of Virginia Military Survey No. 2977; Beginning at a stone in the southerly line of said survey and in south-westerly corner to John Robinson's land; thence with the westerly line of said land N. 33.- W 95 polre to a stone corner to said John Robinson's land and in the line of W. H. Robinson's land; thence with said line S 56- E. 72 polre to a stake; thence S 33- E 95 polre to a stake in the southerly line of said survey; thence with said line N. 56 E. 72 to the beginning, containing 42 and 75/100 acres more or less.

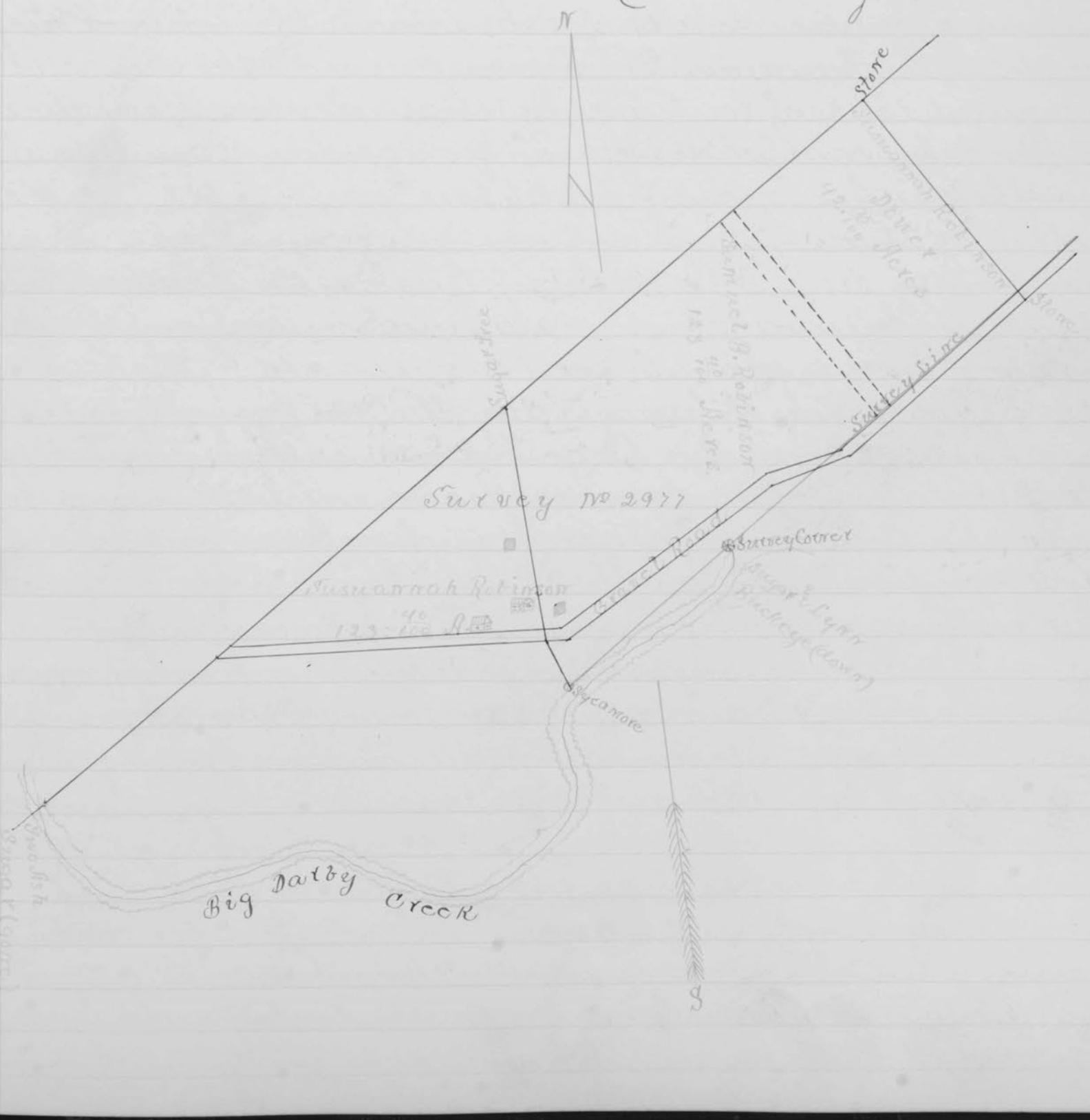
And we do make partition of the same, as follows, to-wit: To the said Samuel B. Robinson the following tract, situate in the County of Union and State of Ohio, and part of Virginia Military Survey No. 2947. Beginning at a sugar-tree, lynn and buckeye corner on big Darby Creek to said Survey No. 2977; thence with the southerly line of said survey N. 56 - E. 150 60/100 polrs to a stone south-westerly corner to John Robinson's land; thence with the westerly

line of said land N. 33-W. 95 pole to a stone corner to said John Robinson's land, and in the southwesterly line of W. Hamiter Robinson's land; thence with said line and in the line of Cyrus Zimmerman's land S. 56-W 180 pole to a sugar tree; thence S. 3-E. 89 pole to a stake in the center of the Robinson Gravel Road; thence S. 35-E. 19 pole to a sycamore on the left bank of Big Darby Creek; thence down the creek with the meandrings thereof to the beginning, containing 123 a. 41/100 acres more or less. And subject to the dower Estate of Susannah Robinson, upon 42 a. 75/100 acres of the same.

To the said Susannah Robinson the following tract, situate in the County of Union and State of Ohio in U. M. Survey No. 2977; Beginning at two blue ash & a sugar tree lower corner on Big Darby Creek to Cyrus Zimmerman's land; thence with the southerly line land N. 56-E. 235 pole to a sugar tree, corner to Samuel B. Robinson's land; thence S. 3-E. 89 pole to a stake in the center of the Robinson Gravel Road; thence S. 35-E. 19 pole to a sycamore on the left Bank of Big Darby Creek; thence up the creek with the meandrs thereof to the beginning, containing 123 a. 41/100 acres more or less; not subject to any dower Estate.

Given under our hands this 4th day of April, A.D. 1888.

Commissioners { W. H. Robb
Cyrus Zimmerman
A. S. Mowry



The State of Ohio, } In Common Pleas Court,
Union County, ss } February Term, 1888.
John R. Taylor, Guard'n } Certified Copy of Journal Entry.
vs } Journal Vol 14, Page 442
Samuel B. Robinson, et al

Thursday, April 5th A. D. 1888.

On motion to the Court by the plaintiff, and upon producing the return of the Sheriff and the report of the Commissioners heretofore appointed herein, and the same having been examined by the Court and found in all respects correct, and in conformity to law and the former orders of the Court, the said proceedings and report are hereby approved and confirmed.

It is therefore ordered and decreed that the said Susannah Robinson have and possess the lands so assigned to her, as and for her reasonable dower in the three-seventhe of said premises and that the said Samuel B. Robinson, and Susannah Robinson hold in severalty the parts and premises so set off and assigned to each respectively.

And the Clerk is hereby directed to have so much of this decree as will show the transfer of title to the several parties put upon record in the office of the Recorder of this County.

And it is further ordered that the costs of this action, including a Counsel fee of $152.^{83}, to H. W. Sayre, Attorney, for services herein, taxed at --- $. be paid by said parties in the following proportion, to-wit: the said Samuel B. Robinson three-seventhe and the said Susannah Robinson four-seventhe; and in default of payment thereof for ten days, that execution issue therefor.

The defendant John Robinson giving notice of an Appeal for himself herein, his bond is fixed at $500^{00}.

The State of Ohio,
Union County, ss: I, R. M^{c} Crory, Clerk of the Common Pleas Court within and for said County, and in whose custody the Files, Journals and Records of said Court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal 15, Page 442 and Execution Docket "S", Page 5939 of the proceedings of the Common Pleas Court, within and for said County and that said foregoing copy has been compared by me with the original entry on said Journal 14, Page 442 and Execution Docket, Page 5939, and that the same is a correct transcript thereof.

In testimony whereof, I do hereto subscribed my name officially and affixed the seal of said Court, at the Court House in Marysville, in said County, this 29th day of August, A. D. 1889.

Seal

R. M^{c} Crory, Clerk.

Appeal Bond

Appeal Bond

Know all men by these presents:

That John Robinson as principal and are held and firmly bound unto John R. Taylor, Guardian of Susannah Robinson in the penal sum of ($500^{00}) Five hundred

dollars to the payment of which well and truly to be made we do hereby jointly and severally bind ourselves, our heirs, executors and administrators.

Sealed with our seals and dated this 5th day of April, 1888.

The condition of the above obligation is such that whereas the said John Robinson has taken an appeal from a certain judgment rendered against defendants and in favor of the said John Saylor in the Court of Common Pleas within and for the County of Union and State of Ohio, at the February Term, 1888, in case No. 5447 entitled John R. Saylor Guardian vs Samuel B. Robinson et al to the Circuit Court of said County: Now if the said John Robinson shall prosecute his appeal to affect without unnecessary delay and shall abide and perform the order and judgment of said Circuit Court and pay all damages and costs which may be awarded against him the said John Robinson then this obligation shall be void; otherwise it shall remain in full force and virtue in law.

In presence of — John Robinson [seal] — J. Woodburn [seal]

The execution of the above undertaking and the sufficiency of the sureties therein approved by me this 5th day of April, 1888.

R. McCrory, Clerk of the Court.

Petition in Error

Afterward, on the 27th day of August, 1889, Petition in Error was filed with the Clerk of said Court.

John R. Saylor, Guardian of Susannah Robinson, Plaintiff in Error
vs
John Robinson, Defendant in Error

Petition in Error

The plaintiff in Error says:

That the defendant in Error at the March Term of the Union Common Pleas A. D. 1889, procured an order by the consideration of said Court of Common Pleas against the said plaintiff in Error ordering the said plaintiff to pay $--- in certain action of Foreclosure then pending in said Court, wherein the said John Robinson was plaintiff and the said John R. Saylor et al were defendants. The said order in said action only affecting this plaintiff in Error.

A copy of the record of the order and proceedings in said cause duly certified together with the original papers and pleadings in the same are herewith filed and made part of this petition.

The said plaintiff avers that there is Error in the said record, order and proceedings in this to-wit:

First. That the agreement was not before said Union Common Pleas Court by any pleading for adjudication.

Second. That the agreement contained in the Journal Entry herein

marked "A" only provided for the payment (4/7) four-sevenths of the land-tax by the plaintiff in Error & (3/7) three-sevenths by the defendant in Error, when in fact by reason of said agreement said Court of Common Pleas adjudged and ordered that the plaintiff in Error should pay four-sevenths (4/7) of the Gravel Road and Bridge assessment, and the defendant in Error (3/7) three-sevenths thereof when by the order and proceedings of partition as shown by the Entry Marked "B" and filed herein, one-half of the whole of the lands assessed for the purpose aforesaid were set off to the Ward of the plaintiff in Error in quantity and one-half in quantity to Samuel B Robinson.

That said Court erred in ordering and adjudging that the said plaintiff in Error should pay (4/7) four-sevenths of said assessments or more than one-half of the said assessments so assessed against the whole of said lands.

Third. That said Court erred in making any order as to said assessments.

Fourth. The said plaintiff in Error, John R Saylor, Guardian, prays that said order of the Court of Common Pleas of Union County may be reversed and that he be restored to all things he has lost by reason thereof.

H. W. Ayers, Atty. for Altf.

We hereby waive the issuing and service of summons in Error upon the defendant in Error John Robinson and enter his appearance in this action and proceedings in Error.

O. B. Cole & Son, Attys for Deft.

Entry 85

Afterward, on the 24th day of September, 1889, the following Entry was made on the Journal by the Clerk of said Court.

John R. Saylor, Guardian of Susannah Robinson

vs

John Robinson, Deft & Error

This cause came on for hearing upon the petition in error, the transcripts and the original papers and pleadings from the Court of Common Pleas of Union County and was argued by counsel. On consideration whereof the Court find that there is no error apparent on the record on said Judgment and proceedings.

It is therefore considered by the Court that the Judgment aforesaid be and the same is hereby affirmed; and that the defendant in Error recover from the plaintiff in error his costs herein expended taxed $----.

And the Court being of opinion that there is reasonable grounds for proceedings in Error allow no penalty.

It is further ordered that a Special Mandate be sent to the Common Pleas Court of Union County for execution and further proceedings upon said Judgment; To all of which rulings &c

decision the Plaintiff in Error then and there excepted to.

Afras continued and held at the Court House in Marysville within and for the County of Union, in the Third Judicial Circuit of the Circuit Court of the State of Ohio. before the Honorable Thomas Beer, John J. Moore & Henry Emery, Judge of said Court of the term of September, to-wit: on the 24th day of September in the year of our Lord one thousand eight hundred & eighty-nine. Be it remembered that, heretofore, to-wit. on the 4th day of April 1889, Undertaking in Error was filed with the Clerk of said Court.

Undertaking in Error.

From Common Pleas Court to Circuit Court.

Whereas, Robert Smith, Treasurer of Union County, Ohio, successor to Wm H. Crary, Treasurer, has instituted proceedings in the Circuit Court in and for the County of Union, Case No. 5574 in the docket of said Circuit Court to reverse a Judgment rendered in the Court of Common Pleas in said County, on the 28th day of March, 1889, in favor of Landon Bishop against the said Robert Smith, Treasurer, for modifying the former decree in this case Judgment Plaintiff for $--- costs.

Now, therefore, We Robert Smith do bind ourselves to the said Landon Bishop in the sum of one-hundred dollars, that the said Judgment shall be affirmed in whole or in part, we will pay to the said Landon Bishop the whole or the part of the said Judgment so affirmed, and the costs which have accrued or may accrue, in the Circuit Court.

Dated this 3rd day of April, A. D. 1889.

Signed & Sealed in our presence: Robert Smith (seal) R. E. Woodburn (seal)

The execution of the above Undertaking and the sufficiency of the sureties therein approved by me this 4th day of April, 1889.

R. McCrory, Clerk of the said County.

Afterward, on the 5th day of September, the following Transcript Transcript was filed with the Clerk of said Court.

The State of Ohio,
Union County, ss In Common Pleas Court, October Term, 1888.

William H. Crary Treasurer of Union County, Ohio vs Landon Bishop

Case No. 5574
Journal 14th, Page 580
Certified Copy of Journal Entry.

Saturday, December 8th, 1888.

This day came this cause to be heard, and it appearing that William H. Crary, has ceased to be Treasurer and Robert Smith is now

the Treasurer of this County, and therefore he is substituted as plaintiff, and it appearing that the defendant is still in default the cause was submitted to the Court.

Whereupon the Court find in favor of the plaintiff on the allegations of the petition, that the same are true, and that there is a lien on the land in the petition described for the taxes assessed as therein set forth in the sum of five hundred and fifty-three dollars and two cents, and it appearing that defendant has paid on said claim on the 7th day of July, 1888, (the sum of $479, and that there remains to be paid thereon the sum of ($74 and .02 dollars, which is a lien under the Statutes on said land.

It is therefore considered, ordered and decreed, by the Court that the said plaintiff, Robert Smith, Treasurer of Union County Ohio, recover of the said Landon Bishop said $74. and 02/100 dollars, and as aforesaid.

And that if the defendant fail for ten days to pay said $74.02 dollars, and the costs herein expended taxed to $--- that an order of sale issue to the Sheriff of this County commanding him to appraise, advertise and sell said land according to law, and bring in his report therein in order that plaintiff said claim be paid.

October Term, A. D. 1888.

Wednesday, January 9th, 1889, Journal Vol. 15th, Page 15.

This day the motion of the defendant to modify the judgment and decree entered at this term is continued, and it is ordered and adjudged that execution of said decree and judgment be stayed until the next term of this Court.

March Term, A. D. 1889

Thursday, March 28, 1889, Journal Vol. 15, Page 64

This day this cause came on to be heard upon the motion made at the last term of this Court and continued to the present term, to modify the Judgment and Decree entered herein at the said last term of Court; and the Court being fully advised in the premises do find that the said sum of $74.02 dollars was a penalty of 15 per cent, charged upon the simple tax and amount of $481.76 and the Court find that the said penalty, was not charged by the Auditor, upon the said tax and assessment of $481.76 and that no penalty whatever was charged upon said tax and assessment, and that the only tax assessment, and charge upon the tax duplicate against the defendant, was said $481.76, and the Court find further that defendant paid to the plaintiff on the 10th day of July A. D. 1888, all the taxes and assessments charged against him upon the duplicate at said date.

The Court therefore order, decree and adjudge, that said entry made at the last term of this Court be so modified that the said sum of $74.02 be stricken out of the same and that the Judgment as to costs be so modified in said entry, that the costs adjudged against

dfndant, for the costs made in the case prior to the 10th day of July 1888, and that the plaintiff be and is herby adjudged to pay the costs made after said 10th day of July A.D. 1888.

Notice of appeal to the Circuit Court is given by the plaintiff and the appeal bond is fixed at $100.00.

The State of Ohio.
Union County, ss I, R. McCrory, Clerk of the Common Pleas Court within and for said County, and in whose custody the Files, Journals and Records of said Court are required by the laws of the State of Ohio to be kept, herby certify that the forgoing is taken and copied from the Journal of the proceedings of the Common Pleas Court within and for said County, and that said forgoing copy has been compared by me with the original Entry on said Journal 14 vs 15 and that the same is a correct transcript thereof.

seal

In testimony whereof, I do hereto subscribed my name officially and affix the seal of said Court, at the Court House in Marysville in said County this 5th day of September, A.D. 1888.

R. McCrory, Clerk.

Entry Afterward, on the 24th day of September, 1888, the following Entry was made on the Journal by the Clerk of said Court.

77 Wm H. Crary, Treas. vs Landon Bishop | In Circuit Court, Union County, Ohio.

This cause came on for hearing upon the Transcript and the original papers and pleadings from the Court of Common Pleas of Union County, - and on motion of the appellant was dismissed.

It is therefor considered by the Court that this cause be and the same is herby dismissed and that the Judgment of the Common Pleas Court of said County be and the same is herby affirmed and that the defendant in Error recover from the plaintiff in Error his costs herein expended taxed to $---

It is further ordered that a Special Mandate be sent to the Common Pleas Court of Union County for execution upon this Judgment, and the Court bring of the opinion that there was reasonable grounds for proceeding in Error allow no penalty.

Ohio was before the Honorable Thomas Beer, John J. Moore & Henry W. Savage, Judges of the Circuit Court within and for the County of Union of the Third Judicial Circuit of the State of Ohio begun and held at the Court House in the Town of Marysville on the 21st day of January in the year of our Lord one thousand right hundred & ninety.

Heretofore, towit, on the 13th day of January, 1890 the Bill of Exceptions was filed in the Circuit Court by the Clerk.

Now comes the said George Crandall, plaintiff, and presents to the Court his certain bill of exceptions herein, which being found by the Court to be true, is allowed, signed, and sealed, and, on motion, is hereby made part of the record of this case.

January 7th, 1889.

Be it remembered that at the trial of this cause at the November term, A. D. 1889, of the Court of Common Pleas, before the Hon. John A. Price & a Jury, the issues being as follows:

"Is the writing produced and referred to in plaintiff's petition the last Will of the said Ashel A. Woodworth, or is it not his last Will"? The said defendants having the affirmative introduced the following evidence, to-wit:

First----- The original paper writing claimed by them to be the last Will of said Ashel A. Woodworth. A copy of said paper writing is hereto attached marked "A" and made a part of this bill of exceptions.

Second---The record of the Probate Court, showing the probate of said paper as said last Will, and thereupon the said defendants rested their case.

Said paper writing produced and claimed by defendants to be the last Will of said Ashel A. Woodworth, was constructed, executed, and showed on its face as follows:

It was partly printed and partly in writing, a printed form having been used, which form was as follows: It was folded as an ordinary sheet of legal cap paper, and was 14 inches in length & 8½ inches wide. It contained four sides or pages, and at the top of the first page extending down three inches, were printed the formal words of a will, immediately following which was written the dispositive part of said alleged Will, extending down to within four inches of the bottom of said first page, and having an uncancelled blank space from the end of the dispositive part of said Will, to the bottom of the page, of four inches. The ruled lines on said page were one-fourth of an inch apart, and there were sixteen lines from the end of the dispositive part to the bottom of the page.

The second and third pages were ruled as the first, and the second page was entirely blank and uncancelled.

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The third side or page measuring from the top down was blank and uncancelled for nine and one-half inches, at which point was the printed and written words following:

"In testimony whereof I have hereunto set my hand to this my last Will and Testament, at my home, this 23rd day of July, in the year of our Lord one thousand eight hundred and eighty-six."

Immediately under this was the signature "A.A. Woodworth"

After said signature and immediately following was written and printed the words and figures following: "The foregoing instrument was signed by the said A.A. Woodworth in our presence and by him published and declared as and for his last Will and Testament, and at his request, and in our presence, and in the presence of each other, we hereunto subscribe our names as attesting witnesses, at Irwin Union County, Ohio, this 3rd day of August A. D. 1886,

George Colwell, resides at Irwin, Ohio.
O. W. McAdow, resides at Irwin, Ohio.

The fourth page of said paper was blank except merely an indorsement of the name of the testator and the date of the paper.

Thereupon said paper writing having been produced and inspected and found to be as aforesaid, the said George Crandall, by his counsel, filed his motion to arrest the testimony from the Jury, and render Judgment against said alleged Will for the reason that said writing was not signed at the end and was not executed as required by law, etc., but the Court overruled said motion and held that on its face said writing was properly executed, and was not void for that reason; to which ruling of the Court, the said George Crandall by his counsel then and there excepted.

The motion being overruled the trial proceeded, and the said plaintiff gave in evidence to the Jury, testimony tending to prove that the said A.A. Woodworth, in his life-time, was a farmer, and in his early married life he also kept a diary, and run a brickyard, &c. That he had been a school teacher, was a great reader, and a man well informed; he had been a guardian of minors and administrator of estates and was familiar with the rules and business of the Courts. That for a period extending back more than twenty-five years, and from that time on to within a few weeks of the date of the alleged Will he had declared to different persons his intention to let his property be divided according to the laws of Ohio governing descent and distribution, and steadily avowing his intention to make no Will, and that such division as the law made was the one he wanted.

The plaintiff also offered evidence tending to prove that said A. A. Woodworth, at the date of said alleged Will, was more than eighty-two years of age, that for more than a year he had been suffering from a disease of a dropsical nature, which caused his feet and lower limbs to swell and burst open; That during the spring and summer of 1886 he had a practice of putting his feet in cold water to relieve the pain. That he was also troubled with spells of suffocation, and distress in his head. That during the month of July, 1886, he was so afflicted with his head that he wanted it rubbed, his hair stroked and his temples chafed; that he would want the door thrown open, and persons to fan him, that he could not lie down without "smothering up"; that a large portion of the time he was kept propped in his chair, restless and suffering, wanting his position constantly changed. That about the 20th of July, 1886 he became worse and a physician was called who was in daily attendance on him for about ten days; that the said physician prescribed opiates and left them with directions to be given to him to relieve the pain and distress of his complication of diseases; that this physical condition had impaired his mind so that he was in a condition to be influenced by those around him and rendering him incapable of making a will.

The plaintiff also gave in evidence to the Jury testimony tending to prove that he was the son and only child of Ellen Crandall, who was a daughter of said A. A. Woodworth; that said Ellen was among his first children, and had helped him to accumulate his property; that she worked on his brick yard, helped in his dairy, spun yarn, did house-work, was a kind and affectionate daughter, and possessed the good will and affection of her father until she died; that the said Ellen died when the plaintiff was a child, and said A. A. Woodworth took the plaintiff and raised him, and their relations were always pleasant, and said A. A. Woodworth had declared that plaintiff would do more for him than his own children, and that he should be a full heir to his estate, and the evidence also tended to prove that there was nothing apparent to change this feeling between the plaintiff and his grand-father.

The evidence given also tended to prove that the state of feeling between the said A. A. Woodworth and his other grand-children was pleasant, and there was no apparent reason for any change in his mind in regard to his property being distributed according to the laws of descent, as he had so often declared.

The plaintiff also gave in evidence testimony tending to prove that Reuben Woodworth, the youngest child of said A. A. Woodworth

had, prior to the date of said Alleged Will, declared that the plaintiff should not be a full heir and come in equal with the children of said A. A. Woodworth, and had also declared that his father should make a Will, and that in said Will said Imogene Moran should have deducted from her share a note known as the Sanner note. Also evidence tending to prove that said Reuben and his mother, and the hired girl were the only persons living at the home of said A. A. Woodworth during the month of July, 1886, and that said Reuben was his mother's favorite child, and that he talked with his mother in regard to his father making a Will, and that she importuned her husband to make a Will, and that said Reuben operated through his mother in order to cause his father to make a Will; that said alleged Will is contrary to the previous declarations of said A. A. Woodworth, and is in accord with the previous declarations of the said Reuben.

Plaintiff also offered evidence tending to prove that said alleged Will, except what is printed, is entirely in the hand writing of said Reuben, and that at the time it was written he was in the room alone with his father (the hired girl passing back and forth, but paying no attention to the proceedings), and that said Reuben, about ten days afterward, took his father to Avon, Ohio, to have said paper witnessed, and that Reuben carried the paper to the witnesses and took it back home, and after his father's death gave it to the person to be appointed administrator; that said Reuben received an advantage by said alleged Will being written, and by the said A. A. Woodworth not carrying out his previous intentions and not making a Will.

Evidence was also given to the Jury tending to prove that said writing was drawn on the twenty-third day of July, 1886, and that on the third day of August, after the said Reuben took his father to the village of Avon for the purpose of having said Will witnessed, and that they drove up in front of a store room and called the witnesses out, and the said A. A. Woodworth sat in his buggy and wrote his name, and after he had signed it one of the witnesses asked him if it was necessary for them to sign it in his presence, and he said he supposed not, and that neither the witnesses or the said A. A. Woodworth supposed it was necessary for the witnesses to sign in his presence, whereupon the witnesses went back into the store room, some twenty-six feet away from where the said A. A. Woodworth sat in his buggy, and signed as witnesses on a show case; that there was a platform out from the store extending in the street about eight feet, and that it was about three feet from the level of the street to the level of the floor of the store

room, and that the show-case sat on a counter, the top of the show-case being front and two inches above the level of the street, and the buggy in which the said A. A. Woodworth sat was a low wheeled phaeton; that from where he sat he could not see a paper lying on the top of the show-case, and that if other like papers had been lying there he could not have seen them, and that there was a rim around the show-case about three-fourths of an inch thick, the top being glass; that the witnesses were at such an elevation that the said A. A. Woodworth could not see the paper when they signed it, and could not tell whether they were signing the same paper he signed or not, and that he could not see the physical act of signing at the time, although he might have seen some parts of the witnesses' bodies but the paper itself was wholly obscured; that the witnesses stood in front of the show-case with their backs in the direction of the said A. A. Woodworth and from where he sat in his buggy he could not see what they were doing.

At the close of the evidence introduced by plaintiff the defendants introduced evidence tending to sustain the validity of said Will, and tending to negative the evidence which had been introduced by plaintiff tending to prove the foregoing matters and things.

The evidence and arguments of counsel being closed, the plaintiff asked the Court to direct and charge the Jury as follows:

1st. The law requires a will to be signed at the end thereof, and this provision must be reasonably complied with in order to make a will valid; the meaning of the end of the will is the end of the dispositive part thereof, and the signature should follow so close after the end of the dispositive part of the will as not to leave room for any considerable additions to be made above the signature without marring the face of the will; a will not so executed is void.

2nd. Where there is an unnecessary and unreasonable blank space between the end of the dispositive part of the will and the signature of the testator, such will is not sufficiently executed, and is void.

3rd. If the Jury find that there is a blank space of over two feet between the end of the dispositive part of the will and the signature of the testator; which space is the same as that upon which the dispositive part is written, and the same is uncancelled so that other and further provisions might be written in such space without marring the face of the will; then there has been a failure to comply with the statute and the will is void.

4th. The plaintiff asks the Court to charge the Jury as a

matter of law that the pretended will is not legally executed and to return a verdict accordingly.

Which charge asked by the plaintiff the Court refused to give; to which refusal to give said charge as asked the plaintiff then and there excepted.

And at the same time the plaintiff asked the Court to give the following charge to the Jury.

In order to make a valid will the alleged testator must have a sound mind and disposing memory.

By a disposing memory is meant that he should be able to make a disposition of his property with reason & understanding; and to comprehend in a reasonable manner the nature of the affair in which he is participating.

He must have a sound mind and disposing memory so as to be capable of making his will with an understanding of the nature of the business in which he is engaged; a recollection of the property he means to dispose of; of the persons who are the objects of his bounty, and the manner in which it is to be distributed between them.

Where it is claimed that the alleged testator by reason of old age and disease had failed in mind and memory so as to lack legal capacity to make a will with reasonable understanding, the Jury in determining the question may take into consideration the education and intellectual capacity of the alleged testator, and his expressed intentions, if there be any while in the undisputed possession of his faculties; they may also take into consideration his age, physical and mental condition and surrounding circumstances at the time of making the alleged will; and may also consider the character and contents of the alleged will itself.

Which charge the Court refused to give to which ruling of the Court the plaintiff then and there excepted.

And at the same time the plaintiff asked the Court to give the following charge to the Jury.

On the question of testamentary capacity and undue influence we ask the Court to charge as follows:

7 st/11. If the Jury find from the evidence that the testator was over eighty years of age and that he was afflicted with disease so that his faculties were impaired; though not amounting to an absolute legal incompetency, and that the will was written by one of his children who by the terms of the provisions received a larger share of his estate than he would if the testator had followed intention previously expressed, and that the will was materially contrary to the intentions of the testator

as he had previously and while having greater capacity
expressed them; then befor the will can be sustained it
is on the contestees to show affirmatively that it was fairly
made and that it emenated from the testator of his own
free will and without the interposition of others.

2nd. If the testator while in health had expressed intentions,
different from the provisions contained in the will and the
draughtsman had previously expressed intentions that the
will should be made as it is and that the provisions of
the will are as the draughtsman had desired, and there
was secrecy in making the will; then the legal presumptions
ordinarily flowing from the act of formal execution are so
far overcome as to require affirmative proof on the part of
the contestees that there was no undue influence, and that
the will emanated solely from the testator, and without
importunity or imposition on the part of the draughtsman
or others.

3rd. If the will is unequal, and it is clearly shown that
the testator while clearly sound and under no restraint
expressed essentially different intentions, and that the
draughtsman who had the opportunity of exerting undue
influence received an advantage, and he was in
such relations with the testator as to have the opportunity
to influence the mind of the testator, such facts and
circumstances unexplained raises a presumption against
the validity of the will.

It is not necessary that the undue influence, if
such there be, should be brought to bear by direct importunity
with the testator on the part of the designing person, it is
sufficient if he operate through an other to bring about the
desired result.

Which charge the Court refused to give, to which
ruling of the Court and refusal to charge, the plaintiff then
and there excepted.

We ask the Court to charge the Jury that the
paper itself is so vague, indefinite and uncertain and
inconsistent as to be invalid as a last will.

Which charge the Court refused to give, to which ruling
of the Court and refusal to charge, the plaintiff then and
there excepted.

And at the same time the plaintiff asked the Court
to give the following charge to the Jury:

5th. The law requires that the witnesses sign the will in
the presence of the testator; this means his ocular presence,
he must be in such position as to see the physical act of
signing, and if he is not in such position the attestation is
not sufficient, and in that case the verdict should be
against the will.

6th. In determining whether the witnesses signed in the

presence of the testator the following rules apply to-wit:

1st. If the testator was not in the same room with the witnesses when they signed then the presumption of the law is that they did not see him sign, and before the will can be sustained, this presumption must be removed by proof showing by a fair preponderance of the evidence that he was in fact in such position as to see the physical act of signing on the part of both of the witnesses.

2nd. Again if it appear from the evidence that when the witnesses signed the will they took it in a room while the testator remained in his buggy outside and that neither the witnesses nor the testator believed it was necessary for them to sign in his presence then the presumption is still stronger that they did not sign in his presence, and such presumption must be removed by proof on the part of the contestee that he was in such position as to see the physical act of signing, or the will must fail.

3rd. The mere contiguity of the places occupied by the testator and the witnesses respectively will not suffice if the testator's view of the witnesses' proceedings was obstructed.

4th. If the testator was in the same room with the witnesses when they signed, then the legal presumption is that he occupied the most favorable position for seeing the act of signing, but if he remained out in his buggy in the road while the witnesses took the paper in the store, then the presumption is against the fact of his being able to see, and it is upon the contestee to show by a fair preponderance of the evidence that he had such opportunity of seeing as to be able to preserve the identity of the paper and see the witnesses sign it.

Which charge the Court refused to give, to which refusal the plaintiff then and there excepted.

The Court having refused the said several charges asked by the plaintiff, then gave his general charge to the Jury in the words and figures following, and which is the whole and only charge given by the Court to the Jury, to-wit:

Charge of the Court.

Gentlemen of the Jury. I regret that circumstances have been such that this case could not be continued right through to the close, but I trust the delay will not work injustice to any of the parties concerned. This is a case involving a good deal of property and there are some important points to be decided.

The plaintiff alleges in his petition that Asbel S. Woodworth departed this life on the 15th day of September 1856, leaving a widow, children, and grand-children;

that in August of 1886 the paper writing purporting to be his Will was drawn, and in October of 1886 it was probated. The petition further avers that the paper writing is not the last Will and Testament of the said Ashel A. Woodworth for reasons stated in the petition.

It states five reasons why the paper writing is not the last Will and Testament of the said Ashel A Woodworth:

First. Said paper writing was drawn by blank, one of the sons of said A. A. Woodworth; said A. A. Woodworth was unduly influenced at the time of the signing of said paper writing.

Second. That Ashel A. Woodworth was not of sound mind and disposing memory, and was mentally incapacitated for making a Will.

Third. Said paper writing is in itself so vague, indefinite and uncertain as to render it invalid.

Fourth. Said paper was not duly executed or legally acknowledged and attested.

Fifth. Said Will was materially altered and new and important provisions added after it was witnessed. These are all the reasons given.

The defendants filed an answer in which they deny that Ashel A. Woodworth was unduly influenced; deny that he was of unsound mind; deny that the will was not duly executed; deny any alteration and deny that it is so vague and indefinite as to be void.

In our statutes regulating the mode of contesting wills, it is provided that the defendant shall have the opening and closing of the case; all they have to do in the first instance, is to produce the Will and the probate, this makes a prima facie case. They have produced the Will and probate, making a prima facie case if no evidence had been given by the plaintiffs. After the defendants thus open the case, the burden is upon the plaintiff to prove some one or more of his allegations before the Will can be declared invalid.

The first reason given is, that the said writing was done by blank, one of the sons of A. A. Woodworth, and that he was unduly influenced in making the same. Before this can avail, the plaintiffs will have to satisfy you that at the time of the execution of the Will, A. A. Woodworth was unduly influenced to make such a Will; no such claim is made unless it be that Reuben or Mrs. Woodworth did so. Mrs. Woodworth had the legal right to ask her husband to make a Will, Reuben had the right to ask him to make a Will, and to make it in a certain way, you are to inquire whether they unduly

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influenced him, it would not be undue influence, unless they so persuaded him that it would not be the Will of Asbel A. Woodworth, but the Will of the parties named.

The mere asking him to make a Will in a certain way is not sufficient to make it void, they must one or both have had such control over his mind, that he would be ruled by the minds of one or both, then it would not have been his Will. That is all I need to say on that question.

The second ground is, the said A.A. Woodworth at the time of the signing of said paper was not of sound mind and memory, and was mentally incapacitated for making a Will. No great amount of mental capacity is required for making a Will, even if the mind was somewhat impaired by reason of old age, or sickness, or for any other reason, if he had mind enough left to understand the nature and extent of his property and the objects of his bounty, and to understand in a reasonable manner the business in which he was engaged, then he had mind enough to make a Will. It makes no difference whether it is the kind of a Will you would have made or not; it is not the Court or Jury's duty to make a Will for a man, and no difference if it may not seem just to you, yet if he had the mental capacity I have named he had the right to dispose of his property as he saw fit.

While I have said this, yet he must have had mental capacity to know the natural objects of his bounty, and the nature and extent of his property, and to understand in a reasonable manner the nature of the affair in which he was engaged, so also, if he expressed any intention not to make a Will, that would be a circumstance to be taken into consideration in determining the question of mental capacity and undue influence, yet it would have no effect if he had the mental capacity I have named, and was not unduly influenced.

Next ground ---- That the paper writing is so vague and uncertain. On this I shall have little to say. It is, in reality, a question of law, and I shall simply say that it is not invalid on that account. Some day it may require construction and the aid of the Court to determine its meaning, but with that you have nothing to do. This case is to determine whether it is a valid Will, and the Court decides that there is one provision, at least, that is not uncertain, and that will save the Will.

The fourth ground ---That it was not duly executed, acknowledged and attested. This brings up one question

wholly for the Court. It was claimed that it was not signed at the end thereof. This is a question of law, and I have decided that this Will was signed at the end thereof. The other question was whether it was subscribed in the presence of the testator. This is a mixed question of law and fact. It is for the Court to determine what is meant by being in the presence of the testator, and for the Jury to determine whether this Will was signed by the witnesses in the presence of the testator. The statute requires that a Will shall be subscribed by two witnesses in the presence of the testator. It is for you to determine whether this Will was signed by two witnesses in the presence of Asbel A. Woodworth. If the witnesses had signed the paper in the same room the presumption would have been that they signed in his presence, and the burden of proof would have been upon the plaintiff to show that the signing was not in his presence. But it being an uncontroverted fact that the witnesses did not sign in the same room, the burden of proof shifts, and it is for the defendants, the persons sustaining the Will, to show, by a fair preponderance of the evidence, that the witnesses did sign in his presence.

Now have the persons sustaining the Will shown, by a fair preponderance of the evidence, that the two witnesses did sign in his presence. By his presence it is not necessary that they should be in the same room.

It is not necessary that he did see them sign, as for instance, if they were in the same room and he turned his back and did not see them sign, it would be in his presence; but to be in his presence they must be in such a position (whether in the same room or whether in a store, as far as that point is concerned) that he could have seen them sign the paper had he looked.

The persons sustaining the Will must prove, not that he did see them sign, but that he could have seen them sign; that he was in such a position that he could have seen them in the act of signing. When the witnesses were in his presence in subscribing the Will, if he was in such a position that he could have seen them sign their names; if he was not, then the Will would not be valid. Right there may be a question in your minds as to whether it was necessary that he should have been in such a position that he could have seen the paper at the time the witnesses subscribed the same. If the Jury are satisfied, from the evidence, that the paper produced on the trial is the same paper delivered by Mr. Woodworth to the witnesses to be witnessed by them as his Will, and that the same was subscribed by them as such witnesses, and immediately return

to Mr. Woodworth, and that Mr. Woodworth was at the time in such a position that he could see the witnesses in the act of subscribing their names, then that would be in his presence, within the meaning of the law, even if he could not see the paper at the time the witnesses subscribed the same."

The last ground in the petition is that the Will was was materially altered and new and important clause added. I will speak briefly on that, as I have on all the points. If anything was added after it was signed by Mr. Woodworth, then that would render it invalid (the date dont make any difference). If anything was added to the body of the Will, after it was signed, even by Mr. Woodworth himself, then it would be invalid. On this question the burden of proof is upon the plaintiff, as on all the questions, except the one, it being shown that Mr. Woodworth remained outside while the witnesses took the paper into the store to sign it, the burden of proof shifts, and it is upon the defendants to show, by a fair preponderance of the evidence, that they were in his presence. On this point I will repeat what I have said before. If the Jury are satisfied, from the evidence, that the paper produced on the trial is the same paper delivered by Mr. Woodworth to the witnesses to be witnessed by them as his Will, and that the same was subscribed by them as such witnesses, and immediately returned to Mr. Woodworth, and that Mr. Woodworth was at the time in such a position that he could see the witnesses in the act of subscribing their names, then that would be in his presence, within the meaning of the law, even if he could not see the paper at the time the witnesses subscribed the same.

There are two blank forms. One that it is a valid Will and Testament, the other that it is not. You are to decide upon one or the other and return your decision to the Court. You will appoint one of your number foreman, who will sign your verdict for you.

The Court having concluded his charge to the Jury the said plaintiff excepted to the same and excepted to every part and paragraph thereof, and especially excepted and pointed out to the Court exceptions to the following parts of said charge, to-wit: To that part in which the Court said the paper writing was not void for uncertainty, and that there was one portion which would save it as a will: to that part also which relates to signing the will at the end, and in which the Court charged the Jury that the Will was signed at the end within the meaning of the law; and the plaintiff also especially excepted to that part of said charge given in

reference to the witnesses signing the will in the presence of the said A. A. Woodworth, wherein the Court charged the Jury that it was not necessary that the said A. A. Woodworth should be in a position to see said paper at the time the witnesses signed it, that it was sufficient if he could see the witnesses in the act of subscribing their names and the plaintiff especially excepted to all that part of the Courts charge in relation to the attestation of said paper, and in addition to the special charge asked as hereinbefore stated asked the Court to give in charge to the Jury, that in order to keep in view the identity of said paper the said A. A. Woodworth should have been in a position to see the paper itself at the time it was signed by the witnesses, but the Court refused to change or modify said charge.

The plaintiff also especially excepted to that part of said charge in relation to the matter of undue influence and pointed his exceptions out to the Court, but the Court refused to change or modify the same. The plaintiff also excepted to that part of said charge which related to the question of testamentary capacity and pointed his exception out to the Court, but the Court refused to change or modify said charge. The Court having refused to make any change or modification in his charge the Jury were permitted to retire, and having returned their verdict in favor of the defendants, as appears of record in the cause; and the plaintiff thereafter filed a motion to set aside the said verdict and for a new trial, and the same was argued by counsel and submitted to the Court, which, upon consideration, overruled the same and entered Judgment upon said verdict as also appears of record.

And the plaintiff thereupon excepted to the overruling of said motion and presented this, his bill of exceptions, and prayed that the same be allowed, signed, sealed, and made part of the record, which is accordingly done this 7th day of January, 1890.

John A. Price,
Judge of Court of Common Pleas,
10th Judicial District of Ohio.

(seal)

Exhibit "A."

In the Name of the Beloved Father of All: Amen.

I, Mr. A. A. Woodworth, of the community of Irwin, County of Union, and State of Ohio, being about eighty-two years of age, and being of sound and disposing mind and memory, do make, publish and declare this my Last Will and Testament, hereby revoking and making null and void all other Last Wills and Testaments by me made heretofore:

First ----- My Will is, that all my just debts and funeral

xpenses shall be paid out of my estate, as soon after my decease as shall be found convenient.

Second ----- I give, devise and bequeath to my wife all my real estate and personal property. The personal property is to be sold, consisting of cattle, horses, hogs, sheep, and farming utensils.

2nd " The property at Irwin, consisting of about four acres of land, two dwelling houses, and store house, shall be sold.

3rd " The home farm of between five and six hundred acres, shall be divided as far as possible.

4th " My Will is, that my grand-children shall not be equal sharers in the final division of property.

5th " My Will is that a note given to Stephen Tanner, which now amounts to about sixteen hundred dollars, shall be deducted from my daughter Imogene Moran's share in the final division.

6th " My Will is, that in the final distribution the grand-children shall receive one-half the amount that my own children receive. Let discretion be used by the executors in the distribution of the same. The grand-children referred to are Clara, Emma and Asa Lee.

These three shall have one-half the share of their mother, Lucina Lee, and George Crandall shall receive one-half the share that would have fallen to his mother, Ellen Crandall.

In testimony whereof, I have set my hand to this, my last Will and Testament, at my home, this twenty-third day of July, in the year of our Lord One Thousand Eight Hundred and Eighty-six.

A. A. Woodworth.

The foregoing instrument was signed by the said A. A. Woodworth in our presence, and by him published & declared as and for his Last Will and Testament, and at his request, and in our presence, and in the presence of each other, we hereunto subscribe our names as attesting witnesses, at Irwin, Union County, Ohio, this third day of August A. D. 1886.

Geo. Caldwell, resides at Irwin, Ohio.
C. W. McAdow, resides at Irwin, Ohio

Petition in Error in Circuit Court

George Crandall
Plaintiff in Error
vs
Jasper Woodworth et al
Defendants in Error.

Filed January 13th, 1890.

Plaintiff in error says that at the November term, 1889, of the Court of Common Pleas of Union County, defendants in error recovered a judgment, by the consideration of said Court, against plaintiff in error, in an action then pending in said Court, wherein plaintiff in error

was plaintiff, and defendants in error were defendants, a transcript of the docket and journal entries whereof is filed herewith, together with the original pleadings and papers in said case.

There is error in the said record and proceedings, in this, to-wit:

1st. Said Court erred in overruling the motion of the plaintiff in error for a new trial.

2nd. Said Court erred in its charge to the Jury on the trial of said action.

3rd. Said Court erred in refusing to give the charges asked by the plaintiff in error.

4th. Said Court erred in overruling the motion of the plaintiff in error to arrest the testimony from the Jury, and to render judgment for the plaintiff in error.

5th. Said Court erred in not deciding as a matter of law that the alleged Will was void for want of proper and legal execution.

6th. Said Court erred in not deciding as a matter of law that the alleged Will was void for uncertainty in its provisions

7th. Said Judgment was given for the defendants in error, when it should have been given for the plaintiff in error.

8th. Said Court erred in sustaining the demurrer of the said defendants in error to the petition of plaintiffs in error. Plaintiff in error therefore prays that said Judgment may be reversed, and that he be restored to all things he has lost by reason thereof.

J. L. Cameron,
Cole & Bates
Attorneys for Plaintiff in Error.

The issuing and service of summons in error is hereby waived and the appearance of the defendants in error entered, this fourteenth day of January, 1890.

Carter & Carter
and J. W. Robinson
Attorneys for defendants in Error.

November Term, 1889.

Journal 15, Pages, 78, 117, 124, 141, 143, 148, 145, 194, 196, 197, 198, 199, 200, 202, 205, 207, 228, 235.

certified copy of Journal Entries.

George Crandall vs Jasper Woodworth et al

Wednesday, April 3rd, A. D. 1889.

This day this cause came on to be heard upon the demurrer filed by defendants to plaintiff's petition, and was argued by counsel, and the Court being fully advised in the premises find that said demurrer is well taken and sustain the same; to which ruling and decision of the Court, the plaintiff then and there excepted.

Friday June 4th, A. D. 1859. Journal 15, Page 117.

This day upon the motion and showing of plaintiff, this cause is continued over from the 14th day of June until the 14th day of June, same month, and at the costs of plaintiff. It is therfore considered that the plaintiff pay the costs for the day, made on said 14th day of June, 1859.

Wednesday, June 19th, A. D. 1859. Journal 15, Page 124

This day on motion and showing of plaintiff, the trial of this cause is passed until the 31st day of July 1859, and at the cost of the plaintiff.

It is therfore considered that the plaintiff pay all the costs occasioned by the postponement of the trial of this cause herein taxed at - - - $.

Wednesday, July 31st, 1859. Journal 15, Page 141.

It is ordered that the following issue be submitted and tried to a Jury in this case; towit; "Is the writing produced and refered to in plaintiffs petition, the last Will of the said Asbel S. Woodworth, or is not his will".

Wednesday, July 31st, A. D. 1859. Journal 15, Page 143.

This day came the parties herein by their attorneys; also came the following named persons as Jurors, towit;

1st. John Barnes	5th. E. B. Southwick	9th. F. A. Martin
2nd. David M. Mather	6th. J. A. Hutson	10th. John Aller
3rd. E. Y. Freeman	7th. S. C. Bailey	11th. J. W. Harrington
4th. Oliver Shaw	8th. James Eddleman	12th. J. B. Norris

who were duly impaneled and sworn according to law, and thereupon the case came on for hearing on the pleadings and evidence, and the said Jury having heard the testimony adduced in part, said cause was continued until tomorrow morning at half past eight oclock. To which time Court then adjourned.

Thursday, August 1st, 1859. Journal 15, Page 145.

This day again came said parties by their attorneys and also came the Jury heretofore impaneled and sworn, and the trial proceeded. And the said Jury having heard the remaining testimony, said cause was continued until tomorrow morning until 8½ oclock.

Friday August 2nd, A. D. 1859. Journal 15, Page 148.

This day again came the said parties, by their attorneys, and the Jury heretofore impaneled and sworn; and the said Jury having heard the arguments of counsel, and the charge of the Court, retired to their room in charge of the Sheriff for deliberation. And

now came the said Jury in open Court and state that they are unable to agree upon a verdict. Whereupon they are, by the Court discharged from further consideration of this case, and the case is continued.

Wednesday November 20th. 1889 Journal 15. Page 194
This day came the parties by their attorneys, also came the following named persons as Jurors, viz:

1. David Swartz	5. David Rea	9. A. H. Olds
2. Stephen Long	6. Bradley Sprague	10. William Jordon
3. L. D. Warbs	7. R. M. Findley	11. John F. Cartmell
4. William H. Bonnett	8. William Love	12. H. H. Spain

who were duly impaneled and sworn according to law, and the said Jury having heard the evidence adduced in part, this cause was continued until 8½ oclock tomorrow morning.

Thursday November 21st A. D. 1889. Journal 15, Page 196
This day again came the parties by their attorneys, also came the Jury heretofore impaneled and sworn in this action, and the trial proceeded, and the said Jury having heard the evidence in part this cause was continued until half past eight o'clock tomorrow morning.

Friday November 22 A. D. 1889. Journal 15, Page 197.
This day came the parties by their attorneys, also came the Jurors heretofore impaneled and sworn in this action, and the trial proceeded, and the said Jurors having heard further evidence, and the hour of adjournment having arrived, this cause was continued until tomorrow morning half past 8 oclock.

Saturday November 23rd A. D. 1889. Journal 15, Page 198.
This day came the parties by their attorneys, also came the Jury heretofore impaneled and sworn, and the said Jury having heard further evidence, this cause was continued until Monday November 25th 1889 at one oclock P. M.

Monday November 25th 1889. Journal 15, Page 199.
This day again came the parties by their attorneys also came the Jury heretofore impaneled and sworn and the trial proceeded, and the said Jury having heard the additional evidence, this cause was continued until nine oclock tomorrow morning.

Tuesday November 26th A. D. 1889. Journal 15, Page 200.
This day again came the parties by their attorneys

also came the Jury heretofore impanneled and sworn in this action, and the said Jurors having heard the arguments of counsel in part, this cause was continued until Monday December 2nd, 1889, at one oclock P. M.

Monday December 2nd, A. D. 1889. Journal 15th, Page 202

This day came the parties by their attorneys, also came the Jury heretofore impanneled and sworn, in this case, the said Jury having heard additional argument of the attorney for plaintiff and defendants the hour of adjournment having arrived, this cause was continued until tomorrow at nine oclock.

Tuesday December 3rd, A. D. 1889. Journal 15, Page 205.

This day again came the parties by their attorney also came the Jury heretofor impanneled and sworn, and the said Jury having heard the conclusion of the argument and the charge of the Court, retired to their room in charge of the Sheriff for deliberation

Wednesday December 4th, A. D. 1889, Journal 15, Page 207.

And now comes the said Jury into open Court with their verdict in writing, signed by their foreman and say:

"We, the Jury, on the issue joined find the paper writing here shown to us, and admitted to Probate, in the Probate Court of Union County, State of Ohio, on the 18th day of October A. D. 1886, purporting to be the last will and testament of A. A. Woodworth, deceased, to be the valid last will and testament of the said A. A. Woodworth, deceased, December 4th, 1889

A. H. Olds, Foreman"

Friday, December 13th, A. D. 1889. Journal 15th, Page 228.

The Jury in this case on a former day of this term, rendered a verdict for the defendants, the contestees and the plaintiff having filed a motion asking the Court to set aside said verdict, and to grant a new trial in said case and this cause coming on to be heard upon said motion for a new trial, the Court being fully advised in the premises, do overrule said motion, to which ruling Judgment and decision the plaintiff then and there excepted.

It is therefore in accordance with said verdict, adjudged by the Court, that the paper writing produced by the defendants in this case and offered by them in evidence, under the Statute, purporting to be the last will and testament of the said A. A. Woodworth, deceased

is his valid last will and testament. To which decission and Judgment the plaintiff excepted.

Tuesday, January 7th, A. D. 1890. Journal 15th, Page 235.
Now comes the said Georg Leandrll, Plaintiff, and presents to the Court his certain Bill of Exceptions, herein which being found by the Court to be true, is allowed, signed and sealed, and on motion is hereby made part of the record of this case.

The State of Ohio,
Union County ss

I, A. McElroy, Clerk of the Court of Common Pleas, within and for said County, and in whose custody the Files, Journals and Records, of said Court are required by the Laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal of the proceedings of the said Court within and for said County, and that said foregoing copy has been compared by me with the original entry on said Journal, and that the same is a correct transcript thereof.

In testimony whereof, I have hereunto subscribed my name officially, and affixed the Seal of said Court, at the Court House, in Marysville, in said County, this 13th day of January A. D. 1890.

Seal

A. McElroy, Clerk

Journal Entry in Circuit Court

Friday, January 24th, A. D. 1890.

This cause came on for hearing upon the petition in error, transcript and the original papers and pleadings and bill of exceptions from the Court of Common Pleas of Union County, and was argued by counsel. On consideration whereof the Court find there is error therein apparent upon the record to the prejudice of the plaintiff in error.

It is therefore considered by the Court that the judgment aforesaid be reversed and held for naught, and that the plaintiff in error recover from the defendants in error his costs herein expended and taxed at $.-----

The Court further proceeding to consider the premises, order that the motion of the plaintiff in error for a new trial be sustained; that the verdict of the Jury be set aside, and a new trial be, and the same is granted.

And it further ordered that this cause be remanded to the said Common Pleas Court of Union County for a new trial, and that a special mandate be sent to said Court

Petition in Error

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to carry this Judgment into execution. To which ruling decision & judgments of the Court the defendants then and there excepted.

Be it remembered that on the 14th day of August 1889 the following Petition in Error was filed with the Clerk.

Petition in Error

Bank of Marysville
Plaintiff in Error
vs
The Windisch-Mulhauser Brewing Company
Defendants in Error.

In Circuit Court
Union County, Ohio

The Plaintiff in Error says:

That the defendant in error at the May Term of the Court of Common Pleas, A.D. 1889, for said County of Union, recovered a Judgment by the consideration of said Court of Common Pleas against the said plaintiff for the sum of $385.57 and -- $ costs of suit in a certain action then pending in said Court, wherein the said Windisch-Mulhauser Brewing Company was plaintiff and the said Bank of Marysville was defendant.

A copy of the record of the Judgment and proceedings in said cause, duly certified, together with the original papers and pleadings in the same, are herewith filed and made part of this petition.

The said plaintiff in error avers that there is error in the said record and proceedings in this, to wit:

II That the facts set forth in the amended petition of the said Windisch-Mulhauser Brewing Company are not sufficient in law to maintain the aforesaid action against the said Bank of Marysville.

III The answer filed by the said Bank of Marysville to the amended petition of defendant in error did state facts sufficient to constitute a defense to said amended petition of said defendant in error.

IIII The Court erred in overruling the demurrer of the

said Bank of Marysville to the said amended petition of the Windisch-Mulhauser Brewing Company.

IV The Court erred in sustaining the demurrer of the said Windisch-Mulhauser Brewing Company to the answer of the said Bank of Marysville to said amended petition of the said Windisch-Mulhauser Brewing Company.

V The said Judgment was given for the said Windisch-Mulhauser Brewing Company, when it ought to have been given for the said Bank of Marysville, according to the law of the land.

The said Bank of Marysville therefore prays that the said Judgment may be reversed, and the said Bank of Marysville restored to all things it has lost by reason thereof.

Porter & Porter,
Attorneys for Plaintiff in Error.

We hereby waive the issuing and service of summons in error upon us, and we enter our appearance in this action and proceedings in error.

H. W. Ayers
Attorney for Defendant's Error

Certified the Windisch-Mulhauser Brewing Company
copy of vs
Journal entries The Bank of Marysville

In Common Pleas Court
Journal 15, Pages 82, 146, & 150.

Thursday April 4th, A. D. 1889.

This day this cause came on to be heard on the demurrer of the above named defendant to the petition of the plaintiff, and was argued by counsel & submitted to the court, on consideration the court overrules the same, to all of which rulings and decisions the defendant then and there excepted.

Leave is hereby granted the plaintiff to file amended petition by Saturday April 6th, 1889, and leave is granted defendant to plead thereto in thirty days from the rising of the court.

Friday August 2nd, A. D. 1889.

This cause came on to be heard on the demurrer of the defendant to the amended petition filed April 6th 1889, by the plaintiff, and was argued by counsel, and submitted to the Court. On consideration whereof the Court overrule the same. To which ruling and decision the defendant then and there excepted, leave was asked and granted to defendant to file answer instanter.

Friday August 2nd, A. D. 1889.

This day this cause came on to be heard on the demurrer of the plaintiff to the answer of the defendant

Certified copy of Journal entry in Circuit Court.

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Error, was argued by counsel and submitted to the Court. On consideration whereof the Court sustain the same, to all of which rulings and decisions the defendants there and there excepted, and the defendant not desiring to plead further, it is considered, ordered and adjudged by the Court that the plaintiff recover from the defendant the sum of three hundred and eighty-five dollars and fifty-seven cents. $385.57) and in default thereof by the 25th day of September 1889 that execution issue therefor, to which time execution is stayed. To which Judgment and decision of the Court the defendant there and there excepted and at the time excepted.

The State of Ohio
Union County ss

I, Robert McElroy, Clerk of the Common Pleas Court within and for said County, and in whose custody the Files, Journals and Records of said Court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal of the proceeding of the Common Pleas Court within and for said County, and that said foregoing copy has been compared by me with the original entry on said Journal 15, Pages 82, 146 and 150 and that the same is a correct transcript thereof.

In testimony whereof, I do hereto subscribe my name officially and affix the seal of said Court, at the Court House in Marysville in said County, this 20th day of August A.D. 1889.

Seal

R. McElroy, Clerk.

certified copy of Journal Entry in Circuit Court.

Tuesday, September 24th, A.D. 1889

This cause came on for hearing upon the petition in error, the transcript and the original papers and the pleadings from the Court of Common Pleas of Union County and was argued by counsel.

On consideration whereof the Court find that there is no error apparent in said Judgment and proceedings.

It is therefore considered by the Court that the Judgment aforesaid be and the same is hereby affirmed, and that the defendant in error recover from the plaintiff in error his costs herein expended, taxed at --$.

And the Court being of opinion that there is probable ground for proceedings in error, allow no penalty.

It is further ordered that a special mandate be sent to the Common Pleas Court of Union County for execution and further proceedings upon said Judgment.

So all of which rulings, decisions and Judgment the said Bank of Marysville then and there excepted.
The State of Ohio,
Union County ss
I, R. McElroy, Clerk of the Court of Common Pleas, within and for said County, and in whose custody the Files, Journals & Records of said Court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal of the proceedings of the said Court within and for said County, and that said foregoing copy has been compared by me with the original entry on said Journal, and that the same is a correct transcript thereof.
In testimony whereof, I have hereunto subscribed my name officially, and affixed the seal of said Court, at the Court House, in Marysville, in said County, this 18th day of December, A.D. 1889.
R. McElroy, Clerk
Seal

Pleas before the Honorable Thomas Barr, John J. Moore and Henry W. Brown, Judges of the Circuit Court within and for the County of Union of the Third Judicial Circuit of the State of Ohio begun and held at the Court House in the Town of Marysville on the 24th day of September in the year of our Lord one thousand eight hundred and eighty-nine.
Herefore, to-wit, on the 27th day of June, 1889, a Petition in Error was filed with the Clerk of Court.

Petition in Error

William G. McAllister and Lexington McAllister Admr. of R. S. McAllister, Dec'd.
Plaintiffs in Error
vs
New York, Lake Erie & Western Railroad Company,
Defendants in Error

In Circuit Court of Union County Ohio

The Plaintiff in Error say that at the March term A.D. 1889 of the Court of Common Pleas of Union County, Ohio in a certain action, wherein these plaintiffs in error were the plaintiffs, and the defendant in error was defendant final Judgment was entered against the plaintiffs dismissing their action and petition, and in favor of the defendant against them for costs. A transcript duly certified

of the several entries, orders and final Judgment in said action from the Journals of said Court of Common Pleas marked "A."; the bill of exceptions duly signed by said Court, and filed therein marked "B."; the original petition marked "C"; the amended petition marked "D."; the second amended petition marked "E"; the demurrer to the amended petition marked "F"; and the several motions, demurrers and answers of the defendant, and all the original papers filed in and pertaining to said action in the said Common Pleas Court are hereto attached and herewith filed, and made part of this petition in error. Plaintiffs in error say there is error manifest on the face of the said proceedings, orders, rulings, record and judgment of the said Court of Common Pleas in this to-wit:

1st. Said Court of Common Pleas erred in sustaining the defendants demurrer to the plaintiffs' amended petition in the Court below.

2nd. Said Common Pleas Court erred in dismissing plaintiffs' action at its said March Term 1889.

3rd. Said Common Pleas Court erred in rendering Judgment against the plaintiffs below for costs.

4th. Said Common Pleas Court erred in excluding evidence on the trial offered by the plaintiffs below.

5th. Said Common Pleas Court erred in sustaining the defendants motion to arrest the plaintiffs evidence from the Jury, and to dismiss their said action.

6th. Said Common Pleas Court erred in refusing to submit said action to the determination of the Jury.

7th. Said Common Pleas Court erred in refusing to submit the said cause and the evidence offered by the plaintiffs therein to the consideration and determination of the Jury.

8th. Said Common Pleas Court erred in refusing to set aside its ruling on defendants motion to arrest the evidence from the Jury and in refusing to grant a new and further trial.

9th. Said Common Pleas Court erred in overruling the plaintiffs motion to set aside its findings and judgment and for a new trial.

10th. Said Common Pleas Court erred in overruling the plaintiffs motion to set aside its final order and judgment, and for a trial of said cause and action to a Jury.

11th. Said Common Pleas Court erred in refusing to submit said cause to a Jury, and in refusing to permit the Jury to find and render a verdict on the evidence.

12th. Said Common Pleas Court erred in its several orders, rulings and Judgments adverse to the plaintiffs

and in its final Judgment entered in said action
13th. For other errors manifest on the face of said record
and proceedings.

Wherefor, plaintiffs in error pray that the said
findings, orders, and final Judgment of the said Common
Pleas Court be reversed and set aside; that they be
restored to all the rights they have lost by reason of the
premises, and for such other and further order and
proceedings as are proper.

W. H. West and
C. B. Cole & Son
Attorneys for Plaintiff in Error.

The issuing and service of summons in error in
this case is hereby waived and the appearance of the
defendant in error is entered.

June 27th, 1887. J. H. Cameron
R. H. Woodburn
H. W. Ayres
Attorneys for Defendant in Error.

certified copy of Journal Entries

Afterward, on the 27th day of June, 1887, certified copy of Journal Entries was filed with the Clerk of said Court

W. G. & E. W. McAllister
Administrators of
R. S. McAllister, deed.
vs
The New York, Lake Erie
& Western Railroad Company

In Common Pleas Court
Union County Ohio.
No. 5113

"A".

Tuesday November 5th A. D. 1886. Journal 14, Page 120

This day this cause came on to be heard on
the motion and showing of the defendant for continuance,
on consideration whereof the Court sustain the motion
and grant the application of continuance of the above case.
Defendant to pay the costs of this term taxed to- - -$.

It is therefore considered, ordered and adjudged by
the Court that the defendant pay the costs herein made
at this term of Court taxed to $ for which execution is
awarded.

Friday, April 1st, A. D. 1887. Journal Vol. 14, Page 224

On motion of plaintiff it is ordered that they have
leave to amend their petition herein by the 15th day of
this month (April 1887) and this cause is continued
and questions as to costs reserved.

Wednesday June 1st, A. D. 1887. Journal 14, Page 259.

On motion of plaintiff leave was granted them to
file an amended petition in this case instanter.
Amended Petition filed. Leave to defendant to plead by

July 11th and cause continued. To which ruling of the Court in granting leave to file said amended petition the defendant excepted.

Monday October 24th, A.D. 1887. Journal 14, Page 307.

This day came the parties by their attorneys and thereupon this case came on to be heard upon the motion of the defendant to strike the amended petition from the files for reasons in said motion stated, on consideration whereof the Court being fully advised in the premises do overrule said motion, to which ruling of the Court the defendant excepted.

October 24th, A.D. 1887. Journal 14, Page 308.

This day came the parties and on motion to the Court leave is granted the defendant to file motion to make the petition more definite and certain, which motion is filed.

Friday October 28th, A.D. 1887. Journal 14, Page 322

This day this cause came on to be heard upon the motion of the defendant for an order requiring the plaintiff to make their petition more definite and certain as in said motion stated, and the Court being fully advised in the premises does overrule said motion. The defendant there and there excepted.

Monday, January 9th, A.D. 1888. Journal 14, Page 379.

This day came this cause on to be heard upon the demurrer of the defendant to the amended petition of the plaintiffs and was argued by counsel and submitted, on consideration whereof the Court being fully advised in the premises does sustain said demurrer to which ruling plaintiffs excepted and plaintiff asked and obtained leave to file an amended petition in 20 days and cause continued.

Friday April 6th, A.D. 1888. Journal 14, Page 448.

This day this cause came on to be heard on the demurrer to the amended petition, the Court on consideration whereof overrules the same. Defendant excepts, and on motion defendant is allowed to answer by the first day of May, 1888.

Friday June 8th A.D. 1888. Journal 14th Page 477

On motion leave was granted defendant to file answer. Answer filed. And on motion and showing of the defendant this case was continued until next term of this Court at the costs of defendant; and judgment against defendant for costs of this term.

Thursday November 22nd. 1888. Journal 14, Page 552

This day this cause came on to be heard on motion and showing of plaintiff for continuance; whereupon the Court being fully advised in the premises do grant said motion, and the cause is thereupon continued at the costs of the plaintiffs for the term, and judgment accordingly.

Monday, March 11th, A.D. 1889. Journal 15, Page 39.

The Venire Facias heretofore issued for Petit Jurors, returnable March 11th 1889, was this day returned by the Sheriff of this County with his endorsements thereon as follows, to-wit:

The State of Ohio,
Union County ss: Sheriffs Office March 11th. 1889.

On the 6th day of March 1889 I received this Venire and served the same on the several persons therein named, at the time and in the manner placed opposite their names, to-wit;

1st. J.F. Bennett, March 8th, 1889. 2nd. Asa Bates, March 8th. 1889.
3rd. A. A. Hill " " " 10th. A. J. Ferguson " " "
4th. Elias Heathaway " " " 11th. B. W. Evans " " "
5th. William Howard " " " 12th. Geo. Treasure " " "
6th. Hayward Ingram " " 13th. Simeon Kilgore " " "
7th. Anthony Moran " " " 14th. R. L. Stimmel " " "
8th. Andrew Brown " " " 15th. L. H. Bechtel " " "
9th. Howard Bidwell " " " 16th. Joseph Shipley " " "

Thomas Martin, Sheriff

And upon calling the same in open Court the following persons answered thereto:

1st. J. F. Bennett, 6th. Hayward Ingram 11th. B. W. Evans
2nd. Asa Bates 7th. Anthony Moran 12th. Geo. Treasure
3rd. A. A. Hill 8th. Andrew Brown 13th Simeon Kilgore
4th. Elias Heathaway 9th. Howard Bidwell 14th. R. L. Stimmel
5th William Howard 10th. A. J. Ferguson 15th. L. H. Bechtel
and 16th Joseph Shipley;
and for good cause shown the Court discharged Simeon Kilgore, R. L. Stimmel, L. H. Bechtel, and Joseph Shipley.

Monday March 11th, 1889, Journal 15, Page 41.

This day came the parties herein by their attorneys also came the following named persons as Jurors, to-wit:

1st J. F. Bennett 5th William Howard 9th. Howard Bidwell
2nd. Asa Bates 6th. Hayward Ingram 10th. A. J. Ferguson
3rd. A. A. Hill 7th. Anthony Moran 11th. B. W. Evans
4th. Elias Heathaway 8th Andrew Brown 12th. George Treasure
who were duly impanneled and sworn according to law, and on motion of both parties the Jury were sent out to view the premises

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Tuesday March 12th A.D. 1889. Journal 15, Page 42.

This day again came the same parties, by their attorneys, and also came the Jury heretofore impaneled and sworn, and the trial proceeded, and the said Jury having heard the evidence in part and the hour of adjournment having arrived, the Court discharged said Jury until tomorrow morning at eight and a half oclock to which time Court adjourned.

Wednesday March 13 A.D. 1889. Journal 15, Page 43.

This day again came the said parties by their attorneys and also came the Jury heretofore impaneled and sworn. The defendants filed a motion to the Court to arrest and withdraw the testimony in this case from the Jury, and render a Judgment for the defendants pending the argument, the Court discharged said Jury until nine oclock tomorrow morning.

Thursday, March 14 A.D. 1889. Journal 15, Page 47

This day again came the parties by their attorneys and also came the Jury impaneled and sworn; and the evidence for the plaintiff being heard, the defendant therupon moved the Court to arrest the testimony from the Jury and for Judgment, and the argument of counsel being heard thereon, the Court on consideration grant the same.

It is therefore considered by the Court that the evidence of plaintiff be withdrawn from the Jury, and that a Juror be withdrawn and said Jury be, and are hereby discharged from further consideration of this case, and that the defendant go hence without day and recover from the plaintiff its costs herein expended.

To all of which ruling and Judgment, plaintiff then and there excepted, and gave notice of motion for a future further and new trial, and immediately filed said motion.

Thursday, March 14th, A.D. 1889. Journal 15, Page 47.

This cause now coming for hearing on the motion of plaintiffs for a further or new trial, the Court on consideration overrules the same, to which ruling and Judgment of said motion the plaintiffs then and there by their counsel excepted, and gave notice of their bill of exceptions; and it is ordered that the Journal of said Court be kept open for thirty days for the allowance signing and entry thereof.

Friday April 12th, A.D. 1889. Journal 15, Page 88.

This day the plaintiffs prepared and presented to the

court their certain bill of exceptions herein which the court allowed signed and sealed and ordered the same to be filed with the pleadings, as part of the record herein but not to be spread upon the Journal. Bill of Exception filed.

Thursday, June 20th, A. D. 1889. Journal 15, Page 126

It appearing that the First Amended Petition in this case is lost; on motion it is ordered that the plaintiff be allowed to substitute a copy thereof, and that the same be received in all respects instead of such original pleadings; and said copy was thereupon filed: defendant excepts to this order and Judgment.

The State of Ohio
Union County, ss

I, A. McElroy, Clerk of the Common Pleas court within and for said County, and in whose custody the files, Journals and Records of said court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal of the proceedings of the Common Pleas court within and for said County, and that said foregoing copy has been compared by me with the original entry on Journal 14 and 15 and that the same is a correct transcript thereof.

In testimony whereof, I do hereto subscribed my name officially and affixed the Seal of said court, at the Court House in Marysville in said County this 2d day of May, A. D. 1889.

{Seal}

A. McElroy, Clerk

Petition in Error

Entry

William G. McAllister et al
Lemington M. McAllister as
Admr. of A. L. McAllister decd. Journal 1, Page 100
vs
The New York, Lake Erie & Western Railroad Company

This cause came on for hearing upon the petition in error, the transcript and the original papers and pleadings from the Court of Common Pleas of Union County and was argued by counsel.

On consideration whereof the Court find there is no error apparent on the record in said proceedings and judgment.

It is therefore considered by the Court that the judgment aforesaid be and the same is hereby affirmed: and that the defendant in error recover from the plaintiff in error its costs herein expended and taxed at $.

It is further ordered that a Special Mandate be sent to the Common Pleas Court of Union County for execution upon said Judgment.

To which Judgment and decision the plaintiff excepts.

Pleas before the Honorable Thomas Orr, John J Moore and Henry W. Savage, Judges of the circuit court within and for the County of Union of the Third Judicial circuit of the State of Ohio begun and held at the Court House in the Town of Marysville on the 24th day of January in the year of our Lord one thousand eight hundred & ninety.

Petition in Error

Heretofore, towit, on the 13th day of January, 1890 Petition in Error was filed with the Clerk of said Court

W. S. Sanford et al
Mary Ervis
vs
The Baptist Church Society of Richwood
William H. Richards
Elmas Langstaff et al

In Circuit Court

Union County Ohio

Plaintiffs in Error say:

That at the last of November Term 1889 of the Court of Common Pleas of Union County the defendants recovered a Judgment by the consideration of said Court against Plaintiffs in Error in an action then pending in said Court wherein plaintiffs in error were plaintiffs and defendants in error were defendants. A transcript of the docket and Journal Entries whereof are filed herewith.

There is error in the said Judgment and findings of said Court in said record and proceedings in this to-wit:

1st. The Court erred in the findings of facts that all of the premises described in plaintiffs petition had been dedicated to the Public for a burying ground by Philip Plummer in his lifetime

2d. Said Court erred in the conclusions of law. That the plaintiffs as the legal representatives of said Philip Plummer are for ever estopped by reason of said dedication from ever asserting their right to enter upon or take possession of said premises or any part or parts thereof.

3". Said Court erred in not granting the prayer of the plaintiffs for the possession of all that part or parts of said premises not actually used by the Public for the burial of the dead.

4". Said Judgment was for the defendants when by the law and the evidence it should have been for the plaintiffs for all that part or parts of said lots described in the petition not now occupied with graves, to-wit: the front parts thereof, one-fourth or one-third of the depth of said lots.

5". The Court erred in overruling the motion of the plaintiffs for a new trial, and rendering Judgment against the plaintiffs for costs.

Wherefor plaintiffs pray that said finding and judgment may be reversed, and a new trial granted, and that plaintiffs be restored to all things lost by reason of said finding and Judgment.

O. A. Kerr,

Attorney for Plaintiffs in Error.

The Clerk will make transcript of the docket and Journal Entries in this case and file same with this petition.

O. A. Kerr, Atty.

Certified M. S. Sanford etal
copy of ex Journal 15, Pages 34, 89, 115, 141,
Journal Entries The Trustees of the 224, and 229.
Baptist Church, of
Richwood Ohio

Wednesday March 6th, 1889. Journal 15, Page 34.

This day this cause came on to be heard, upon the demurrer to the petition, was argued by counsel and on consideration thereof the Court sustained said demurrer at plaintiffs' costs, and plaintiff obtained leave to file amended petition by March 11th, 1889.

Friday April 2d A. D. 1889. Journal 15, Page 89.

This day this cause came on to be heard upon the motion of defendant for additional security for costs, and the Court being fully advised in the premises, does sustain said motion. It is therefore ordered and adjudged by the Court, that the plaintiff furnish to the Clerk of this Court additional and satisfactory security for costs in this action within 30 days from this date, and in default thereof that this cause be dismissed.

Friday June 14th, 1889. Journal 15, Page 115.

This day this cause came on to be heard upon the motion of defendants to dismiss this action, for want of security for costs; was argued by counsel, and the Court being fully advised in the premises, overrule said

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motion, and on motion ordered that plaintiff secure the costs by Monday June 15th, 1859, and in default thereof that this case be dismissed without prejudice to another action.

Wednesday July 31st, A. D. 1859. Journal 15th, Page 141.
Leave is granted to defendant to file answer within thirty days.

Friday, December, 13th, A. D. 1859. Journal 15th, Page 223
This day came on this cause to be heard by the Court, the parties having waived a trial by Jury, and the parties having requested the Court to make a special finding as to the facts, as well as the law, and the cause having been heard on the evidence, the Court find the following facts to-wit:
1st. Philip Plummer held the fee-simple title, to the two lots (2) described in the petition.
2nd. He is dead and the plaintiff now hold all the title to said lots, that he held at the time of his decease.
3rd. The lots in question were used from 1833 to 1869 as a public burying ground, this was done with the full knowledge and consent of Philip Plummer in his life time, he having been frequently present there at funerals, and having declared that he had given the lots for a cemetery.
4th. There has been no interment in this Cemetery since 1869, and some of the bodies buried there before that time have been removed to other cemeteries.
The larger number of bodies have not been removed and the graves still there are scattered over about three-fourths (3-4) of the two (2) lots.
5th. On 1852, the Trustees of the Township, in which the lots are located gave a written lease to the defendants to erect a Church building on said lots upon the condition stated in the lease, of which the following is a copy:
This article of agreement made this third day of April 1852, between the Trustes of Claibourne Township Union County, Ohio, of the first part, and the Trustees of the First Regular Baptist Church of Richwood Union County Ohio, of the second part, stipulates that the party of the first part, so far as they have the right, do hereby lease the old Richwood burying-ground, on Pt Lots Nos 29 & 30 in the Village of Richwood Ohio, to the party of the second part, for the term of 99 years, as a site on which to erect a Church building, to be used as a house of worship by said Church society.

the party of the second part bind themselves to fulfill the following: To pay one dollar in money into the Treasury of Claibourne Township, and the further consideration of building and keeping in repair a good and substantial fence, inclosing said lots, and to at all times keep said lots in such condition, that they, the lots, shall be a credit to all parties interested in the same.

To the above the party of the second part bind their successors in office; and if at anytime, the said Church building, shall cease to be used as a house of worship by said Baptist Society, then the same shall become the property of Claibourne Township, absolutely as though it had been built and occupied by said Township from the first.

In consideration of the fulfilment of the above stipulations by the party of the second part, the party of the first part do hereby bind their successors in office, so far as they have the right, to make this lease good to said society.

Witness our hands and seals this 3rd day of April A. D. 1852.

W. H. Richards, E. D. Langstaff, A. M. Strickey — Trustees of the First Regular Baptist Church Richwood Ohio.

S. M. Slater, J. M. Martin, Asa Langstaff — Trustees of Claibourne Township.

seal

Bill of Exceptions

6". For some time prior to the erection of the Church building the lots had been permitted to grow up in weeds and under-brush. Since the erection of the Church they have been cleaned up and kept in decent and orderly condition.

"Conclusions of Law".

Upon the foregoing facts I find that Philip Plummer dedicated the said lots to public use for a burying ground; and that he in his life time was, and those claiming through and under him, since his death, are estopped from asserting any claim to the possession of the said premises."

Thereupon it is considered, ordered and adjudged by the Court that the defendants go hence and recover of the plaintiffs their costs herein taxed at $--.

Whereupon the plaintiffs filed their motion for a new trial, which was overruled by the Court, to which ruling and proceeding and judgment the plaintiff excepts.

Thursday, January 7th, A. D. 1870. Journal 15, Page 229.

And now comes plaintiffs and present their Bill of Exceptions, which is allowed, signed, sealed and ordered to be made a part of the record.

The State of Ohio,
Union County ss,

I, R. McElroy, Clerk of the Court of Common Pleas, within and for said County, and in whose custody the Files, Journals and Records, of said Court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal of the proceedings of the said Court within and for said County, and that said foregoing copy has been compared by me with the original entry on said Journal, and that the same is a correct transcript therefrom.

In Testimony Whereof, I have hereunto subscribed my name officially, and affixed the Seal of said Court, at the Court House in Marysville, in said County, this 13th day of January A.D. 1890.

{seal}

R. McElroy, Clerk.

Bill of Exceptions

Afterward, on the 13th day of January, 1890, Bill of Exceptions was filed with the Clerk of said Court.

M.S. Sanford et al
vs
The Baptist Church of Richwood. Will H. Richards, Elmas Langstaff & Wm Woodruff

Bill of Exception.

Be it remembered that on the trial of this case at the November Term of 1889, Before his Honor Judge John A. Price, a Jury having been waived by both parties, the plaintiffs to sustain the issues on their part, introduced as a witness, one, H. Sabin who was sworn and testified as follows:

I am agent for the plaintiffs in the managment and sale &c. of their interest in the estate of Philip Plummer, deceased, especially the real estate situated in the Village of Richwood Ohio. And as early as 1880 or 1881 I was in Richwood looking after said interest of the plaintiffs and asserted to the public generally their claim to be the owners of the fee in the lots described in the petition to-wit: Lots No. 29 & 30 as designated on the recorded Plat of said Village, and that before the defendants had done anything toward improving said grounds or erecting their church building thereon, he notified William H. Richards, one of the defendants, and at that time a Trustee of said Church society, that the plaintiffs claimed to be the owners of the fee in said lots, and claimed the right to the possession thereof, that he was acquainted with the plaintiffs, that M. S. Sanford is a daughter of said Philip Plummer, and that Mary Lewis

is a daughter-in-law of said Alummer, and that her husband Frank Alummer is dead, and that he, as the agent of said plaintiffs had procurd the conveyance by quit-claim claim deeds to M. S. Sanford by the hirs at-law of said Alummer 4/6 of their interest in his said estate at Richwood including the lots described in the petition, and by the same 1/6 to the plaintiff Mary Lewis, that said deeds were recordd in Union County, a Record of Deeds, in Volume 54, Pagrs 580 to 586. That said lots had been used or rather the north end of them lots had been used for burial purposes, but had long since been wholly neglected and abandoned as a burial ground, and grown up with weeds, briers and bushes, that said lots were valuable for building lots, were worth $300.00 at the least, and were worth at least $18.00 per year as a rental value, that they were centrally located in said Villge as it now exists, facing on a prominent street.

Also, plaintiff to further maintain the issues on their part, produced to the Court the recordd original Plat of said Village as laid out, platted and recordd by said Philip Alummer, also the record of the quit-claim deeds of the hirs of Philip Alummer in Volume 54, Pagrs 580 and 586, as above referd to in Mr. Sabin's testimony.

Also, one Mr. Hamilton who was sworn and testified as follows: Was well acquainted Philip Alummer in his lifetime and all his family; knew the plaintiff M. S. Sanford to be his daughter; that Frank Alummer the husband of the plaintiff Mrs Lewis was dead; and gave the names of the other children; that he was acquainted with the lots mentioned in the petition; that they were prominently located on one of the principal streets of Richwood and were between the business portion and the Union School building.

On cross-examination, said he did not know that said lots would have any rental value on account of the graves on them.

Also, one John A. Philips was sworn as a witness for plaintiffs; said he knew Alummer and his family; knew M. S. Alummer when a girl, but did not know who she married; said that additions had been made on the east side of the original town of Richwood, and many buildings built thereon, including the Union School Building and by that means the lots 29 and 30 became centrally located and dwellings and a woolen factory had been built in close proximity thereto.

On cross-examination said he did not think these lots

had any rental valu at the time the defendants took possession on account of their containing the graves and being in a very bad condition.

Whereupon Plaintiffs rested.

The defendants to maintain the issues on their behalf, called Mr. E. Hamilton as their witness who testified on behalf of the defendants as follows:

I lived near Richwood from about 1834 to 1854: I knew the old grave yard; people began burying there as early as that year, to-wit: 1834: the grounds were not up near of timber; the burying was on the north end of the lots just across the alley where the old school house used to be; when I was a boy going to school we played on those grounds; the Public continued to bury on those grounds up to 1854 in which year I left Richwood and went to Iowa; I came back to Richwood in 1859; have been at those grounds at funerals when Philip Hummer would also be there: there were two or three other small grave yards in the vicinity of Richwood, one was called the Fiddle or Bethlehem Church grave yard, about 2 miles south of Richwood, where the Township Cemetary is now established. When I came back to Richwood in 1859 there had been considerable of an epidemic there and a good many deaths, and I found that the people were not burying their dead in the Richwood grave yard, but that some were going to the Price grave yard about 4 miles north of Richwood, and some to the Fiddle grave yard 2 miles south.

I dont know of any, at least not more than one or two burials in the Richwood grounds after I came back in 1859.; in 1869 Mr. Stevenson's daughter died, and as the Mr. was about to move from Richwood he had his daughter buried there temporarily, expecting and intending to have her removed soon, but she has not been removed yet; after this the grounds were wholly neglected and permitted to grow up with weed, briars and brush; and the fence was gone and the grounds were in a very bad condition until the defendants came in possession about 1882. They cleared up the grounds removed the weeds, briars & brush, put a fence around the grounds and built a church on the front or south end of the lots 29 & 30 facing on Ottawa street, and since then have kept the grounds in good order and it has been a pleasant place to go.

Cross Examination

The graves are all on the north or rear end of the lots; they began to bury on the knoll at the back end and the graves go down about two-thirds of the way

towards the front; a good many graves have been removed, but quite a number remain; the grounds were not fenced until some time in 1840 to 1850. Joshua Gill bought the lots next to these burial grounds and fenced the whole up together and used it as a pasture, including the grave yard and all. And in 1864 my father purchased the same grounds of Gill and used it the same way a short time, and sold out to Edward Norris, who, sold the grounds off in building lots, and that threw the burying grounds out in the commons again. And after that the grave yard was neglected and became a thicket of weeds, briers and bushes, a very unsightly place. There were no graves in the front part of the lots, and there are none there now. The Church stands about in the center of the two lots from east to west, and out to the south line, and there does not seem to be any graves on either side of the church. The ground on either side of the church is leveled down and is a nice sod. The front part of these lots were low and wet and would not have been suitable for burial purposes.

It has now been drained and is dry; there are dwellings on either side of these lots on adjoining lots, and also on opposite side of the street, and except for the graves these lots would be desirable for building purposes. These grounds were wholly neglected and abandoned as a burial ground at the time defendants went into possession.

The defendants to further maintain the issues on their part called said John A. Phillips as their own witness who testified as follows:

I have lived in Richwood all my life or nearly so; remember of the public using these grounds for burial at an early day, and on up to 1869 but only a few graves since 1850.

Mr. Stevenson's daughter was buried there in 1869, after this the grounds were neglected and become in a very bad condition up to the time defendants got possession; since that time the grounds have been kept neat and clean; have a good fence around it.

Cross-Examination.

There are no graves on the front part of the lots; it was always too low and wet there for burial purposes; there was a nice knoll on the part; the graves extend down about two thirds of the way towards the front.

I am one of the Trustees of Claiborne Township.

The Township established and keep up a Township Cemetery. It is about 2 miles south of Richwood. Since this Cemetery has been established no burials have been made

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in the Richwood grounds except Mr. Stevenson's daughter in 1869. That I remember of a good many graves have been removed from the old grounds to the new; I removed several myself.

The defendants to further maintain the issues on their part called as a witness one, Asa Langstaff who testified as follows:

I was one of the Trustees of Claiborne Township in 1882. And in that year the Trustees of that Township leased the old Richwood Country grounds to the Trustees of the Baptist Church Society of Richwood by written lease. We thought we had a right to do so; our object was to have the grounds cleared up and a fence put around them and kept in good condition; and we leased it to their church people to build their church thereon, to save the Township the expense of keeping up the grounds &c.

On cross-examination witnesses said:

The Trustees had some doubts about their power to lease said grounds, and so saved themselves of any responsibility by a saving clause in the lease.

This lease was then introduced and used as evidence by the defendants, a copy of which is hereto attached marked "Exhibit A".

The defendants to further maintain the issues on their part, called one J.W. Richards who testified as follows:

I am a member of the Baptist Church at Richwood. I was employed by the Church in 1882 to clear up the old Richwood grave yard grounds. I found those grounds in a very bad condition; all grown up -- weeds and brush; so much so that it looked like a howling wilderness that might be full of wild beasts, and people were afraid to go past the place.

The defendants cleared up and fenced the grounds and built a Church thereon in 1882 & 3 & 4 & have kept the grounds clean and tidy ever since. I looked over the grave stones that are on the graves in those grounds, and noted the epitaphs on most of them. I found that burials had been made there as early as 1833 and on up to 1869, but only a few since 1854. The graves extend down on the west side nearly to the street. I helped to build the Church and thought there were no graves where it stands. The Church is 28 by 40 feet with a small room at the back end.

On cross-examination said:

Those grounds were so

thickly grown up with under-brush and weeds so that a person could hardly get through it at all; and no graves could be seen from the street; and that it did not look at all like a grave yard.

The defendants then read the depositions of John Graham which is hereto attached marked "Exhibit A"; of Robert E. Swartz which is hereto attached marked "Exhibit B"; of John A. J. Sargent which is hereto attached marked "Exhibit C"; of William H. Ferguson which is hereto attached marked "Exhibit D." and of Samuel Myers which is hereto attached marked "Exhibit E".

Defendants thereupon read to the Court as evidence a certain law passed by the Legislature of the State in 1850, a copy of which is hereto attached marked "Exhibit F", being the law referred to by Wm H. Ferguson in his testimony.

The defendants then rested.

The plaintiffs introduced no rebutting testimony other than that brought out on cross-examination.

The foregoing is all the testimony offered by either party, or heard and considered by the Court in the trial of this case.

A Jury being waived this case was submitted to the Court upon argument of counsel. And the Court being requested so to do made a separate finding of the facts and conclusions of law in the case. And the findings of the facts being against the plaintiffs in this, that Philip Plummer in his life time dedicated all of said lots No 29 & 30 in the Town of Richwood to the public for a burying ground. And also the conclusions of law being against the plaintiffs in this to wit: that they as the legal representatives of said Philip Plummer are estopped by reason of said dedication of asserting their right to enter upon or have possession of said premises or any part or parts thereof: and the Judgment of said Court being against the plaintiffs for costs.

The plaintiff within three days made a motion for a new trial, but the Court overruled said motion and rendered Judgment as aforesaid on said special finding. To all of which plaintiffs excepted and tenders this their bill of exceptions which is allowed signed, sealed and ordered to be made part of the record this 7th day of January A. D. 1870.

John R. Price
Judge of Court of Common Pleas
10th Judicial District of Ohio.

Entry

Question
Answer

Exhibit "B"

Entry

M. S. Sanford et al
vs
Trustees Baptist Church et al

No 5667.
Court of Common Pleas
Union County Ohio

And now come the plaintiffs and present their Bill of Exceptions which is allowed signed, sealed and ordered to be made a part of the record.

John A. Price
Judge of said Court.

O. R. Kirr,
Attorney for Plaintiff

M. S. Sanford et al
vs
W. H. Richards et al Trustees

Court of Common Pleas
Union County, Ohio

Depositions of witnesses taken by agreement of the parties without notice in the above cause. O. R. Kirr, Attorney for Plaintiff present and Orrent; S. S. Gardner and J. W. Robinson Attorneys for Defendants.

Taken before John M. Brodrick, Notary Public and the depositions are to be used as far as competent save as if the witnesses did not live in the County of Union Ohio.

John Graham, being duly sworn by me, John M. Brodrick testifies on behalf of the defendants as follows

Question — State your name, age, residence and occupation?

Answer — My name is John Graham, age 67 years, Residence near Richwood, Occupation since 21 years of age Minister of the Gospel. Am now retired

Exhibit "B" — My first introduction to Philip Plummer was in 1836. He lived in Richwood. He was proprietor of Richwood, dealing in real estate and running a farm at that time. My acquaintance with him lasted as long as he lived. I left home in 1844, I knew him as long as he lived. Illinois he died in Edwardsville, Morrow County, Ohio, — Am not sure. He became a Minister after I went into the work of the ministry, and continued in the ministry until about the time of his death. He lived in Richwood to my knowledge for several years after the year 1844. I some part of the time he lived on a farm near Richwood. Am acquainted with the cemetery in Richwood — there is only one in the corporation of Richwood that I know of. There were some graves in it when I first saw it in 1836 - a few.

It was continuous as long as I staid at home until 1844. I attended a funeral at Richwood when I was on a visit home - I think in 1848. And the

burial was in that Cemetery. I was called upon I think in 1840 or 41 to act as pall-bearer at a burial in that Cemetery which was the first time I was ever called upon to act in that capacity.

Mr Plummer was present as the friend of the family whose daughter was buried and had charge of the arrangements. The corpse was buried in that Cemetery.

The ground occupied as the Cemetery was two lots and was about half filled with graves scattered over it at the time Mr. Plummer left.

About the time Mr. Plummer left or a little while before there was a Cemetery started at the Wiley School House, one at Bethlehem Church and one on Mr. Hamilton's land, besides the one at Wiley's School House. And they did not bury so rapidly in the town Cemetery after that time.

I heard a conversation between Mr Plummer and other parties before either of the Cemeteries outside of town were started, in regard to the Richwood Cemetery. Mr. Plummer and a number of other men -- myself with them -- were engaged in opening the road now known as the Hoskins piker; along in the day sometime we stopped work and Mr. Plummer brought up the question of the outlook of Richwood and what would promote its prosperity. Mr. Plummer said, one thing we needed for the convenience of the community was a good Cemetery. "That the little lot, or spot of ground I gave for that purpose was too small." "And it is too close to where people live and have their wells for obtaining water". So far as I know all the other persons present at that conversation are dead, except myself. The Cemetery lots were not fenced up, that I saw, until recently -- within a few years.

Exhibit "A"

Cross Examination.

I don't know when the public ceased to bury in that Cemetery. I think they ceased regularly to bury there when the Claibourne Cemetery was established. -- The same Cemetery heretofore spoken of by me as at Bethlehem Church.

I did not know of many of the people removing their friends to the Claibourne Cemetery. I did not know of it as a general rule; -- from the Richwood Cemetery. My recollection is from the beginning they buried on either of the lots as the choice of the friends selected. I recognized the whole ground as our Cemetery. My understanding is the burying commenced at the north, or back end of the lots and

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filled toward the south, or front end. The back end of lots was a little higher than the front end. At the time of the conversation of Mr. Plummer as hereinbefore stated, there were some houses built in the neighborhood of the Cemetery, but none on the adjoining lots that I know of. The houses nearest were those of Rev. Isaac Cade and Rev. John Canry. This is what I understood was Mr. Plummer's idea: He expected Richwood to become a great place, populous, and that on the ground he had given there would not be room for all the burials that would necessarily take place, and that if it would be large enough it would not be safe to have the burials so near where the people would live. He regarded it as temporary in this sense, that it would not be large enough to hold the graves that would be necessary for a place so populous as Richwood would become

Cr. Examination

I was particularly acquainted with Mr. Plummer and during some time was an intimate friend of his and I never heard him intimate that he ever expected to have any of the bodies buried in that Cemetery removed.

John Graham.

Robert D.S. Swartz, being also sworn at the same time deposes and says as follows:

My name is Robert D. S. Swartz, I am 68 years of age. My residence is now at Richwood. I resided there from 1836 to 1841. Then I was a resident of that place for the most of the time until 1854.--was off for one or two years.

The burying was commenced in the Cemetery in Richwood within a year after the town was laid out.

Exhibit "A"

I was raised in the vicinity of Richwood. I was there when the first wagon track was made through what is now Richwood before the town was laid out.

It might have been a little more than a year after the town was laid out that the first burial was in the Cemetery. They continued burying there up till--I couldn't tell the date, but think--somewhere in 1840. It was the only burial ground in the neighborhood laid off as a burial ground. I don't know to what extent it was afterward used as a burial ground.

To make them all solid, close together I suppose it would have filled about one-half the lot, but they were scattered somewhat, not buried close together.

Upon reflection I remember persons that were buried there after 1854. The Cemetery was all considered

our lot and called the grave yard lot. I was acquainted with Philip Plummer from the time he came there up to - as near as I can recollect - about 1846. Was well acquainted with him -- saw him nearly every day from the time he moved up there which was within a year from the time the town plat was laid off until about 1846, at which time he moved away. He knew this ground was being filled with graves. I saw him at burials there frequently. I heard Mr. Plummer make statements that he had given that ground for burial purposes. He said that he had given that ground for burial purposes and that he would never recall that. That the ground was rather smaller than was necessary for the accommodation of a community as large as he anticipated would be in the town and its surrounding but that he would never have any of the graves removed. This conversation was in connection with a man who was viewing and talking about buying a lot near the grave yard and the man objected on that account. It was probably about the year 44 as near as I can remember.

Exhibit "E"

Cross- Examination

The graves were on the north end of the lot, principally, there were some within about 50 feet of the front, or less than that. There is one of them that is there yet, the grave of John Canary. I cannot postive, but my recollection is it was about as near, or a little nearer the front than any other.

Philip Plummer had first conversation about the burial ground from 1833 to 1836 -- about the time we were clearing up the ground to bury the little girl who burned to death. I think her name was either Jane Mary or Mary Jane Brookins. Mr. Plummer was assisting in clearing up the ground. -- At the time of the conversation I do not remember the name of the man who was trying to buy the lot. He did not purchase the lot on account of the grave yard. It was to near the grave yard. The lot laid between the lot now occupied by Mr. Hill and the grave yard.

Durston

Answer

Re Examination.

The conversation with the man who was trying to buy the lot was about the year 1844. I think same year James K. Polk was elected President.

Robert E. S. Swartz.

Also John A J. Sougust being sworn deposes and says; I was born in 1816 - 78 years of age - reside near Richwood. I know of one buried in the Richwood Cemetery in 1840

and I think some before. I became acquainted with Mr. Plummer when he and his company first rode into town to lay it out. I assisted in cleaning up the land adjoining the burial ground on the east.

Exhibit "E"

That was on the outside of the corporation. It came up to the line of the corporation as it was first laid out. Plummer said the cemetery came up to the corporation line. We cleared up to the Claiborne Survey line, and we were to clear and fence. Plummer laid it off to where we were to come. There was a strip of land about sixteen feet west to the land laid out for burial ground.

When we came to that Mr. Plummer said, you may continue this fence to the line of the burial ground lot and we will make the drive outside of the burial ground in the field and west of the Claiborne Survey line. He said that this is for a burying ground and that he would make the drive in the field instead of the burying ground.

This conversation was after the town was laid off. I rather think there was no grave there at that time, yet there may have been. Mr Calloway buried a daughter there, and I am not real certain that Plummer was there, but I think he was there and told where the corner was, and Mr. Calloway buried his child in the corner.

Mr. Calloway lived in the country outside of Richwood. In early days the neighborhood generally buried in this cemetery, both inside, and outside of town.

Cross-Examination.

The three acres we were clearing run across from our road to the other and was immediately east of the cemetery, and part of the Fuller Claiborne Survey and came up to the west line of said survey.

Durston

Was this spot of ground pointed out to you by Philip Plummer as the grave yard, immediately west of this land you cleared?

Answer

It was immediately west of our half of the three acres, -- the south half.

I can't fix the date. It was in '30 sometime, probably '35 or '36 or somewhere about that time, hardly up to '36. Not certain there were any graves there.

The east corporation line was the west line of the Fuller Claiborne Survey. He showed me the north-east corner of the grave yard lot. The first graves that I know of was in the north-east corner.

This was in 1840. That is the first I can tell with any certainty. The grave yard lot was not

really cleared off at the time we cleared the 3 acre lot and the fence we built was the first on the east side of the Cemetery.

Cr-Examination

Don't know whether Philip Plummer owned the Clairbourne Survey, but he claimed to own the land we cleared off in the Clairbourne Survey.

J. F. J. Sargent.

Exhibit "G"

William H. Simpson also being sworn deposes and says:

My name is William H. Simpson. Age 64 years. Reside near Richwood, was acquainted with Philip Plummer from 1848. Moved to Richwood in 1847 and he came to Richwood as a minister about 1848. He was there two years at least. This Richwood Cemetery Exhibit "F." was a burying ground at that time, but they were burying outside of town, also. Up to the time the Church was put on the grave yard lot it, the lot, was in a dilapidated condition, grown up with briers and weeds. Since the Church has occupied it, it has been kept in good, fair condition.

Question State what you know about a petition being circulated by Mr. Plummer and for his benefit to get the Legislature of Ohio to pass an Act to relieve Mr. Plummer in regard to lots that he had donated to the public.?

Answer My recollection is that there was a petition to the Legislature to have certain public lots revert back to Mr. Plummer.

Question On what plea was that petition circulated?

Answer Plummer had become very poor financially and it was thought to be a relief to him to revert back to him so that he could sell them and use the proceeds.

Question Were the burying ground lots included in the petition.

Answer Do not remember. I bought two of the lots of Mr. Plummer and have deeds for same.

Never had any conversation with Plummer about the Cemetery lots to my recollection.

Cross-Examination.

Question Was there not prior to taking possession of that lot by the Church, the part of the Cemetery where the graves were grown up into a perfect wilderness of weeds, briers & brush.

Answer Personally I don't know about the briers. There were plenty of weeds there that I know of and may have been briers. And it was in a dilapidated

condition, very much so.

W. H. Ferguson

Also Emmit Myers, being sworn says:

I am 72 years old. Reside in Richwood. Was acquainted with Mr. Plummer when he came back there to preach. Not personally acquainted with him before. Were very intimately. He lived there while preaching about two years. I came there about 1842. I had several children die and buried them - four - from 1850 to 1860 in that Cemetery in Richwood. Never had any conversation with Mr. Plummer or heard him say anything about removing any of the graves from this Cemetery. The Cemetery was in a very bad condition before the Church took possession of it. It was grown up in weeds, briers and bushes so as to be a hiding-place for improper purposes. Since the Church took possession of it, it is in very respectable order.

Exhibit "G"

Cross-Examination

It was in pretty fair condition when I buried my children. Some bushes and weeds, but was in pretty fair condition. I should think my children were buried about 2/3 of the way towards the north -- About 1/3 of the way from the north end, and about the middle. The graves are mostly in the north end. -- It being the highest. The front end was low, flat and wet. Wouldn't liked to have buried in the front end of it in three times.

Question: As a matter of fact was the front end of the lots a fit place for burial?

Answer: I would have considered it too wet for burying purposes on front end where Church stands. There were not many graves more than 2/3 of the way down towards the front end of the lot. Mr. Stevenson's daughter was the last buried there that I know of.

I think they came down farther on the west side -- nearly to the street. They may have been removed. They came down opposite the back end of the Church. Didn't notice along the west side of the lot about the graves the other day when there.

There is a small grave at the back end of the Church at the side of the Church. Don't think the Church was put on any graves. Don't know whether any graves were there or not. -- not certain.

Was called out 20 or 25 years ago to help fix the fence in front of the grave-yard lot, I think it was fenced on the other sides. Think the fence all gone down, carried off and burned up before the

Church took possession of the grounds.

Question — Then as a matter of fact were not these grounds wholly neglected and abandoned as a public burying ground, several years befor the Church was permitted to take possession of them.

Answer — I think they was, and when I had grand children buried I buried them down at the other Cemetery, but I have not had my children removed, nor never expect to, for the reason that they have been buried so long.

Question — Would you object to have the bodies of your children properly and decently disinterred & removed to the grave yard where your grand children are and placed besides them?

Answer — I should certainly object to it?

Question — Where would you prefer to be buried yourself? In this old grave yard or beside your grand children in the new?

Answer — I would prefer to be buried in the Claiborne Cemetery in a decent lot, but not beside my grandchildren for they were buried before the Cemetery was properly laid out. There is no room beside my children in the old Cemetery.

Question — Would you object to the removal of your children from the old to the new Cemetery if done properly?

Answer — I would object to having them disturbed as I put them there to stay.

E. Myers.

I certify that the above depositions were reduced to writing by me and signed in my presence and that the witnesses were all sworn before testifying.

Present on behalf of Plaintiffs -- A. A. Kerr Esq., and on behalf of Defendants S. S. Gardner Esq. and Hon. J. M. Robinson.

John M. Brodrick,
Notary Public, Union County, Ohio

Fees -- $ 3.86

Entry

Afterward, on the 24th day of January, 1890, the following Entry was made on the Journal by the Clerk.

90

M. S. Sanford et al
vs
Trustees of the Baptist Church

Journal 1, Page 101

This cause came on for hearing upon the petition in error, the transcript, and the original papers and pleadings from the Court of Common Pleas of Union County, and was argued by counsel;

On consideration whereof the Court find there is no

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error apparent on the record in said proceedings and Judgment.

It is therefore considered by the Court that the Judgment aforesaid be, and the same is hereby affirmed and that the defendant in error recover from the plaintiff in error his costs herein expended taxed at $.

And the Court bring of opinion that there was reasonable ground for proceedings in error, allow no penalty.

It is further ordered that a Special Mandate be sent to the Common Pleas Court of Union County, for execution upon this Judgment.

Pleas before the Honorable John J. Moore, Henry W. Berry and Thomas Beer, Judges of the Circuit Court within and for the County of Union of the Third Judicial Circuit of the State of Ohio, begun and held at the Court House in the Town of Marysville on the 23rd day of September in the year of our Lord one thousand eight hundred and ninety.

Heretofore, towit: on the 27th day of January, 1890, the following Transcript was filed with the Clerk of Court, towit:

Transcript. State of Ohio, Union County ss. | In the Court of Common Pleas:

Harvey M. Haines Vs C. Aultman & Co | November Term 1887. Journal Vol. 14, Pages 418 & 419. Journal Vol 15 - Pages 34-114-172-213-221-234

Entry 3227

This day this cause came on to be heard upon the motion of the plaintiff to dismiss the appeal, and was argued by counsel, on consideration whereof, and the Court being fully advised in the premises, finds that said motion is well taken, and the said appeal is dismissed at cost of defendant

C. Aultman & Co Vs H. M. Haines | February Term, March 17th, 1888. No. 5433

This day this cause came on to be heard upon the petition in error, and was argued by counsel, on consideration whereof and the Court being fully advised in the premises, find that there is error in the proceedings had before said Justice, to the

prejudice of the said plaintiff in error.
It is therefore considered and adjudged that the judgment of the said Justice of the Peace be reversed, and the said case is set down for trial in this Court, and the said defendant in error is given leave to file petition instanter, and the plaintiff in error, has leave to plead thereto until Saturday the 24th of March. 1888.

C. Aultman & Co
vs
Harvey M. Haines

March Term, 1889.
Wednesday March 6th, 1889.

This day the Court granted leave to Harvey M. Haines to file petition in this case, and thereupon Harvey M. Haines filed his petition therein.

Harvey M. Haines
vs
C. Aultman & Co.

Thursday June 13th, 1889.

This day came the defendants and asked and obtained leave to file their answer, and their answer filed. Thereupon the defendant made a showing for continuance of the cause.
Thereupon the defendant having made sufficient showing, by reason of absence of witnesses for continuance, which motion is sustained, and the cause is continued on defendants motion and at the defendants costs. Whereupon it is considered and adjudged by the Court, that plaintiff recover of defendant the costs of this term taxed at 8- - -.

Harvey M. Haines
vs.
C. Aultman & Co

November Term. Friday November 8th 1889.
No. 5433

This day defendant asked and obtained leave to file amended answer herein instanter.

Harvey M. Haines
vs
C. Aultman & Co.

No. 5433
November Term, 1889.
Wednesday November 20th, 1889

The defendant moved the court for continuance of this case, by reason of the absence of witnesses named in the affidavit, filed in support of said motion. Whereupon the Court overrule said motion, but sustain the motion to postpone

this cause to the 29th of November, 1889 at defendants cost. Whereupon it is considered by the Court that plaintiff recover of defendant the cost of said postponement taxed to $- - -.

Harvey M. Haines vs C. Aultman & Co.	No. 5-7433 November Term, 1889. December 6th, 1889.

This day came the parties by their attorneys, also came the following named persons as Jurors, to-wit:

1st. Joseph Norris.	5th Bradley Sprague	9th John Jordan
2nd Stephen Long	6th R. D. Findley	10th John V. Cartmell
3rd W. H. Bennett	7th William Dove	11th John W. Ford
4th David Rea	8th A. H. Olds.	12th Geo. Edwards

who were impaneled and sworn according to law, and the trial proceeded, and the said Jury having heard the evidence adduced the argument of counsel, and charge of the Court retired to their room in charge of the Sheriff for deliberation.

And now comes the said Jury into open Court, with their verdict in writing signed by their foreman, and say;

We, the Jury, being duly impaneled and sworn find the issues in this case in favor of the plaintiff, and assess the amount due the plaintiff from the defendant at the sum of $141.30.

W. J. Dove, Foreman.

Harvey M. Haines vs C. Aultman & Co.	No. 5-7433 Thursday December 12th, 1889

This cause now coming on for hearing on the motion of the defendant for a new trial, the Court on consideration overrules the same.

It is therefore considered by the Court that the said H. M. Haines recover from the said C. Aultman & Co the said sum of $141.30, as heretofore found due him together with his costs herein expended. To all of which the defendant by his attorney excepted.

Harvey M. Haines vs C. Aultman & Co.	No. 5-7433 January 7th, 1890

Now comes the defendant and present its bill of exceptions, which is allowed signed, sealed and made a part of the record.

Bill of Exceptions recorded in Common Pleas Record 27, Page 242

The State of Ohio
Union County ss

I R. McCrory, Clerk of the Court of Common Pleas, within and for said County, and in whose custody the Files, Journals and Records of said Court are required by the Laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal of the proceedings of the said Court within and for said County, and that said foregoing copy has been compared by me with the original entries on said Journal, and that the same is a correct transcript thereof.

In testimony whereof, I have hereunto subscribed my name officially, and affixed the seal of said Court at the Court House, in Marysville, in said County this 27th day of January, 1890.

Seal

R. McCrory, Clerk of Court.

Petition & Error 91

Afterward, on the 27th day of January, 1890, the following Petition in Error was filed with the Clerk of Court.

C. Aultman & Co.
vs.
Harvey M. Haines

In Union County Circuit Court.

Plaintiff in Error says that at the November term 1889 of the Court of Common Pleas of Union County, defendant in error recovered a judgment by the consideration of said Court against plaintiff in error, in an action then pending therein, wherein defendant in error was plaintiff and plaintiff in error was defendant. A transcript of the docket and journal entries thereof is filed herewith. There is error in the said record and proceedings in this, towit:

First--- Said Court erred in overruling the motion of plaintiff in error for a new trial.

Second--- Said Court erred in its charge to the Jury on the trial of said action.

Third--- Said Court erred in refusing to give the charges asked for by plaintiff in error.

Fourth--- Said Court erred in the admission of improper evidence, to which the plaintiff in error objected.

Fifth--- Said Court erred in excluding evidence offered by plaintiff in error, and to which plaintiff in error excepted.

Said judgment was given for said defendant in error when it ought to have been given for plaintiff in error. Plaintiff in error therefore prays that said judgment may be reversed and that it be restored to all things it has lost by reason thereof.

D. W. Ayers and J. C. McMath, Attorneys for Plaintiff in Error.

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Attorneys
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We hereby waive service by summons and enter
Waiver. the appearance of the defendant herein.
Jan. 27th, 1890. J. W. Robinson Atty

Entry
91 C. Hallman Exr &c
vs
Harvey M. Hannes

Afterward, on the 24th day of September, 1890, an Entry was made on the Journal by the Clerk of Court.
Journal 1 Page 110.

This day came the parties and submitted this cause to the Court on the petition in error and transcript and the argument of counsel.

Whereupon the Court being fully advised in the premises do find that there is no error in said record and it is therefore considered and adjudged by the Court that said judgment of the Court of Common Pleas be and the same is affirmed with costs but without penalty.

It is therefore considered and adjudged by the Court that said judgment be affirmed and the defendant in error recover of the plaintiff in error his costs herein taxed to $- and it is ordered that a mandate issue remanding this cause to the Court of Common Pleas to carry this Judgment into execution.

Pleas before the Honorable John J. Moore, Henry W. Seney and Thomas Beer, Judges of the Circuit Court within and for the County of Union of the Third Judicial Circuit of the State of Ohio, begun and held at the Court House in the Town of Marysville on the 23th day of September in the year of our Lord one thousand eight hundred and ninety.

Heretofore, Towit: On the 16th day of April, 1890, the following Petition in Error was filed with the Clerk
Petition of said Court, towit:
in Error John C. Montgomery Admr. of In Union County
estate of George W. Montgomery.
Deceased. Vs Circuit Court
94 Sarah Montgomery

Plaintiff in error says, that at the March term 1890, of the Court of Common Pleas of Union County, Ohio, defendant in error recovered a judgment by the consideration of said Court against plaintiff in error in an action then pending wherein defendant in error was plaintiff, and plaintiff in error was defendant. A transcript of the

docket and journal entries whereof is filed herewith.
There is error in the said record and proceedings in this towit:
1st. Said Court erred in rendering judgment on the verdict of the Jury in said case before expiration of three days from the returning of said verdict by the Jury in the Union County Common Pleas Court.
2nd Said Court erred in rendering a judgment on said verdict because the amount thereof was and is excessive
3rd Said Court erred in rendering a judgment on said verdict because as shown by the transcript of the docket and journal entries filed herewith, the said Court adjourned and closed the March Term of said Court on day said verdict was returned by the Jury and thereby prevented the plaintiff in error from submitting to said Court of Common Pleas his motion for a new trial within three days as provided by law, and at the trial Term in which said action was tried.
4th. That said verdict was against the evidence and contrary to law.
5th - That the Court erred in its charge to the Jury.
6th Said Judgment was given for said Sarah Montgomery when it ought to have been given for John Montgomery as the Administrator of George W. Montgomery, deceased.
Plaintiff in Error prays therefore that said judgment may be reversed and that he be restored to all things he has lost by reason thereof.

D. W. Ayers. Attorneys for
Plaintiff in Error

Waiver We hereby waive service by summons or otherwise and enter the defendants appearance in the above case this 16th day of April, 1890.

Robinson & Woodburn

Transcript Afterward, on the 16th day of April. 1890. the following Transcript was filed with the Clerk of Court.

The State of Ohio
Union County ss.
Sarah Montgomery
vs.
John Montgomery Admr.
June 11th, 1889.

In the Court of Common Pleas
March Term, 1890.
Journal 15. Pages 111, 142, 281, & 291.
Certified Copy of Journal Entry.

This day came the parties by their attorneys also came the following named persons as Jurors towit: 1st John Barnes, 2nd David W. Mather, 3rd L. V. Thompson

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4" John Oller, 5" E G Freeman, 6" Oliver Shaw, 7" E. B. Southwick, 8" Ray G Morse Jr. 9" V. C. Bailey, 10" James Eddleman, 11. F. A. Martin, 12" J. N. Parris. whowere duly impaneled and sworn according to law; and thereupon this case came on for hearing on the pleadings and evidence. The defendant by permission of the Court filed his Amended answer and by consent of parties, one of said Jurors was withdrawn from the panel, and the residue of said Jury is discharged from the further consideration of the case, and this cause is continued at the costs of the defendant. It is therefore considered and adjudged by the Court, that the defendant pay the cost of this term of Court, and execution is awarded.

Sarah Montgomery
vs
John Montgomery Admr. | Wednesday July 31st 1889

On motion leave is granted to the plaintiff to file amended petition in thirty days and this cause is continued.

Sarah Montgomery
vs
John Montgomery | Thursday March 20th, 1890

This day came the parties by their attorneys, also came the following persons as Jurors, viz:

1" S. E. Williams	5" Wilson Brown	9" W. W. Judy
2" Joseph Roff	6" G. W. Welch	10" W. L. James
3" Samuel McEntire	7" Abel M. Garry	11" L. A. Hedges
4" J. A. Henderson	8" Leonidas Turner	12" Aniseemus Shearer

who were duly impaneled and sworn according to law, and this case came on to be heard upon the pleadings and the evidence, and the said Jury having heard the evidence adduced, the argument of counsel and charge of the Court, retired to their room for deliberation. And now comes the said Jury into open Court with their verdict in writing signed by their foreman and say:

We, the Jury, being duly impaneled and sworn find the issues in this case in favor of the plaintiff, and assess the amount due the plaintiff from the defendant at the sum of ($463.23) Four Hundred and sixty-three 23/100 dollars.

J. A. Henderson, Foreman.

It is therefore considered by the Court that the plaintiff recover of the defendant John C.

Montgomery, as Administrator, the said sum of $463.33 and her costs herein taxed at $- -.

Sarah Montgomery
vs
John Montgomery Admr. ‖ April 16th, 1890

Now comes the plaintiff and presents his bill of exceptions which is allowed, signed, sealed and made part of the record.

For Bill of Exceptions see Order Record 30. Page 407.

The State of Ohio
Union County ss. ‖

I, Robert McCrory, Clerk of the Court of Common Pleas, within and for said County, and in whose custody the Files, Journals, and Records of said Court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal of the proceedings of the said Court within and for said County, and that said foregoing copy has been compared by me with the original entry on said Journal, and that the same is a correct transcript thereof.

In testimony whereof, I have hereunto subscribed my name officially, and affixed the seal of said Court, at the Court House in Marysville, in said County, this 16th day of April 1890.

Seal

R. McCrory, Clerk.

Entry

91 Afterward, on the 27th day of September, 1890, an Entry was made on the Journal by the Clerk of Court

John C. Montgomery Admr. ‖ Journal 1, Page 110.
vs
Sarah Montgomery

This day came the parties to this action to the Court. Whereupon the Court being fully advised in the premises do find that there is no error in the record described in plaintiffs petition.

It is therefore considered and adjudged by the Court that the said judgment be and the same is hereby affirmed with costs but without penalty

It is therefore considered and adjudged that said defendant in error recover of plaintiff in error her costs herein expended taxed to $- - -. And it is ordered that a Mandate issue to remand this cause to the Court of Common Pleas to carry the same into execution.

Pleas before the Honorable John J Moore, Henry W. Seney and Thomas Beer, Judges of the Circuit Court within and for the County of Union of the Third Judicial Circuit of the State of Ohio, begun and held at the Court House in the Town of Marysville on the 21st day of January, in the year of our Lord one thousand eight hundred and ninety.

Heretofore, towit: On the 29th day of August. 1889, the following Transcript was filed with the Clerk of Court, towit:

Transcript | The State of Ohio, Union County ss: | In Common Pleas Court. May Term, 1889.

86

Benjamin Thomas vs The Board of Education of York Township, Union Co. | Journal 15. Page 50 & 130

Certified Copy of Journal Entry. No. 5711.

This day this cause is continued on motion and showing and at defendants costs.

It is therefore considered that defendants pay the costs of this term taxed at $- - -.

Friday, June 21st, 1889.

This day this cause came on to be heard upon the petition of plaintiff and the answer of defendant, and the evidence of the parties; on consideration thereof the Court find on the issue joined for the plaintiff.

The Court further find that at the time of the bringing of this action, the said plaintiff was in possession of the real property described in this petition, and that he had the legal title and estate therein, and was entitled to the possession of the same; that the defendant have no estate in, and is not entitled to the possession of the said real estate, nor to any part thereof, and that the plaintiff ought to have his title and possession quieted against said defendants as prayed for in said petition.

It is therefore ordered and adjudged and decreed, that the title and possession of the said Benjamin Thomas to all and singular the premises in the petition described, be, and the same is hereby quieted as against the defendants, and it is hereby forever enjoined from setting up any claim to said premises, or any part thereof adverse to the said Benjamin Thomas, his heirs, or assigns thereto, with judgment against defendants for all costs. Therefore

the defendant gave notice of its intention to appeal this cause to the Circuit Court, and the Court fixed the amount of the appeal Bond at $200 ⁰⁰/₁₀₀.

The State of Ohio, ‖
Union County, ss: ‖

I, R. McCrory, Clerk of the Common Pleas Court within and for said County, and in whose custody the Files, Journals and records of said Court are required by the laws of the State of Ohio, to be kept hereby certify that the foregoing is taken and copied from the Journal of the proceedings of the Common Pleas Court within and for said County, and that said foregoing copy has been compared by me with the original entry on said Journal 15, Pages 50 & 131 and that the same is a correct transcript thereof.

In testimony whereof, I do hereunto subscribe my name officially and affix the seal of said Court at the Court House in Marysville in said County this 29th day of August, 1889.

Seal

R. McCrory, Clerk.

Entry

Afterward, on the 24th day of January, 1890, an Entry was made on the Journal by the Clerk of Court.

86 Benjamin Thomas. ‖
To ‖
The Board of Education ‖ Journal 1st, Page 98.
of York Township ‖

This day came on this cause to be heard by the Court, whereupon the Court having heard the evidence offered by the parties and the argument of counsel and the defendants having asked the Court to make its findings of law and facts separately.

The Court on full consideration find the facts as follows, viz:

The controversy arises from a dispute between the parties as to whether the strip of land in the petition described was formerly owned by Thomas W. Miller or owned by James B. Miller. The plaintiff claiming title by deed from Thomas W. Miller and the defendant claiming title by deed from the heirs of James B. Miller. We have heard the case upon the evidence and from the evidence we find the following facts. That the land owned by Thomas W. Miller was formerly owned by Jonathan G. Miller. That when these lands were owned by Jonathan G. Miller and James B. Miller, to-wit: about 50 years ago a fence was built between these two tracts: the lands lying west of the fence were owned by Jonathan G. Miller and the

lands lying East of the fence were owned by James C. Miller. That the lands in dispute lie west of the fence immediately adjoining thereto.

That a church was erected (now destroyed) upon the land immediately west of said fence and adjacent thereto which land was donated for said purpose by Jonathan G. Miller. That a school house was erected upon the land immediately east of said fence and adjoining thereto which land was donated for said purpose by James C. Miller. That the land west of the fence (including the land in dispute) have been in the possession of Jonathan G. Miller, Thomas W. Miller and the plaintiff for a period of about 50 years. That the deed from Jonathan G. Miller to Thomas W. Miller calls for the south line and east line as follows: "thence with James Charles Miller S. 6- W. 138 poles to a beech and buckeye: thence S. 78- W. 80 poles to a hickory. That the monuments named beech and buckeye are destroyed and marked the South-west corner of the James C. Miller tract, and the South-east corner of the Jonathan G. Miller tract, and were located at the south end of said fence.

That the deed from Thomas W. Miller to the plaintiff Benjamin Thomas calls for the same line as follows: "thence with the center of a gravel road N. 80- E. 64 poles to a stone with bricks under it": that at the end of the 64 poles no monument ever existed, but further east on said line where the beech and buckeye were located was or did exist consisting of a stake with bricks on top of said stake as found by Bell the Surveyor and that his corner is the true corner, said stake and brick being burried in the ground some distance.

From these facts as a conclusion of law we find that monuments control distances and that the call in Thomas deed "to a stone with bricks under it" carries the line to the monument and therefore the land in dispute is covered by Thomas deed and in connection with the long possession of Thomas and his grantors the plaintiff is entitled to have his title quieted to the Bell corner.

It is therefore considered, ordered and decreed by the Court that the plaintiffs title and possession to said land in the petition described be and the same is hereby quieted as against any and all claims of the defendant in said land and the Court further order and decree that

the defendant pay the costs in this case and in default of the payment for ten days that execution issue therefor as upon judgments at law and thereupon the defendant excepts to the findings of the Court as to the facts and the law in the case and to the judgment of the Court.

Whereupon the Court orders this cause to be remanded back to the Court of Common Pleas for execution.

Pleas before the Honorable John J. Moore, Henry W. Seney and Thomas Beer, Judges of the Circuit Court within and for the County of Union of the Third Judicial Circuit of the State of Ohio, begun and held at the Court House in the Town of Marysville on the 3rd day of March in the year of our Lord one thousand eight hundred and ninety-one.

Heretofore, on the 9th day of September, 1890, Transcript was filed with the Clerk of Court, towit:

The State of Ohio	Certified Copy of Journal Entry.
Union County, ss	In the Court of Common Pleas.
Robert W. Brestow	May Term, 1890.
~Vs~	
E. P. Reese	Journal 15, Pages 48, 127, 259, 341, 343, 357

Monday March 18th, 1889.

Leave is granted to defendant to file answer within ten days from the rising of the Court.

Wednesday June 19th, A. D. 1889.

This day this cause came on for hearing upon the motion to make plaintiff's petition more definite and certain, as to the 1st, 2nd, and 3rd cause of action, and as to demurrer to 4th cause of action: the Court being fully advised in the premises does overrule said motion as to the 1st, 2nd and 3rd cause of action, and does sustain said demurrer as to the 4th cause of action.

Thereupon the defendant took 30 days to answer thereto.

Friday March 7th, A. D. 1890.

This cause is continued on the motion and showing of defendants at his costs.

Thursday June 19th, A. D. 1890.

This day came the parties by their attorneys, also came the following named persons as Jurors, towit:

1st. S. R. Berger
2nd. D. K. Anthony,
3rd James Leranston,
4th John Gosnell,
5th A. W. Robinson
6th Jacob Bowersmith,
7th Luther K. Wood,
8th Jerome Richey
9th G. P. Trapp
10th Henry Worthington
11th William Longbrake
12th Eli Gabriel who were

duly impaneled and sworn according to law: and thereupon the case came on for hearing on the pleadings and evidence, and the said jury having heard the evidence adduced, & the arguments in part, said cause was continued until 8-30 oclock tomorrow morning to which time Court adjourned.

Friday June 20th. A. D. 1890.

This day again came the parties by their attorneys, also came the jury heretofore impaneled and sworn in this case, and the said Jury having heard the remaining argument of counsel and the charge of the Court, retired to their room for deliberation. And now comes said Jury into open Court with their verdict in writing, signed by their foreman, and say:

"We, the Jury, being duly impaneled and sworn find the issues in this case in favor of the plaintiff, and assess the amount due the plaintiff from the defendant at the sum of $ 137 cts.

John A. Gosnell, Foreman.

Wednesday June 25th, A. D. 1890.

This cause came on for hearing on motion of the defendant to set aside the verdict, and for a new trial herein: the Court on consideration thereof, overrule the same, to which the defendant excepts. It is therefore considered by the Court that the said plaintiff recover from the defendant the said sum of $137 cts as heretofore by the verdict of the Jury found due him, with interest together with his costs herein expended.

Saturday August 2nd. A. D. 1890.

It is ordered that all cases, motions and matters now pending in this Court, not otherwise disposed of be, and the same are hereby continued till the next regular term thereof.

This separate session of the Court of Common Pleas of the Tenth Judicial District of the State of Ohio, for the term of May A. D. 1890, was begun on Monday May 26th, A. D. 1890 and continued from day to day by regular adjournments, until the 2nd day of August A. D. 1890, and is now adjourned without day.

R. McElroy, Clerk of Court.

September 9th, 1890. Journal 15. Page 388.

Now comes the plaintiff and presents his bill of exceptions which is allowed, signed, sealed and made part of the record.

The State of Ohio ‖
Union County ss: ‖

I, R. McElroy, Clerk of the Court of Common Pleas, within and for said County, and in whose custody the files, journals and records, of said Court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal of the proceedings of the said Court within and for

said County, and that said foregoing copy has been compared by me with the original entries on said Journal; and that the same is a correct transcript thereof.

In testimony whereof, I have hereunto subscribed my name officially, and affixed the Seal of said Court, at the Court House, in Marysville, in said County, this 9th day of September, A.D. 1890.

Seal

R. McElroy, Clerk.

Afterward, on the 9th day of September, 1890, Bill of Exceptions filed with the Clerk of Court, towit.

Bill of Exceptions

Robert W. Briston
vs.
E. P. Reese

Court of Common Pleas
Union County, Ohio.

Be it remembered that on the trial of this cause at the May Term A.D. 1890 of the Court of Common Pleas of Union County Ohio before Honorable John A. Price and a Jury the plaintiff to maintain the issue on his part offered Robert W. Briston as a witness who testified as follows:

I am the plaintiff in this case and have been on the Reese land in Jackson Township. About the 9th of March 1887 I went over to see Michael Piper who also resides on the land and had a talk with him about clearing and raising a couple of crops on the Reese land. He told me I could have two crops of corn off of the land for clearing the same. I went over on the following Monday: my boys were with me: and Michael Piper staked off what land I was to have,--that is between the land Piper was tending and the remainder of the Reese land, and I went to work clearing the land off.

I with the help of my boys cleared off and put out about seven acres of corn and tended the same during the summer and received the whole of the first crop. The following year I had got the ground ready for about twelve acres of corn when M. W. Hill came and objected. I compleated about twenty-five acres in all I think. I afterwards measured it and it made close to twenty-three acres -- I put out and tended twelve acres of corn. One day when I was in Marion a posse of twelve came and took the half of seven acres of my corn: about the average of it I think they took about eighty six shocks that would average one bushel to the shock.-- It was worth twenty-five cents a bushel in the shock. Piper and wife would insult me and want to fight frequently. It was worth ten dollars an acre to clear the land and I think ten acres of it could have been cleared in a week.

And on Cross-Examination as follows:

I had got twenty-five acres of the land completely cleared -- there was five acres not finished. I had got crops out on twelve acres the second year.

I made all my arrangements for the clearing of the land with

Michael Pipher: the arrangements were completed at Pipher's barn,--all except the staking off of the land. Pipher said he was working under T. P. Coltrys orders. He told me they wanted him to clear the land and he couldnt: he said he would go on Monday and see Coltry and would then show me where to clear. Michael Pipher's wife was at the pump where they lived while we were talking.

I was to have the two first crops for clearing, and was to have the same to farm as long as it was for rent. I was to have the whole forty-five acres. The first year I cleared up twelve acres and I was to clear it up as fast as I could. I planted twelve acres the second year and Pipher came and said he had got word that Reese wouldnt give but the first crop. I knew T. P. Coltry was agent for Reese. I measured the land with Ed. Manly George Parish and others last week and it measured twenty-three acres. I didnt go into any writing with T. P. Coltry or any one else as to the clearing up of said land. Michael Pipher handed me a writing sometime in March 1888. and I asked him if it was from N. W. Hill and he said it was and I told him I didnt want to have any thing to do with Hill.

When I saw Hill afterward he told me I could have all the land I wanted to clear for the first crop, but that I could not have but the first crop. This he told me some time in May of 1888 and also to stop doing anything on the land I had planted on the year before. And that if I did planted on the land I had planted the year before that he would claim the one-half of the crop -- that is the land-lords share. This occurred at haying pitch when Pipher was present. I was not prevented from clearing up the land at any time-except in the Fall of 1888 when Pipher and his wife quarreled with me about going through at their gate and threatened me with hoes &c:

Also Jabel Breston who testified as follows:

I am the son of Robert M. Breston. I am 18 years of age and reside with my father in Jackson Township of this county. I helped my father in clearing the Reese land in the year 1887. I was there the morning Pipher pointed out the land when we commenced to clear: we was to have the two first crops: we cleared about twelve acres the first year. Piper came in April and said Reese wouldnt let us have but the first crop: we worked over about thirty acres altogether. I helped to measure it and it made twenty-two acres ready for the plow. We raised twelve acres of corn the second year, and Hill and some hands came in the Fall and got ten shock of the first crop we had put out in addition to the seven acres we had planted the year before, and one-half of the second crop, raised on the same land we had raised a crop on the year before.

Hill first interfered with us in April of the second year 1888. I think the corn on the seven acres would yield one and

a half bushel to the shock.

And on Cross-Examination as follows:

On the morning the land was marked off father told me he had made all arrangements with Piper before and that all they had to do was to blaze the trees.

I heard Piper say we were to have the two first crops, and I heard him say it one hundred times afterwards: I am not mistaken about the number of times. I helped to measure the land, it was about thirty acres we measured. I measured it by my eye and made it about thirty-five acres. The corn was cut ten hills square. I don't remember of any one else being present when Pipher said we were to have the first two crops.

Also James Breston who testified as follows:

Breston. I am the s/ My name is James Breston. I am the son of Robert N. Breston and helped in clearing up and raising corn on the Ruse land. He was to have the first two crops. I heard my father say so and I also heard Piper say so almost every time he would come out at the end of the row while plowing corn.

And on Cross-Examination as follows:

I heard him say that as many as sixty times. No one else was present. Every time Piper would plough out to the end of the row of corn he would holler out that Pap was to have the two first crops for clearing the land.

Also Dudley Breston who testified as follows:

My name is Dudley Breston I am the son of Robert M. Breston the plaintiff. I was present the morning the land was staked off and we commenced clearing on the Ruse land. Piper said we were to have the first two crops. I was sitting on a log the first time I heard him say so. Piper marked a tree to show where we were to clear too. We cleared in all about 2/3 or 2/4 acres: we planted about seven acres in corn the first year and 12 the second.

And Hill came with a couple of hands in the Fall and took one-half of the corn on the ground we had planted on the second time, and what we called the old ground (about seven acres) and two shocks off of the new ground where we had *planted for the first time. Piper came over in the Spring and told us to quit as he was afraid we would undermine him.

When we were going on the land to work Piper and his wife came at us, and would not let us go through. Piper came at us with a hoe but stopped when about the length of this Court Room of us.

*Not correct.

And on Cross-Examination as follows:

I heard Piper say a good many times that we were to have the two first crops. He came over often while we were working there and said father was to have first two crops. He would come over every hour in the day father was to have the two first crops and would make more than one hundred times: it would make one hundred and twenty-five times he said so. I am sure He'll took two shocks of corn off of the new ground we had planted that first year for the first time.

Also Eugene Breston who testified as follows:

My name is Eugene Breston. I am a son of the plaintiff Robert N. Breston. I am 14 years of age. I helped to clear up the Reese land that my father had Piper came over on the land once and said as father was doing a good job he would try and get him two crops.

We had been working about three or four days when Piper came over and said if he done him a good job he could have two first crops.

Also Frank Boots who testified as follows:

My name is Frank Boots. I did not hear Piper say anything about the contract with Breston.

I had conversation with Piper before the contract was made.

I seen what clearing Breston had done. He cleared the first year about six or seven acres, and six the second -- and the second and cleared over some more but I don't know how much.

He had out about twelve acres of corn the second year. It would be worth about ten dollars an acre to clear the land.

O. Northrup who testified as follows:

I am acquainted with Robert N. Breston, the plaintiff, and reside in the vicinity of the Reese land. I was over the land several times when Breston was clearing: I do not know how much he cleared. It would be worth about 10^{00} per acre to clear the land.

A. Northrup who testified as follows:

I am acquainted with Robert N. Breston and live in the vicinity of the Reese land. I was over the land while Breston was clearing. I don't know how much he cleared. It was worth about 8^{00} to 10^{00} per acre to clear the land.

P. Johnson, who testified as follows:

I am acquainted with Robert N. Breston and live in the vicinity of the Reese land. I live about 3/4 of a mile from said land. It would be worth about $10.00 per acre to clear said land.

Ed Manley who testified as follows:

I am acquainted with Robert N. Breston and live about 1/2 mile from said Reese land.

I helped Mr. Breston to measure some of said Reese land he claimed to have cleared: it measured out 23 acres: 12 acres of said land was in shape for crops and about 12 acres had logs on it yet.

And on Cross-Examination as follows:

We measured said land about one week ago. Breston called me over and said he wanted me to help him measure some land: we measured the land he pointed out to us. I don't know how much of it he cleared. I did not go upon or notice the land while he was clearing it. It would be worth from $8.00 to $10.00 per acre to clear said land.

George Parish who testified as follows:

I am acquainted with the plaintiff and live about one-half mile from the Reese land. I helped Breston and Manley measure some of said land. The piece we measured run out 23 acres. We measured the land pointed out to us by Breston: part of it was cleared up good and part not so good. It would be worth about $10.00 per acre to clear said land.

On Cross-Examination as follows:

I don't know how much of said land Breston cleared. I saw him clearing there.

F. M. Semans who testified as follows:

I live in Jackson Township Union County, Ohio, and am acquainted with Robert N. Breston and M. W. Hill. In the fall of the year 1888, I was on the road near the Reese land and met Mr. Hill and a couple of hands with a load of corn which they had just taken off the Reese land.

I asked Mr. Hill if he hadn't taken any more than Reese's half of the second crop, and if he hadn't taken part of the first crop. And Hill said he didn't know and didn't care whether he had or not.

Robert W. Brexton, the plaintiff, was recalled and testified as follows:

I had almost completed the clearing of said 23 acres: I could have finished it in about 3 days. I pointed out to Manley and Parish the land I had cleared over and that was what they measured.

And thereupon plaintiff rested.

And the defendant to maintain the issue on his part offered Morris W. Hill as a witness who testified as follows:

I am a resident of Richwood, Union County Ohio, and acquainted with both plaintiff and defendant, - and am the duly appointed authorized agent of the defendant E. T. Reese. I succeeded Mr. T. P. Beatty as said agent in the Spring of 1887. Breston was on the Reese land at the time in the following June, towit: June 1887, I was upon the land where Breston was clearing: I went up there to have Breston sign an article - and we talked it over. Breston said an article was not necessary: that he was on the land to clear what he could for the first crop - until the land was sold -- and wanted to make a bargain with me to rent the land he cleared for a second year. In the following month of March, towit: March 1888, I learned that Breston was about to prepare the land he had got one crop off for a second crop, and I sent him by Mr. Piper a written notice to leave the premises he had got one crop off. And about the 19th day of April 1888, I again saw Breston upon the Hazen Ditch -- Piper was with me at the time.

I asked Breston if he was about to put out a second crop on the Reese land, and if he had received the notice I sent him. He said yes, that he thought the law would give him two crops, and the neighbors told him so: he did not then claim that he had any contract for two crops. I told him if he insisted on putting out two crops, I as agent of Mr. Reese would claim the landlords share, viz: one-half in the shock. About October 1888 I took a team and some hands and went up there and husked out one-half of the second crop of corn. I got by actual measurement 72 bushel of corn and no more. The corn was poor.

David Beard, William Forider and William Beard and Mr. Piper was with me and assisted me. I did not take any corn off the new ground and I did not know when I went up there that Breston was not at home. I saw F. M. Sanders that day and talked with him about the corn, but did not tell him that "I didn't know and didn't care whether I had taken corn off the new ground or not." He claimed to have purchased the corn of Breston. I am a farmer and know what it is worth to clear land. I was upon said land with Mr. Beatty before Breston moved on the land: we went up there to see about getting the land cleared - - at least that was Mr. Beattys business

and I went with him. In the condition the land was in -- being nearly all deadened and easily cleared, -- it would be worth about $2.00 per acre to clear said land. The fire had been through there several times: and Breston cleared up and put in corn about 6 acres the first year. He did not properly clear any of said land: he rolled the logs off and hacked them up: there was no grubbing to do.

And on cross-examination testified as follows:

I never ordered Breston off any of the land except that upon which he had already had one crop. The notice will show that. If he did not put out a crop on land he had cleared it was his own fault: we did not take control of or put out any crop on land he was clearing or had cleared and upon which he had not received his one crop.

He cleared off to completion in all about 9 acres, and partly cleared 2 acres more, and hacked over and took the green timber off about 13 acres and sold the same, but left the tops on the ground and did not burn any trash.

Also the Deposition of T. P. Beratty which is hereto attached "Exhibit A."

Also Mike Piper who testified as follows:

I live upon the Reese land in Jackson Township, Union County Ohio: am acquainted with Robert W. Breston, M. W. Neill and T. P. Beratty. Mr. Beratty was the agent for Reese for the overseeing and control of said land in the early part of the year 1887, and for some time previous thereto. In the month of March 1887, Breston came to me and wanted the job of clearing up some of the Reese land for the first crop. I told him I had nothing to do with it: that Mr. Beratty was the agent and for him to go to Richwood and see Mr. Beratty. He insisted that I should accomodate him by going to Richwood and seeing Mr. Beratty for him. I told him I was afraid there would be misunderstanding about it, and I would much rather he would go himself: but I finally consented and did go and see Mr. Beratty for him. The conversation between Breston and myself stated was at my house in presence of my wife. When I returned from Mr. Beratty's Breston came over to the house and I told him what Mr. Beratty said, viz: that he might go on and clear for the first crop, but he could not have the possession of the land for more than one year at a time as it was for sale and Beratty did not want to encumber it by a lease for longer than a year at a time. I told him that he had better go down and get a written contract from Beratty, but he said that is not necessary -- here is your wife as a witness. Shortly after he went on to said land and commenced clearing. I was not Reese's agent in the matter:

what I did in the matter I did for Brestow and for his accomodation.

I never told Brestow or any one else that Brestow was to have two crops for clearing said land. I never told him or his boys or in their presence that he was to have two crops on the morning they commenced the clearing or at any other time. I was clearing on said land for the first crop myself and so was others. In April 1888 M. W. Hill gave me a written notice to serve on Mr. Brestow and I went directly and handed it to him; and he handed it back saying he would not receive it; and dropping it on the ground.

The notice shown me is an exact copy. "Exhibit B."

Shortly after I was with M. W. Hill, and we saw Brestow upon the Blazen Ditch. He, Brestow, said he did not claim two crops under the contract, but the neighbors told him the law would give him two crops and he was going to try and hold two crops. Mr. Hill told him if he did put out two crops he would take the ½ in shock. In the Fall of 1888 I assisted said Hill in husking out and taking said corn: we measured the corn and it was just 72 bushels: we did not take any corn off the new ground. I never attempted to prevent said Brestow from going on to his clearing: he would take his horses over my corn-field, over the growing corn to get to his clearing. This was not the proper way for him to get to it, and I told him not to do so - but he insisted and finally one day I attempted to prevent him from taking his horses over my growing corn, but I never tried to prevent him from going on to his clearing by the regular way.

I have cleared up a good deal of land and know what it is worth to clear land. This land had been deadened for a great many years, and was easily cleared: it would be worth about $2.50 or $3.00 per acre to clear the land he claims to have cleared.

He, Brestow, cleared off and put in corn the first Spring about 6 acres, and he cleared in all about 9 acres and partly cleared about 2 acres more, and about 13 acres he hacked over and took the green timber off for firewood and for sale, but did not burn the tops or brush: and the land has been cleared by other parties since. In clearing the land he would roll the logs over and bank them up on the side instead of burning them, and I had to haul them away and burn them after him.

I am a married man and have a small child about 6 months old who is quite sick. I live about 23 miles from this Court-House, and it is impossible for my wife to bring our sick child here to attend this trial, or to leave the child at home, consequently it is impossible for her to attend this trial. There had been no ploughing done on said land when I served the notice on Brestow.

And on Cross-Examination as follows:

I nor my wife ever attempted to prevent Brestow from going on to his clearing, except when he attempted to cross my corn-field with his team after I had repeat

edly asked him not to do so. He had another way of getting to his land which was only a little further around. I never told him or any one else that he was to have the first two crops.

The conversation between him and myself relative to the clearing took place at my house in presence of my wife, and he called her as a witness. Breston did not clear all of said 23 acres of land: part of said land measured by Manley and others has been cleared since by others.

Deposition of Mrs. Annie Piper was here offered by defendant and objected to by plaintiff, and objection sustained by the Court and exceptions noted by defendant.

David Beard who testified as follows:

I have lived in the vicinity of the Reese land for the past 15 years. The timber on the land claimed to have been cleared by said Breston has been deadened ever since I can remember. The fire has been through there several times. I was over on said land while Breston was clearing. I am acquainted with him. He told me two or three times that he was clearing on said land for the first crop: and only had it for one year and one crop: He did not clear the land very well. The land was easily cleared I have done a good deal of clearing myself, and it would not be worth more than $3.00 per acre to clear said land. Breston told me several times that he was only getting one crop for clearing: he told me that once out in the road. I cleared on said land for the first crop myself at the same time. I assisted M. N. Neill in husking and taking corn in October 1888: we got 72 bushel. I did not take any shock off the new ground.

And on Cross-Examination as follows:

It would be worth more than $2.25 to $3.00 per acre to clear the land upon which the green timber was growing, but only $3.00 on the land Breston cleared: where the green timber was it might be worth $5.00 or $10.00 per acre.

William Frider who testified as follows:

I live near the Reese land: have lived there close to it for several years. I am acquainted with Robert N. Breston and was over the land frequently while he was clearing. The land had been deadened for a long time: the fire had been through there, and the land was easily cleared: a man could clear an acre in a day. Breston told me several times that he only had the first crop for said clearing. I have cleared a good deal of land and it would not be worth more than

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Exhibit "A."
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$2.50 to $3.00 per acre to clear said land. The clearing was not well done: the logs were banked up and not burned.

And on Cross Examination as follows:

Breston told me several times he was clearing for the first crop. I don't think I ever heard Piper say anything about it.

William Beard testified as follows:

I live close to the Reese land in Jackson Township and am acquainted with Robert W. Breston. The land claimed to have been cleared by Breston has been in deadening for a great many years: and the fire has been through there: and the land was easily cleared. I have cleared on said land in same condition as it was when Breston took it for the first crop: it was not worth more than $3.00 per acre to clear said land.

And on Cross Examination as follows:

I may have told Breston that it was worth $10.00 per acre to clear on said land, but I had reference to the green timber: it might be worth it to clear in the green woods but it was not worth more than $3.00 per acre to clear where he cleared.

Exhibit "A."

Notice

State of Ohio. Union County ss:	
Robert W. Breston vs. E. T. Reese	In the Court of H. M. Hall. J. P. Jackson Township. Union County, Ohio.

The plaintiff will take notice that the defendant will on Saturday the 22nd day of December 1888 at the hotel called the St. Nicholas in the city of Topeka, State of Kansas, take the depositions of sundry witnesses to be used as evidence on the trial of at a case between the hours of 8 A. M. & 6 P. M. and will be continued from day to day until completed.

December 17th, 1888. S. S. Gardiner, Attorney.

I acknowledge service of above notice and waive official character of officer.

December 17th, 1888. C. B. Mather, Attorney for Plaintiff.

Depositions of witnesses taken in an action pending before H. M. Hall J. P. of Jackson Township, Union County Ohio wherein Robert Breston is plaintiff and E. T. Reese is defendant and for said defendant at the time and place hereinafter mentioned.

The following interrogations were submitted by the defendant.

Thomas P. Beatty of lawful age being first duly sworn by me

deposes as follows:

Exhibit "B"

2. -- State your name, age, place of residence, and are you acquainted with the parties to this suit?

A. -- Thomas P. Gratty. 58 years. Topeka Kansas. I know E. T. Reese the defendant. I do not Mr. Bruton.

2. -- State whether or not in the year 1555, 1556, and 1557 or any time during said period you acted as agent or otherwise for the defendant E. T. Reese in overseeing or controling his land in Jackson Township Union County, Ohio. If you did so act state when and how long you so acted.

A. -- I can't tell the time but I did act for him perhaps three years. I turned over my trust or agency to M. W. Heill in March 1557.

2. -- State whether or not you ever made any contract as said agent with the plaintiff in regard to clearing said land: If so, state it fully.

A. -- I never did.

2. -- Did you as said agent ever authorize any one to make a contract in regard to clearing said land with plaintiff. If so, whom did you authorize, and what was the contract you authorized to be made. state fully.

A. -- I told one Mike Piper who was living on the place that he might let any one clear off certain lands belonging to the place or adjoining the cleared land, and for said clearing the party might have one crop.

I do not know that plaintiff or any one else ever accepted the proposition. The reason I did not lease it to Piper or any one else for a longer period than one year was that Mr. Reese the owner of the land wanted to sell the land and I had no authority to encumber it with a lease for a longer period than one year at a time.

2. -- If in answer to the last question you say you authorized an agreement to be made with plaintiff. State if you have stated all the agreement you so authorized.

A. -- Yes.

T. P. Gratty.

I, C. M. Welch, a Notary Public in and for the County of Shawnee, State of Kansas do hereby certify that the above named Thomas P. Gratty was by me first duly sworn to testify the truth, the whole truth and nothing but the truth. That the foregoing deposition by him subscribed were reduced to writing by me and by said witness subscribed in my presence and were taken at the time and place specified in the inclosed notice.

In testimony whereof I have hereunto set my hand and official seal this 22nd day of December, 1555.

Seal

C. M. Welch. Notary Public.

Commission expires September 21st, 1590.

Notarial Fees $2.00. Witness Fees $1.00

Received defendant the sum of $3.00 in full of my fees as above specified also $1.00 as witness fees.

C. M. Welch, Notary Public.

Received my fees in above case.

T. P. Gratty

Exhibit "B."

Notice.

To Robert Brestow:

Sir:-- I wish you to leave the following described premises, situated in the Township of Jackson, County of Union and State of Ohio, and known as part of the farm belonging to E. T. Rose being about 5 acres off the north-east part of said land and including all that part you had in cultivation last year.

Your compliance with this notice within three days after its service, will prevent any legal measures being taken by the undersigned, to obtain possession.

Yours Respectfully,
E. T. Reese
Per M. N. Heill, Agent.

Dated this 26th day of April, A. D. 1878.

Thereupon the Court charged the Jury as follows:

Gentlemen of the Jury:

The plaintiff seeks to recover on three causes of action in his petition. He claims in his first cause of action that he made a verbal contract with the defendant by which he was to make 2000 rails for the defendant on the farm of the defendant and that he was to clear up, occupy and cultivate about 45 acres of land and was to have the full and complete possession and use of the same for two years including the crops that he might raise thereon. That he went on under said agreement and cleared up about 12 acres of said land and planted the same in corn, and raised one crop off said 12 acres, and was proceeding to clear up and cultivate all of said lands when defendant entered and deprived him of the opportunity of completing said clearing under said contract for which he claims damages in the sum of $95.00.

In his second cause of action he claims that he was to have the two first annual crops off said land, and was proceeding to cultivate and raise said second crop on said 12 acres when the defendant entered and took possession of and applied to his own use the one-half of said second crop of corn to his damage in the sum of $72.50.

In his third cause of action he claims that he was proceeding to clear up and cultivate about 13 acres more of said land and had the same cleared almost to completion when the defendant deprived him of the use and occupancy of the same, and that the cost and expense of clearing said 13 acres was $10.00 per acre or $130.00 which amount he also claims.

The defendant in his answer denies that the plaintiff was to have the use of the land to be cleared by him for a longer period than would enable the plaintiff to obtain one crop of corn off of the same: and the one crop so obtained was to be a full compensation for the lands cleared by the plaintiff. And the defendant further claims in his answer that the plaintiff was permitted to take off of the land is one crop, and that the corn taken by M. N. Heill was merely the landlord's share inuring to the defendant

because it was not included in the contract with the plaintiff.

That the land was imperfectly cleared, and that it was not worth the sum of 10^{00} per acre to clear the same. And that the plaintiff planted his second crop with full knowledge and notice from Hill that he could not have the second crop of corn off of the land for the clearing of the same and that the plaintiff was not prevented from going on and taking the first crop on any of the lands he had cleared. This is in substance what the defendant claims in his answer.

Before the plaintiff can recover in this action it is necessary for him to satisfy you by a fair preponderance of the evidence of all of the material allegations in his petition. He must satisfy you by the weight of the evidence that he had a contract with the defendant or his agent by which it was agreed that the plaintiff was to have two crops of corn off of all the Reese landing designated by the defendant or his agent on the Reese land. If you find from the evidence that the plaintiff had such contract with the defendant or his authorized agent then the next question you will inquire into is has he been prevented by the defendant or his agent from having the benefit of that contract or from performing the same.

If you should find from the evidence that the plaintiff was prevented from obtaining one crop on any of the land he had cleared under his contract by the defendant or his agent, the defendant would be liable that far and the plaintiff would be entitled to recover for the same its reasonable value.

You may consider Piper the agent of Reese for the purposes of this case. The defendant can not repudiate the agency and at the same time receive the benefits of it. If I authorize a man to buy a horse for me and he buys a cow and I accept the cow I am bound to pay for her.

If the plaintiff is entitled to recover in this case he is entitled to the value of the corn taken by M. W. Hill and reasonable compensation for clearing the ground on which he was prevented from obtaining any crop if the evidence shows that he was so prevented.

By the preponderance of the evidence I mean that evidence which best convinces you, that evidence which weighs the most. It does not consist in the number of witnesses necessarily although that is one circumstance to be considered by you.

I should have said that so far as the rails are concerned and claimed for in the plaintiffs petition there is no proof offered and no claim made for anything on account of the rails but it is conceded on this trial that they have been paid for by the defendant.

* If you find from the evidence that the plaintiff was to have but one ~~boxxx~~ crop for the clearing up of the land then M. W. Hill as the agent of Reese had a right to enter on the lands and take one-half of the corn raised the second year or the landlords share what ever you may find from the proof that is -- and the plaintiff would not be entitled to recover. If you find from the evidence that he was to have but one crop of corn for the clearing of the lands

* This word as given by the Court

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Motion 95

Petition in Error.

unless you find from the evidence he was prevented from completing his contract by the defendant or his agent. This is a question of fact for you to determine and there is but little law for the Court to charge you.

And neither party excepted to said charge of the Court.

And this was all the evidence offered by either party in this action, and having filed a motion for new trial and the Court having overruled the said motion for a new trial, the said defendant excepted to said ruling of said Court on said motion for a new trial and to the judgment thereon rendered and prayed the Court here to sign and seal this Bill of Exceptions and order the same to be made a part of the record in this case, all which is done and ordered as said defendant has prayed for. this 8th day of September, A.D. 1890.

John A. Price.

Seal

Judge of Common Pleas Court
Tenth Judicial District of Ohio.

Motion

Afterward, on the 22nd day of September, 1890, a Motion was filed with the Clerk of Court, towit:

95

Robert W. Breston
vs
E. T. Reese

Circuit Court Union County, Ohio.

Now comes Robert W. Breston by his attorneys J. M. Kennedy & A. H. Kollefrath and moves the Court here to strike the pretended Bill of Exceptions attempted to be filed in this case from the files for the following reasons, towit:

1st. There was no Journal Entry allowing forty days after the term to prepare and present for allowance said Bill of Exceptions

2nd. That said pretended Bill of Exceptions was not submitted to opposite counsel for examination within the time prescribed by law before the expiration of said forty days required by law.

3rd. That no Journal Entry showing that such Bill was ever prepared presented allowed or ordered to be made a part of the record

4th ---. That no petition in error has been filed in this Court setting forth the errors complained of.

J. M. Kennedy & A. H. Kollefrath.
Attorneys for Plaintiff.

Afterward, on the 6th day of October, 1890, a Petition-in Error was filed with the Clerk of Court, towit:

Petition in Error.

E. T. Reese
Vs.
Robert W. Breston

Circuit Court, Union County Ohio.

Plaintiff in Error says: That at the May Term 1890 of the Court of Common Pleas of Union County, Ohio, defendant in error recovered a judgment by the consideration of said Court against plaintiff in error in an action then pending therein wherein defendant in error was plaintiff and plaintiff in error was

defendant. A transcript of the docket and Journal whereof is filed herewith. There is error in the said record and proceedings in this towit:

1st. Said Court erred in overruling the motion of plaintiff in error for a new trial.

2nd. -- Said Court erred in its charge to the Jury on the trial of said action.

3rd -- The facts set forth in the petition are not sufficient in law to maintain the said action against the plaintiff in error.

4th. -- The Court erred in overruling the motion and demurrer of the plaintiff in error to the petition of the defendant in error.

5th -- The Court erred in sustaining the motion and demurrer of the defendant in error to the answer of the plaintiff in error.

6th -- Said Court erred in the admission of the evidence of - - - to which said E. T. Reese objected

7th - - The Court erred in ruling out the deposition of Ann Piper.

8th - - - The said judgment was given for said Robert N. Breston when it ought to have been given for said E. T. Reese.

Plaintiff in error therefore prays that said judgment may be reversed and that he be restored to all things he has lost by reason thereof.

S. S. Gardiner and D. N. Ayres,
Attorneys for Plaintiff in Error.

Certified Copy of Journal Entry

State of Ohio,
Union County ss

In the Court of Common Pleas.

Robert N. Breston
Vs.
E. T. Reese

May Term, 1890.
Journal 15. Pages 48, 124, 259, 341, 343, and 354.

Monday, March 18th, A. D. 1889.

Leave is granted to defendant to file answer within 10 days from the rising of this Court.

Wednesday, June 19th, A. D. 1889.

This day this cause came on for hearing upon the motion to make plaintiffs petition more definite and certain as to the 1st, 2nd, and 3rd causes of action and does sustain said demurrer as to the 4th cause of action. Thereupon the defendant took 30 days to answer thereto.

Friday, March 7th, A. D. 1890.

This cause is continued on the motion and showing of the defendant and at his costs.

Thursday, June 19th, A. D. 1890.

This day came the parties by their attorneys, also came the following named persons as Jurors, towit:

1st. S. R. Berger,
2nd. D. R. Anthony,
3rd. James Geranston,
4th. John Gosnell,
5th A. W. Robinson,
6th. Jacob Bowersmith,
7th. Luther A. Wood,
8th. Jerome Richey,
9th. G. P. Trapp,
10th. H. Worthington,
11th Wm Longbrake,
12th. Eli Gabriel, who were

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duly impaneled and sworn according to law: and thereupon the case came on for hearing on the pleadings and evidence, and the said Jury having heard the evidence adduced and the arguments in part, said cause was continued until 8-30 oclock tomorrow morning. To which time Court adjourned.

Friday, June 20th, A.D. 1890.

This day again came the parties by their attorneys, also the Jury heretofore impaneled and sworn in this case, and the said Jury having heard the remaining argument of counsel and the charge of the Court, retired to their room for deliberation.

And now come said Jury into open Court with their verdict in writing signed by their foreman & say:

"We, the Jury, being duly impaneled and sworn find the issues in this case in favor of the plaintiff and assess the amount due to the plaintiff from the defendant at the sum of $137.50."

John A. Gosnell, Foreman

Wednesday, June 25th, A.D. 1890.

This cause came on for hearing on the motion of the defendant to set aside the verdict, and for a new trial herein, the Court on consideration thereof, overrule the same, to which the defendant excepts. It is therefore considered by the Court that the said plaintiff recover from the said defendant the said sum of $137.50 as heretofore by the verdict of the Jury, found due him with interest together with his costs herein expended.

Tuesday, September 9th, 1890.

And now comes the plaintiff and presents his Bill of Exceptions which is allowed, signed and sealed and made part of the record.

The State of Ohio.
Union County ss.

I, R. McElroy, Clerk of the Court of Common Pleas, within and for said County, and in whose custody the files, journals and records, of said Court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal of the proceedings of the said Court within and for said County, and that said foregoing copy has been compared by me with the original entry on said Journal, and that the same is a correct transcript thereof.

In testimony whereof, I have hereunto subscribed my name officially, and affixed the seal of said Court, at the Court House, in Marysville, in said County. This 6th day of October A.D. 1890.

Seal

R. McElroy, Clerk.
By N. M. Winget, Deputy.

We hereby waive the issuing and service by summons in error in the above case and enter our appearance herein this 6th day of October, 1890. J. M. Kennedy and A. H. Kollefrath.

Motion

Afterward, on the 25th day of February, 1891, a motion was filed with the clerk of court, towit:

98. Robert W. Breston vs. E. T. Reese | Circuit Court of Union County, Ohio.

Now comes Robert W. Breston, plaintiff, by his attorney J. M. Kennedy and A. H. Kollefrath and moves the court here to strike the pretended Bill of Exceptions attempted to be filed in this case from the files for the following reasons, towit:

There was no Journal Entry prepared and filed for allowance for the forty days after the term to prepare and present to opposite attorneys for their approval, or to the court for allowance of any Bill of Exceptions.

That said pretended Bill of Exceptions was not prepared and submitted for opposite counsel less than 10 days before the expiration of said 40 days as provided in Section 5302 of R. S. as amended April 15th, 1890, page 206, Volume 87, Statutes of Ohio.

That no Journal Entry showing that said Bill of Exceptions was ever prepared and presented to opposite counsel for their examination within the time prescribed by law nor that said Bill of Exceptions was ever allowed by Court or Judge thereof within time prescribed by law an order to be made part of record in this case.

J. M. Kennedy and A. H. Kollefrath, Attorneys for Plaintiff

Motion

Afterward, on the 5th day of March, 1891, a Motion was filed with the clerk of court, towit:

98 E. T. Reese vs. Robert W. Breston | Circuit Court of Union County, Ohio.

Appeal Bond.

Now comes the defendant in error R. W. Breston, by his attorneys and moves the court to strike the pretended entry making said Bill of Exceptions a part of the record herein, from the files of this Court for the following reasons:

1st. -- That said pretended entry was not filed as written thereon on the 9th day of September 1890, but was filed, if filed at all, on the 6th day of October, 1890.

2nd -- That the last day for filing said entry or any entry, expired on the 11th day of September, 1890 being the expiration of said 40 days from the adjournment of said Court.

3rd - Said pretended entry was never presented to the defendant in error or his attorney for their approval.

4th. -- Said pretended entry is informal, imperfect and insufficient.

J. M. Kennedy.

Attorney for Defendant.

Afterward, on the 6th day of March, 1891, an Entry was made on the Journal by the Clerk of Court, towit:

E. T. Reese
Vs.
Robert N. Breston

Journal 1, Page 118.

This day this cause came on to be heard upon petition in error and Bill of Exceptions herein, and the Court being fully advised in the premises do find there was not sufficient evidence to sustain said verdict heretofore rendered in said action. And the Court required the defendant in error to remit said verdict so that it would amount to and be only $30.00 from this date, or the Court would grant the plaintiff in error a new trial.

Wherefore the defendant in error remitted as required by the Court. It is thereupon considered ordered and adjudged by the Court that the defendant in error Robert N. Breston recover of said plaintiff in error said E. T. Reese said sum of thirty dollars with interest from 6th day of March A. D. 1891. and his costs herein taxed at $. - - -.

Pleas before the Honorable John J. Moore, Henry N. Leavy John H. Albaugh and Thomas Beer, Judges of the Circuit Court within and for the County of Union of the Third Judicial Circuit of the State of Ohio, begun and held at the Court House in the Town of Marysville on the 22d day of September in the year of our Lord one thousand eight hundred and ninety one.

Heretofore, on the 24th day of April, 1891, Appeal Bond was filed with the Clerk of Court, towit:

Appeal Bond.

Know all men by these presents, that D. A. Hedges, Morgan Young and Peter Finch are held and firmly bound unto William Kirby, Samuel Kirby, Thomas S. Kirby, Joseph W. Kirby, Mary E. Howeson and Catharine Kirby in the penal sum of two hundred dollars to the payment of which well and truly to be made we do hereby jointly and severally bind ourselves, our heirs, executors and administrators. Sealed with our seals and dated this 25 day of April 1891.

The condition of the above obligation is such that whereas the said D. A. Hedges, Morgan Young and Peter V. Finch has taken an appeal from a certain judgment rendered against them and in favor of the said William Kirby, Samuel Kirby, Thomas Kirby Joseph W. Kirby, Mary E. Howeson and Catharine Kirby in the Court of Common Pleas within and for the County of Union and State of Ohio, at the February Term 1891, in case No. 6051 entitled Hosea Finch et al against William Kirby et al to the Circuit Court of said County:

Now if the said D. A. Hedges, Morgan Young, and Peter V. Finch shall prosecute their appeal to affect without unnecessary delay and

shall abide and perform the order and judgment of said Circuit Court and pay all damages and costs which may be awarded against themselves the said D. A. Hedges. Morgan Young and Peter V. Finch then this obligation shall be void: otherwise it shall remain in full force and virtue in law.

D. A. Hedges.
M. Young.
P. V. Finch.

In presence of
R. McClerory

The execution of the above Undertaking and the sufficiency of the sureties therein approved by Clerk of Court this 24th day of April A. D. 1891.

R. McClerory.

Motion

Afterward, on the 29th day of August, 1891, the following Motion was filed with the Clerk of Court, Court:

103 Hosea Finch,
Vs
William Kirby et al

Court of Common Pleas
Union County, Ohio.

The defendants move the Court to dismiss the appeal in this case and for grounds of their motion say: This case is one in which either party had the right to a trial by jury in the Court of Common Pleas, and is not a proper case for appeal under the laws of Ohio. The action in the Court of Common Pleas being for the recovery of specific real property, was properly triable by Jury and the same is not an appealable case under the laws of Ohio.

J. D. Cameron and
E. F. Poppleton, Attys for Defts

Certified copy of Journal Entry

Afterward, on the 8th day of September, 1891, a Transcript was filed with the Clerk of Court, Court:

Hosea Finch et al
Vs.
William Kirby et al

February Term
Journal 15, Page 472.

Entry

103

Saturday, February 14th, A. D. 1891.

This day came the parties by their attorneys and the plaintiffs asked and obtained leave to amend their petition by interlineation as follows: Add the words "or if defendants hold said legal title they hold the same in trust for plaintiffs", after the words "the said heirs of John Kirt deceased immediately before the prayer of the petition. Also in the prayer of the petition and have their title quieted against the defendants claim to said lands, after said amendment the parties waived the calling and impanelling a jury and submitted this cause to the Court upon the pleadings and evidence. On consideration whereof the Court being fully advised in the premises finds upon the issues joined in favor of the defendants. That upon the death of said Andrew C. Kirt in the petition described descended to his widow the said Matilda Kirt in fee simple absolutely and no estate or interest therein passed to the plaintiffs. That upon the death of said Matilda Kirt said lands passed by the terms of her said will to the defendants William Kirby, Samuel Kirby, Thomas S. Kirby, Joseph W. Kirby, Mary E. Howson, and Catharine Kirby devisees in fee

simple absolutely and that the same is not subject to any trust expressed or implied in favor of plaintiffs, and that the plaintiffs have no interest in said lands.

The Court further finds that the defendants are entitled to have their title quieted. It is therefore considered ordered and adjudged by the Court that the plaintiffs petition be and the same is dismissed and that the title of the said defendant to said land be quieted and put at rest and that the defendants recover of the plaintiffs their costs herein expended taxed at ---$.

Plaintiffs gave notice of their intention to appeal to the Circuit Court and this Court fixes the Appeal Bond at $200. ⁰⁰/₁₀₀

The State of Ohio. ‖
Union County ss: ‖

I. R. McLeroy. Clerk of the Court of Common Pleas, within and for said County, and in whose custody the files, journals, and records of said Court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal of the proceedings of the said Court within and for said County and that said foregoing copy has been compared by me with the original entry on said Journal, and that the same is a correct transcript thereof.

In testimony whereof, I have hereunto subscribed my my name officially, and affixed the Seal of said Court, at the Court House, in Marysville, in said County, this 8th day of September 1891.

{Seal} R. McLeroy. Clerk.

Entry

Afterward on the 22nd day of September, 1891, an Entry was made on the Journal by the Clerk of Court, towit:

103 Hosea Finch et al ‖
Vs. ‖ Journal 1. Page 128.
William Kirby et al ‖

This day came the parties by their attorneys and thereupon this cause came on to be heard upon the motion of the defendants to dismiss the appeal in this case for reasons in said motion stated and was argued by counsel and submitted, on consideration whereof the Court being fully advised in the premises grant and sustains said motion.

It is therefore considered and adjudged by the Court that the appeal in this case be and the same is dismissed at its cost of the plaintiff, and it is ordered that plaintiff pay its cost on appeal. Ordered that a Mandate be sent to the Common of Union County to carry this judgment into execution. To which ruling of the Court the plaintiff excepts

Pleas before the Hon. John J. Moore, Henry N. Seney and Thomas Burr, Judges of the Circuit Court within and for the County of Union of the Third Judicial Circuit of the State of Ohio, begun and held at the Court House in the Town of Marysville on the 3rd day of March in the year of our Lord one thousand eight hundred and ninety one. Heretofore, on the 26th day of February, 1890, a Transcript is filed with the Clerk of Court, towit:

The State of Ohio,
Union County ss: In the Court of Common Pleas.

Benjamin Rogers vs. G. J. Baldwin	November Term 1890. Journal 15, Pages 246, 275, 292, 428, 452.

Order for Injunction before Probate Judge.
Motion for Temporary Injunction in the Court of Common Pleas.

And now, on this 26th day of February, 1890, came the plaintiff by J. D. Cameron his attorney, and it being made to appear that there is at this time now Common Pleas, Circuit, or Supreme Judge within said County, the motion of the plaintiff for a temporary injunction came on and was heard upon the petition of the plaintiff B. Rogers and the affidavit therein filed, and after hearing argument of counsel, and being fully advised in the premises, it is considered and ordered that a temporary injunction be, and the same is hereby allowed in this case to restrain the defendant from proceeding with said execution or from any other or further attempt to collect said pretended judgment or any part thereof, as prayed for in said petition of plaintiff.

It is further ordered that the Clerk of the Court of Common Pleas issue summons in this case endorsed injunction allowed, on said plaintiff giving an undertaking to said defendant, conditioned according to law, with security to be accepted by said Clerk of the Court of Common Pleas in the sum of $50.00.

D. Piper, Probate Judge

Tuesday March 18th, A. D. 1890.

This day this cause came on for hearing on the motion of the defendant to vacate the injunction heretofore granted herein and the same was argued by counsel and submitted to the Court on consideration the Court do sustain said motion. It is therefore considered and adjudged by the Court that the injunction heretofore granted herein be, and the same hereby is vacated.

Thereupon the plaintiff asked and obtained leave of the Court to file an amended petition herein within ten days from this date.

Benjamin Rogers vs. G. J. Baldwin	Order of Injunction before Probate Court. Motion for Temporary Injunction in the Court of Common Pleas.

And now on the 22nd day of March A. D. 1890 came the plaintiff by J. D. Cameron his attorney, and it being made to appear that there is no Common Pleas, Circuit or Supreme Judge within

said County, the motion of the plaintiff for a temporary injunction came and was heard upon the petition of plaintiff Benjamin Rogers, and the affidavit therein filed and, after hearing the argument of counsel, and being fully advised in the premises, it is considered and ordered that a temporary injunction be, and the same is hereby allowed in this case to restrain the said defendant be restrained and enjoined from proceeding with the execution or from any other or further attempt in any way to collect said pretended judgment, or any part thereof, and upon final hearing he may be forever and perpetually enjoined from interfering with plaintiff or his property, on account of said pretended judgment as prayed for in said petition of plaintiff.

It is further ordered that the Clerk of the Court of Common Pleas issue summons in this case endorsed injunction allowed, on said plaintiff giving an undertaking to the said defendant conditioned according to law with security to be accepted by said Clerk of the Court of Common Pleas, in the sum of 50^{00}.
Fees - - 2^{00}. Leonidas Piper, Probate Judge.

Wednesday, November 26th, A.D. 1890.

This day this cause came on for hearing on the motion of the defendant to strike the transcript of the Justice of the Peace from the petition and files and to strike out that part of the plaintiff's petition which made said transcript a part thereof and the same was argued by counsel and submitted to the Court, on consideration whereof the Court do sustain motion and said transcript is stricken from the petition and files of the case and the said part of said petition is stricken from said petition.

Thursday, December 4th, A.D. 1890.

This day this cause came on to be heard on the demurrer of the defendant to the amended petition of said plaintiff and the same was argued by counsel and submitted to the Court, on consideration whereof the Court do sustain said demurrer. It is therefore considered ordered and decreed by the Court that the temporary injunction heretofore granted herein be, and the same hereby is vacated, dissolved and held for naught.

It is further considered, ordered and decreed by the Court that this action be, and the same is hereby dismissed at the costs of said plaintiff, and it is adjudged by the Court that said defendant recover of said plaintiff his costs herein expended taxed at - - $ and execution is awarded therefor. To all of which rulings, orders and decrees and judgments of said Court said plaintiff hereby excepts.

The State of Ohio, ||
Union County ss. ||

I, R. McElroy, Clerk of the Court of Common Pleas, within and for said County, and in whose custody the files, journals,

and records, of said Court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal of the proceedings of the said Court within and for said County, and that said foregoing copy has been compared by me with the original entry on said Journal, and that the same is a correct transcript thereof.

In Testimony whereof, I have hereunto subscribed my name officially, and affixed the Seal of said Court, at the Court House, in Marysville, in said County, this 26th day of February 1890

{Seal} R. McElroy, Clerk.

Petition in Error

Afterward on the 1st day of January, 1891, the following Petition in Error was filed with the Clerk of Court

Benjamin Rogers, Plaintiff in Error

vs.

G. J. Baldwin, Defendant in Error

To the Circuit Court of Union County, Ohio.

Plaintiff in Error says: that at the November Term, A. D. 1890 of the Court of Common Pleas of said County the said defendant in error recovered a judgment by the consideration of said Court against this plaintiff in error in a case then pending in said Court wherein the plaintiff in error was plaintiff and the said defendant in error was defendant, a transcript of the docket and journal entries in which case together with the original papers is herewith filed. Plaintiff in error says there is error in said judgment and proceedings in this towit:

1st. Said Court erred in sustaining the demurrer of the said defendant in error to the amended petition filed in said Court.

2nd -- Said Court erred in not overruling the said demurrer of said defendant in error to said amended petition.

3rd -- Said Court erred in sustaining the demurrer of the said defendant in error to the petition filed in said Court.

4th -- Said Court erred in dismissing said case, and rendering judgment against the said plaintiff in error.

5th -- There are other errors in said record and proceeding.

Plaintiff in error therefore prays that said judgment may be reversed and that he may be restored to all things he has lost by reason thereof. J. L. Cameron, Attorney for Plaintiff in Error.

The issuing and service of Summons in Error is waived and the appearance of Defendant in error entered this January 1st, 1891.

John M. Brodrick, Attorney for Defendant in Error.

Order of Injunction

Afterward, on the 1st day of January, 1891, an Order of Injunction was filed with the Clerk of Court, towit:

Benjamin Rogers vs. G. J. Baldwin

Before the Probate Court.

Motion for temporary injunction in the Court of Common Pleas, Union County Ohio.

And now on this 22nd day of March, 1890, came the plaintiff by J. L. Cameron his attorney: and it being made to appear that there

is at this time no Common Pleas, Circuit, or Supreme Judge within said County, the motion of the plaintiff for a temporary injunction came on and was heard upon the petition of the plaintiff Benjamin Rogers and the affidavit therein filed, and after hearing the argument of counsel, and being fully advised in the premises, it is considered and ordered that a temporary injunction be, and the same hereby is allowed in this case to restrain the said defendant be restrained and enjoined from proceeding with the execution or from any other or further attempt in any way to collect said pretended judgment or any part thereof and upon final hearing he may be forever and perpetually enjoined from interfering with plaintiff or his property on account of said pretended judgment as prayed for said petition of plaintiff. It is further ordered that the Clerk of the Court of Common Pleas issue Summons in this case endorsed injunction allowed on said plaintiff, giving an undertaking to the said defendant, conditioned according to law with security to be accepted by the said Clerk of the Court of Common Pleas, in the sum of $50.00.

Fees.--$2.00 Paid. {Seal} Leonidas Piper, Probate Judge.

Afterward, on the 1st day of January, 1891, a Petition was filed with the Clerk of Court, to-wit:

Benjamin Rogers
vs.
G. J. Baldwin

State of Ohio, Union County ss:
To the Court of Common Pleas.

The plaintiff says: The plaintiff is a resident of the said County of Union and State of Ohio, and has been such resident for more than ten years last past. That during the month of October 1887 the plaintiff was absent from said County. That on the 5th day of October 1887 while the plaintiff was so absent from said County the defendant caused a pretended judgment to be entered in his favor and against the plaintiff by one W. M. Haines then a Justice of the Peace of Washington Township in said County which pretended judgment appears of record on the docket of said Haines now in the possession of his successor John Bonham.

Said pretended judgment is wholly void for the reason that said W. M. Haines never had or obtained any jurisdiction over the person of this defendant and no summons or copy of any summons was ever served on the plaintiff or left at his residence, and the plaintiff had no notice or knowledge of the proceeding of said defendant nor of said pretended judgment until more than ten days after the same was rendered.

Plaintiff says that in the proceeding of the said defendant before said Justice of the Peace one Mathew Dingrel was joined in the suit and was served with a summons and he appeared at the time fixed for trial. But no judgment was rendered against him: but the said Justice unlawfully and without any authority or jurisdiction proceeded to render judgment against the plaintiff for the sum of $8.67 and cost.

Plaintiff says that when he learned of said proceedings

and pretended judgment he notified the defendant that no process had been served on him, and the said defendant did not then attempt to enforce the same.

On the 25th day of January 1890 the said defendant caused an execution to issue upon said pretended judgment and the same has been levied upon property of the plaintiff which said property is advertised for sale to take place March 1st, 1890.

Plaintiff says that unless restrained by order of this Court the said defendant who is threatening to proceed with his forced collection of said pretended judgment will carry his threats into execution and cause the plaintiff great and irreparable injury.

Wherefore the plaintiff prays that an injunction may issue against the said defendant and that he be restrained and enjoined from proceeding with his said execution, or from any other or further attempt to collect said pretended judgment or any part thereof and upon final hearing that he may be forever and perpetually enjoined from interfering with the plaintiff or his property on account of said pretended judgment but that the same may be declared void and of no effect and for all proper relief.

J. D. Cameron, Attorney for Plaintiff.

State of Ohio,
Union County ss

B. Rogers being first duly sworn says the facts stated in his foregoing petition are true.

B. Rogers.

Sworn to before me and signed in my presence this 26th day of February, 1890. {Seal} R. McElroy, Clerk

Afterward, on the 1st day of January, 1891, an Amended Petition was filed with the Clerk of Court to-wit:

Amended Petition

Benjamin Rogers
vs.
G. J. Baldwin

State of Ohio, Union County ss:
To the Court of Common Pleas.

The plaintiff by leave of the Court amend his petition and says: That during the month of October 1887, the defendant caused a pretended judgment to be entered in his favor and against the plaintiff by one W. M. Haines then a Justice of the Peace of Washington Township in said County, which judgment appears of record on the docket of said Haines now in the possession of his successor John Bonham. The plaintiff says that said pretended judgment is wholly void for the reason that the said W. M. Haines never obtained any jurisdiction of the plaintiff.

The plaintiff and one Mathew Lingrel were joined in the said suit and service of summons was in fact made upon said Lingrel and he appeared. But at the time of said proceedings this plaintiff was absent from the County and the constable who had the summons to said action, not knowing the plaintiff was absent from the County left a copy of said summons with a neighbor that was ploughing in his field and told him

to give the same to plaintiff. But the plaintiff being out of the County said summons was never delivered to him and no copy was left at his residence and no other service made than above stated. The said constable made the following return upon his writ which will appear from said transcript viz: October 8th 1887 summons returned. Recived this writ October 5th. 1887, and served same day by copys". Constable Fees -- Service .25, mileage .45, 6 copys .80, Total $1.20. E. Crouly"

The plaintiff says that he had no notice or knowledge of said pretended judgment until more than 10 days had elapsed from the date thereof, and said defendant knew the plaintiff was not served with summons, and did not attempt to enforce said pretended judgment for more than two years after the same was entered, and he has now caused an execution to issue thereon and is threatening to go on and enforce the collection of the same by levying on plaintiffs property and thereby cause the plaintiff great and irreparable injury.

The plaintiff says that unless restrained by order of this Court the said defendant who is threatening to proceed with his forced collection of said pretended judgment will carry his threats into execution and caused the plaintiff great and irreparable injury. The plaintiff says that the return of said constable on said summons is ambiguous, but his error of serving the same on the wrong person does not affirmatively appear upon said record and the plaintiff was induced by the silence of the defendant to understand said defendant would not try to enforce the collection of said pretended judgment until the statute of limitations has barred his proceedings in error, and by reason of the ambiguous return of said constable his error does not affirmatively appear and this plaintiff has no other remedy than apply to the Honorable Court for an injunction.

Wherefore the plaintiff prays that an injunction may issue against the said defendant and that he be restrained and enjoined from proceeding with his execution or from any other or further attempt in any way to collect said pretended judgment or any part thereof and that upon final hearing that he may be forever and perpetually enjoined from interfering with plaintiff or his property on account of said pretended judgment and for all such other and further relief as may be equitable & just.

J. D. Cameron,
Attorney for Plaintiff.

State of Ohio,
Union County ss.

B. Rogers being sworn says the facts stated in his foregoing petition are true. B. Rogers.

Sworn to before me and signed in my presence the 22d day of March. 1890.

R. McElroy. Clerk of Courts.

Seal

Demurrer

Afterward, on the 1st day of January 1891, the following Entry was filed with the Clerk of Court, towit:

5946 Benjamin Rogers vs. G. J. Baldwin | In the Court of Common Pleas Union County, Ohio.

And now comes the said defendant and demurs to the amended petition of the plaintiff herein filed and for ground thereof says: That said amended petition does not state facts sufficient to constitute a cause of action against said defendant.

John M. Brodrick
Attorney for Defendant.

Entry

Afterward, on the 6th day of March, 1891, an Entry was made on the Journal by the Clerk of Court, towit:

100 Benjamin Rogers -- Vs. -- G. J. Baldwin | In the Circuit Court for Union County Ohio. Journal 1, Page 118

This cause came on for hearing upon the petition in error, the transcript, and the original papers and pleadings from the Court of Common Pleas of Union County, Ohio. and was argued by counsel: on consideration whereof, the Court find there is no error apparent, on the record in said proceedings and judgment.

It is therefore considered by the Court that the judgment aforesaid be, and the same hereby is, affirmed; and that the defendant in error recover from the plaintiff in error his costs herein expended taxed at $- - -.

And the Court being of opinion that there was reasonable ground for proceedings in Error allow no penalty.

It is further ordered that a special mandate be sent to the Court of Common Pleas of Union County, Ohio, for execution upon this judgment.

Pleas before the Honorable John J. Moore, Henry N. Leney, and Thomas Beer, Judges of the Circuit Court within and for the County of Union of the Third Judicial Circuit of the State of Ohio begun and held at the Court House in the Town of Marysville, on the 23rd day of September, in the year of our Lord one thousand eight hundred and ninety one. Heretofore, on the 12th day of August 1889, an Appeal Bond was filed with the Clerk of Court, towit:

Appeal Bond

Know all men by these presents: That we, H. D. Gill, Ann Gill - - - are held and firmly bound unto Emily M. Adams or one - - Colton, Administrator of Susan Adams in the penal sum of One hundred dollars to the payment of which well and truly to be made we do hereby jointly and severally bind ourselves, our heirs, executors and administrators. Sealed with our seals and dated - - - this day of August 1889. The condition of the above

Certified Copy of Journal Entries

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obligation is such that whereas the said H. D. Gill and Anna Gill has taken an appeal from a certain decree rendered against them and in favor of the said Administrator of Susan Adams in the Court of Common Pleas within and for the County of Union and State of Ohio at the May Term, 1859 in case No. 565 intitled Emily M. Adams Administrator Vs. Anna Gill et al to the Circuit Court of said County: Now if the said H. D. Gill & Anna Gill shall prosecute their appeal to effect without unnecessary delay and shall abide and perform the order and judgment of said Circuit Court and pay all damages and costs which may be awarded against them the said H. D. Gill and Ann Gill then this obligation shall be void: Otherwise it shall remain in full force and virtue in law.

H. D. Gill (Seal)
Ann Gill (Seal)
C. F. Gill (Seal)

The execution of the above Undertaking and the sufficiency of the sureties therein approved by me this 12th day of August. 1859.

R. McElroy, Clerk.

Certified Copy of Journal Entries

Afterward, on the 30th day of August, 1859, Transcript of Journal Entries was filed with the Clerk of Court, towit:

The State of Ohio
Union County, ss. | In Common Pleas Court
Emily M. Adams Admr | May Term, 1859.
Vs. | Journal 15, Pages 28, 36, 66, 76, 9/1, 138.
Anna Gill et al

Tuesday March 5th, A. D. 1859.

On Motion leave was granted to Mary Callahan to plead by March 25th.

Thursday, March 7th. A. D. 1859.

On motion, and it being made to appear to the Court that since the finding of the petition in this case, the said Emily M. Adams has been removed from her trust as Administrator of said Susan Adams deceased and R. G. Colton appointed in her stead by the proper Court. It is therefore ordered and adjudged by the Court that the said R. G. Colton be and he is substituted as Plaintiff in this case, as Administrator of said Susan Adams deceased.

Friday March 29th A. D. 1859.

On motion leave is granted to defendants Anna Gill and H. D. Gill to file amended answer instanter.

Wednesday, April 3rd, A. D. 1859.

On motion of defendant Mary Callahan, this cause is continued at the cost of the term, judgment for cost: and if said Mary Callahan fail for twenty days to pay said costs of this term. that execution issue therefor as upon judgments at law.

Thursday June 20th. A.D. 1889.

This day this cause came on to be heard, as between the plaintiff and the defendants Anna Gill and H.D. Gill, and said cause was submitted to the Court upon the evidence.

Plaintiff obtained leave to strike out from the petition the prayer for personal judgment. And the Court after hearing the evidence, the arguments of counsel and being fully advised in the premises do find that said defendants Anna Gill and H.D. Gill have made all the payments set up in the amended answer on said note and mortgage except the payment of 500^{00} alleged to have been made February 4th, 1887, which the Court finds has not been made.

And that there is due and owing from said Anna Gill and H.D. Gill on said note and mortgage the sum of Six hundred and eighty dollars and thirty-eight cents ($680.38) with interest thereon from June 13th, A.D. 1889.

The Court further find that said mortgage was recorded as stated in the petition, and is the first and best lien on the premises described in the petition, and that the condition of defeasance has been broken and plaintiff is entitled to have defendants Anna Gill and H.D. Gill's equity of redemption foreclosed.

It is therefore ordered and adjudged by the Court, That unless the defendants, Anna Gill and H.D. Gill within ten days pay or cause to be paid to the Clerk of this Court the costs in this case (excepting what has heretofore been taxed to Mary Callahan) and also pay into Court the amount so found due upon said note, and mortgage; that an order of Sale issue to the Sheriff of Union County, commanding him to appraise, advertise and sell said premises as upon execution, and bring the proceeds into this Court for further order, And the further hearing of this case as between the plaintiff and Mary Callahan is continued.

P. R. Kerr, attorney for defendants Anna Gill, and H.D. Gill gave notice of their intention to appeal this case to the Circuit Court and the Court fixed the Appeal Bond at 100^{00}

notice of motion 88 — Entry

The State of Ohio.
Union County, ss

I, R. McElroy, Clerk of the Common Pleas Court within and for said County, and in whose custody the files, journals and records of said Court are required by the laws of this State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal of the proceedings of the Common Pleas Court within and for said County, and that said foregoing copy has been compared by me with the original Entry on said Journal 15 Page 138 and that the same is a correct transcript thereof.

In testimony whereof, I do hereto subscribed my name officially and affix the Seal of said Court, at the Court House in Marysville in said County this 30th day of August A.D. 1889.

R. McElroy, Clerk.

Seal

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Notice of motion

88

Afterward, on the 23rd day of September, 1890, the following Notice was filed with the Clerk of Court.

Emily M. Adams Admr. vs. H. D. Gill et al | Circuit Court of Union County, Ohio.

The plaintiff will take notice that the defendants will move the the Court on the 23rd day of September, 1890, or as soon thereafter as counsel can be heard, to discharge the defendant H. D. Gill as a party defendant as being an unnecessary party in this action to foreclose the mortgage on the separate property of his wife the defendant Anna Gill; and also for leave to defendant Anna Gill to file an amended separate answer.

Witness my hand this 16th day of September, 1890.

P. R. Kerr, Atty. for Dfts.

I acknowledge service of the above notice this 17th day of September, 1890. S. S. Gardiner, Attorney for Plaintiff.

Motion

88

Afterward, on the 23rd day of September, 1890 the following motion was filed with the Clerk of Court, towit:

Emily M. Adams Admr. vs. H. D. Gill et al | Circuit Court, Union County, Ohio.

And now come the defendants H. D. Gill & Anna Gill and move the Court for leave to withdraw their joint answer filed herein, and for leave for Anna Gill to file separate answer instanter.

Also defendants move the Court to dismiss and discharge the defendant H. D. Gill from further answering in this action for the reason that the mortgage sought to be foreclosed in this action is upon the separate property of the said Anna Gill who is the wife of the said H. D. Gill, and he is therefore not a proper or necessary party herein.

P. R. Kerr Attorney for said Defendants.

Entry

88

Afterward, on the 24th day of September, 1890 an Entry was made on the Journal by the Clerk of Court.

Emily M. Adams Admr. vs. Anna Gill et al | Journal 1, Page 108.

This day came the parties to this cause and submitted this cause to the Court on the pleadings, testimony and arguments of counsel for plaintiff and for Anna Gill and Henry D. Gill and counsel for Mary Callahan. Whereupon the Court being fully advised in the premises do overrule the motion to dismiss Henry D. Gill and do find against said Mary Callahan and for the plaintiff on the issues joined between them and that the plaintiff is the owner of said note and mortgage in the petition described. And the Court find for said plaintiff as Administrator and against said defendants on all the issues between them.

And the Court find the balance due and unpaid on said

note and mortgage this day to be and amounts to the sum of five hundred and eighty-six dollars and thirty six cents after reducing ing the interest to six per cent. per annum.

It is therefore considered, ordered and decreed that said defendants Anna Gill and Henry D. Gill within five days pay to the present Administrator of the estate of Susan Adams said sum, towit: $556 30/11, so found due on said mortgage and interest from this date and all the costs except the costs made by Mary Callahan herein, and in default of payment thereof that an order of sale issue to the Sheriff of this County according to law commanding him to appraise advertise and sell the premises in said petition described according to law and bring the proceeds thereof into Court according to law.

And it is considered and adjudged by the Court that the cross-petition of Mary Callahan be dismissed at her costs and that plaintiff recover of said Mary Callahan the costs made by her in this cause. And this cause is remanded to the Court of Common Pleas of Union County, Ohio, and carry this order into execution.

Pleas before the Honorable John J. Moore, Henry N. Smy and Thomas Beer, Judges of the Circuit Court within and for the County of Union of the Third Judicial Circuit of the State of Ohio begun and held at the Court House in the Town of Marysville on the 8th day of March in the year of our Lord one thousand eight hundred and ninety. Heretofore, towit, on the 7th day of May 1889, Appeal Bond was filed with the Clerk of Court, towit:

Appeal Bond

Harry E. Goff
Vs.
William Martin et al.

Appeal Bond to Circuit Court.

Know all men by these presents: That Harry E. Goff, D. E. Thornton and William Wellwood are held and firmly bound unto William Martin, Leah Kile, Eunice Mosure, and Thomas Mosure, her husband in the penal sum of one hundred dollars to the payment of which well and truly to be made we do hereby jointly and severally bind ourselves, our heirs, executors and administrators.

Sealed with our seals and dated this 6th day of May 1889.

The condition of the above obligation is such that whereas the said Harry E. Goff has taken an appeal from a certain judgment rendered against him and in favor of the said William Martin, Leah Kile, Eunice Mosure, & Thomas Mosure in the Court of Common Pleas within and for the County of Union and State of Ohio, at the March Term 1889 in case No. 5469 entitled Harry E. Goff Vs. William Martin et al to the Circuit Court of said County: Now if the said Harry E. Goff shall prosecute his appeal to effect without unnecessary

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delay and shall abide and perform the order and judgment of said Circuit Court and pay all damages and costs which may be awarded against him the said Harry O. Goff then this obligation shall be void; otherwise it shall remain in full force and virtue in law.

In presence of William Holmes } Harry O. Goff Seal
L. B. Goff } D. E. Thornton Seal
Wm. Millwood Seal

The execution of the above Undertaking and the sufficiency of the sureties therein approved by me this 7th day of May. A. D. 1859.

R. McElroy. Clerk.

Certified Copy of Journal Entry

Afterward, on the 12th day of July, 1859. a Transcript of Journal Entries was filed with the Clerk of Court. towit:

Harry O. Goff vs. William Martin et al

In Common Pleas Court. March Term 1859.
Journal 14, Pages 412, 456, 9/4 5-33.
Journal 15, Page 30.

Friday March 16th, 1855.

Continued with leave of plaintiff to reply in ten days.

Monday, May 21st, 1855.

Continued.

Thursday November 1st, 1855.

This day came the plaintiff and made good showing for continuance on account of absence of witnesses, and thereupon this cause is continued by order of the Court, on plaintiffs motion and at his costs including the witness fee of William P. Andrews coming here from Plain City as a witness for defendant: judgment against plaintiff for the costs of this term.

Wednesday March 6th, 1859.

This day came the parties and submitted this cause to the Court on the pleadings and evidence, whereupon the Court being fully advised in the premises do find for the defendants and thereupon it is considered ordered and decreed by the Court that the petition be dismissed at plaintiffs costs.

It is thereupon ordered and decreed by the Court that defendants recover of their plaintiff their costs herein expended and taxed to - - - $.

And thereupon the plaintiff gave notice of appeal to the Circuit Court; and the Court fixed the Appeal Bond at $100.

The State of Ohio
Union County, ss:

I, R. McElroy, Clerk of the Common Pleas Court within and for said County, and in whose custody the files, journals and records of said Court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from Journal 14, Pages 412, 456, 9/4 5-33 9/4 Journal 15 Page 30, of the

proceedings of the Common Pleas Court within and for said County and that said foregoing copy has been compared by me with the original entry on said Journal 14 pg 15 and that the same is a correct transcript thereof.

In testimony whereof, I do hereto subscribed my name officially and affixed the seal of said Court, at the Court House in Marysville in said County this 12th day of July, A.D. 1859.

{Seal} R. Mclerory, Clerk.

Entry — Afterward, on the 21st day of January, 1890, an Entry was made on the Journal by the Clerk of said Court.

81 Harry E. Goff
vs
Wm Martin et al
Journal 1, Page 94.

On motion to the Court and good cause being shown therefore leave is granted to the plaintiff to file an amended petition in this cause and the same is filed. Thereupon came Lucius B Goff and waived the issuing and service of summons and entered his appearance herein and filed his answer.

The defendant William Martin excepts to the ruling of the Court allowing plaintiff to file this amended petition.

Thereupon this cause is continued by agreement.

Amended Petition

Harry E. Goff
vs
William Martin,
Leah Kile, a/k/
Lucius B. Goff

To the Circuit Court of Union County Ohio.

On appeal from the Court of Common Pleas

The plaintiff now comes and by leave of the said Circuit Court first had and obtained, files this his amended petition pg says:

That on or about the 29th day of September, A.D. 1849, one David Martin, a resident of said State, departed this life, intestate seized in fee simple of the following lands and tenements, towit:

Situate in the County of Union and State of Ohio, part of Survey 7073 and bounded and described as follows: Beginning at two elms and an ash, one of the original lines of the Survey, which is also a line of John Crawford's Survey Nº 7074, and corner to land deeded by one Sheppard to John McClung: running from thence with Crawfords line correcting the course thereof N. 51-30 E. 113 poles to a large hickory and two small sugar trees, corner to the land deeded by said Sheppard to James Hayes: thence with his line N. 36. 30 W. 199 poles to a beech and three small water ashes: another corner of Hays land and in the original line of the survey: thence with said original line correcting the course thereof S 53.-40 W. 107 poles to a hickory, lynn and elm, another corner of McClungs land: thence with his line S. 36 E. 180 poles to the place of beginning containing 132 acres more or less.

Said David Martin left Leah, his widow, who is now intermarried with Enoch Kile, who is entitled to dower in said lands. subject to said dower said lands descended to the seven children

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of said David Martin, among whom were Sarah Goff and the defendant William Martin. Said William Martin purchased of and procured deeds from all the other children and heirs of said David Martin, except the said Sarah Goff, and said William is now the owner in fee-simple of the undivided six-seventh of said land. The said Sarah Goff died intestate in the year 1873 seized in fee simple of the undivided one-seventh part of said land leaving Lucius B. Goff her husband and the plaintiff her only child and heir at law to whom said land descended, and the plaintiff is now the owner of the same in fee simple

The said Lucius B. Goff never made any claim of courtesy or dower in said lands. The plaintiffs age is now 26 years.

The plaintiff further says: That prior to the year A. D. 1863, the said Sarah Goff became insane, and that she continued to be a lunatic and insane person until the time of her death, the greater part of the time being in one of the state asylums for the insane.

That while insane and wholly incapacitated by reason thereof from transacting any business, towit: on the 7th day of March A. D. 1863 the said Sarah Goff signed a paper purporting to be a deed of conveyance of her interest in said land to the defendant William Martin, and the said Lucius B. Goff, her husband also joined in said writing and the same is recorded in Volume 26. on page 436 of the records of deeds for said County, and the same is a cloud upon the plaintiffs title to said land.

The plaintiff says said paper writing is wholly invalid as a deed: First, because it was never legally executed or acknowledged and no legal certificate of acknowledgement is hereto attached thereto: Second, because the said Sarah Goff at the time of signing the same was of unsound mind and had not sufficient mental capacity to make a valid deed.

The plaintiff desires to hold his interest in said land in severalty, and that the cloud aforesaid be removed from his title.

Wherefore the plaintiff prays, that the said pretended deed be set aside and held for naught, and that the cloud cast upon the plaintiffs title by reason thereof be removed: and that partition of said lands may be ordered, to the plaintiff one seventh part thereof, and to the said William Martin six-sevenths part thereof, and for all proper relief. J. D. Cameron and J. M. Kennedy, Attys for Pltff

The State of Ohio,
Union County ss:

Harry E. Goff, being sworn says the facts stated and allegations made in his foregoing amended petition are true as he verily believes.

Harry E. Goff.

Sworn to before me and signed in my presence this 11th day of January A. D. 1890.

James D. Moore Dpt Clerk of Courts
Hardin County, Ohio.

Seal

Answer of Lucius B. Goff

Harry E. Goff
Vs.
William Martin et al.

To the Circuit Court of Union County, Ohio.
On appeal from the Common Pleas.

And now comes Lucius B. Goff, and having by leave of the Circuit Court been made party defendant herein, waives the issuing and service of summons and files this his answer and says.

That the said Sarah Goff was his wife, and that he does not desire to make any claim of courtsy or dower in said lands as against the plaintiff, and he hereby waives any rights he has, or might have, in favor of the said plaintiff, and asks that the decree may be entered as prayed for in the plaintiff's amended petition.

J. D. Cameron &c
J. M. Kennedy,
Attorneys for Lucius B. Goff

The State of Ohio.
Union County, ss:

Lucius B. Goff, being sworn, says that the facts stated and allegations made in his foregoing answer are true as he believes.

Lucius B. Goff.

Sworn to before me and signed in my presence this 11th day of January, A.D. 1890. James D. Moore, Dpty. Clerk of Courts Hardin County, Ohio.

Seal

Entry 51

Harry E. Goff.
Vs.
William Martin et al

Filed September 24th, 1890
Journal 1, Page 109.

This cause is continued on the plaintiff's motion and affidavit on account of absent witnesses and at the plaintiff's cost.

It is therefore adjudged by the Court that defendants recover of the plaintiffs the the costs of this term of Court.

Motion

Afterward, on the 28th day of February, 1891. the following motion was filed with the Clerk of Courts.

Harry E. Goff
Vs
Wm Martin et al.

Circuit Court, Union County, Ohio.

The defendant William Martin moves the Court to require the plaintiff to give security for costs in this case for the reason that the plaintiff is not a resident of the County of Union, Ohio, and that John Hobensack who became his surety by order of the Court of Common Pleas has also moved from said County of Union and is insolvent.

J. N. Robinson,
Attorney for Wm Martin.

Answer to Amended Petition

Afterward, on the 3d day of March, 1891. the following Answer was filed with the Clerk of Court.

Harry E. Goff
Vs.
William Martin,
Dean Kile, &c
Lucius B. Goff.

In the Circuit Court of
Union County, Ohio.

The said William Martin for his separate answer to said amended petition of plaintiff says that he denies that the paper

purporting to be a deed of conveyance mentioned in said amended petition is invalid, and denies that Sarah B. Goff at the time she executed the same was insane and denies that said land in the petition described or any part thereof discended to plaintiff or that he has any interest thereon; and the said defendant on the contrary avers that on said 7th day of March 1863 the said Lucius B. Goff & Sarah B. Goff being of sound mind and memory for a full and valuable consideration sold said land to said William Martin and by said ded duly executed and delivered conveyed the same to said defendant and gave to him possession thereof, and he says said deed is valid and in full force and gave the said defendant the right to have, hold, own and to posess said lands and he hath ever since said March 7th, 1863 held, owned, used and occupied exclusively, openly, adversely, and notoriously said lands claiming title thereto and the plaintiffs claim thereto and his cause of action did not accrue within twenty-one years last prior to the commencement of this action and he says that if said certificate of acknowledgment to said deed is defective in form it was the mistake of the Justice of the Peace making the same and was intended by all the parties to said deed and by said Justice of the Peace to be a legal and valid certificate of acknowledgment thereto to convey the said land in fee to the said defendant, and the defect was the mutual mistake of all of said parties and in equity should be corrected so as to conform to said intentions of said parties and therefore said defendant says he denies that said ded is invalid on account of either of the causes in said amended petition alleged. And further he denies that said Sarah B. Goff was in the insane asylum except as follows, towit: admitted September 3rd, 1861, & discharged as recovered January 23rd 1862: admitted again the 20th of August 1864 and discharged recovered November 30th, 1866 and afterwards in 1868 admitted to Longview Asylum and died in 1873.

The defendant further says that said ded of conveyance by Lucius B. Goff is valid to convey to said William Martin all of his interest in said land then held in March 7th 1863 & contingent on the death of Sarah B. Goff and the same was executed to said defendant at the request of said Lucius B. Goff and he in equity is estopped from denying the sanity of his wife at the time they executed the same as aforesaid.

Therefore said William Martin prays judgment that said ded be held valid and if found defective in form that it be corrected as law and equity require and that the prayer of the said petition be denied.

Robinson & Woodburn
Attorneys for Wm Martin.

The State of Ohio,
Union County ss:

William Martin being duly sworn deposes and says he believes the allegations of the foregoing Answer are true.

William Martin.

Sworn to before me and signed in my presence this 8th day

of March, 1891. {Seal} R. McElroy, Clerk.

Reply

Afterward, on the 3rd day of March, 1891, a Reply was filed with the Clerk of Court, towit:

Harry E. Goff
Vs.
William Martin et al

The plaintiff for reply says: He admits that said Sarah E. Goff was in the asylum for the insane at the time and during the period in the answer stated, but denies each and every other allegation in said answer set forth and not in the petition admitted. Wherefore he prays as he has always prayed.

J. L. Cameron
J. M. Kennedy, Attys for Plff.

State of Ohio,
Union County ss

Harry E. Goff, being duly sworn says the facts and allegations of the foregoing riply are as he believes true.

Harry E. Goff.

Sworn to and subscribed by the said Harry E. Goff before me this the 3rd day of March, 1891.

{Seal} R. McElroy, Clerk.

Entry

Afterward, on the 6th day of March, 1891, an Entry was made on the Journal by the Clerk of Court, towit:

Sarah E. Goff.
Vs.
William Martin et al

Journal 1, Page 120

This day came the parties and submitted this cause to the Court upon the pleadings and the testimony submitted by the parties. Whereupon the Court being advised in the premises do find for the defendant William Martin on the issues joined between the plaintiff and said William Martin and that the certificate of acknowledgement to the deed mentioned in said deed was defective by reason of the mistake of the officer making the same and the mutual mistake of the parties to said deed, and further find that said mistake should in equity be corrected so as to show a certificate made in legal form, and the Court find that said Sarah E. Goff was not insane when she made said deed and had legal mental capacity to make the same as alleged in defendants answer.

Therefore it is ordered adjudged and decreed by the Court that said deed be corrected in the manner aforesaid and that plaintiff petition be dismissed and that defendant William Martin recover of the plaintiff his costs herein expended taxed to -- $.

And this cause is remanded to the Court of Common Pleas for execution.

Petition in Error

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Pleas before the Hon. John J. Moore, John H. Albaugh and Thomas Beer, Judges of the Circuit Court within and for the County of Union of the Third Judicial Circuit of the State of Ohio begun and held at the Court House in the Town of Marysville, on the 2d day of September in the year of our Lord, one thousand eight hundred and ninety-one.

Heretofore, towit: On the 4th day of September, 1890, the following Petition in Error was filed with the Clerk of Court, towit:

Absalom Diggett Plff in Error
vs
Morgan Savage, Defd. in Error

Petition in Error

In Circuit Court, Union County, Ohio.

The Plaintiff in Error says that at the May Term, 1891, of the Court of Common Pleas of said County of Union, the said Morgan Savage recovered a judgment by the consideration of said Court against the said Absalom Diggett in a certain action and proceeding then pending in said Court as cause No. 6170, wherein the said Morgan Savage was plaintiff, and the said Absalom Diggett was defendant. A copy of the record and proceedings in said cause duly certified is herewith filed and made a part of this petition.

And the said Absalom Diggett avers that there is error in the said record and proceedings in said cause in this towit:

II The Court erred in not vacating the judgment rendered against said Absalom Diggett, and in favor of said Morgan Savage at the February Term 1891 of said Court, and in not reinstating the case on the docket for trial to a jury.

III The finding and judgment of the Court was against and contrary to the evidence introduced in said proceeding

IIII The finding and judgment of the Court in said proceedings was against the law of the case.

IIV The said judgment was given for the said Morgan Savage when it ought to have been given for the said Absalom Diggett according to the evidence of the case, and the law of the land.

The said Absalom Diggett therefore prays that the judgment rendered at the said February Term 1891 against him be vacated, (and the judgment rendered at the said February Term, 1891 against him be vacated,) and the judgment rendered in this proceeding be reversed and that said action be ordered placed on the docket for trial according to law. And plaintiff asks all other and further relief to which he may be entitled.

Porter & Porter, Attorneys for Plaintiff in Error.

I hereby waive the issuing and service of a summons in error in the above entitled case and enter my appearance in the same as party defendant without process on me.
September 4th, 1891.

Morgan Savage
By John M. Brodrick his Attorney.

Certified Copy of Journal Entries

Afterward, on the 5th day of September, 1891, Transcript was filed with the Clerk of Court, towit:

Morgan Savage
vs.
Luther Liggett
Absalom Liggett

May Term, 1891.
Journal 15, Pages 507 and 562.

Friday, April 10th, A.D. 1891.

This day came the plaintiff by his attorney, and thereupon came W. T. Hooper, one of the attorneys of record of this Court, who by virtue of a warrant of attorney duly executed and now produced in open Court and duly proven, waived the issuing and service of process, and entered appearance of said defendants herein, and by virtue of same warrant of attorney confesses that there is due from said defendants to said plaintiff as is alleged in said plaintiffs petition the sum of $1735.89.

It is therefore considered that said plaintiff do recover of said defendants the sum of $1735.89 so as aforesaid confessed to be due together with costs of suit herein to be taxed with interest to be computed at the rate of eight per centum per annum, and by virtue of said warrant of attorneys all errors are released, and all right of appeal, and all right to file a petition in error are waived.

Friday, June 26th, A.D. 1891.

This day this cause came on for hearing on the petition of said defendant Absalom Liggett and to vacate the judgment heretofore rendered in this case and the evidence and the same was argued by counsel and submitted to the Court. On consideration whereof the Court do find from the evidence that there are not sufficient grounds to vacate said judgment. Thereupon the said defendant Absalom Liggett filed his motion for a new trial herein, which was overruled by the Court.

It is therefore considered ordered and adjudged by the Court that said petition be, and the same is hereby is dismissed, and the said plaintiff recover of said defendant Absalom Liggett his costs herein expended taxed to - - $, and execution is awarded therefor.

To all of which findings, rulings, orders, and judgments of the Court said defendant Absalom Liggett then and there excepted. And for the purpose of preparing, signing &c: a Bill of Exceptions the Journal is to be kept open for forty days after the term.

Saturday, August, 15th, A.D. 1891.

Now comes the said Absalom Liggett and presents to the Court his certain Bill of Exceptions herein, which being found by the Court to be true is allowed, signed and sealed by the Court, and on motion of said Absalom Liggett it is ordered to be placed on the file with the pleadings and made a part of the record of this cause.

State of Ohio,
Union County, ss

I, R. McElroy, Clerk of the Court of Common Pleas, within

Bill of Exceptions

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and for said County, and in whose custody the files, journals, and records of said Court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal of the proceedings of the said Court within and for said County, and that said foregoing copy has been compared by me with the original entry on said Journal, and that the same is a correct transcript thereof.

In testimony whereof I have hereunto subscribed my name officially and affixed the Seal of said Court, at the Court House, in Marysville in said County, this 11th day of September, A. D. 1891.

{Seal} R McElroy, Clerk.

Bill of Exceptions	Morgan Savage vs. Luther Liggett & Absalom Liggett	Filed in Union Common Pleas August 15th 1891. Case No. 6170 Filed in Union Circuit Court. September 5th 1891. Case No. 105.

Be it remembered that on the trial and hearing of this cause in the Court of Common Pleas, within and for said County of Union at the May Term thereof 1891, the said Absalom Liggett to maintain his petition, and the issue on his part, introduced in evidence the promissory note, and the endorsements on the same, upon which the said Morgan Savage obtained his judgment in the above action and proceeding and which note is attached to the petition of said Morgan Savage, and which note with the endorsements and payments made thereon are in the words and figures following, towit:

$1700 00 Marysville, Ohio, January 5th, 1889

Six months after date, as principal debtors, we jointly and severally promise to pay to the order of Morgan Savage Seventeen hundred dollars, for value received with interest at 8 per cent. semi-annually till paid. And we hereby dispense with demand of payment of this note, and authorize any Attorney at Law to appear for us, or either of us, at any time after the same shall become due, in any Court of Record in the State of Ohio, or elsewhere, and waive the issuing and service of process and confess judgment against us, or either of us, in favor of the holder or holders of this note for the amount of said note, with eight per cent. interest, payable annually after the same shall become due, together with costs of suits, and release all errors and waive all right of appeal in this behalf.

Witness our hands and seals this 5th day of January, 1889

Luther Liggett.
Absalom Liggett.

There were endorsements made on said note as follows:

"Interest paid on this note to 5th of July 1889."
"Interest paid on this note to 5th of January, 1890,
"Interest paid on this note to 5th of July 1890,
"Interest paid on this note to 5th of January, 1891.

The said Absalom Liggett to further maintain the issue on his part called as a witness Luther Liggett: and said note with its endorsements being exhibited to the witness, said Luther Liggett testified as follows: I am the principal on said note, and said Absalom

Liggett was security for me on the same: he received no part of the consideration of said note and had no interest in the money for which it was given, but was surely merely on the same. A few days after said note became due I went and paid the interest on the same. This is the interest as appears indorsed on the note as appears, indorsed on the note as of July 5th, 1889. This interest I paid to the wife of Morgan Savage. The interest on this note was treated by Mr Savage and myself as payable semi-annually. Between the 10th and 12th of January 1890 after the next payment of interest due January 5th 1890 became due, I saw Mr. Savage here in Marysville. It had not occurred to me that the interest was again due, but Mr. Savage reminded me of that fact and asked me for the interest. I asked him what the amount was, and he said it was sixty-four dollars. I paid him that amount, and Mr. Savage then proposed, and said to me that he would let the note run if I would pay the interest promptly when it became due. I agreed to this, and he did let the note run until the next semi-annual interest was due. In a short time after I paid him the sixty-four dollars Mr. Savage reminded me that there was a mistake of four dollars in the amount of interest that I had paid him at Marysville (the semi-annual payment due being sixty-eight dollars instead of sixty-four dollars) I corrected this and paid him the four dollars. The next payment of interest would be due on the 5th of July 1890. About ten days before this interest was due Savage came to see me and said that the interest was not quite due and asked me if I could pay it in advance, as he was going to Kansas. I said to him that I had not the money by me then, but would get it for him, if he wanted it. He said he would not put me to that trouble: that he could get along without it; and for me to pay it to his wife when it became due. I told him I would do so, and a few days after the interest was due I went to pay it to his wife, and was surprised to find that he had got home from Kansas. I paid the amount to him and I put the credit on the back of the note myself at his request.

This credit is in my hand writing, and is the 3rd credit on the back of the note. When I made this payment of interest in July 1890, Mr. Savage again offered to let the note run if I would pay the interest when it became due. To this I again agreed, and it did run until the next interest was due on January 5th, 1891, which interest I paid to him through the Marysville Bank, and there was no further agreement to extend the time of payment. Mr. Savage did not in either of the agreements made with him in January 1890 or in July 1890 to let the note run on payment of the interest reserve the right to sue, or to collect the principal of the note.

It was well understood by Mr. Savage and myself that the semi-annual interest would be due January 5th, and July 5th of each year. Mr. Savage knew when he loaned me the money and took this note that Absalom Liggett was merely surety for me on the note.

On cross examination of this witness by counsel for said Savage, he said Liggett further testified that he had made an assignment for the benefit of his creditors, and that the said

Absalom Liggett was his cousin.

The said Absalom Liggett to further maintain the issue on his part offered himself as a witness, and testified as follows:

"I was security merely for Luther Liggett on said note. I received no part of the consideration of the note. Mr. Savage never spoke to me about this note. I had no knowledge of any agreement between Luther Liggett and Mr. Savage as to any extension of time in paying this note, and if any such arrangement was made it was without my knowledge or consent. I supposed the note was paid long ago and the first I knew to the contrary was when I heard they had got judgment on it, which was some time after the February Term had adjourned. And thereupon said Absalom Liggett rested his case.

And the said Morgan Savage, to maintain the issue on his part offered himself as a witness and testified as follows, in chief:

"I made no agreement with Luther Liggett in January, 1890, in Marysville to extend the time of payment of the note, and I did not ask for the interest in advance. I went to see him before I went to Kansas to ask him for a mortgage to secure the note, and he said he would pay the note some time next Fall or Winter. All the payments of interest were made to my wife or to the Marysville Bank.

The interest in January 1890, was paid me through the Bank.

I did not see Luther Liggett here in Marysville at that time. He paid the July 1890 interest to my wife. I was not at home.

On Cross Examination said Morgan Savage testified, and gave answers to the following questions, towit:

Q.-- Was the January interest 1890 all paid at one time?

A.-- Yes.

Q.-- Did not Liggett pay only $64.00 first, on the January 1890 interest, and did you not remind him that there was a mistake of four dollars which he afterwards paid? A.-- Yes. The mistake was $2.00 in amount and was in the July 1890 payment of interest. I may be mistaken about the July 1890 payment of interest.

Q.-- Who reminded Liggett of this mistake? A.-- I told you I did.

Q.-- Did you not ask Liggett for the interest in June 1890, in advance before you went to Kansas? A.-- I don't remember.

Q.-- Why did he not pay the interest to you in June before you went to Kansas? A.-- I can't tell.

Q.-- You knew that Absalom Liggett was security for Luther, did you not? A.-- I did.

Q.-- How does it come that the payments of interest are all on the 5th of the months, when they were not all paid on the 5th?

A.-- They are so, that is all I know.

Q.-- Who put the 3 indorsements on the note? A.-- I don't know. It looks like Joe Wilkins hand-writing.

Q.-- Was this not done at your house by Liggett by your direction, after you came back from Kansas? A.-- I don't know, the

interest was paid when due.
Q. -- Were you not at home when Liggett paid the interest July 5th, 1890 at your house? A. -- I dont remember
Q. -- Why did you let note run, and receive interest on it for four semi-annual payments? A. -- I let it run because Absalom Liggett here was security.
And thereupon the said Morgan Savage rested his defense.

The above is all the testimony introduced in the case by the parties, and no further or other evidence was introduced or offered in the case by either party. And the Court having rendered a judgment in said proceeding against the said Absalom Liggett, and in favor of the said Morgan Savage, the said Absalom Liggett filed his motion for a re-hearing and new trial in said action and proceeding, and the Court having overruled the said motion, the said Absalom Liggett excepted to the decision and ruling of the Court on said motion for a re-hearing, and new trial, and to the judgment rendered in said proceeding, and prayed the Court here to sign & seal this his Bill of Exceptions, and order the same to be made a part of the record in this proceeding and action. All of which is done and ordered as the said Absalom Liggett has prayed for re:

{Seal} John A. Price. Judge of
Done this 15th day of August, 1891. Court of Common Pleas.

Approved: August 14th, 1891.

Porter and Porter, Attorneys for
Plaintiff in Error
John M. Brodrick, Attorneys for
Defendant in Error.

Entry — Afterward, on the 23rd day of September, 1891, an Entry was made on the Journal by the Clerk. towit:

105 Absalom Liggett. -Vs- Morgan Savage | Journal 1. Pages 131 and 132.

This day this cause came on for hearing upon the petition in error, transcript, bill of exceptions and the original papers and pleadings from the Court of Common Pleas of Union County, Ohio, and was argued by counsel and submitted to the Court: on consideration whereof the Court find that there is no error apparent on the record, in said proceedings and judgment.
It is therefore considered and adjudged by the Court, that the judgment aforesaid be, and the same hereby is affirmed: and that the defendant in error recover from the plaintiff in error his costs herein expended, taxed at $---.
And the Court being of opinion that there was reasonable ground for proceeding in error, allow no penalty.
It is further ordered that a special mandate be sent to the Common Pleas Court of Union County, Ohio, for execution upon this judgment. To the decision and judgment of the Court the plain-

=liff in error. by his attorneys then and there excepts.

Pleas before the Honorable John J. Moore, Henry N. Seney and Thomas Burr, Judges of the Circuit Court within and for the County of Union of the Third Judicial Circuit of the State of Ohio, begun and held at the Court House in the Town of Marysville on the 23rd day of September in the year of our Lord one thousand eight hundred and ninety. Heretofore, on the 16th day of April, 1890. Bill of Exceptions, Petition in Error & Transcript was filed with the Clerk of Court

Mrs. M. J. Abrams, Plaintiff in Error
--Vs--
Adam Wolford & Executor of the last Will & Testament of Robert V. Abrams Deceased. Defendant in Error

Circuit Court of Union County, Ohio.

Petition in Error

Plaintiff in Error says, that at the March Term 1890 of the Court of Common Pleas of Union County, Ohio, defendant in error recovered a judgment by the consideration of said Court against plaintiff in error in an action then pending in said Court wherein defendant in error was plaintiff and plaintiff in error was defendant. A transcript of the docket and journal entries whereof is filed herewith.

There is error in the said record and proceedings in this, towit:

1st --- Said Court erred in overruling the motion of plaintiff in error for a new trial.

2nd The facts set forth in the petition, are not sufficient in law to maintain the said action against plaintiff in error.

3rd --- The finding of the Court on the agreed state of facts and filed herewith is not supported by the same, and is contrary to law.

4th --The said judgment was given for the said Adam Wolford when it ought to have been given for Mrs. M. J. Abrams.

5th The facts agreed upon in said action are insufficient in law to enable the defendant in error to recover from the plaintiff in error.

Plaintiff in error therefore prays that said judgment may be reversed and that she be restored to all things she has lost by reason thereof.

D. N. Ayers, Attorney for Plaintiff in Error.

Service by summons or otherwise is hereby waived and the appearance of defendant in error entered this 16th day of April, 1890.

John M. Brodrick, Attorney for Defendant in Error.

Adam Wolford, Executor of the last Will & Testament of Robert V. Abrams, deceased,
Vs
Mrs. M. J. Abrams

Agreed Statement of facts.

The plaintiff and defendant herein, being duly represented by their respective attorneys, hereby agree that the facts in this cause are as follows:

That on the 28th day of February, 1879, said Robert V. Abrams duly executed his last Will and Testament, which is hereto attached marked exhibit "A" and made part hereof. That said Robert V. Abraham died on or about the 17th day of July, A.D. 1879.

That on the 13th day of September, 1879, said last Will & Testament was duly proven and admitted to probate and record in the Probate Court of Union County, Ohio, and said plaintiff was duly appointed by said Probate Court as Executor of said last Will & Testament, & he thereupon duly qualified. That said Probate Court on the application of plaintiff ordered an appraisement of the personal estate of said decedent and appointed three appraisers therefor. That said appraisers duly appraised said personal property at the sum of $1931.20 and allowed said defendant as the widow of said decedent the sum of $1500 for her years support, all of which were duly approved by said Probate Court and said defendant took said personal property at said appraisement, and gave to said plaintiff her receipt for said sum of $1500 to apply on the purchase money of said property and agreed to pay the remainder thereof as needed by said plaintiff. That there was also, at the death of said decedent the sum of $90. on hand which was also turned over to said defendant under the said agreement to be repaid when needed by said plaintiff. That said plaintiff made his settlements with said Probate Court as required by law each year from his appointment to the present time and that said plaintiff accounted to said Probate for all of said property and money in said settlements, and charged himself with interest on the balances thereof appearing due to said estate. That no exceptions have ever been filed to any of said accounts, and that said plaintiff needing said balance of said purchase money for the use of said estate made demand for the payment thereof of said defendant, which was refused by her. That the moneys accounted for by the plaintiff were paid by defendant of her own and the means of the other heirs of the deceased not as payments on said property but to pay debts of deceased. That the property named in plaintiff's petition is the same property disposed of by the Will of Abrams deceased.

That the defendant is old and infirm and did not know in fact of any of the proceedings named above in Probate Court.

John M. Brodrick, Atty. for Plf.
D. N. Ayers, Atty. for Deft.

Will of Robert V. Abraham

I, Robert V. Abraham, of the Township of Allen, Union County & State of Ohio make this my last Will and Testament. I give devise & bequeath all my estate and property real and personal as follows: that is to say I give devise and bequeath to my beloved wife Margaret Jane Abraham all my property both personal and real for

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her use during her life time. At her death I desire that my real estate shall be sold and division thereof to be made among my heirs as follows: To the two children of my deceased daughter Martha Matilda Mc Elwing, Clyde Mc Elwing and Lebanon Mc Elwing I bequeath Five hundred dollars each to be paid to them when they shall have attained to the age of twenty-one years or within one year after the death of my wife Margaret Jane Abraham if she should live beyond the time of their attaining to the aforesaid age. To my beloved daughter Alice Ann Chappel I bequeath the sum of Two thousand dollars to be by my Executor paid for a homestead which she shall select and the deed made to her and her heirs. To my beloved daughter Esther Mary Walke, I bequeath one-fourth of the proceeds of the remainder of my real estate after the amount bequeathed to my grandsons Clyde Mc Elwing and Lebanon Mc Elwing and the amount bequeathed to my daughter Alice Ann Chappel shall have been deducted to be by my Executor paid for a homestead by her to be selected and the deed thereof to be made to her and her heirs.

To my beloved daughter Eliza Jane Abraham, Sarah Samantha Abraham & Minta Altina Abraham I bequeath the remainder of the proceeds of my real estate to be equally divided between them.

To my beloved daughters Sarah Samantha Abraham and Minta Altina Abraham I bequeath all my personal property which shall remain at the death of my beloved wife Margaret Jane Abraham to be equally divided between them.

I appoint Adam Wolford, farmer of Allen Township, Union County & State of Ohio, Executor of this my Will & Testament.

In witness whereof I have signed and sealed and published and declared this instrument as my Will at my home in Allen Township, Union County and State of Ohio, on this 28th day of February in the year of our Lord one thousand eight hundred & seventy-nine.

R. V. Abraham {Seal}

The aforesaid Robert V. Abraham at the said home in Allen Township, Union County, Ohio, on the aforesaid 28th of February A. D. 1879 signed and sealed this instrument and published and declared the same as and for his last Will and we at his request and in his presence and in the presence of each other have hereunto written our names as subscribing witnesses. H. P. Havens
P. D. Coe
D. M. Abram.

State of Ohio,
Union County:

I, Leonidas Piper, Sole Judge and Ex-Officio Clerk of the Probate Court within and for the County of Union, do hereby certify that the foregoing is a true copy of the last Will and Testament of Robert V. Abrams deceased, late of said Union County, Ohio, together with the entry of probate thereof, as the same remains on file and probate (and record) in said Court, and in my custody.

In witness whereof, I have hereunto set my hand and affixed the seal of said Probate Court at Marysville, Ohio, this 4th day of March A. D. 1889. {Seal} Leonidas Piper, Judge & Ex Officio Clerk

Will Probated September 9th, A. D. 1879.
Will Recorded Vol. B. Page 494.

Certified Copy of Journal Entries.

The State of Ohio, Union County ss ‖ In the Court of Common Pleas.

Adam Wolford, Executor &c: vs. Mrs. M. J. Abrams ‖ March Term, 1890. Journal 15. Pages 127, 277 and 291.

Thursday June 20th 1889.

This day this cause came on for hearing, on motion of the defendant to require the plaintiff to make his petition more definite and certain for reasons stated in said motion and the same was argued by counsel and submitted to the Court. On consideration whereof, the Court do overrule said motion. Whereupon the defendant asked leave to file an answer herein by August 1st, 1889. which was granted.

Wednesday, March 19th, 1890.

This day this cause came on for trial on the issues joined between the parties, and a jury being waived the same was submitted to the Court on an agreed statement of facts, and the same was argued by counsel and submitted to the Court. On consideration the Court do find on the issues joined in favor of the plaintiff, and that there is due from the defendant to the plaintiff as such Executor the sum of one hundred and eighty 25/100 dollars, with interest thereon at six per cent from the first day of the present term, towit: March 3rd, 1890.

It is therefore considered and adjudged by the Court that the plaintiff as such Executor recover of the said defendant said sum of $180.25 with six per cent. interest thereon from March 3rd, 1890, and the costs herein taxed at $--. Whereupon defendant made motion for a new trial, the motion was overruled, to all of which rulings and decisions the defendant then excepted.

April 16th, A. D. 1890.

Now comes the plaintiff and presents his bill of exceptions and agreed state of facts, which is allowed and made part of the record.

The State of Ohio, Union County ss: ‖

I, R. McElroy, Clerk of the Court of Common Pleas, within and for said County, and in whose custody the Files, Journals and Records, of said Court are required by the Laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal of the proceedings of the said Court within and for said County, and that said foregoing copy has been compared by me with the original entry on said Journal and that the same is a correct transcript thereof.

In testimony whereof, I have hereunto subscribed my name officially

Entry 95

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and affixed the seal of said Court, at the Court House, in Marysville, in said County; this 16th day of April, A.D. 1890.

{Seal} R. McElroy, Clerk.

Entry — Afterward, on the 24th day of September, 1890, an Entry was made on the Journal by the Clerk of Court

95 Mrs. M. J. Abrams
Vs.
Adam Wolford Exc. | Journal 1, Page 109.

This day this cause came on for hearing upon the petition in error and the transcript from the Court of Common Pleas of Union County, and was argued by counsel, on consideration whereof the Court find there is no error apparent on the record in said proceedings and judgment.

It is therefore considered by the Court that the judgment aforesaid be and the same hereby is affirmed: and that the defendant in error recover from the plaintiff in error his costs herein expended taxed at - - $. It is further ordered that a special mandate be sent to the Common Pleas Court of Union County, Ohio for execution on this judgment. To all of which the plaintiff in error excepted.

Pleas before the Honorable John J. Moore, John H. Albaugh and Thomas Beer, Judges of the Circuit Court within and for the County of Union of the Third Judicial Circuit of the State of Ohio begun and held at the Court House in the Town of Marysville on the 22nd day of September in the year of our Lord one thousand eight hundred and ninety-one.

Heretofore, on the 8th day of September, 1891, Bill of Exceptions and Petition in Error was filed with the Clerk of Court.

Petition in Error — S. M. Robinson, Plaintiff in Error
- - Vs. - -
Thomas D. Fuller, Defendant in Error. | Circuit Court, Union County.

The said plaintiff in error says that on 27th day of November, 1890 at the November Term 1890 of the Court of Common Pleas of the County of Union in the State of Ohio the said defendant in error recovered judgment by the consideration of said Court against said plaintiff in error for the sum of one hundred and eighty six dollars and forty cents debt and $ - - costs in a certain cause pending in said Court wherein said defendant in error was the plaintiff and the defendant in error was the defendant, a copy of which judgment and proceedings is hereto attached and made part of this petition, and the plaintiff in error avers that there is error in said record and proceedings in this towit: 1st - - Said Court erred in ruling out the evidence offered by said plaintiff in error on the trial of said action to which he excepted at the time. 2nd Said Court erred in its instruction to the

jury as to the law, to which the defendant excepted at the time.
3.rd The Court erred in overruling the motion for new trial and in rendering judgment for defendant in error and against the plaintiff in error.
Wherefore A. M. Robinson plaintiff prays that said judgment may be reversed and said plaintiff restored to all that he has lost by reason thereof. J. W. Robinson. Attorney for Plaintiff.

Bill of Exception

Thomas D. Fuller
vs.
A. M. Robinson

Filed November 27th, 1890. Union Common Pleas
Filed September 8th, 1890. Union Circuit Court.

Be it remembered that on the trial of this cause in the Court of Common Pleas within and for said County of Union at the November Term thereof A.D. 1890, the said defendant to maintain the issues on his part to prove to the jury the representations made to defendant by J. B. Branston at the time and before defendant signed the note in the petition described and signed the application for the policy of insurance and Madison Mitchell being duly sworn and called by defendant was asked by defendant's counsel to state to the jury what if anything said J. B. Branston stated to defendant before he signed said note and application for said policy as to what would be its value at the end of twenty years if its earnings should be equal to its earnings in the past

To which question plaintiff objected and the defendant stated that the witness would testify that J. B. Branston just before the defendant agreed to sign said note and application for a policy on his life and in the same interview represented to defendant that if the Company's earnings for the next twenty years should equal its earnings for the past that the policy would be worth in cash between $10.000 and $11.000 (he gave a certain sum but the witness could not remember the exact sum) but the Court sustained the objection and refused to allow the witness to answer said question and give said answer to which defendant at the time excepted -- prayed that his bill of exceptions in that behalf might be allowed which is accordingly done. Also the same witness being duly sworn was asked by defendant this question. Did you hear the conversation between defendant and J. B. Branston the day the note and the application for a policy on defendant's life were signed by defendant and before they were signed? To which question the witness answered in the affirmative.

The defendant asked the witness to state what, if anything, J. B. Branston said to defendant he would do in regard to the note and application for a policy if defendant would sign them at that time? To which question plaintiff objected.

Whereupon the defendants counsel claimed that the witness would testify that before the defendant agreed to sign the note and application for a policy the said J. B. Branston said to the defendant that if he would sign the application and the note and deliver them to him (Branston) he would send the application to the Company and if the Company should issue a policy on it to the defendant he (the agent Branston) would bring it to the defendant himself, and

if in the meantime defendant became dissatisfied or found that the representations he had made to defendant in regard to said Company were not correct that defendant need not take the policy and he (Braxton) would return the note to the defendant. That the defendant accepted this proposition and the said agent presented the note and application for defendants signature and he signed them on that condition: but the plaintiff still objected to the question and said answer on the ground that the written application for the policy contained a different condition and that this was an attempt to contradict by parol a written agreement. Prior to the above rulings and decisions the Court had allowed plaintiffs counsel to introduce said written application and binding receipt, a copy of which is hereto attached and made part hereof. Whereupon the Court sustained said objection and refused to allow said witness to make said answer to which defendant at the time excepted and asked the Court to allow his bill of exceptions which was done.

The defendant then introduced evidence tending to show that at the time the defendant signed said application and note, the said agent represented that the Insurance Company was not a Stock Company but was a Company that carried on its business on the mutual plan and defendant answered that if it was a Stock Company he would not take a policy in it. And said agent in reply assured defendant that it was not a Stock Company.

Also defendant introduced evidence tending to prove that said Company was a Stock Company and not doing doing business on the mutual plan. Whereupon defendant rested.

And the plaintiff to maintain the issues on his part stated that he owned said note: that he was the General Superintendent of said Insurance Company for Ohio. That the Company did not take notes but the agents sometimes did and advanced the money to the Company, and that was done in this case by him.

He also offered in evidence the certified copy of what he claimed was the Charter to said Company under the laws of the State of New York, a copy of which is hereto attached and made part hereof.

The plaintiff also introduced evidence tending to disprove the claim of defendant that said Company was a Stock Company and read and introduced in evidence the Statute of New York authorizing as a general law the incorporation of Insurance Companys and this Company, and tending to show that it did business on the mutual plan. Whereupon the Court among other things charged the Jury that the said Charter to said Company under said law of New York constituted said Company a Mutual Insurance Company and not a Stock Company and directed the Jury on that point to find that said Company was a Mutual Company and not a Stock Company, to which instruction of the Court to the Jury the defendant excepted at the time, and thereupon the Jury returned its verdict for the plaintiff.

Whereupon the defendant moved the Court for a new trial on the ground of error of the Court in rejecting said evidence of defendant

and error in said charge to the Jury, but the Court overruled said
motion and rendered judgment on said verdict for the plaintiff to which
the defendant excepted and asked the Court to allow his bill of exceptions
which is accordingly done and the same is ordered by the Court to be
recorded as part of the record of said Court.

Done this 27th day of November, A.D. 1890.

John R. Price, Judge of Common Pleas
{Seal} Court, 10th Judicial District of Ohio.

Afterward, on the 11th day of September, 1891, Transcript was filed
with the Clerk of Court, towit:

Certified Copy of Journal Entries.

Thomas D. Fuller
Vs.
A. M. Robinson

November Term, 1890.
Journal 15, Page 429.

Thursday, November 27th, A.D. 1890.

This day this cause came on for trial upon the issues joined be-
tween the parties and thereupon came a jury towit:

1st. Robert Maskel, 5th. N. Farmum, 9th. Charles Jacob,
2nd. Jerome Albaugh, 6th. D. C. Davis, 10th. Arthur Flesher,
3rd. J. S. McCune, 7th Joseph Powell, 11th. Reuben Poling
4th. B. F. Norris, 8. Oscar Murphey, 12th David Skidmore, who were
duly impaneled and sworn according to law and after hearing the evidence
argument and charge of the Court retired to their room for deliberation
and now comes the Jury into open Court with their verdict in writing
signed by their foreman and say:

"We, the Jury, find on the issues joined for the plaintiff and we
assess and find the amount due to the plaintiff from the defendant.
to be one hundred and eighty-six and 40/100 dollars ($186.40). And thereupon
the defendant moved the Court to set aside said verdict and grant to
defendant a new trial for reasons set forth in defendants motion on file
and which motion was argued by counsel, and the Court being advised
in the premises overrule said motion, to which ruling and decision of
the Court the defendant then and there excepted. And thereupon
it is considered and adjudged by the Court that the said Thomas D.
Fuller recover of said A. M. Robinson said sum of one hundred and
eighty-six 9/9 40 dollars ($186.40) the amount so assessed by said Jury
to draw interest at eight per cent. from the commencement of this term
of Court and his costs herein expended taxed at - - - $.

Entry 102

Petition 101

Thursday November 27th, A.D. 1891.

This day the Judge signed, sealed and allowed a Bill of
Exceptions for defendant which the Court ordered to be filed and made
a part of the record in this case.

The State of Ohio,
Union County ss:

I, R. McCleary, Clerk of the Court of Common Pleas, within
and for said County, and in whose custody the Files, Journals and
Records, of said Court are required by the laws of the State of Ohio to
be kept, hereby certify that the foregoing is taken and copied from the

Journal of the proceedings of the said Court within and for said County and that said foregoing copy has been compared by me with the original entry on said Journal, and that the same is a correct transcript thereof.

In testimony whereof, I have hereunto subscribed my name officially and affixed the Seal of said Court, at the Court House, in Marysville, in said County, this 11th day of September. A.D. 1891.

{Seal} R. McLeroy. Clerk.

Entry — Afterward, on the 23rd day of September. 1891. an Entry was made on the Journal by the Clerk of Court. towit:

102 Thomas D. Fuller
Vs.
A. M. Robinson

Journal 1. Page 132

This day this cause came on for hearing upon the petition in error, the transcript, and the original papers and pleadings from the Court of Common Pleas, of said County of Union, and was argued by counsel; on consideration whereof the Court find that there is no error apparent on the face of the record in said judgment and proceeding

It is therefore considered by the Court that the judgment aforesaid be and the same is hereby affirmed, and that the defendant in error recover from the plaintiff in error his costs herein expended taxed at $- And it is further ordered that a special mandate be sent to the said Court of Common Pleas for execution upon the judgment aforesaid.

Pleas continued and held at the Court House in Marysville within and for the County of Union in the Third Judicial Circuit of the State of Ohio, begun and held at the Court House in Marysville on the 3rd day of March in the year of our Lord one thousand eight hundred and ninety one. Hon. John J. Moore. H. N. Sharp. Thomas Bur

Heretofore, towit: on the 10th day of February, A.D. 1891, the following Petition was filed with the Clerk of said Court. towit:

Petition — The State of Ohio.
Union County, ss — In the Circuit Court.

101

The State of Ohio on relation of
Edward N. Porter, Prosecuting
Attorney for the County of Union
in the State of Ohio. Plaintiff
Vs.
The Marysville Light &
Water Company, Defendant

Quo Warranto.

Edward N. Porter, Prosecuting Attorney for the County of Union, in the State of Ohio who sues for said State in this behalf, comes and gives the Court to understand and be informed, that the Marysville Light and Water Company, the defendant herein, is a corporation duly incorporated under the laws of the said State of

ohio; that this defendant, in contravention of law, claims, holds, and exercises the following franchises, privileges and rights, towit: that of having and exercising the exclusive right, privilege and permission to erect, maintain and operate water works within the village of Marysville, Union County, Ohio, a municipal corporation, a village of the first class, duly organized under the laws of the State of Ohio; and also the following franchises, privileges, and rights, towit: those arising under a contract with said village of Marysville, by which said village agrees that it shall and will promptly and punctually pay this defendant annually for and during the period of thirty years (unless the said water works shall be purchased by said village before the expiration of that period) from and after the completion of said water works, as a rental for the use of said system, the sum of three thousand ($3000.00) dollars per annum: and further by which the said village agrees that, in consideration of the water to be furnished to the drinking troughs, schools and other public buildings, it will pay any and all taxes that may be levied against the water works or the capital invested in the same (except State Tax): and further, by which said village agrees that all and singular, the covenants, agreements, contracts and stipulations shall be and continue in full force and effect and binding on all parties thereto and their legal successors from the date thereof and from and during the complete period of thirty years next after the completion of said water works, as therein provided, unless said water works be sooner purchased by said village: and further, if at the termination of the above period of thirty years from completion, the said village has not availed itself of the right and privilege to purchase the water works therein provided for, then the terms, contracts and agreements therein with all and singular the covenants, agreements, provisions and stipulations shall be deemed and taken as extended and continued and shall be so extended and continued for a further and additional period of thirty years.

Wherefore, this plaintiff prays advice and judgment of this Court: that this defendant be required to appear and answer to the State of Ohio by what warrant it claims, holds and exercises the franchises, privileges and rights aforesaid: and that this defendant be wholly ousted and excluded therefrom and that the relator will recover his costs.

Edward N. Porter, Pros. Attorney.

Union County, Ohio.

Harry A. Garfield, being first duly sworn, affirms and says that the facts stated in the foregoing petition are true as he believes.

Harry A. Garfield.

Sworn to and signed in my presence this tenth day of February A. D. 1891. {Seal} R. D. Woodburn, Notary Public.

Praecipe

February 10th, 1891. The defendant hereby waives the issuing and the service of process in the above entitled case, and it enters its appearance in and to said action. The Marysville Light & Water Co.. By John F. Querner, President. Geo. M. McPeck, Secretary.

Answer

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Praecipe

The State of Ohio,
Union County ss | In the Circuit Court.
The State of Ohio on relation of
Edward W. Porter, Pros. Attorney for
the County of Union, in the
State of Ohio, Plaintiff.
vs.
The Marysville Light & Water
Company, Defendant.

To the Clerk: Issue Summons on the above defendant returnable according to law, indorse "Quo Warranto".
Garfield & Garfield
Attorney for Plaintiff

Afterward, on the 10th day of February, 1891, a Summons was issued by the Clerk of said Court as follows:

The State of Ohio.
Union County ss. | Summons in Quo Warranto.

To the Sheriff of the County of Union.

You are hereby commanded to notify The Marysville Light and Water Company that the State of Ohio on the relation of Edward W. Porter, Prosecuting Attorney for the County of Union, the State of Ohio, has filed a petition in the Clerks office of the Circuit Court of Union County asking judgment against said Light & Water Company and that unless said Light & Water Company attend on the first day of next term of said Circuit Court, said judgment may be reversed.

You will make due return of this Summons on the 23d day of February, 1891. Witness my hand and seal of said Circuit Court, at Marysville, Ohio, this 10th day of February, A. D. 1891.
Endorsed: Summons in "Quo Warranto" {Seal} R. McLeroy, Clerk.

And on the 14th day of February, 1891, the Sheriff of said County returned said writ to the Clerk's office in said County which return is as follows: Sheriffs Office, Union County, Ohio.

Copies	$ 1	25
Services		90
Mileage		32
Return		15
Total	$ 2	62

Received this writ on the 10th day of February, A. D. 1891, and on the 10th day of February, 1891. I served the same by handing a true copy thereof with the endorsements thereon to John F. Qwerner, President of said Light and Water Company. And afterward on same day John M. Brodrick Attorney for said Company acknowledged service of this writ.
Thomas Martin, Sheriff.

February 10th, 1891. Service of this summons is hereby acknowledged and by agreement with attorneys for plaintiff all questions of time are hereby waived that this action may be heard March 3d, 1891.
John M. Brodrick
Attorney for defendant.

Afterward, on the 18th day of February, 1891, the following Answer was filed with the Clerk of said Court which reads as follows:

Answer

The State of Ohio on relation of Edward W. Porter
Pros. Attorney for the County of Union in State of Ohio
vs
The Marysville Light & Water Company.

Plaintiff.
Defendant.

In Circuit Court
Union County, Ohio

Quo Warranto.

101

And now comes the said defendant and for answer to plaintiffs petition herein filed, says: That it admits that it is a corporation duly incorporated under the laws of the said State of Ohio: that it claims, holds and exercises the following franchises, privileges and rights, to wit: that of having and exercising the exclusive right privilege and permission to erect, maintain and operate water works within the village of Marysville, Union County, Ohio, a municipal corporation, a village duly organized under the laws of the State of Ohio: and also the following franchises privileges and rights, towit: those arising under a contract with said village of Marysville, by which said village agrees that it shall and will promptly and punctually pay this defendant annually for and during the period of thirty years (unless the said water works shall be purchased by said village before the expiration of that period) from and after the completion of said works, as a rental for the use of said system, the sum of three thousand dollars (3000^{00}) per annum: and further, by which the said village agrees that, in consideration of the water to be furnished to the drinking troughs, schools and other public buildings, it will pay any and all taxes that may be levied against the water works or the capital invested in the same (except State tax) and further, by which said village agrees that all and singular, the covenants, agreements, contracts and stipulations shall be and continue in full force and effect and binding on all parties thereto and their legal successors from the date thereof and from and during the complete period of thirty years next after the completion of said water works as therein provided, unless said water works be sooner purchased by said village: and further, if at the termination of the above period of thirty years from completion, the said village has not availed itself of the right and privilege to purchase the water works therein provided for, then the terms, contracts and agreements therein, with all and singular the covenants, agreements provisions and stipulations shall be deemed and taken as extended and continued and shall be so extended and continued for a further and additional period of thirty years, but this defendant denies that the same are in contravention of law. And the defendant denies each and every other allegation in said petition contained.

Further answering the defendant says that on the 5th day of June, A.D. 1890, there being at that time no water works erected, constructed or existing, or in process of erection or construction in said village of Marysville, Ohio, the Council of said village by an ordinance of that date duly contracted with certain individuals, viz: N. C. Fullington, John F. Zwerner, Jerome E. Davis and George M. McPeck for supplying water fore fire purposes, streets, public buildings, and other public places mentioned in said ordinance, and for supplying the citizens of said village with water for the time and upon the terms hereinbefore mentioned and in plaintiffs said petition set forth: that said ordinance provided for submitting said contract to a vote of the electors of said village, and on the 23d day of June A.D. 1890 and before said contract was

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finally executed and became binding, at a special election, said contract was ratified by a vote of said electors of said village, and on the 26th day of June A.D. 1890, said contract was by resolution of said Council duly executed by the Mayor and Clerk, for and on behalf of said village and under the seal thereof, and said contract then became binding as provided in Section 2434 of the Revised Statutes of Ohio. On the 1st day of July 1890, A.D. 1890 said N. C. Fullington John F. Guerner, Jerome C. Davis and George M. McPeck, by a written assignment of that date duly sold, assigned and transferred all their right, title, interest, claim, demand, privileges and franchises under and by virtue of said contract with said village, to said defendant, and by virtue of said assignment, it is the legal successor to said individuals and the legal owner and holder of all rights, privileges and franchises under said contract and entitled to all the rights, privileges and payments thereunder, and on the 28th day of January A.D. 1891, said water works were fully completed and council by resolution of that date duly accepted said water works and approved the water to be furnished by said defendant.

John M. Brodrick,
John C. Porter and
Robinson and Woodburn Attys. for Deft.

The State of Ohio
County of Union ss.

George M. McPeck, being sworn makes oath that he is a member of the within named defendant corporation, and the Secretary thereof, and that the facts stated in the foregoing answer are as affiant believes, true.

George M. McPeck.

Sworn to by said George M. McPeck, before me and signed by him in my presence this eighteenth day of February A.D. 1891.

{Seal}

R. McElroy, Clerk of Court.

Reply

Afterward, on the 5th day of March, 1891 the following Reply was filed with the Clerk of said Court which reads as follows:

101

The State of Ohio,
Union Union County ss

In the Circuit Court.

The State of Ohio, on the relation of
Edward N. Porter, Prosecuting Attorney
for the County of Union in the State of Ohio, Plaintiff
vs.
The Marysville Light and Water
Company, Defendant

Quo Warranto.

For reply to the answer of the defendant herein, the plaintiff denies each and every allegation in said answer contained.

Garfield and Garfield
Attorneys for Plaintiff.

James R. Garfield, being duly sworn, says that he is one of the Attorneys for the plaintiff in the above entitled action and that the facts therein stated are within his personal knowledge: and that he believes them to be true.

James R. Garfield.

Sworn to in my presence signed this 5th day of March 1891.

R. McElroy Clerk of Courts
Union County, Ohio.

{Seal}

Entry

Afterward, on the 6th day of March, 1891, an Entry was made on the Journal by the Clerk of Court which is as follows:

101

The State of Ohio on relation of Edward N. Porter, Prosecuting Attorney of Union County, Ohio, Plaintiff

vs.

The Marysville Light & Water Company, Defendant

In the Circuit Court of Union County, Ohio

Journal 1, Page 119.

This day this cause came on for hearing upon the pleadings and the evidence and the same was argued by counsel and submitted to the Court, on consideration whereof the Court find that the defendant, the said The Marysville Light and Water Company, has as alleged exercised the franchise and privilege of the exclusive right to maintain water works in said village of Marysville, and has exercised the franchise and privilege of having any and all taxes that may be levied against said water works and the capital invested therein, paid by said village of Marysville, contrary to, and without the authority of, the laws of the State of Ohio.

Wherefore, it is ordered and decreed that the prayer of said plaintiff's petition, that the defendant be wholly ousted from the exercise of said franchises and privileges so set forth in the petition & answer herein be refused, but it is ordered and decreed that said Company be, and it is hereby ousted of said franchise and privilege of exercising the exclusive right to maintain water works in said village, and of having any and all taxes that may be levied against said water works and the capital invested therein, paid by said village as aforesaid; but that it be ousted of no other of said franchises or privileges. And that the plaintiff recover of the said defendant his costs herein expended, taxed to $--- and that said defendant pay its own costs and execution awarded. To all of which rulings, orders and decrees of the Court the plaintiff excepts, and also to all of which said rulings, orders and decrees of the Court the defendant excepts.

Motion

Afterward, on the 9th day of March, 1891, the following Motion was filed with the Clerk of Court which reads as follows:

101

The State of Ohio,
Union County ss To the Circuit Court.
The State of Ohio on the relation of
Edward N. Porter, Prosecuting Attorney
for the County of Union, in the State of Ohio, Plaintiff

vs.

The Marysville Light & Water Co. Defendant

Motion for New Trial.

The relator moves the Court for a new trial for the following reasons to-wit:

1st There was irregularity in the proceedings of the Court by which the relator was prevented from having a fair trial.

2nd There was an abuse of discretion on the part of the Court by which the relator was prevented from having a fair trial.

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3rd. There was misconduct on the part of the defendant.
4th. The relator was subjected to both accident and surprise which ordinary prudence could not have guarded against.
5th. The finding, decision and judgment- - -

Pleas continued and held at the Court House in Marysville within and for the County of Union in the Third Judicial Circuit of the Circuit Court of the State of Ohio, before the Honorable Thomas Beer, John J. Moore and Henry M. Seney Judges of said Court of the Term of February towit, on the 23" day of February in the year of our Lord one Thousand eight hundred and ninety-two.

Heretofore towit: On the 11" day of September, A. D. 1891 the following Transcript was filed with the Clerk of said Court, towit:

Transcript

The State of Ohio.
Union County, ss In the Court of Common Pleas.
Jonathan Hammond, Plaintiff
vs. May Term 1891.
The Chicago St. Louis & Pittsburg R. R. Company, Defendant Certified Copy of Journal Entries.

Monday June 23" A. D. 1890

On motion leave is granted to the defendant to plead by September 1st, and cause continued.

Monday, November 24" A. D. 1890.

The defendant made affidavit for continuance in this case on account of the absence of witnesses, whereupon the Court sustained the motion for continuance and order the continuance of the case at costs of the term against defendant.

Whereupon it is considered and adjudged by the Court that plaintiff recover of the defendant the costs of the present term of Court.

Friday, February 13", A. D. 1891.

This day came the parties by their attorneys, also came the following named persons as Jurors, viz:

1". S. S. Rea, 5". E. A. Myers, 9". C. M. Ingman,
2". George Burns, 6". Lewis Mills 10". R. S. Bonnett,
3". Solomon Yount 7". Q. Tossey 11". John W. Niceley
4". George Trapp 8". D. S. Ford, 12". J. B. Parthemore, who

were impaneled and sworn and the trial proceeded, and the said Jury having heard the evidence adduced in part, and the hour of adjournment having arrived this cause was continued until 8½ o'clock tomorrow morning.

Saturday, February 14"; A. D. 1891

This day came the parties by their attorneys, also came the Jurors heretofore impaneled and sworn in this case and the said Jurors having heard the remaining evidence adduced, the arguments of counsel and charge of the Court retired to their room in charge of the Sheriff for deliberation, and now come the said Jury into open Court with their verdict in writing signed by their foreman and say: " We, the Jury being duly impaneled and sworn find the issues in this case in favor of the plaintiff and assess the amount due to the plaintiff from the defendant

"The Chicago, St. Louis & Pittsburg Railroad Company at the sum of $1500.00" (fifteen hundred dollars)
February 14th A.D. 1891. R. S. Bonnett, Foreman.

Wednesday, August 26th A.D. 1891.

Now comes the defendant and presents to the Court his certain Bill of Exceptions herein which being found by the Court to be true, is allowed signed and sealed, and on motion is hereby made part of the record in this case.

Wednesday, August 26th A.D. 1891.

This day this cause came on to be heard on the motion for a new trial filed by defendant whereupon the Court being fully advised in the premises hereby overruled said motion, to which ruling and judgment this defendant excepted and asked the Court to allow and sign his Bill of Exceptions which is accordingly done.

Whereupon this cause coming on to be heard upon the verdict rendered by the Jury in this case, it is considered ordered and adjudged by the Court that said verdict be confirmed and the plaintiff recover of the defendant the sum of fifteen hundred dollars together with his costs herein expended and taxed at $- -

Said judgment of fifteen hundred dollars to draw interest at six per cent. from the date of verdict, towit: the 24th day of February A.D. 1891. To which judgment the defendant excepted.

The State of Ohio,
Union County ss:

I, R. McCrory, Clerk of the Court of Common Pleas, within and for said County, and in whose custody the Files, Journals, and Records of said Court are required by the Laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal of the proceedings of the said Court within and for said County, and that said foregoing copy has been compared by me with the original entries on said Journal, and that the same is a correct transcript thereof.

In Testimony Whereof, I have hereunto subscribed my name officially, and affixed the Seal of said Court, at the Court House, in Marysville, in said County, this 11th day of September A.D. 1891.

(Seal)

R. McCrory, Clerk.

Afterward, on the 11th day of September 1891, the following Petition in Error was filed with the Clerk of said Court.

The Chicago St. Louis & Pittsburg Railroad Company Plaintiff in Error
vs.
Jonathan Hammond, Defendant in Error.

To the Circuit Court within & for the County of Union & State of Ohio.

Petition in Error

The Chicago, St. Louis and Pittsburg Railroad Company, plaintiff in error says; That at the May term A. D. 1891 of the Court of Common Pleas within and for the said County of Union, Jonathan Hammond, the defendant in error recovered a judgment by the consideration of said Court in an action then pending therein, wherein defendant in error was plaintiff, and the plaintiff in error was defendant; a transcript of the docket and journal entries in which case together with the original papers and bill of exceptions is filed herein. There is error on the said record and proceeding, in this towit:

1st. Said Court erred in overruling the motion of plaintiff in error for a new trial.

2nd. The said Court erred in admitting evidence offered by the defendant in error, to which plaintiff in error excepted & objected.

3rd. The Court erred in ruling out evidence offered by the plaintiff in error.

4th. The verdict of the Jury was not sustained by the evidence and the Court erred in not setting it aside and granting a new trial.

5th. After the verdict the plaintiff discovered new and material evidence, and the Court erred in not setting the verdict aside for that reason and granting a new trial.

Bond.

6th The verdict and judgment was for the defendant in error when it should have been for the plaintiff in error according to the law of the land.

Wherefore the plaintiff in error prays that said judgment be reversed, and the said verdict set aside and a new trial granted and that the plaintiff in error be restored to all things he has lost by reason thereof, and for proper relief.

Frank Chance,

J. L. Cameron, Attorneys for Plaintiff in Error

Waiver

Jonathan Hammond the defendant in error hereby waives the issuing and service of a summons in error in this

104 case and enters his appearance herein.

Robinson & Woodburn,

Attorneys for Defendant in Error.

Afterward, on the 25th day of February A. D. 1892, an Entry was made on the Journal by the Clerk of said Court.

Entry The Chicago. St Louis & Pg Co.,

vs. Journal 1, Page 138.

104 Jonathan Hammond

This cause come on for hearing upon the petition in error, the transcript, Bill of Exceptions and the original papers and pleadings from the Court of Common Pleas Union County and was argued by counsel; on consideration whereof the Court find there is no error apparent on the record in said proceedings and judgment.

It is therefore considered by the Court that the judgment aforesaid be and the same hereby is affirmed and that

the defendant in error recover from the plaintiff in error his costs herein expended taxed $ - -

It is further ordered that a Special mandate be sent to the Common Pleas Court of Union County for execution upon said judgment. To all of which the plaintiff in error then and there excepted.

Pleas continued and held at the Court House in Marysville within and for the County of Union, in the Third Judicial Circuit of the Circuit Court of the State of Ohio before The Honorable Thomas Beer, John J. Moore and Henry W. Seney Judges of said Court, of the Term of September, to-wit, on the 23rd day of September, in the year of our Lord one thousand eight hundred and ninety-two.

Heretofore to-wit: On the 1st day of February A.D. 1890 a Bond was filed with the Clerk of said Court, to-wit:

Bond. Know all men by these presents, that Berry P. Stewart James Sweeney, Landon Bishop and John G. Woerner are held and firmly bound unto the State of Ohio for Union County in the penal sum of Five hundred ($500.00) dollars to the payment of which well and truly to be made we do hereby jointly and severally bind ourselves, our heirs, executors and administrators. Sealed with our seals and dated this 27th day of January 1890.

The condition of the above obligation is such that whereas the said Berry P. Stewart, Abraham Brobeck and John G. Woerner et al (Beverly Depp and A. Geder refuse to join in appeal) has taken an appeal from a certain judgment rendered against them and in favor of the said Board of Commissioners of Union County Ohio, in the Court of Common Pleas within and for the County of Union and State of Ohio at the November Term 1889 in case No. 5595 entitled Berry P. Stewart et al vs. The Commissioners of Union County to the Circuit Court of said County: Now if the said Berry P. Stewart, Abraham Brobeck and John G. Woerner et al shall prosecute their appeal to affect without unnecessary delay and shall abide and perform the order and judgment of said Circuit Court and pay all damages and costs which may be awarded against them the said Berry P. Stewart, Abraham Brobeck and John G. Woerner then this obligation shall be void; otherwise it shall remain in full force and virtue in law.

In presence of
J. C. Sweeney
L. Woerner

Berry P. Stewart
James Sweeney
Landon Bishop
John Woerner

The execution of the above Undertaking and the sufficiency of the sureties therein approved by me this first day of February A. D. 1890. (Seal) R. M'Crory, Clerk.

Afterward, on the 6th day of September, A. D. 1890, a Transcript was filed with the Clerk of said Court, towit:

Berry P. Stewart et al

Transcript

vs.

92 The Board of County Commissioners of Union County, Ohio

The State of Ohio, Union County ss:
In the Court of Common Pleas.

July 17th A. D. 1888. Journal 14, Page 5-16

This day came the plaintiff by his attorneys, and on his motion and affidavits herein filed, and on good cause shown and it appearing to me that at this time there is no Supreme or Common Pleas Judge in said County it is ordered that an injunction be issued herein enjoining the defendant from taking any steps or doing any further act or thing whatever towards the collection of any assessments made upon their lands for the construction of said gravel road as prayed for in said petition, until the further order of the Court of Common Pleas, or a Judge thereof, or otherwise dissolved by due course of law, upon the plaintiffs executing an undertaking in the sum of $300.00 conditioned according to law, with sureties to be approved of by the Clerk of the Court of Common Pleas.

Leonidas Piper, Probate Judge.

Wednesday, December 5th, A. D. 1888. Journal 14, Page 566-7

This day this cause came on to be heard upon the demurrer of the defendants to the petition of plaintiff, and was argued by counsel, and the Court being fully advised in the premises do find said demurrer well taken, and sustain the said demurrer and dissolves said injunction. Thereupon plaintiffs asked and obtained leave to amend their petition by January 22nd A. D. 1889 and cause continued

April 4th, A. D. 1889. Journal 15. Page 91.

This day this cause came on to be heard upon the demurrer of the defendants to the amended petition of plaintiffs, and was argued by counsel, in consideration whereof the Court find said demurrer to be well taken and sustains the same. To all of which rulings and decisions the plaintiffs then and there excepted. Leave to amend petition in 20 days from the rising of the Court.

January 19th A. D. 1889. Journal 15, Page 122.

In Probate Court.

Now on this 19th day of January, A. D. 1889 came the plaintiffs by Powell, Ricketts and D. W. Ayers, their attorneys and it

being made to appear that there is now no Common Pleas, Circuit or Supreme Judge within said County, the motion of the plaintiff for a temporary injunction came on and was heard upon the petition of the plaintiff and the affidavits therein filed, and after hearing the arguments of counsel and being fully advised in the premises it is considered and order-ed that a temporary injunction be and the same is hereby allowed in this case, to restrain the defendant from collecting from the plaintiff or either of them the assessments so levied as in the petition stated against them, as prayed for in said petition of plaintiffs.

It is further ordered that the Clerk of the Court cause of Common Pleas issue summons in this case endorsed, "In-junction allowed," upon plaintiffs giving an undertaking to the said defendants conditioned according to law with security to be accepted by said Clerk of the Court of Common Pleas in the sum of $200.00. Leonidas Piper, Probate Judge.

Friday November 15th, A. D. 1889. Journal 15, Page 186.

This day on motion of plaintiff this cause is passed and delayed until the 27th day of November 1889 and at the costs of the plaintiff, caused by said delay.

It is therefore considered that the plaintiffs pay the costs of said delay herein taxed at $---.

Tuesday, January 7th, A. D. 1890. Journal 15, Page 232.

This day this cause came on to be heard upon the pleadings and evidence, and was argued by counsel, on consideration whereof the Court do find the equity of the case to be with the defendants, and that the plaintiffs are not sustained by the evidence and law in the case.

It is therefore considered that the petition of plain-tiff be dismissed at their costs. It is therefore consider-ed that the defendants recover of the plaintiffs their costs herein taxed at $---. Notice of appeal by plaintiffs and their bond fixed at $5-00.00

The State of Ohio,
Union County ss:

I, R. McCrory, Clerk of the Court of Common Pleas within and for said County, and in whose custody the Files, Journals and Records, of said Court are required by the Laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal of the pro-ceedings of the said Court within and for said County, and that said foregoing copy has been compared by me with the original entries on said Journal, and that the same is a correct transcript thereof.

In testimony whereof, I have hereunto subscribed my name

officially, and affixed the seal of said Court, at the Court House in Marysville, in said County, this 6th day of September A.D. 1890.
(Seal) R. M^c^ Clory, Clerk.

Entry 92 Berry P. Stewart et al vs. The Board of County Commissioners

Afterward, on the 23rd day of September, A.D. 1890, an Entry was made on the Journal by the Clerk of said Court, towit: Journal 1, Page 106.

This day this cause came on to be heard, and was continued by agreement of the parties.

Amended Answer 92 Berry P. Stewart et al vs. The Board of County Commissioners of Union County, Ohio.

Afterward, on the 5th day of March A.D. 1891, an Amended Answer was filed with the Clerk of said Court, towit: In the Circuit Court, Union County, Ohio.

The defendants answer to the second amended answer petition of plaintiffs filed herein on the 20th day of June 1889 and admit: That plaintiffs and those for whom they sue reside in Union County, Ohio, and are the owners of lands lying in the bounds of said road improvement, and that said lands were assessed for said improvement. And defendants admit that said Commissioners upon the proper petition, ordered said road improvement to be made, and let the contract for making said improvement and that the contractor is progressing with the same.

And defendants deny that they, or either of them have accepted or paid for said improvement, and defendants deny that said road is now the properly of said Union County, and deny that said contractors, or their bondsmen, are discharged or exonerated from any further liability under said contracts.

And defendants deny that said County Commissioners have willfully neglected or refused to finish or complete said work and construct said road according to said contracts and specifications as modified and changed by said engineer and Superintendent as hereinafter stated, or to require said contractors so to do. And defendants deny that they have left, or intend to leave for all time or any time, said road rough, defective or incomplete.

The defendants further answering say, that the said written contract and specifications between said County Commissioners and said contractor J. B. Wells, contained a condition and provision in the words and figures following, towit:

Section No. 6. The right is reserved to make any change in the cutting, filling, number and size of culverts, or any other matters relating to the construction of said road which the Superintendent may deem necessary. The same to be

added to or deducted from the contract price on the basis of the original bid. That by virtue of said part of said contract made by the said Commissioners and said J. B. Wells the contractor to build said road, the said Commissioners by the Superintendent appointed to supervise the construction of said road had the right to modify said specifications so as to make a good turn-pike road, and C. S. Lee was appointed engineer with John K. Dodge, one of the said Commissioners, to Superintend the construction of said road according to law.

And it was found by them that the specification, in order to make a good road over the ground on which said road was improved, should be modified and changed. And, by their authority the stone that was put in the bottom of said road was of a larger size than those mentioned in the specifications in the belief that it would not injure the road, and by the consent of said superintendant the contractor proceeded in the construction of said road in the manner aforesaid by placing said larger stones in the bottom of the road.

Also by said engineer and superintendent said specifications were modified so as to allow crushed stone of a slightly larger size than one and a half inches through their greater diameter was placed upon said road, they believing that the same would make a better road than the size mentioned in said specifications. That they say all said modifications, changes, and departures from said original specifications were made in good faith by the said engineer and superintendent with the knowledge of said Commissioners for the purpose of making a good road, and they say the said road is now a better road than it would have been if said specifications as originally made had been followed in the construction of the same. And they say said plaintiffs have the benefit of a better road than they would have had, if the same had been constructed according to said original specifications.

And they say the expense of said construction was not increased by said changes. And they say said changes were made as aforesaid in good faith for the benefit of the public in whose interest said road was built, for the purpose of making a better and more solid road. And the plaintiffs have not been injuriously affected by said changes. And defendants deny each and every other allegation not herein admitted and defendants ask to be dismissed with their costs.

Porter & Porter,
& J. W. Robinson, Attorneys for Defendants.

Thomas M. Brannon one of the defendants being duly sworn says the allegations of the foregoing amended answer are true as he believes.

Thos. M. Brannon.

Sworn to by Thomas M. Brannon before me, and signed by him in my presence this 5th day of March A. D. 1891.
(Seal) R. M^c Crory, Clerk of Courts.

Entry

92

Afterward, on the 5th day of March A. D. 1891, an Entry was made on the Journal by the Clerk of said Court.

Berry P. Stewart et al

vs.

County Commissioners of Union County, Ohio.

Journal 1, Page 116.

This day this cause came on for trial on the Second Amended Petition and the answer thereto and the evidence and thereupon progressed. And this day on motion of the defendants leave is given said defendants to file an amended answer herein instanter and the same is filed accordingly, to which ruling and judgment of the Court plaintiffs except.

And thereupon said cause is continued at the costs of said defendant made at this term.

And it is ordered and adjudged by the Court that the plaintiffs recover of the defendants their costs herein taxed at this term. And on motion of the plaintiffs leave is hereby given them to plead herein by April 18th, 1891.

Motion

92

Afterward, on the 27th day of March A. D. 1891, a Motion was filed with the Clerk of said Court, towit:

Berry P. Stewart et al. Plaintiffs

vs.

The Board of County Commissioners of Union County, Ohio. Defendants

In the Circuit Court, Union County, Ohio.

The plaintiffs move the Court to require the defendant to make its amended answer filed herein on the 5th day of March A. D. 1891 more definite and certain in this, towit:

1st. That defendant be required to state whether or not said defendant acting as such Board of County Commissioners at its proper place of doing business and at a general or special meeting or session thereof, after the letting of said contract found it necessary to change or modify said specifications so as to authorize the use of larger stone, and if so whether or not said finding was entered upon the records of said Board of County Commissioners.

2nd. State whether or not said defendant acting as such Board of County Commissioners, caused to be entered upon the records of said Board any change, alteration or modification of said specifications after the letting of said contract, whereby said contractor or superintendent was authorized to use larger stone in the construction of said road than named in said specifications.

E. F. Poppleton &c

Powell, Owen, Ricketts & Black, Plaintiffs' Attorneys.

Reply to Amended Answer

Motion

92

Afterward, on the 22nd day of September, 1891, a Motion was filed with the Clerk of said Court, towit:

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Berry P. Stewart et al Plaintiff

vs.

The Board of County Commissioners of Union County, Ohio, Defendants

Circuit Court, Union County, Ohio.

The plaintiffs move the Court to strike out all of that part of the amended answer filed by the defendant herein on the 5th day of March A. D. 1891 commencing with and including the words and figures following towit: "The defendants further answering say that the said written contract and specifications" on the second page of said amended answer and ending with and including the words and figures towit: "And the plaintiffs have not been injuriously affected by said changes" on the fourth page of said amended answer, for the reason that each and all of said allegations and statements therein contained are irrelevant, redundant, improper and constrain or afford no defense or answer to plaintiffs petition herein.

E. F. Poppleton

Powell, Owen, Ricketts & Black, Plaintiffs Attorneys.

Entry

92

Afterward, on the 23rd day of September A. D. 1891, an Entry was made on the Journal by the Clerk of said Court:

Berry P. Stewart et al

vs.

The Board of County Commissioners of Union County, Ohio.

Journal 1, Page 131.

This day on motion of plaintiffs leave is granted them to withdraw their motion to make the amended answer of the defendants more definite and certain, and for leave to make and file a motion to strike out certain matter in said amended answer, and said motion was sustained, and said motion to make more definite and certain was withdrawn by plaintiffs and their said motion to strike out filed by them herein accordingly.

Whereupon said cause came on to be heard upon the motion of plaintiffs to strike out of said amended answer certain matter described and designated in said motion and the Court being fully advised in the premises do overrule said motion, to which rulings and judgement of the Court in overruling said motion to strike out the plaintiffs duly excepted, and it is further ordered by the Court that said cause be and the same is hereby continued.

Reply to Amended Answer

92

Afterward, on the 5th day of February A. D. 1892 a Reply was filed with the clerk of said Court, towit:

Berry P. Stewart et al. Plaintiff

vs.

The Board of County Commissioners Union County, Ohio. Defendant

In the Circuit Court Union County, Ohio.

For reply to the Amended Answer of the defendant filed herein on the 5th day of March 1891, plaintiffs say they admit that the specifications for said road contained the condition designated therein as Section No. 6 and as set out in defendants said amended answer, but they deny each and every other statement and allegation therein contained, and renew the prayer of their petition.

Powell, Owen, Ricketts & Black.
Attorneys for Plaintiff.

The State of Ohio,
Franklin County ss:

Thomas Ricketts being duly sworn says: that he is one of the attorneys of record in the above entitled cause; that the facts above stated are within his personal knowledge, and that the same are true as he verily believes.

Thos. H. Ricketts.

Sworn to by the said Thomas H. Ricketts and by him subscribed in my presence this 4th day of February, 1892.

(Seal) Robert L. Gilliam, Notary Public.

Entry

Afterward, on the 25th day of February, A. D. 1892, an Entry was made on the Journal by the Clerk of said Court:

92 Berry P. Stewart et al
vs.
The Board of County Commissioners of Union County, Ohio.

Journal 1, Page 139.

This day this cause came on to be heard upon the issues joined between the parties, and the evidence introduced by both parties, and was argued by counsel; and the Court being fully advised in the premises find the equities of the case to be with the defendants, and that the petition of plaintiffs is not sustained by the evidence and should be dismissed with costs.

It is therefore considered, adjudged, and decreed that the injunction heretofore granted in this case be dissolved, and the petition dismissed, and that the plaintiffs pay the costs of this action herein taxed at $--- except the costs heretofore adjudged against the defendants. To which findings, rulings and judgment of the Court the plaintiffs by their counsel except.

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Pleas continued and held at the Court House in Marysville within and for the County of Union, in the Third Judicial Circuit of the Circuit Court of the State of Ohio, before the Honorable Thomas Beer, John J. Moore, and Henry M. Seney Judges of said Court, of the Term of February, towit, on the 23rd day of February in the year of our Lord one thousand eight hundred and ninety-two. Heretofore, towit: On the 1st day of February 1890, an Appeal Bond was filed with the Clerk of said Court which reads as follows, towit:

Appeal Bond

Know all men by these presents: That Berry P. Stewart, James Sweeney, Landon Bishop and John G. Woerner are held and firmly bound unto the State of Ohio, for the use of Union County in the penal sum of Five hundred ($500.00) dollars to the payment of which well and truly to be made we do hereby jointly and severally bind ourselves, our heirs, executors and administrators.

Sealed with our seals and dated this 27th day of January 1890. The condition of the above obligation is such that whereas the said Berry P. Stewart, Abraham Brobeck and John G. Woerner et al (Beverly Depp and Alpheus Geeder refuses to join in the appeal) has taken an appeal from a certain judgment rendered against them and in favor of the said Commissioners of Union County, Ohio, in the Court of Common Pleas within and for the County of Union and State of Ohio, at the November Term 1889 in case No. 5-5-91 entitled Berry P. Stewart et al against County Commissioners to the Circuit Court of said County:

Now if the said Berry P. Stewart, Abraham Brobeck and John G. Woerner shall prosecute their appeal to effect without unnecessary delay and shall abide and perform the order and judgment of said Circuit Court and pay all damages and costs which may be awarded against them the said Berry P. Stewart, Abraham Brobeck and John G. Woerner then this obligation shall be void; otherwise it shall remain in full force and virtue in law.

Berry P. Stewart.
James Sweeney
Landon Bishop
John Woerner

In presence of
J. C. Sweeney
L. Woerner.

The execution of the above Undertaking and the sufficiency of the surities therein approved by me this 1st day of February. A. D. 1890.

(Seal) R. McCleary, Clerk.

Afterward, on the 6th day of September A. D. 1890, a Transcript was filed with the Clerk of said Court, towit:

Berry P. Stewart et al. Plaintiff
vs.
The Board of County Commissioners of Union County, Ohio. Defendants

The State of Ohio.
Union County
In the Court of Common Pleas.

July 17th, 1888. Journal 14, Page 517.

This day came the plaintiff by his attorneys, and on his motion and affidavits herein filed, and on good cause shown, and it appearing to me that at this time there is no Supreme or Common Pleas Judge in said County, it is ordered that an injunction be issued herein enjoining the defendant from taking any steps or doing any further act or thing whatever towards the collection of any of the assessments made upon their lands for the construction of said gravel road, as prayed for in said petition, until the further order of the Court of Common Pleas or a Judge thereof or otherwise dissolved by due course of law, upon the plaintiffs executing and undertaking in the sum of $300.00 conditioned according to law, with sureties to be approved of by the Clerk of the Court of Common Pleas. Leonidas Piper, Probate Judge.

Wednesday December 5th, A. D. 1891. Journal 14, Page 567

This day this cause came on to be heard upon the demurrer of the defendants to the petition of plaintiff, and was argued by counsel, and the Court being fully advised in the premises do find said demurrer well taken, and sustain the said demurrer and dissolves said injunction.

Thereupon plaintiffs asked and obtained leave to amend their petition by January 2nd, A. D. 1889 and cause continued.

April 4th, A. D. 1889. Journal 15, Page 91.

This day this cause came on to be heard upon the demurrer of the defendants to the amended petition of plaintiffs, and was argued by counsel, in consideration whereof the Court find said demurrer to be well taken and sustains the same. To all of which rulings and decisions the plaintiffs then and there excepted. Leave to amend petition in 20 days from the rising of the Court.

January 19th, A. D. 1889. Journal 15, Page 136.
In Probate Court.

Now on this 19th day of January, A. D. 1889, came the plaintiffs by Powell, Ricketts and D. W. Ayers, their attorneys and it being made to appear that there is now no Common Pleas Circuit or Supreme Judge within said County, the motion of the plaintiff for a temporary injunction came on and was heard upon the petition of the plaintiff and the affidavits therein filed, and after hearing the arguments of counsel and being fully advised in the premises it is considered and ordered that a temporary injunction be and the same is hereby allowed in this case to restrain the defendant from collecting from the plaintiff or either of them the assessments so levied as in the petition stated against them, as prayed

for in said petition of plaintiffs:

It is further ordered that the clerk of the Court xxxxx of Common Pleas issue summons in this case endorsed, "Injunction allowed," upon plaintiffs giving an undertaking to the said defendants conditioned according to law with security to be accepted by said clerk of the Court of Common Pleas in the sum of $200.00" Leonidas Piper, Probate Judge

Friday November 15th, A.D. 1889. Journal 15, Page 185

This day on motion of plaintiff this cause is passed and delayed until the 27th day of November 1889 and at the costs of the plaintiff, caused by said delay.

It is therefore considered that the plaintiffs pay the costs of said delay herein taxed at $---.

Tuesday January 7th, A.D. 1890. Journal 15, Page 232.

This day this cause came on to be heard upon the pleadings and evidence, and was argued by counsel, on consideration whereof the Court do find the equity of the case to be with the defendants, and that the plaintiffs are not sustained by the evidence and law in the case.

It is therefore considered that the petition of plaintiffs be dismissed at their costs. It is therefore considered that the defendants recover of the plaintiffs their costs herein taxed at $---. Notice of appeal by plaintiffs and their bond fixed at $500.00

The State of Ohio,
Union County ss:

I, R. McElroy, Clerk of the Court of Common Pleas within and for said County, and in whose custody the Files, Journals, and Records, of said Court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal of the proceedings of the said Court within and for said County, and that said foregoing copy has been compared by me with the original entry on said Journal, and that the same is a correct transcript thereof.

In testimony whereof, I have hereunto subscribed my name officially, and affixed the Seal of said Court, at the Court House, in Marysville, in said County, this 6th day of September A.D. 1890.

Seal

R. McElroy, Clerk.

Afterward, on the 23rd day of September A.D. 1890, an Entry was made on the Journal by the Clerk of Court, towit:

Berry P. Stewart et al
vs.
County Commissioners

Journal 1, Page 106.

This day this cause came on to be heard, and was

continued by agreement of the parties.

Afterward, on the 5th day of March A. D. 1891, an Entry was made on the Journal by the Clerk of said Court, towit:

Berry P. Stewart et al

vs.

County Commissioners of Union County, Ohio. Journal 1, Page 116.

This day this cause came on for trial on the Second Amended Petition and the answer thereto and the evidence and thereupon progressed. And this day on motion of the defendants leave is given said defendants to file an amended answer herein instanter and the same is filed accordingly, to which ruling and judgment of the Court plaintiffs except.

And thereupon said cause is continued at the costs of said defendant made at this term.

And it is ordered and adjudged by the Court that the plaintiffs recover of the defendants their costs herein taxed at this term.

And on motion of the plaintiffs leave is hereby given them to plead herein by April 15th, 1891.

Afterward, on the 9th day of March A. D. 1891, an Amended Answer was filed with the Clerk of said Court, towit:

Amended Answer

Berry P. Stewart et al. Plaintiff.

vs.

The Board of County Commissioners of Union County, Ohio. Defendants

In the Circuit Court Union County, Ohio.

93

The defendants, by leave of the Court, amend their answer to the second amended petition of plaintiff filed herein on the 20th day of June 1889 and admit: That plaintiffs and those for whom they sue, reside in Union County, Ohio, and are the owners of lands lying in the bounds of said road improvement, and that said lands were assessed for said improvement. And defendants admit that said Commissioners upon the proper petition, ordered said road improvement to be made, and let the contract for making said improvement, and that the contractor is progressing with the same. And defendants deny that they, or either of them have accepted or paid for said improvement except the one mile graveled part which was built by a separate contract and has been accepted. And defendants deny that said road is now the property of said Union County, and deny that said contractors, or their bondsmen, are discharged or exonerated from any further liability under said contracts. And defendants deny that said County Commissioners have willfully neglected or refused to finish or complete said work, and construct said road according to said contracts and specifications as modified and changed by said engineer and superintendent as hereinafter stated, or

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to require said contractors so to do. And defendants deny that they have left, or intend to leave for all time, or any time, said road rough, defective or incomplete.

The defendants further answering say, that the said written contract and specifications between said County Commissioners and said contractor J. B. Wells, contained a condition and provision in the words and figures following, towit: "Section N.° 6. The right is reserved to make any change in the cutting, filling, number and size of culverts, or any other matters relating to the construction of said road which the superintendent may deem necessary, the sum to be added to or deducted from the contract price on the basis of the original bid." That by virtue of said part of said contract made by the said Commissioners and said J. B. Wells, the contractor, to build said road, the said Commissioners by the Superintendent appointed to supervise the construction of said road, had the right to modify said specifications so as to make a good turn-pike road, and C. S. Lee was appointed engineer with John S. Dodge, one of the said Commissioners to superintend the construction of said road according to law. And it was found by them that the specifications, in order to make a good road, over the ground on which said road was improved, should be modified and changed. And by their authority, the stone that was put in the bottom of said road of a larger size than those mentioned in the specifications in the belief that it would not injure the road, and by the consent of said superintendent the contractor proceeded in the construction of said road, in the manner aforesaid, by placing said larger stones in the bottom of the road. Also by said engineer and superintendent said specifications were modified so as to allow crushed stone of a slightly larger size than one and a half inches through their greater diameter, was placed upon said road they believing that the same would make a better road than the size mentioned in said specifications. That they say all said modifications, changes, and departures from said original specifications, were made in good faith by the said engineer and superintendent with the knowledge of said Commissioners for the purpose of making a good road, and they say the said road is now a better Road than it would have been if said specifications as originally made had been followed in the construction of the same. And they say said plaintiffs have the benefit of a better road than they would have had, if the same had been constructed according to said original specifications. And they say the expense of said construction was not increased by said changes.

And they say said changes were made as aforesaid in good faith for the benefit of the public in whose interest

said road was built, for the purpose of making a better and more solid road. And the Plaintiffs have not been injuriously affected by said changes.

And defendants deny each and every other allegation not herein admitted, and defendants ask to be dismissed with their costs.

Porter & Porter & Robinson
Attorneys for Defendant.

Thomas M. Brannon, one of the defendants being duly sworn says the allegations of the foregoing amended answer are true as he believes.

Thos. M. Brannon.

Sworn to by Thomas M. Brannon before me, and signed by him in my presence this 9th day of March 1891.

R. McClerory, Clerk.

Entry 93

Afterward, on the 27th day of March, A. D. 1891, a motion was filed with the clerk of said Court, towit:

Motion 93. Berry P. Stewart et al Plaintiffs
vs.
The Board of County Commissioners of Union County, Ohio. Defendants

In the Circuit Court, Union County, Ohio.

The plaintiffs move the Court to require the defendant to make its amended answer filed herein on the 5th day of March A. D. 1891 more definite and certain in this, towit:

1st That defendant be required to state whether or not said defendant acting as such Board of County Commissioners at its proper place of doing business and at a general or special meeting or session thereof, after the letting of said contract found it necessary to change or modify said specifications so as to authorize the use of larger stone, and if so whether or not said finding was entered upon the records of said Board of County Commissioners.

2nd: State whether or not said defendant, acting as such Board of County Commissioners, caused to be entered upon the records of said Board any change, alteration or modification of said specifications after the letting of said contract, whereby said contractor or superintendent was authorized to use larger stone in the construction of said road than named in said specifications.

Reply to Amended Answer 93.

E. F. Poppleton &
Powell, Owen, Rickets & Black, Attorneys.

Afterward, on the 22nd day of September, A. D. 1891, a motion was filed with the clerk of said Court, towit:

Motion 93. Berry P. Stewart et al. Plaintiff
vs.
The Board of County Commissioners of Union County, Ohio. Defendants

Circuit Court, Union County, Ohio.

The plaintiffs move the Court to strike out all of that part of the amended answer filed by the defendant herein on the 5th day of March A. D. 1891, commencing with and including the words and figures following towit: "The

defendants further answering say that the said written contract and specifications "on the second page of said amended answer and ending with and including the words and figures to-wit: "And the plaintiffs have not been injuriously affected by said changes" on the fourth page of said amended answer, for the reason that each and all of said allegations and statements therein contained are irrelevant, redundant, improper and contain or afford no defense or answer to plaintiffs petition herein.

E. F. Poppleton

Powell, Owen, Ricketts & Black, Plaintiffs Attorney.

Entry

Afterward, on the 23rd day of September A. D. 1891, an Entry was made on the Journal by the Clerk of said Court, to-wit:

93

Berry P. Stewart et al

vs.

Journal 1, Page 191.

The Board of County Commissioners

This day on motion of plaintiffs leave is granted them to withdraw their motion to make the amended answer of defendants more definite and certain and for leave to make and file a motion to strike out certain matter in said amended answer, and said motion was sustained and said motion to make more definite and certain was withdrawn by plaintiffs, and the said motion to strike out filed by them.

Thereupon said cause come on to be heard upon the motion of plaintiffs to strike out of said amended answer certain matter described and designated in said motion.

And the Court being fully advised in the premises do overrule said motion. And said cause is continued.

Reply to Amended Answer

Afterward, on the 5th day of February A. D. 1891 the following Reply was filed with the Clerk of said Court, to-wit:

Berry P. Stewart et al. Plaintiff

93

vs.

In the Circuit Court

Board of County Commissioners Union County, Ohio.

Union County, Ohio. Defendants

For reply to the amended answer of the defendant filed herein on the 5th day of March 1891, plaintiffs say they admit that the specifications for said road contained the condition designated therein as Section No. 6 and as set out in defendants said amended answer, but they deny each and every other statement and allegation therein contained, and renew the prayer of their petition.

Powell, Owen, Ricketts & Black

Attorneys for Plaintiffs.

The State of Ohio,

Franklin County, ss:

Thomas H. Ricketts being duly sworn says: that he

is one of the attorneys of record in the above entitled cause; that the facts above stated are within his personal knowledge and that the same are true as he verily believes.

Thos. H. Ricketts.

Sworn to by the said Thomas H. Ricketts and by him subscribed in my presence this 4th day of February 1892.

(Seal) Robert L. Gilliam, Notary Public.

Entry

Afterward, on the 25th day of February A.D. 1891, an Entry was made on the Journal by the Clerk of said Court:

92 Berty A. Stewart et al

vs.

The Board of Commissioners of Union County, Ohio. Journal 1, Page 139

This day this cause come on to be heard upon the issues joined between the parties, and the evidence introduced by both parties, and was argued by counsel; and the Court being fully advised in the premises find the equities of the case to be with the defendants, and that the petition of plaintiffs is not sustained by the evidence and should be dismissed with costs. It is therefore considered, adjudged and decreed that the injunction heretofore granted in this case be dissolved and the petition dismissed, and that the plaintiffs pay the costs of this action herein taxed at $-- except the costs heretofore adjudged against the defendants.

To which findings, rulings and judgment of the Court the plaintiffs by their counsel except.

Pleas continued and held at the Court House in Marysville, within and for the County of Union, in the Third Judicial Circuit of the Circuit Court of the State of Ohio, before the Honorable Thomas Beer, John J. Moore and Henry N. Seney Judges of said Court of the Term of February, towit, on the 23rd day of February in the year of our Lord one thousand eight hundred and ninety-two.

Heretofore, towit: On the 19th day of December A.D. 1891, a Transcript was filed with the Clerk of said Court, towit.

The State of Ohio,
Union County, ss In the Court of Common Pleas,
Fleetwood Courtright, Plaintiff
vs. November Term A.D. 1891,
F. M. Taylor, Defendant

Wednesday June 23rd A.D. 1890. Journal 15, Page 333

This day came this cause to be heard on the demurrer of defendant to plaintiffs petition, whereupon the Court being fully advised in the premises do overrule said demurrer, to which ruling of the Court the defendant excepts; and thereupon leave was given defendant to answer by September 1st, A.D. 1890 and cause continued.

Monday November 24th, A.D. 1890. Journal 15- Page 424

This day came the defendant and made affidavit for continuance on account of his witness' sickness; whereupon the Court sustain the motion and continue the case at the costs of the defendant for this term.

Therefore it is considered and adjudged that the plaintiff recover of defendant the costs of this term of Court.

And on application of plaintiff leave is granted plaintiff to file amended petition in twenty days.

Wednesday March 4th, A.D. 1891. Journal 15- Page 493

This day came on this cause to be heard on the demurrer to the plaintiffs amended petition. Whereupon the Court being fully advises in the premises, doth overrule said demurrer, to which defendant excepts.

Whereupon leave was given to the defendant to file answer by the 4th day of April next and this cause continued.

Monday May 25th, A.D. 1891. Journal 15, Page 523.

Leave is given to defendant to file answer instanter and the same is filed.

Monday, November 16th, A.D. 1891. Journal 16, Page 51.

This day came the parties herein, by their attorneys; also came the following named persons as Jurors, towit:

1st. Ruben Stultz	5th. S. W. Dolbear,	9th. A. E. Knox
2nd Ed. Liggett,	6th. John Cochran	10th. Samuel Brightler
3rd H. F. Chapman,	7th. Guido Robinson	11th John Lawson
4th Conrad Weidman	8th. W. F. Jackson	12th. William N. Epps.

who were duly impaneled and sworn according to law; and thereupon this case came on for hearing on the pleadings and the evidence, and after hearing the evidence and the arguments of counsel said cause was continued until tomorrow morning at 8½ o'clock.

Tuesday November 17th, A.D. 1891. Journal 16, Page 55-

This day again came the parties by their attorneys and also came the Jury heretofore impaneled and sworn and the said Jury having heard the charge of the Court retired to their room in charge of the Sheriff for deliberation

Wednesday November 18th A.D. 1891. Journal 16. Page 56.

And now come the said Jury into open Court with their verdict in writing, signed by their foreman, and say: "We, the Jury, being duly impaneled and sworn, find the issues in this case in favor of the plaintiff and assess the amount due to the plaintiff from the defendant at the sum of one hundred and sixty-six $\frac{57}{100}$ dollars.

S. W. Dolbear, Foreman.

Friday, December 4th, A. D. 1891. Journal 16, Page 84

This day came on this case to be further heard on the motion to set aside the verdict and grant a new trial: Whereupon the Court being fully advised in the premises overrule said motion. Wherefore it is considered, ordered and adjudged by the Court that the plaintiff recover of the defendant the sum of one hundred and sixty dollars and fifty-nine cents found his due by the verdict of the Jury and that he recover of the defendant his costs herein expended, taxed to $---. To all of which defendant excepts and ask the Court to allow seal and signed his bill of exceptions and the Court for the purpose of the preparation and signing such bill orders this Journal to be kept open for thirty days from the rising of the Court.

Friday December 18th, A.D. 1891. Journal 16, Page 99.

This day came the defendant and presented his bill of exceptions which are allowed, signed and filed in this case the record having been kept open for that purpose.

The State of Ohio,
Union County ss:

I. R. McCrory Clerk of the Court of Common Pleas, within and for said County, and in whose custody the Files Journals, and Records, of said Court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal of the proceedings of the said Court within and for said County, and that said foregoing copy has been compared by me with the original entry on said Journal, and that the same is a correct transcript thereof.

In testimony whereof, I have hereunto subscribed my name officially, and affixed the seal of said Court at the Court House, in Marysville, in said County this 19th day of December A. D. 1891.

(Seal)

R. McCrory, Clerk.

Afterward, on the 18th day of December, A.D. 1891, a Petition in Error was filed with the Clerk of said Court, towit:

Petition in Error 106

F. M. Taylor, Plaintiff in Error
vs.
Fleetwood Cowdright, Defendant in Error. To the Circuit Court.
The State of Ohio. Union County, ss:

Plaintiff in Error says, that at the November Term 1891 of the Court of Common Pleas of said County of Union, defendant in error recovered a judgment by the consideration of said Court against the plaintiff in error, in a certain action then pending in said Court wherein the plaintiff in error was defendant, and the defendant in error was plaintiff; a transcript of the docket and Journal entries whereof, together with the original pleadings and bill of exceptions in said case is herewith filed. There is error in the said record and proceedings in this to wit: 1st. Said Court erred in overruling the motion of the plaintiff in error for a new trial.

2nd. Said Court erred in its charge to the Jury in said action. 3rd. Said Court erred in refusing to give the charges asked for by the plaintiff in error.

4th. The facts set forth in the amended petition are not sufficient in law to maintain the said action against the plaintiff in error.

5th. Said Court erred in overruling the demurrer of the plaintiff in error to the amended petition.

6th. Said Court erred in overruling the demurrer of the plaintiff in error to the petition.

7th. Facts sufficient to constitute a defense to the answer of plaintiff in error were not contained in the reply.

8th. The judgment was given for the defendant in error when it should have been given for the plaintiff in error according to law. Plaintiff in error therefore prays that the said judgment may be reversed, and that he be restored to all things he has lost by reason thereof, and for all proper relief.

J. D. Cameron,

Attorney for Plaintiff in Error.

The issuing and service of summons in error is hereby waived and the appearance of the defendant in error is entered herein this 15th day of December 1891.

Robinson & Woodburn,

Attorneys for Defendant in Error.

Afterward, on the 25th day of February, A.D. 1892, an Entry was made on the Journal by the Clerk of said Court.

F. M. Taylor, Plaintiff in Error

vs. Journal 1, Page 138.

Fleetwood Courtright, Defendant in Error

This cause come on for hearing upon the petition in error, the transcript, bill of exceptions, and the original papers and pleadings from the Court of Common Pleas Union County and was argued by counsel: on consideration whereof, the Court find there is no error apparent on the record in said proceedings and judgment.

It is therefore considered by the Court that the judgment be and the same hereby is affirmed and that the defendant in error recover from the plaintiff in error his costs

herein expended taxed ℔.

It is further ordered that a Special Mandate be sent to the Common Pleas Court of Union County for execution upon said judgment. To all of which the plaintiff in error excepted.

Pleas continued and held at the Court House in Marysville within and for the County of Union, in the Third Judicial Circuit of the Circuit Court of the State of Ohio, before the Honorable Thomas Beer, John J. Moore, Henry M. Seney, Judges of said Court, of the term of February, towit, on the 13th day of September in the year of our Lord one thousand eight hundred and ninety-two. Heretofore, towit: On the 2nd day of April A.D. 1892 a Transcript was filed with the Clerk of said Court.

The State of Ohio,
Union County ss: In the Court of Common Pleas.
Algernon S. Johnson, Plaintiff
Vs.
William Goff, Defendant.

Thesday, November 24th, A.D. 1891.

This day came the parties by their attorneys, also came the following named persons as Jurors, viz;

1st. H. A. Chapman,	5th. Guido Robinson	9th John Lawson
2nd. S. N. Dolbear,	6th. N. F. Jackson	10th Justus Scheiderer
3rd. Ruben Stultz	7th. A. E. Knox	11th John Jones
4th. Conrad Weidman,	8th. Samuel Beightler,	12th Owen Jackson

who were duly inpaneled and sworn in this case and the hour of adjournment having arrived, this cause was continued until 8 30 o'clock tomorrow morning to which time Court then adjourned.

Wednesday November 25th A.D. 1891.

This day again came the parties by their attorneys also came the Jury heretofore inpaneled and sworn in this case and the trial proceeded. And the Jury having heard the evidence in part, the hour of adjournment having arrived, the further hearing of this case was continued until 8. 30 o'clock tomorrow morning, to which time Court then adjourned.

Thursday November 26th A.D. 1891.

This day again came the parties by their attorneys, also came the Jury heretofore inpaneled and sworn in this case and the trial proceeded. And the said Jury having heard the evidence adduced and the hour having arrived for adjournment This cause was continued until 8. 30 o'clock

tomorrow morning to which time Court then adjourned.

Friday. November 27th. A.D. 1891.

This day again came the parties by their attorneys, also the Jury heretofore impaneled and sworn herein and the trial proceeded and the said Jury having the remaining evidence and the arguments of counsel, the hour of adjournment having arrived this cause was continued until 8 30 o'clock tomorrow morning, to which time Court then adjourned.

Saturday November 28th. A.D. 1891.

This day again came the parties by their attorneys also the Jury heretofore impaneled and sworn herein, and the said Jury having heard the charge of the Court said Jury retired to their room for deliberation.

And now comes the said Jury into open Court with their verdict in writing signed by their foreman and say:

"We, the Jury being duly impaneled and sworn, find the issues in this case in favor of the plaintiff and assess the amount due to the plaintiff from the defendant at the sum of $600.00" Owen Jackson, Foreman.

Saturday December 5th A.D. 1891.

This day this cause came on again to be heard upon the motion of the defendant to have the verdict against him set aside, and a new trial in said cause granted him, and was argued by counsel in consideration whereof the Court overrules said motion.

It is therefore considered and adjudged that the plaintiff Algernon S. Johnson recover of said defendant William Goff said sum of six hundred dollars so found due for plaintiff against defendant, by the verdict of the Jury, and also his costs in this behalf wholly expended. To all of which rulings, decisions, and judgments the defendant then and there excepted, and asked the allowance of signing and sealing of his Bill of Exceptions. And the Journal is ordered to be kept open for the preparation of said Bill of Exceptions.

Monday, January 4th, A.D. 1892.

This day January 2nd, 1892, the Bill of Exceptions was signed and sealed, and Court orders the same filed and made part of the record as prescribed by law.

The State of Ohio. }
Union County ss }

I, R. McCreary, Clerk of the Court of Common Pleas, within and for said County, and in whose custody the Files, Journals, and Records, of said Court are required by the laws of the State of Ohio to be kept, hereby certify that the

foregoing is taken and copied from the Journal of the proceedings of the said Court within and for said County, and that said foregoing copy has been compared by me with the original entries on said Journal, and that the same is a correct transcript thereof.

In testimony whereof, I have hereunto subscribed my name officially, and affixed the seal of said Court at the Court House, in Marysville, in said County this 2nd day of April A. D. 1892. R. McCrory, Clerk

(Seal)

Petition in Error

Afterward, on the 2nd day of April A. D. 1892, a Petition in Error was filed with the clerk of said Court, to-wit:

William Goff, Plaintiff in Error
vs.
Algernon S. Johnson, Defendant in Error

In the Circuit Court of Union County, Ohio.

104

The plaintiff in error says: That at the November Term 1891 of the Court of Common Pleas of Union County, Ohio, defendant in error recovered a judgment, by the consideration of said Court against the plaintiff in error, in an action then pending in said Court, wherein the plaintiff in error was defendant and the defendant in error was plaintiff, a transcript of the docket and journal entries in said case, together with the original pleadings and papers in said action are filed herewith. There is manifest error in said judgment and proceedings to the prejudice of the plaintiff in error in this to-wit:

1st. Said Court erred in overruling the motion of the plaintiff for a new trial.

2nd. The verdict of the Jury is not sustained by the evidence and is against and contrary to the manifest weight of the evidence. 3rd. The said Court erred in its charge to the Jury

4th. The said Court erred in ruling out evidence offered by the plaintiff in error.

5th. The Court erred in admitting evidence against the objection of the plaintiff in error.

6th. The verdict and decision are contrary to law.

7th. Said judgment was given for the said Algernon S. Johnson when it should have been given for the said William Goff.

The plaintiff in error therefore prays that said judgment may be reversed and that he be restored to all things he has lost by reason thereof.

Robinson & Woodburn &
J. L. Cameron Attorneys for Plff. in Error

The issuing and service of summons in error in this case is hereby waived, and the appearance of the defendant in error is entered in this action this 2nd day of April 1892

Porter & Porter & D. M. Ayers
Attorneys for Defendant-in Error

Transcript

Entry

Entry
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Entry

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Afterward, on the 13th day of September A.D. 1892, an Entry was made on the Journal by the Clerk of said Court

William Goff. Plff. in Error

vs.

Journal 1 Page 143.

Algernon S. Johnson Deft in Error

This cause come on for hearing upon the petition in error, the Transcript, and the original papers and pleadings from the Court of Common Pleas of Union County and was argued by counsel; on consideration whereof the Court find there is no error apparent on the record in said proceedings and judgment. It is therefore considered by the Court that the judgment of the Court of Common Pleas be and the same is hereby affirmed with costs; and that the defendant in error recover from the plaintiff in error his costs herein expended taxed at $- - -. And the Court being of opinion that there was reasonable ground for proceedings in error allow no penalty.

It is further ordered that a Special Mandate be sent to the Court of Common Pleas of said County for execution upon said judgment.

Pleas continued and held at the Court House in Marysville within and for the County of Union, in the Third Judicial Circuit of the Circuit Court of the State of Ohio, before the Honorable Henry N. Seney and James H. Day, Judges of said Court of the Term of February, towit, on the 21st day of February in the year of our Lord one thousand eight hundred and ninety-three.

Heretofore, towit; On the 16th day of February A.D. 1893 a Transcript was filed with the Clerk of said Court, towit

The State of Ohio,

Union County, ss: In the Court of Common Pleas.

Lincoln & Kimball, Plaintiff

Transcript

vs.

January Term 1893.

P. L. Coe et al. Defendants.

Saturday, December 5th, A.D. 1891.

This cause now coming on for hearing upon the petition to vacate the judgment heretofore rendered in this Court in case No. 6286, wherein the said Lincoln & Kimball was plaintiff, and the said P. L. Coe and others were defendants, and the evidence. The Court find that judgment was taken in said case upon a Warrant of

Attorney for more than was due the plaintiffs,- when the defendants were not summoned or otherwise legally notified of the time and place of taking such judgment, and that the defendants herein by reason thereof are entitled the judgment and said case vdcated.

And the Court further finding that the said defendants have a valid defense herein, it is therefore ordered that the judgment in the case above named be, and it hereby is vacated, and a new trial of the case is granted with leave granted defendants to answer in ten days from the rising of the Court.

Thursday, September 29th, A.D. 1893.

On motion and showing of the plaintiffs this cause is continued at the costs of the plaintiff. It is the order of the Court that the defendants recover of the plaintiffs the costs of this term of the Court taxed to $- - .

Monday, January 16th, A.D. 1893.

This day came the parties by their attorneys and also came the following named Jurors, towit:

1st George Baldwin,	5th R. B. Middlesworth	9th Jonathan N. Hedges
2nd Philip Bender	6th Daniel C. Parish	10th Hyglas Ketch
3rd Alex Reed	7th S. A. Skidmore	11th James Shirk
4th E. N. Bonnett	8th T. J. Clevenger	12th Thomas M. Brannon

who were duly impaneled and sworn and the trial proceeded.

And the said Jury having heard the evidence in part and the hour of adjournment having arrived this cause was continued until 9 o'clock tomorrow morning.

Wednesday, January 18th, A.D. 1893.

This day again came the parties by their attorneys also came the Jury heretofore impaneled and sworn in this case, and the trial proceeded, and the same Jury having heard the remaining evidence, the argument of counsel and the charge of the Court retired to their room for deliberation.

And now come the said Jury into open Court with their verdict in writing signed by their foreman and say:

"We, the said Jury being duly impaneled and sworn find the issues in this case in favor of the plaintiffs, and assess the amount due to the plaintiff from the defendants at the sum of $208.$\frac{25}{}$. Dated January 18th, 1893.

J. N. Hedges, Foreman.

Tuesday, February 7th, A.D. 1893.

This day came the parties by their attorneys and this cause came on for hearing on the motion of the plaintiffs to set aside the verdict for a new trial herein, and the Court on consideration thereof does overrule the same.

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Bill of Exceptions

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It is therefore considered by the Court that the said plaintiffs recover from the said defendants the said sum of two hundred and eight and $\frac{25}{100}$ dollars as heretofore by the verdict of the Jury found due them with interest from the first day of this term of Court together with their costs herein expended.. To which ruling of the Court in overruling said motion for a new trial the plaintiffs excepts, and pray the Court to sign and seal their Bill of Exceptions which is done accordingly.

Thursday, February 16th, A.D. 1893.

Now comes the plaintiffs and present their Bill of Exceptions, which is allowed, signed and sealed, and ordered by the Court to be made a part of the record of this case.

The State of Ohio,
Union County ss:

I, R. McElroy, Clerk of the Court of Common Pleas, within and for said County, and in whose custody the Files, Journals, and Records, of said Court are required by the Laws of the State of Ohio to be kept, hereby certify That the foregoing is taken and copied from the Journal of the proceedings of the said Court within and for said County, and that said foregoing copy has been compared by me with the original Entry on said Journal, and that the same is a correct transcript thereof.

In testimony whereof, I have hereunto subscribed my name officially, and affixed the Seal of said Court at the Court House, in Marysville, in said County, this 16th day of February A.D. 1893.

(Seal)

R. McElroy, Clerk,
By W. M. Winget, Deputy.

Bill of Exceptions

O. E. Lincoln et al Plaintiffs
vs.
P. D. Coe et al Defendants

In the Court of Common Pleas
Union County, Ohio.

115

Be it remembered that at the January Term A.D. 1893 of the Court of Common Pleas of Union County, Ohio, before the Honorable John R. Price and a Jury; the defendants to maintain the issues on their part gave in evidence to the Jury testimony tending to prove, that the only consideration for the note set forth in the petition was a stallion horse on the dale of the note sold by the plaintiffs to the defendants. That said stallion was an imported horse and was sold to the defendants by the plaintiffs and at the time of said sale as part of the terms thereof the plaintiffs warranted said stallion to be a "sure foal getter" and that the plaintiffs sold and the defendants bought said horse to be put upon the stand for breeding purposes, and for no other purpose. The defendants also offered evidence tending to prove that said horse was not a sure foal getter, and that he got but few colts, and was much below the average

stallion in his foal getting qualities, and that by reason thereof the warranty had been broken, and the defendants were entitled to an abatement from the amount of the note by reason thereof.

The defendants did not offer to prove that any payment had been made on said note, or that there was any other defence thereto except the defense made upon said warranty.

The plaintiff to maintain the issues on their part gave in evidence to the Jury testimony tending to prove, that the said stallion had been imported by them from France a short time before he was sold to the defendants, and that the only means they had of knowing anything about his foal getting qualities was from his appearance, that there was a great variance in the number of foals that an imported stallion would get from a given number of mares, that some imported stallions would not breed at all, some would get but few colts, while others would get a large per cent. of the mares served by them with foal.

That the terms "sure foal getter" and avarage foal getter were very uncertain, and that the only warranty the plaintiffs would or did put upon said horse was that he was "a foal getter" and that they gave no other or further warranty, and the plaintiffs gave evidence tending to prove that the horse did get colts, and that he was in fact a foal getter although he did not get so large a per cent. of mares served by him with foal as some stallions would get.

The plaintiffs also gave in evidence testimony tending to prove, that before and at the time of the sale the defendants inspected said horse, and that they had the same opportunity of knowing his foal getting qualities as the plaintiffs had. The evidence being closed the plaintiffs asked the Court to charge the Jury that if they found from the evidence that the only warranty put upon said stallion was that he was "a foal getter" that in law would mean that he was not a barren horse but that he would in fact get colts, and the per cent of get from a given number of mares was immaterial. And if the horse did in fact get colts the warranty would not be broken, and the plaintiffs would be entitled to recover the amount of the note.

But the Court refused to give the charge as asked or any part of it, but did charge the Jury, that if they found from the evidence that the plaintiffs warranted the stallion to be a "foal getter" that would in law mean that he was a "fair average foal getter" that the term "foal getter" and "sure foal getter" were synonimous terms and both meant the same thing. That if they found that the plaintiffs warranted the stallion to be a "foal getter" in order to fill the terms of the warranty he must be a fair average foal getter" that this did not mean that he must get the largest number of foals from a given number of mares served, nor was it sufficient that he got some colts, or a few colts from a large number of mares

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served, but he must come fairly up to the average per cent whatever that might be, and this must be found from the evidence.

And if the said Stallion was warranted to be a "foal getter" and he was not in fact a fair average foal getter then the warranty would be broken and the defendants would be entitled to an abatement from the amount of the note sued upon, for any damages they may have sustained by reason of the warranty having been broken, and this would be the difference in the value of the horse as he would have been if he had been warranted, and as he actually was. And this was all the charge on the question of warranty. To which refusal of the Court to charge the Jury as asked by the plaintiffs, the plaintiffs then and there excepted, and to the charge to the Jury as given by the Court the plaintiffs then and there excepted, and excepted to that part of the charge wherein the Court charged that a warrant that the stallion was a "foal getter" meant in law the same thing as a warrant that he was a sure foal getter, and excepted to that part of the charge wherein the Court charged that, the terms foal getter and sure foal getter were synonimous terms and meant the same, and excepted to that part of the charge wherein the Court charged the Jury that if they found that the plaintiffs warranted the stallion to be a foal getter, and he was not in fact a fair average foal getter then the warranty would be broken and the plaintiffs excepted to each and every paragraph of the charge given and pointed out their exceptions to the Court at the time. The Jury having returned their verdict giving the defendants a large abatement from the price of said horse, and reducing the amount of said note, the plaintiffs within three days made their motion for a new trial for the reasons in the said motion stated, but the Court overruled the said motion for a new trial, and gave judgment on the said verdict, to all of which rulings, decisions and judgment of the Court the plaintiffs then and there excepted, and the plaintiffs having prepared this their Bill of Exceptions and the same having been submitted to comsel for the defendant as the law requires, and the Court having found this Bill of Exceptions to be true and correct, does allow and approve the same, and it is hereby approved signed and sealed by the Court and ordered to be made a part of the record of this cause.

John A. Price, Judge,
Court of Common Pleas.

(Seal)

Afterward, on the 16th day of February, A. D. 1893, a Petition in Error was filed with the Clerk of said Court. Tovit:

The State of Ohio,
Union County, ss: In the Circuit Court.
Lincoln & Kimball Plaintiff in Error
vs.
P. K. Coe, Defendant in Error.

Plaintiffs in error say; That at the January term A. D. 1893

of the Court of Common Pleas of Union County Ohio plaintiffs in error recovered a judgment by the consideration of said Court, against the defendants in error, in an action pending therein, wherein defendants in error were defendants and the plaintiffs in error were plaintiffs, a transcript of the docket and journal entries in which case together with the original papers and Bill of Exceptions is herewith filed.

The plaintiffs in error say that the said judgment was only for the sum of $208.25 when but for the errors herein set forth the plaintiffs would have obtained judgment for the sum of $1100.00 with its interest from the 14th day of November 1889, and that it was only by reason of the errors herein set forth that the plaintiffs in error were prevented from obtaining the full amount of judgment to which they were entitled according to law, towit: the sum of $1100.00 with its interest from November 14th, 1889.

There is error in the said record and proceedings in this, towit: Said Court erred in overruling the motion of the plaintiffs for a new trial.

2nd. Said Court erred in refusing to charge the Jury as requested by the plaintiffs in error.

3rd Said Court erred in its charge to the Jury on the trial of the said action.

Said judgment was only for the sum of $208.25 when it should have been for the sum of $1100.00 with interest from the 14th day of November 1889 according to law.

Plaintiffs in Error therefore pray that the said judgment may be reversed, and that they be restored to all things they have lost by reason thereof.

Robinson & Woodburn,
J. D. Cameron, Attorneys for Plaintiffs in Error.

The issuing and service of summons in error is hereby waived and the appearance of the defendants in error is hereby entered, this 20th day of February 1893.

J. M. Brodrick
D. N. Ayers, Attorneys for Defendant in Error.

Afterward, on the 21st day of February A. D. 1893, an Entry was made on the Journal by the Clerk of said Court, towit:

Lincoln & Kimball
vs. Journal 1, Page 148.
P. D. Coe et al.

This day this cause came on to be heard upon the petition in error and original papers, and was argued by counsel.

On consideration whereof the Court being fully advised in the premises finds there is no error in the proceedings and judgment of the said Court of Common Pleas.

It is therefore adjudged by the Court that the said judgment be and the same is affirmed. And the Court finding there was reasonable grounds for error assess no penalty.

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It is ordered that a special Mandate be sent to said Court of Common Pleas to carry the judgment of said Court into effect and for execution, and that defendant in error recover of the plaintiffs in error their costs on this proceeding in error expended.

Pleas continued and held at the Court House in Marysville within and for the County of Union in the Third Judicial Circuit of the Circuit Court of the State of Ohio, before the Honorable James H. Day John J. Moore, Henry M. Senby, Judges of said Court, of the Term of October, on the 10th day of October in the year of our Lord one thousand eight hundred and ninety-three. Heretofore, towit: On the 24th day of May A. D. 1893, the following Appeal Bond was filed with the Clerk of said Court, towit:

Appeal Bond

Appeal Bond to Circuit Court.

Appeal Bond

Know all men by these presents; That Burnham C. Bales & Edward E. Cole are held and firmly bound unto Ray G. Morse, Administrator in the penal sum of Two hundred dollars, to the payment of which well and truly to be made we do hereby jointly and severally bind ourselves our heirs, executors and administrators.

Sealed with our seals and dated this 24 day of May 1893. The condition of the above obligation is such that whereas the said The Connecticut Mutual Life Insurance Company has taken an appeal from a certain judgment rendered against it and in favor of the said Ray G. Morse Administrator of Nancy H. Bland, deceased in the Court of Common Pleas within and for the County of Union, and State of Ohio, at the April Term 1893, in case No. 6507 entitled Ray G. Morse Administrator Vs. Matthias Loschky et al. to the Circuit Court of said County. Now if the said The Connecticut Mutual Life Insurance Company shall prosecute its appeal to affect without unnecessary delay and shall abide and perform the order and judgment of said Circuit Court and pay all damages and costs which may be awarded against it the said The Connecticut Mutual Life Insurance Company then this obligation shall be void: otherwise it shall remain in full force and virtue in law.

Burnham C. Bales,
Edward E. Cole.

The execution of the above Undertaking and the

sufficiency of the sureties therein approved by R. McCrory, Clerk. This 24th day of May A. D. 1893.

(Seal) R. McCrory, Clerk.

Transcript 118

Afterward, on the 24th day of May A. D. 1893, a Transcript was filed with the Clerk of said Court, towit:

The State of Ohio,
Union County, ss: In the Court of Common Pleas.
Ray G. Morse Admr. of the Estate
of Nancy H. Bland, Decd. Plaintiff.
vs.
Matthias Loschky et al. Defendant

I, R. McCrory, Clerk of the Court of Common Pleas, within and for the County of Union, do hereby certify that the following Entries and Judgments are truly copied from the Journals of said Court, towit:

Monday, March 13th, A. D. 1893. Journal 16, Page 334.

This day came William Moodie and asked leave to be made party defendant with leave to file answer that he has sold the lands in the petition by Warranty Deed and was for that reason interested in the said cause and thereupon said Matthias Loschky asked that said Moodie be made a defendant with leave to enter his appearance and file answer and thereupon plaintiff objected and the Court sustained said objection and refused to allow said Moodie to file his answer to all of which defendant excepted.

Tuesday April 25th, A. D. 1893. Journal 16, Page 384.

This day came on this cause to be heard on the demurrer of Matthias Loschky and of the The Connecticut Mutual Insurance Company. Whereupon the Court being fully advised in the premises doth overrule each one of said demurrers to which ruling of the Court overruling said demurrers each of said defendants excepted and thereupon leave was granted to said defendants to file their answers which is accordingly done.

Tuesday May 2nd, A. D. 1893. Journal 16, Page 401.

This cause now coming on for hearing was submitted to the Court on the petition, the answer of Matthias Loschky, the answer of The Connecticut Mutual Life Insurance Company and the reply of the plaintiff Ray G Morse, and the evidence, and on consideration whereof the Court find on the issue joined for the plaintiff on the indebtedness set forth in the petition with interest to the first day of this term the sum of $4368.00

The Court further find that in order to secure the payment of the indebtedness described in the petition, towit: the sum of $1000.00 due December 1st, 1873 with interest at six per cent, and one note of $530.00 due

December 1st 1876 at 6 per cent: and one note for $550.00 due December 1877 at 6 per cent. interest, and that the said sums were for purchase money for the lands sold to John R. McDowell by Nancy H. Bland and described in the plaintiffs petition: and that the mortgage described in the plaintiffs petition was executed and delivered by John R. McDowell to Nancy H. Bland and on the premises in the petition described: That said mortgage was duly recorded in Book Eleven (11) Page 617 of the Record of Mortgages of Union County and is a good and valid first lien on the premises described in the petition and that the conditions in said mortgage have been broken.

And the Court further find that said mortgage was uncancelled at the time of the commencement of this action. And it is ordered and decreed that the cancellations appearing on the record of said mortgage be and the same are set aside and held for naught.

And the Court find that the Connecticut Mutual Life Insurance Company hold and have a mortgage on 46 acres additional to the lands described in the plaintiffs petition to secure their indebtedness of $1500.00 against the defendant Matthias Doschky and it is ordered and decreed that the said Connecticut Mutual Life Insurance Company exhaust said additional lands to satisfy their said indebtedness and that thereafter it hold and have subordinate to the mortgage described in the plaintiffs petition as a second mortgage on the premises so described in the plaintiffs petition.

It is therefore adjudged and decreed that unless the defendant Matthias Doschky shall within 10 days from the entry of this decree pay or cause to be paid to the Clerk of this Court the costs of this action and to the plaintiff (D. N. Ayers) herein the sum so found due as aforesaid with interest from the 4th day of April 1893, the defendants equity of redemption be foreclosed and that said premises be sold and that an order of sale issue therefor to the Sheriff of Union County directing him to appraise, advertise and sell said premises as upon execution and report his proceedings to this Court for further order.

Thereupon the defendants gave notice of their intention to appeal from the order and decree of the Court and the Court fix their Appeal Bond in the sum of Two ($200.00) hundred dollars.

The State of Ohio }
Union County, ss: }

I, R. McCrory, Clerk of the Court of Common Pleas, in and for said County, do hereby certify that the foregoing is a true transcript of the Journal Entries of said Court in the above entitled cause, and that the

said Matthias Doschky entered in a written undertaking with approved sureties, conditioned to abide and perform the order and judgment of the Circuit Court, and to pay all moneys, costs and damages which may be required of or awarded against said Matthias Doschky et al. by said Circuit Court: and I further certify, that the papers herewith sent, numbered from one up to thirteen are the original papers and pleadings filed in the above cause of Ray G. Morse, Administrator, plaintiff, against Matthias Doschky et al. defendant.

In Testimony Whereof, I have hereunto set my hand and affix the seal of said Court of Common Pleas, at the Court House in Marysville, Ohio, this 24th day of May A. D. 1893. R. McCrory, Clerk

(Seal)

Entry

Afterward, on the 11th day of October A. D. 1893, an Entry was made on the Journal by the Clerk of said Court.

118 Ray G. Morse Admr.

vs. Journal 1, Page 156.

Matthias Doschky et al

This cause coming on for hearing was submitted to the Court on the petition of the plaintiff, the answer of Matthias Doschky, the answer of the Connecticut Mutual Life Insurance Company, the reply of the plaintiff Ray G. Morse, Administrator &c and the evidence, and on consideration whereof the Court find on the issue joined for the plaintiff, on the indebtedness set forth in the petition with interest to the 10th day of October 1893 (being the first day of this term of said Court the sum of $4741.50

The Court further find that in order to secure the payment of the indebtedness described in the petition, to wit: the sum of $1000. due December 1st, 1875 with interest at 6 per cent: and one note of $550.00 due December 1st, 1876 at 6 per cent. interest and one note for $550.00 due December 1st, 1877 at 6 per cent. interest, and that the said sums were for purchase money for the lands sold to John R. McDowell by Nancy H. Bland and described in the plaintiffs petition; and that the mortgage described in the plaintiffs petition was executed and delivered by John R. McDowell to Nancy H. Bland and on the premises in the petition described. That said mortgage was duly recorded in Book Eleven (11) Page 617, 618 of the Records of Mortgages of Union County, Ohio, and is a good and valid first lien on the premises in the petition described in the petition of the plaintiff and that the conditions in said mortgage have been broken.

And the Court further find that the said mortgage was uncancelled at the time of the commencement of this action; and it is ordered and decreed that the cancellations appearing on the record of said mortgage be and the same are set aside and held for naught. And the Court

find that the Connecticut Mutual Life Insurance Company hold and have a mortgage on 46 acres additional to the lands described in the plaintiffs petition to secure their indebtedness of $1500.00 with interest against the defendant Matthias Doschky, and it is ordered that the said The Connecticut Mutual Life Insurance Company exhaust said additional lands to satisfy their said indebtedness, and that thereafter said Company hold and have subordinate to the mortgage described in the plaintiffs petition as a second mortgage on the premises so described in the plaintiffs petition. It is therefore adjudged and decreed that unless the defendant Matthias Doschky shall within 10 days from the entry of this decree pay or cause to be paid to the Clerk of this Court the costs of this action and to the plaintiff or his attorney herein the sum so found due as aforesaid with interest from the 10th day of October 1893 the defendants equity of redemption be foreclosed and that said premises be sold and that an order of sale issue therefor to the Sheriff of Union County, Ohio, directing him to appraise advertise and sell said premises as upon execution and report his proceedings to the Common Pleas Court of Union County, Ohio, to which Court this cause is remanded for the execution of this order and decree

Pleas continued and held at the Court House in Marysville, within and for the County of Union, in the Third Judicial District of the Court Circuit Court of the State of Ohio, before the Honorable James H. Day, John J. Moore Henry M. Seney Judges of said Court, of the Term of October towit, on the 18th day of October in the year of our Lord one thousand eight hundred and ninety three.

Heretofore, towit; On the 24th day of April A.D. 1893, a Transcript was filed with the Clerk of said Court, towit:

The State of Ohio,
Union County, ss: In the Court of Common Pleas.
Robert B. Robinson, Plaintiff
vs. Transcript of Journal Entries.
Elijah Mitchell, Defendant.

I, R. McCleary, Clerk of the Court of Common Pleas within and for the County of Union, do hereby certify that the following Entries and Judgments are truly copied from the Journals of said Court, towit:

Tuesday April 18th, A.D. 1893. Journal 16, Page 378.

This day came the parties by their attorneys and submitted this cause to the Court upon the pleadings, the plaintiff asking judgment because the execution of the notementioned in the petition is admitted and no sufficient defense thereto set forth. On consideration whereof the Court being fully advised in the premises is of the opinion that the answer does not contain facts sufficient to constitute a defense to the petition, and the said defendant not desiring to answer further, the Court finds that there is due the plaintiff upon the note set up in the petition the sum of one hundred dollars which he is entitled to recover with 6 per cent. interest from July 26th, 1891, amounting to the sum of $10.50 making a total sum due plaintiff at this date of $110.50.

It is therefore considered and adjudged by the Court that the plaintiff recover of the defendant the sum of 110.50 together with his costs in this case expended taxed to $---. To all of which defendant excepts.

The State of Ohio,
Union County ss:

I, R. McCreary, Clerk of the Court of Common Pleas, in and for said County, do hereby certify that the foregoing is a true transcript of the Journal Entries of said Court in the above entitled cause, and that the said Elijah Mitchell entered in a written undertaking with approved sureties, conditioned to abide and perform the order and judgment of the Circuit Court, and to pay all moneys, costs and damages which may be required of or awarded against said Elijah Mitchell by said Circuit Court; and I further certify that the papers herewith sent, numbered from one up to seven, are the original papers and pleadings filed in the above cause of Elijah Mitchell, plaintiff, against Robert E. Robinson, defendant,

In Testimony Whereof, I hereunto set my hand and (Seal) affix the seal of said Court of Common Pleas, at the Court House in Marysville, Ohio, this 24th day of April A.D. 1893. R. McCreary, Clerk

Petition in Error Afterward, on the 24th day of April, A.D. 1893, a Petition in Error was filed with the Clerk of said Court, to-wit:

Elijah Mitchell, Plaintiff in Error
117 vs. Circuit Court of
Robert E. Robinson, Defendant in Error. Union County, Ohio.

The said plaintiff in error claims that there is manifest error prejudicial to him in the record and proceedings of the Common Pleas Court of Union County, Ohio, in this to-wit; 1st. That the Court erred in holding that the words and figures set up in the first cause of defendants answer as follows, to-wit: But denies each and every other allegation therein contained were not complete cause of defense to plaintiffs petition. 2nd. The Court erred in holding

Entry 117

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That defendants second cause of defense set up in his answer was not a complete defense to plaintiffs right to bring an action upon his said note.

3rd. There are other errors prejudicial to plaintiff in error manifest upon the face of the record.

Wherefore plaintiff in error asks that the said judgment and proceedings in error be reversed with costs, and that he be restored to all things he has lost thereby.

J. M. Kennedy & A. H. Wollefrath
Attorneys for Plaintiff in Error.

Entry — Afterward, on the 11th day of October A.D. 1893, an Entry was made on the Journal by the Clerk of said Court.

117 Elijah Mitchell
vs. Journal 1, Page 157.
Robert O. Robinson

This day this cause came on to be heard upon the petition in error of the plaintiff and the answer of the defendant and other exhibits, and the Court being fully advised in the premises and after due consideration thereof do reverse the decision of the Court of Common Pleas herein and remand the same to said Court for further proceedings.

Pleas continued and held at the Court House in Marysville, within and for the County of Union, in the Third Judicial Circuit of the Circuit Court of the State of Ohio, before the Honorable James H. Day, John J. Moore, Henry N. Olney, Judges of said Court, of the Term of October, to-wit, on the 10th day of October in the year of our Lord one thousand eight hundred and ninety-three. Heretofore, to-wit: On the 22nd day of February, A.D. 1893, an Appeal Bond was filed with the Clerk of said Court, to-wit:

Appeal Bond — Appeal Bond to Circuit Court.

Know all men by these presents: That we Charles M. Jones and Albert N. Jones, and George M. Rickard are held and firmly bound unto John Robinson in the penal sum of Fifteen Hundred dollars to the payment of which well and truly to be made we do hereby jointly and severally bind ourselves, our heirs, executors, and administrators.

Sealed with our seals and dated this 22nd day of February 1893. The condition of the above obligation

is such that whereas the said Charles M. Jones and Albert N. Jones has taken an appeal from a certain judgment rendered against them and in favor of the said John Robinson in the Court of Common Pleas within and for the County of Union and State of Ohio, at the January Term, 1893, in case No. 6312 entitled John Robinson vs. Thomas Jones et al to the Circuit Court of said County: Now if the said Charles M. Jones and Albert N. Jones shall prosecute their appeal to affect without unnecessary delay and shall abide and perform the order and judgment of said Circuit Court and pay all damages and costs which may be awarded against them the said Charles M. Jones and Albert N. Jones then this obligation shall be void; otherwise it shall remain in full force and virtue in law.

Charles M. Jones Seal
Albert N. Jones Seal
George W. Rickard Seal

In presence of
Clark Rickard

The execution of the above Undertaking and the sufficiency of the sureties therein approved by Clerk of Court this 22nd day of February A. D. 1893.

(Seal) R. M. Creary, Clerk.

Transcript Afterward, on the 16th day of March A. D. 1893, a Transcript was filed with the Clerk of said Court, to-wit:

The State of Ohio
Union County, ss: In the Court of Common Pleas.
John Robinson, Plaintiff
vs.
Thomas Jones et al. Defendant.

Journal 16, Pages 135, 148, 181, 184, 207, 316

Thursday, February 16th, A. D. 1892. Journal 16, Page 135

This cause is continued with leave to plaintiff to file an Amended Petition by February 27th, 1892.

In Vacation, Monday, April 4th, A. D. 1892. Journal 16, Page 148.

The Court not having convened the plaintiff dismisses Thomas Jones and Miriam Jones from this case, and dismisses this action as to them and pays the costs.

Tuesday, May 3rd, A. D. 1892. Journal 16, Page 181.

This day came this cause on to be heard upon the demurrer of the defendant to the amended petition and was argued and submitted. On consideration whereof the Court being fully advised in the premises does overrule said demurrer. To which ruling the defendant excepted.

Wednesday, May 4th, A. D. 1892. Journal 16, Page 184.

This cause was this day heard on the motion of Thomas Jones to be made a party with leave to answer, on consideration whereof the Court overrule said motion to which ruling said Thomas Jones excepts.

Thereupon the defendant Charles M. and Albert N. Jones asked and had leave to file answer herein within 10 days from

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This date May 4th 1892.

Friday June 24th A. D. 1892. Journal 16, Page 207.

This day came the parties by their attorneys, and this cause came on to be heard upon the demurrer to the defendants answer, and was argued by counsel, and submitted to the Court. On consideration whereof the Court being fully advised in the premises overrules said demurrer as to all matters except the third defense, and as to the third defense the said demurrer is sustained, to which the defendants excepts. Therefore defendant asked and obtained leave of the Court to file amended answer by the day of August 1892, and cause continued.

Tuesday January 24th A. D. 1893. Journal 16, Page 306.

This day came the parties and their attorneys and this cause came on for hearing upon the pleadings, exhibits and evidence, and was argued by counsel and submitted to the Court. On consideration whereof the Court finds that the note in the first cause of action in the amended petition described and was executed for the amount and at the date in said cause of action set forth and at the rate of interest therein stated, and was secured by mortgage conditioned and recorded as set forth in said amended petition, and upon the lands therein described.

That the note in the second cause of action was executed for the amount and at the date in said amended petition set forth and was secured by mortgage, conditioned and recorded as therein stated, and upon the lands therein described. That subsequent to the execution of the said notes and mortgages, towit: on the 10th day of April 1883, the said Thomas Jones and wife conveyed their interest in said land to the said Charles M. Jones and Albert N. Jones. At the time of said conveyance, the said Thomas Jones had only an equity of redemption in said land, and the amount then due upon each of said notes was $4000.00 with interest at 8 per cent. from January 27th, 1883. Both said tracts of land were conveyed by said deed and at the time of receiving said conveyance the said Charles M. Jones and Albert N. Jones had full knowledge of the execution of both said notes and mortgages, and knew the amount of the same, and knew the said Thomas Jones had only an equity of redemption in said land. And as consideration for said conveyance, and as part of purchase money for said lands the said Charles M. Jones and Albert N. Jones assumed and agreed to pay the said mortgage indebtedness, towit: the notes in the petition described.

The said Charles M. Jones and Albert Jones took

possession of said lands and have had the use and enjoyment of them ever since, and they notified the plaintiff that they had assumed the payment of the said notes, and they continued to pay the interest on the same from year to year until the time stated in the amended petition.

The Court finds the equity of the case to be with the plaintiff and that there is due the plaintiff from the defendant Charles M. Jones and Albert N. Jones upon the notes in the first cause of action in the amended petition described, including interest to this date the sum of $4821 73/100 and that the condition of the said mortgage in the said first cause of action set forth has been broken and the plaintiff is by reason thereof entitled to have it foreclosed. The Court further find that there is due the plaintiff from the said Charles M. Jones and Albert N. Jones upon the note in the second cause of action set forth the sum of $55-97 80/100 which sum includes interest to this date. The Court finds that the condition of the mortgages in the said second cause of action described has been broken and the plaintiff is entitled to have the same foreclosed. The Court finds that in assuming the payment of said notes and mortgages they become purchase money and that plaintiffs said claim is prior to any dower rights of the said Ida or Flora Jones.

It is therefore considered ordered and decreed by the Court that unless the said Charles M. Jones, Albert N. Jones shall within five days pay or cause to be paid unto the said John Robinson the said sum of four thousand eight hundred and twenty-one 73/100 dollars with 8 per cent. interest from this date and to the Clerk of this Court the costs of this proceeding, then that an order issue to the Sheriff of this County commanding him to appraise, advertise and sell the lands in the first cause of action in the amended petition described and apply the proceeds to payment of the said sum so found due upon the note in the first cause of action described.

And it is further decreed that unless the said Charles M. Jones and Albert N. Jones shall within five days from this date pay to said plaintiff the further sum of $5-5-97 80/100 with 8 per cent. interest from this date then that an order issue to the Sheriff of said County of Union commanding him to appraise, advertise and sell the lands in the second cause of action in the amended petition described and apply the proceeds of said sale to the payment of the said last named sum so found due upon the second cause of action in the petition.

And it is ordered that said sales be made free of the dower of the said Ida and Flora Jones.

It is ordered that the defendant Charles M. Jones

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and A. Albert N. Jones pay the costs of this proceeding, except ½ of the Stenographer, one-half of which is adjudged against the plaintiff by agreement. To all the findings, orders and judgments aforesaid the defendants at the time duly excepted and filed herein their motion for a new trial of this cause upon the grounds stated therein which motion was by the Court overruled to which the said defendants at the time duly excepted. And also at the time gave notice of their intention to appeal this cause to the Circuit Court of this County and requested the Court to fix the penalty of an undertaking for appeal which the Court fixed at the sum of $13.00.""

The State of Ohio,
Union County, ss:

I, R. McElroy, Clerk of the Court of Common Pleas, within and for said County, and in whose custody the Files, Journals and Records of said Court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal of the proceedings of the said Court within and for said County, and that said foregoing copy has been compared by me with the original entry on said Journal, and that the same is a correct transcript thereof.

In Testimony Whereof, I have hereunto subscribed my name officially, and affixed the Seal of said Court, at the Court House, in Marysville, in said County, this 16" day of March A. D. 1893.

(Seal)

R. McElroy, Clerk.

Afterward, on the 11" day of October A. D. 1893, an Entry was made on the Journal by the Clerk of said Court, to-wit

John Robinson
vs. Journal 1, Page 159
Charles M. Jones et al

Entry 116

This day came the said plaintiff, by J. D. Cameron and J. N. Robinson, his attorneys, and the said defendants by Selwyn N. Owen, and Cole and Bales, their attorneys, and thereupon this cause came on for trial upon the pleadings, the exhibits and the evidence, and was argued by counsel and submitted to the Court. Upon consideration thereof, and upon request of the said plaintiff, the Court states its findings of facts and conclusions of law as follows:

The undisputed facts in this case are that on January 27" 1877, Thomas Jones executed and delivered to the plaintiff his mortgage deed securing the payment of four thousand dollars with interest at the rate of eight per cent. per annum payable annually.

The $4000." was evidenced by a promissory note of the same date conditioned to be paid as stated in the mortgage.

This indebtedness was secured to be paid upon one

hundred and seven acres of land in Union County described in the mortgage.

At the same time and in the same manner Thomas Jones executed and delivered to the plaintiff his other mortgage deed upon real estate described in the mortgage, situate in Union County, being 117 acre tract of land -- and securing two promissory notes, one for $4000. due in two years from date with interest at eight per cent. payable annually, -- and another for $227.40 due in two years without interest. That each of these two mortgages was filed for record on January 30th, 1877. That on the 10th day of April, 1883, the said Thomas Jones, his wife joining in the conveyance, conveyed by deed duly executed, containing covenants of general warranty, both said tracts of land to his two sons, defendants in this suit, Charles M. and Albert N. Jones, for the expressed consideration of $13,794.00 At the same time this conveyance was made Thomas Jones conveyed to his two sons certain other real estate, -- one tract situate in Delaware County, and one in Madison County, -- the former being quite largely encumbered together with some personal property. At the time of these conveyances Thomas Jones was largely indebted, -- being the amount of these mortgages and other indebtedness, aggregating the sum of about $20000.

The Court finds from the evidence offered that on July 1st, 1871, Thomas Jones was indebted to the plaintiff in the sum of $6.000. That from that time to January 27 1877, he paid upon said sum annually interest at the rate of ten per cent. per annum.

That at the date last named the plaintiff assumed payment of indebtedness to Thomas Jones, which, with an increased indebtedness to himself, aggregated in all $11370.55 The $3370.55 secured by mortgage on real estate in Delaware County has been paid.

The two notes of $4000 each -- and now in controversy -- were conditioned to bear interest at the rate of eight per cent. per annum payable annually. At the time of the execution and delivery of the notes and mortgages, to wit: January 27th, 1877, and as part of the transaction, Thomas Jones executed his two notes for $227.40 each one payable in one year without interest and unsecured, -- the other payable in two years, without interest, and secured in the second mortgage described. These notes have been paid.

The Court finds that the consideration for these notes consisted of two per cent. usurious interest -- the two years on the indebtedness for which the several notes amounted to were given January 27th, 1877, making the interest contracted for 10% per annum $160. each year on the $8000.00 for which this suit is brought.

Thomas Jones continued to pay ten per cent. per

annum on the $8000. until July 27th, 1881, from which time for eighteen months thereafter six per cent. per annum was paid by contract between the parties which contract is set out in the reply of said plaintiff signed by John Robinson and which was surrendered to John Robinson at the expiration of eighteen months, said contract was without consideration.

After the expiration of said eighteen months eight per cent. interest has been paid as set forth in the petition and as thereinnamed except a further payment of $120.00 on May 15th, 1891. The usury therefore that we find in these notes is the excess above six per cent. paid upon the $6000. from July 1st '71 to January 27th, '77, the usury being four per cent. each year.

What was then due upon the $6000. indebtedness added to the $2000. would form a new principal and the consideration of the two mortgages for $4000. each. All the interest paid in excess of six per cent. upon this new principal is usurious, and should be applied as payment upon the principal including the $120. payment of May 15th 1891. The Court finds from the evidence that the defendants agreed to pay, in consideration for the land and personal property the indebtedness of the father Thomas Jones and should have the usury that has been paid applied in payment of the principal and the residue will be the amount due upon the mortgages for which the decree should be rendered.

Proceeding therefore, with the accounting prayed for by the parties hereto, the Court find that there is due to the said plaintiff upon the said mortgage indebtedness the sum of sixteen hundred and ten dollars which is the first and best lien upon the lands described in the petition.

It is therefore ordered, adjudged and decreed that upon the failure of the payment of said sum of sixteen hundred and ten dollars with the accrued interest thereon at six per cent. and the costs of this proceeding to be taxed within fifteen days from the entering of this decree, the said premises, or so much thereof as may be necessary to satisfy the charge herein made upon said lands, be appraised, advertised and sold upon execution at law, and the proceeds thereof applied to the payment, first of the costs herein adjudged, and increased costs, and secondly to the sum so found due as aforesaid.

To all and singular the findings of fact and conclusions of law aforesaid, the said plaintiff, by his counsel, at the time duly excepted.

Pleas continued and held at the Court House in Marysville within and for the County of Union in the Third Judicial Circuit of the Circuit Court of the State of Ohio, before the Hon. John J. Moore, Henry K. Seney, James H. Day, Judges of said Court, of the Term of October, Towit, on the 10th day of October in the yedr of our Lord one thousand eight hundred & ninety three

Heretofore, towit: On the 23rd day of July A.D. 1892, a Bond was filed with the Clerk of said Court, towit:

Bond — Appeal Bond to Circuit Court:

110 Know all men by these presents: That Leonidas M. Kenton, B. Kenton, Dibba J. Conklin, R. L. Woodburn and J. N. Robinson are held and firmly bound unto Florence S. Ellis in the penal sum of four hundred dollars, to the payment of which well and truly to be made we do hereby jointly and severally bind ourselves, our heirs, executors and administrators.

Sealed with our seals and dated this 23rd day of July 1892.

The condition of the above obligation is such that whereas the said Leonidas M. Kenton, B. Kenton, Dibba J. Conklin has taken an appeal from a certain judgment rendered against them and in favor of the said Florence S. Ellis in the Court of Common Pleas, within and for the County of Union, and State of Ohio, at the April Term 1892, in case No. 6307 entitled Leonidas Marion Ellis et al vs. Florence S. Ellis et al. to the Circuit Court of said County: Now if the said Leonidas M. Kenton, B. Kenton, Dibba J. Conklin, shall prosecute their appeal to effect without unnecessary delay and shall abide and perform the order and judgment of said Circuit Court, and pay all damages and costs which may be awarded against them the said plaintiffs then this obligation shall be void; otherwise it shall remain in full and virtue in law.

(Seal) R. L. Woodburn, Leonidas M. Kenton
B. Kenton, Deba J. Kenton,
Benjamin B. Harrington, J. N. Robinson.

The execution of the above Undertaking and the sufficiency of the sureties thereon approved by me this 23rd day of July A.D. 1892. R. McElroy, Clerk of Court.

Article of Agreement — Article of
110 — B. Kenton

Afterward, on the 23rd day of July A.D. 1892, a Transcript was filed with the Clerk of said Court, towit:

The State of Ohio,
Union County, ss: In Court of Common Pleas,
L. M. Kenton, et al
vs. Transcript of Journal Entries.
Florence Ellis et al

I, Robert McElroy, Clerk of the Court of Common Pleas, within and for the County of Union, do hereby certify that the following Entry and Judgment is truly copied from the Journal of said Court, towit:

Friday, July 24th, A.D. 1892. Journal 16, Page 208.

This day came on this cause to be heard on the petition of the plaintiff, and the answer of defendants, and the reply of the plaintiffs, and of the evidence produced by the parties; whereupon the Court being fully advised in the premises do find for the defendant Florence Ellis, and it is therefore considered, ordered and decreed by the Court that the plaintiffs' petition be, and the same is hereby dismissed and that said Florence Ellis recover of the plaintiffs her costs herein taxed to $---. Whereupon plaintiffs gave notice of their intention to appeal the case to the Circuit Court and asked the Court to fix the amount of the Appeal Bond: which the Court fix at $400.00

The State of Ohio,
Union County, ss

I, R. McClerory, Clerk of the Court of Common Pleas, in and for said County, do hereby certify that the foregoing is a true transcript of the Journal Entry of said Court in the above entitled cause, and that the said L. M. Kenton et al entered into a written undertaking with approved sureties, conditioned to abide and perform the order and judgment of the Circuit Court, and to pay all moneys, costs and damages which may be required of or awarded against said L. M. Kenton et al by said Circuit Court; and I further certify, that the papers herewith sent, numbered from one upto 10, are the original papers and pleadings filed in the above cause of L. M. Kenton, B. Kenton, Dibba J. Conklin, plaintiff, against Florence Ellis et al. defendant.

In Testimony Whereof, I hereunto set my hand and affix the Seal of said Court of Common Pleas, at the Court House in Marysville, Ohio, this 23rd day of July A. D. 1892.

(Seal)

R. McClerory, Clerk.

Article of Agreement

110

Afterward, on the 10th day of October, A. D. 1893, the following Article of Agreement was filed with the Clerk of said Court, towit:

Leonidas Marion Kenton
B. Kenton, and Dibba J. Conklin — Court of Common Pleas and
vs. Plaintiff — Circuit Court.
Florence S. Ellis, J. S. Ellis, et al. — Union County, Ohio.
Defendants.

The parties Herein this day settle the following branch and issue in said case as follows, towit:

The plaintiffs, and the defendants, excepting Florence S. Ellis, and J. S. Ellis, agree with said Florence S. Ellis and J. S. Ellis, to withdraw, abandon, and dismiss all of said cause relating to the deed made by Arthur T. Kenton to Florence S. Ellis, on the 15th day of December 1891, for so much of the Kenton farm in Jerome Township, Union County, Ohio, as lies north-east of the Marysville and California gravel road, and for a more particular description reference is made

to said deed. And we agree to dismiss and abandon all the issue made in said cause relating to the setting aside of said deed, and relating to the partition, asked for as to said tract of land, hereby abandoning said issue as to said tract of land so conveyed and the partition of the same,

And as to said issue said cause is dismissed. But the cause is still to remain, so far as it asks the partition of the balance of the land still remaining in Union and in Hardin Counties. In consideration of the above settlement, and abandoning said issue the said Florence S. Ellis and the said J. S. Ellis hereby agree to pay all the costs made in said cause upon the tridl of the issue now abandoned, and they are to pay all costs made in said cause, except so much thereof as belongs to the partition case exclusively, excepting that the costs already paid in the taking of Depositions, are not included in this settlement, the same being already paid. And partition of the premises described in Plaintiffs petition, is to be proceeded with leaving the tract conveyed to Florence S. Ellis out of the order of partition according to this settlement. And the Court having jurisdiction may make its order according to this settlement

In Witness Whereof, the parties hereto have hereunto set their hands and seals this 2nd day of March, A. D. 1893.

(Signed) L. M. Kenton, Jennie Kenton [Seal]
B. Kenton, B. B. Warrington [Seal]
Deba J. Conklin, Charley Conklin [Seal]
Florence Ellis, J. S. Ellis [Seal]

I hereby certify that L. M. Kenton, Jennie Kenton, B. Kenton, B. B. Warrington, Deba J. Conklin, Charley Conklin did voluntary sign this Agreement in my presence.

B. Kenton,

Afterward, on the 10th day of October A. D. 1893, an Entry was made on the Journal by the Clerk of said Court.

L. M. Kenton et al

vs. Journal 1, Page 134.

Florence S. Ellis et al.

This day came the parties and filed their written contract which is ordered to be made a part of the record.

Whereupon the Court order that so much of this cause as seeks to set aside the deed made by Arthur T. Kenton to Florence S. Ellis described in plaintiffs petition be and the same is hereby dismissed as provided in said agreement filed. And thereupon as to the balance of the land in the petition described the Court find that the said plaintiff are each tenants in common with each other and with Florence S. Ellis and the heirs of Etta Warrington deceased, who left her husband Benjamin B. Warrington still living and that they are entitled to partition of said balance of

said land in the proportions hereinafter mentioned towit: Leonidas Marion Kenton one-fifth part: B. Kenton one-fifth part: Deba J. Conklin one-fifth part: Florence S. Ellis one-fifth part: Alice Warrington one-fifteenth part: William Warrington one-fifteenth part: and Florence E. Warrington one-fifteenth part thereof. Therefore it is ordered by the Court that said Florence S. Ellis pay the costs of Court to this time and made on said issue hereby settled excepting all costs made on the partition alone, and except costs already paid on deposition, and that the Sheriff by of this County by the oaths of John M. Robinson, Marion Hopkins, and George M^c Peck three disinterested freeholders not of kin to either party of the vicinity of said lands make partition of said balance of said land and set off to said Leonidas Marion Kenton and B. Kenton and Deba J. Conklin, and Florence S. Ellis each the one-fifth of the same and to said Benjamin B. Warrington his dower of one-third of one-fifth of said balance and subject to said dower that he assign to Alice Warrington, William Warrington and Florence Etta Warrington each the one-fifteenth part thereof and that he make his report to the Court of Common Pleas of this County his proceedings, to which Court this cause is remanded for further proceedings on this order.

Pleas continued and held at the Court House in Marysville within and for the County of Union, in the Third Judicial District of the Circuit Court of the State of Ohio, before the Honorable John J. Moore and James H. Day Judges of said Court, of the Term of February, towit, on the 13^th day of February in the year of our Lord one thousand eight hundred and ninety-four.

Heretofore, towit; On the 29^th day of May A. D. 1893, a Transcript was filed with the Clerk of said Court, towit:

The State of Ohio,
Union County, ss: In Court of Common Pleas.
Dora Miller by William
M^c Elroy, Guardian
vs.
Mary Fatman, James E. Cary
James Smoke, L. A. Bosh,
Isaac Walters.

Transcript of Journal Entries

Transcript 119

I, R. M^c Elroy, Clerk of the Court of Common Pleas

within and for the County of Union, do hereby certify that the following Entries and Judgments are truly copied from the Journals of said Court, to wit:

Monday, April 3rd, A. D. 1893.

This day came John R. Taylor and obtained leave to be made a party Defendant herein: On consideration whereof it is ordered that the said John R. Taylor be made a party defendant herein, and leave is granted to him to file answer herein in ten (10) days.

Tuesday, May 2nd, A. D. 1893.

This day came on this cause to be heard by the Court, whereupon the Court being fully advised in the premises find for the plaintiff that she is entitled to have partition of the premises in said petition described, and that said defendants named as heirs and legatees of said Samuel Walters, deceased, are tenants in common with plaintiff in said land with plaintiff, as in said petition alleged, and that said heirs have secured any debts of said decedent.

Therefore it is considered and ordered by the Court, that partition be made of said land as prayed for in said petition, and it is ordered by the Court that the Sheriff of this County by the oaths of Nathaniel N. Hill, A. S. Mowry and Miller Brithwate three disinterested freeholders of said County make said partition of said land, assigning and setting off to the plaintiff Dora A. Miller the one-eighth part thereof: to Jasper E. Cary, one-fourth part thereof: to Isaac Walters one-eighth part thereof: to James Smoke one-eighth part thereof: to Ella Bosh one-eighth part thereof: to Mary Tatman one-fourth part thereof: each to hold in severalty the part of said lands so set off.

And the Clerk of this Court is ordered to cause such order of partition returnable by the 5th day of June 1893.

Thereupon John R. Taylor Executor of the Will of Samuel Walters deceased filed his motion for new trial which was overruled to which ruling he excepted, and thereupon said Executor gave notice of Appeal to Circuit Court.

The State of Ohio,
Union County, ss:

I, R. McCrory, Clerk of the Court of Common Pleas, in and for said County, do hereby certify that the foregoing is a true transcript of the Journal Entries of said Court in the above entitled cause, and that the said John R. Taylor as Administrator is not required to give bond according to Statute conditioned to abide and perform the order and judgment of the Circuit Court, and to pay all moneys, costs and damages which may be required of or awarded against said appellants by said Circuit Court: and I further certify, that the papers herewith sent, numbered from one up to seven are the original papers and pleadings filed in the above

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cause of Dora Miller by her Guardian, plaintiff, against Mary Tatman et al. defendants.

In Testimony Whereof, I hereunto set my hand and (Seal) affix the Seal of said Court of Common Pleas, at the Court House in Marysville, Ohio. This 29th day of May A.D. 1893. R. M^c^ Cerory, Clerk.

Afterward, on the 9th day of February, 1894, a Motion was filed with the Clerk of said Court, towit,

Motion 119 Dora Miller by Guard. vs. Mary Tatman et al.

Circuit Court, Union County, Ohio

The plaintiff moves the Court to dismiss this appeal for the following causes: 1st. Said John R. Taylor gave no bond or undertaking for the appeal.

2d. No proper notice and entry as to undertaking for appeal was made in the Court of Common Pleas.

3d. The said Taylor as Executor of the Will was not a necessary party to this action and came in by leave of the Court on his own motion and has no interest in the merits of the case which would justify the Court to permit him to appeal this case.

4th. There are other defects in said appeal for which it should be dismissed.

Robinson & Woodburn
Attorneys for Plaintiff.

Afterward, on the 13th day of February, A.D. 1894, an Entry was made on the Journal by the Clerk of said Court

Dora Miller by Guard. vs. Mary Tatman et al.

Journal 1, Page 163.

This day came on this cause to be heard on the motion of plaintiff to dismiss the appeal. Whereupon the Court being fully advised in the premises do find for the plaintiff on the motion and therefore it is ordered by the Court that the appeal in this cause be and the same is dismissed, to all of which John R. Taylor excepts.

It is therefore ordered that a Special Mandate issue to the Court of Common Pleas to carry out its order of partition the same as if said appeal had not been taken.

Pleas continued and held at the Court House in Marysville, within and for the County of Union in the Third Judicial Circuit of the Circuit Court of the State of Ohio, before The Honorable John J. Moore, James H. Day Judges of said Court of the Term of February, towit, on the 13th day of February in the year of our Lord one Thousand eight hundred & ninety four.

Heretofore, towit: On the 3d day of October A.D. 1893 a Transcript was filed with the Clerk of said Court, towit:

The State of Ohio
Union County ss: In the Court of Common Pleas.
James T. Black, Receiver
vs. Certified Copy of Journal Entries
James N. Robinson Admr.

Transcript
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Tuesday February 7th, A.D. 1893. Journal 16, Page 320

This day came on this cause to be heard on the demurrer of the said Administrator and the demurrer filed by J. B. Smith and of Lawrence Calhoun, and the Court being fully advised in the premises do sustain each of said demurrers.

Thereupon the plaintiff asked leave of the Court to file his amended petition in 30 days which is granted and this cause is Continued.

Monday June 5th, A.D. 1893. Journal 16, Page 406

This day came on this cause to be heard on the demurrer of J.N. Robinson Administrator to amend petition of the plaintiff. Whereupon the Court being fully advised in the premises sustains said demurrer to which ruling of the Court the plaintiff excepts, and the cause is continued.

Saturday, September 16th, A.D. 1893. Journal 16, Page 432.

This day came the plaintiff and made known to the Court here that since the commencement of this action the said Charles B. Smith one of the defendants herein has departed this life and that one Emery Smith has been duly appointed and is now acting as Administrator of his estate.

Wherefore the said plaintiff moves the Court that such proceedings be had and taken as are necessary to a revivor of this action as against said Administrator.

And thereupon came the said Administrator and waived any formal proceedings and process against him and voluntarily enters his appearance herein as defendant and consents to abide the final judgment in this action.

It is therefore ordered that this action as against Charles B. Smith stand revived as against his said Administrator

Friday, September 29th, A.D. 1894. Journal 16, Page 503.

This day came on this cause to be heard upon the demurrers of James B. Smith, Dawson Calhoun and the Administrator of Charles B. Smith deceased, to the plaintiffs

Amendment to Amended Petition
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amended petition and said demurrers were argued by counsel and submitted to the Court. On consideration whereof the Court being fully advised in the premises sustains each and all of said demurrers. To which ruling of the Court in sustaining said demurrers the plaintiff excepted.

And the plaintiff not desiring to further amend his petition it is considered and adjudged by the Court that the action be and the same is dismissed at the cost of the plaintiff. It is therefore adjudged by the Court that the defendants recover of the plaintiff their costs herein expended and taxed to $--

Thereupon plaintiff gave notice of his intention to appeal this cause to the Circuit Court of said County of Union, and the Court allows said appeal, and the plaintiff having heretofore given bond as Reciever no further bond is required for appeal.

The State of Ohio.
Union County, ss:

I, R. McClerory, Clerk of the Court of Common Pleas, within and for said County, and in whose custody the Files, Journals and Records, of said Court are required by the laws of the State of Ohio to be kept, hereby certify that the fordgoing is taken and copied from the Journal of the proceedings of the said Court within and for said County, and that said foregoing copy has been compared by me with the original entry on said Journal, and that the same is a correct transcript thereof.

In Testimony Whereof, I have hereunto subscribed my name officially, and affixed the Seal of said Court, at the Court House, in Marysville in said County, this 3rd day of October A.D. 1893.

(Seal)

R. McClerory, Clerk.

Amendment to Amended Petition

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Afterward, on the 10th day of October A.D. 1893, an Amendment to Amended Petition was filed with the Clerk, to-wit:

James T. Black as Receiver of
The Plain City Bank, Plaintiff
vs.
James N. Robinson, Administrator
De Bonis Non with the Will annexed
of the last Will & Testament of
Abrah Smith Decd. Defendant

Circuit Court
Union County, Ohio.

Pursuant to the leave of Court heretofore granted in this case, the said plaintiff files this his amendment to the amended petition heretofore filed in this case, and says that in lieu of the following averments in said amended petition, to-wit: "Of said $130000. of the indebtedness of said estate $55000. were paid out of assets of the said estate then in the hands of the said executors" etc. The

plaintiff alleges, what he has discovered the fact to be, that of said $130000. of the indebtedness of said estate $55000. were paid out of assets of said estate of Alvah Smith individually and of the partnership assets of the old Plain City Bank in the following proportion, towit: $21500. were of the individual assets of said Alvah Smith and the residue, towit: $33500. were of the assets of the said partnership comprised of the said Alvah and Charles B. Smith known as the Plain City Bank.

J. L. Cameron & Selwyn N. Owen,
Attorney for Plaintiff.

The State of Ohio,
Union County ss:

Selwyn N. Owen, makes oath and says that he is one of the attorneys of said plaintiff; that the latter is a non-resident of and absent from said Union County; and that the several statements contained in the foregoing amendment are true as he believes.

Selwyn N. Owen.

Sworn to and subscribed in my presence by Selwyn N. Owen this 10th day of October 1893.

(Seal) R. McElroy, Clerk of Court.

Afterward, on the 9th day of February A. D. 1894, a Demurrer was filed with the Clerk of said Court, towit:

James T. Black, Receiver,
vs.
James N. Robinson Admr.

Demurrer

Circuit Court, Union County, Ohio.

121

And now comes the said James N. Robinson Administrator and demurs to the plaintiffs amended petition as amended by his amendment filed October 10th, 1893 by leave of the Circuit Court at its October Term A. D. 1893 and for cause of demurrer says said amended petition as amended by said amendment doth not state facts sufficient to constitute a right of action against said Administrator.

2nd. Said amended petition as amended shows that the plaintiff hath no right to maintain this action.

Robinson & Woodburn,
Attorneys for Administrator.

Afterward, on the 13th day of February A. D. 1894, an Entry was made on the Journal by the Clerk of Court.

James T. Black, Receiver,
vs.
James N. Robinson Admr,

Journal 1 Page 162.

This day came the parties and thereupon this cause came on to be heard on the demurrers of the defendants. Whereupon the Court being fully advised in the premises do sustain the demurrers of the defendant to which action of the Court in sustaining said demurrers the said plaintiff at the time excepted.

And thereupon the plaintiff not desiring to further amend the petition it is ordered and adjudged by the Court that the plaintiffs petition be dismissed and that

the defendants recover of the plaintiff their costs herein expended taxed to $---. To which finding and judgment of the Court the plaintiff also excepts.

Pleas continued and held at the Court House in Marysville, within and for the County of Union of the Third Judicial Circuit of the Circuit Court of the State of Ohio, before the Honorable Henry N. Seney and James H. Day, Judges of said Court, of the Term of February, towit, on the 21st day of February in the year of our Lord one thousand eight hundred and ninety three.

Be it remembered that, heretofore, towit, on the 16th day of February A. D. 1893, the following Transcript was filed with the Clerk of said Court, towit.

The State of Ohio
Union County, ss. In the Court of Common Pleas.
Fleetwood Courtwright, Plaintiff
vs.
L. J. Taylor et al D. M. Taylor, Defendant

Certified Copy of Journal Entries.

Tuesday February 7th, A. D. 1893.

This day came the parties and waived the right of trial by Jury and submitted this cause to the Court.

Whereupon the plaintiff asked the Court to find the conclusion of the Court on the facts found in the case in pursuance of Section No. 5-205 of Ohio Revised Statutes and separate from the conclusions of law of the cause for the purpose of review as provided by said Section if parties desire. Whereupon the Court having heard the evidence and the arguments of counsel and being fully advised in the premises the Court find the following conclusion of facts, towit: By virtue of the provisions of Section 5-205 Revised Statutes the Court has been requested by counsel to state the conclusions of fact found in the case.

In pursuance of the Statute, and the request thereunder, I proceed to make the following finding.

Conclusions of fact found:

1st. In March and February 1886 the defendant L. J. Taylor sold to the plaintiff Fleetwood Courtwright two (2) different lots of promissory notes that had been given for Bohemian Oats and Red Lime wheat.

The oats notes had been given for oats at $10.00 per bushel with the agreement that the seller of the oats would in the following year sell for the makers of the notes

double the amount of oats for which the notes were given at the same price and take notes therefor which notes should go to the makers of the notes less a commission of $2.50 per bushel. The wheat notes had been given for wheat sold at $15.00 per bushel with the agreement that the seller of the wheat would in the following year sell for the makers of the notes double the amount of wheat for which the notes were given at the same price and take notes therefor, which notes should go to the maker of the notes less a certain commission, in some case $2.50 per bushel and in some case $5.00 per bushel. The price at which said grain was sold was fictitious and more than ten times its actual or market value,

2nd. At the time of the sale by the defendant L.J. Taylor of the two (2) lots of notes to Mr. Courtwright, he, Courtwright had knowledge of the consideration for which the notes had been given.

3rd. Of the notes so sold $1300.00 was for what is known as Red Dine wheat, and the remainder for what is known as Bohemian Oats.

4th. The plaintiff did not know at the time he purchased the notes that it was a part of the scheme that such notes should be sold before they became due: nor did he have any intention or purpose at the time he bought the notes to aid the defendant in carrying on said Bohemian Oats or Red Dine scheme.

5th. At the time plaintiff purchased the second lot of said notes, to-wit, March 15th, 1886, in consideration of the purchase by plaintiff, the defendant L.J. Taylor executed a paper which reads as follows: "This is to certify I sold to Fleetwood Courtwright the above notes persons named and I do hold myself responsible if these notes are not collectible and will stand good for the deficiency if there be any.
March 15th, 1886. (Signed) L.J. Taylor.

On the same paper above the foregoing writing was a list of names of the makers of notes purchased by plaintiff, and the several amounts of the notes, but only a few of the names now appear as the paper has been torn off by accident: and I am unable to say from the evidence whether the list included all the notes purchased by plaintiff or not.

6th. At the time the notes sued upon in this case were given, the notes purchased by plaintiff as aforesaid were re-delivered to defendant L.J. Taylor: but they were not purchased by him. The notes sued upon were given in settlement of the written guaranty: and such written guaranty was the consideration for the notes sued upon,

Conclusions of law:

If the consideration for the notes sued

upon, or any part thereof, is illegal, either in the sense of being contrary to sound morals or public policy, or in the sense of being against positive law, the plaintiff must fail upon the whole of the notes; for if the consideration of the notes is illegal, even in part, the whole note is tainted, and void. So that the important question in this case is whether the consideration of these notes sued upon is illegal either in whole or in part. The notes sold by Taylor to plaintiff were void as between the original parties, because the consideration was contrary to sound morals, and against public policy. They were also void in the hands of the plaintiff after he purchased them from Taylor, because when he purchased them he had knowledge of the consideration for which they had been given. The sale of the notes to Courtwright was not illegal, nor was the contract of guaranty, or the consideration therefor illegal. When the notes were sold to Courtwright prior to the Act of May 15th, 1886, the consideration passing to Courtwright was the notes and the guaranty; the consideration passing to Taylor was the money received from Courtwright. There was nothing illegal, in either of the senses before mentioned, in the consideration passing either way.

The consideration for the guaranty was the money received from Courtwright: certainly there was no illegality in that. It seems to me that as to the contract of guaranty and its consideration, at least, there is no taint of immorality or illegality. But although the original transaction was not so tainted, yet if any illegality entered into the consideration of the notes sued upon, the plaintiff must fail in the action. I have found that the plaintiff did not purchase back the oats and wheat notes at the time the notes in controversy were given. If they were given for the purchase price of such wheat and oats notes, they would not be collectible, because on the 15th day of May 1886 a law was passed making it unlawful to sell, barter, or dispose of "such notes."

If the sale of those notes was the consideration of the ones in suit, the plaintiff would necessarily fail in his suit because of the illegality of the consideration.

But in my judgment the transaction was not a purchasing back of the wheat and oats notes, but was simply intended by the parties, and was in fact, a settlement of Mr. Taylor's written contract of guaranty, which was based on a valid and legal consideration. True, the wheat and oats notes were re-delivered to Mr. Taylor; and it may be said that such re-delivery of the notes forms at least a part of the consideration of the notes sued upon; and that if even a part of the consideration

of the notes is illegal, the whole notes are tainted and fall to the ground. I think, however, that the re-delivery of the oats and wheat notes does not constitute any part of the consideration of these notes. M. Taylor had given his written guaranty. When he settled his guaranty by giving the notes sued upon, the title to the wheat and oats notes reverted to Taylor, by operation of law.

The settlement of the guaranty re-invested him with the title to the wheat and oats notes. When Courtwright re-delivered the wheat and oats notes, he only did what he was legally bound to do, after his claim under the guaranty had been settled; and such re-delivery was not a selling, bartering or disposing of the notes, within the meaning of the Act of May 15th, 1886. I find no illegality in the consideration of the notes sued upon, therefore give judgment in favor of the plaintiff for the amount claimed in the petition".

Whereupon the Court find for the plaintiff and that there is due plaintiff from the defendants on the notes in said petition described the sum of $3058. with eight per cent. interest from this date.

Therefore it is considered ordered adjudged by the Court that the plaintiff recover of said defendants said sum of $3058. with eight per cent. interest from this date together with his costs herein expended taxed to $--

To all the findings, orders, and judgments and decisions aforesaid the defendants at the time duly excepted and filed herein their motion for a new trial of this cause upon the grounds stated therein, which motion was by the Court overruled to which ruling of the Court in overruling said motion for a new trial the defendants then and there excepted, and prayed the Court to sign and seal a Bill of Exceptions which is done accordingly

Thursday, February 16th, A.D. 1893.

Now comes the defendants and present to the Court their certain Bill of Exceptions herein, and it appearing to the Court that the same has been presented to and approved by counsel for the plaintiff, and said Bill of Exceptions being found by the Court to be in all respects true and correct the same is allowed, signed and sealed, and on motion is hereby made part of the record in this case.

The State of Ohio.
Union County, ss:

I, R. McCreary, Clerk of the Court of Common Pleas, within and for said County, and in whose custody the Files, Journals and Records, of said Court are required by the laws of the State of Ohio, to

Petition in Error

Waiver

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be kept, hereby certify that the foregoing is taken and copied from the Journal of the proceedings of the said Court within and for said County, and that said foregoing copy has been compared by me with the original entries on said Journal, and that the same is a correct transcript thereof. In Testimony Whereof, I have hereunto subscribed my name officially, and affixed the Seal of said Court, at the Court House, in Marysville, in said County this 16th day of February A.D. 1893.

(Seal)

R. M. Leroy, Clerk
By W. M. Winget. Deputy.

Afterward, on the 16th day of February A.D. 1893, a Petition in Error was filed with the Clerk of Court, to-wit:

Petition in Error

L. J. Taylor & F. M. Taylor Plaintiff in Error
vs.
Fleetwood Courtwright
Defendant in Error.

To the Circuit Court within & for the County of Union, in the State of Ohio.

114

Plaintiffs in Error say, that at the February Term A.D. 1893 of the Court of Common Pleas of Union County, Ohio, defendant in error recovered a judgment, by the consideration of said Court, against plaintiffs in error in an action then pending therein, wherein the plaintiffs in error were defendants and the defendant in error was plaintiff, a transcript of the docket and Journal Entries, together with the original papers and Bill of Exceptions in which case is filed herewith.

There is error in the said record and proceedings in this to-wit: Said Court erred in overruling the motion of plaintiffs in error for a new trial.

2nd, Said Court erred in its findings of fact.

3rd, Said Court erred in its conclusions of law.

4th, Said Court erred in applying the law to the facts found.

5th, Said judgment and decision was given for the defendant in error, when it should have been given for the plaintiffs in error according to the law of the land.

6th, The said Court erred in rendering judgment in favor of the said Fleetwood Courtwright, and in not rendering judgment in favor of the L. J. Taylor and F. M. Taylor.

The plaintiffs in error therefore prays that said judgment may be reversed, and that they be restored to all things they have lost by reason thereof.

J. D. Cameron
Porter & Porter, Attorneys for
Plaintiffs in Error.

The State of Ohio,
Union County, ss:

Waiver

L. J. Taylor & F. M. Taylor, Plaintiffs in Error
vs.
Fleetwood Courtwright, Defendant in Error

In Circuit Court.

114

The defendant in error hereby waives the issuing and service of summons in error, and enters his appearance herein.

Robinson & Woodburn Attorneys for Defendant in Error.

Afterward, on the 21st day of February A.D. 1893, an Entry was made on the Journal by the Clerk of said Court.

L. J. Taylor & F. M. Taylor

vs.

Fleetwood Courtwright

Entry

Journal 1, Page 148.

114

This day this cause came on to be heard upon the petition in error, and the original papers, and was argued by counsel of both parties. On consideration whereof the Court being fully advised in the premises find there is no error in the proceedings and judgment of said Court of Common Pleas.

It is therefore adjudged by the Court that the said judgment be, and the same is affirmed. And the Court finding that there was reasonable ground for error assess no penalty. It is therefore ordered that a Special mandate be sent to the Court of Common Pleas to carry the judgment of said Court into effect and for execution.

And that the defendant in error recover from plaintiff in error their costs in this proceeding expended and the Bill of Exceptions not to be recorded in the record, to all of which plaintiffs in error except.

Petition in Error

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J-16-P-440 Certified copy of Journal Entries-

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J-16-P-449

Pelas continued and held at the Court House at Marysville within and for the County of Union in the Third Judicial District of the Circuit Court of the State of Ohio before the Honorable John J Moore James H Day and Henry W Seney Judges of said Court October to wit on the 2nd day of October in the year of our Lord One Thousand Eight hundred and ninety four.

Be it remembered that heretofore to wit, on the 22nd day of September A.D. 1894 a Petition in Error was filed with the Clerk of said Court to wit.

The N.Y.L.E. & W. Ry Co. Plaintiff in error

vs

Arthur D Holman Defendant in error

Circuit Court
Union County Ohio.

Petition in Error.

The Plaintiff in error The New York Lake Erie and Western Railway Company avers that at the April Term A. D. 1894 of the Court of Common Pleas of Union County Ohio, by the consideration of said Court the Defendant in Error recovered a judgment against the plaintiff in Error in a certain action then pending in said Court wherein the said Defendant in error Arthur D Holman was plaintiff and the New York Lake Erie and Western Railway Company was Defendants: and that plaintiff in error avers that there is Error in the record and proceedings in said Cause wherein such judgment was rendered in this to wit.

First— The verdict of the Jury was contrary to the Charge of and instruction of the Court of Common Pleas and was also Contrary to the evidence in the case.

Second— The verdict of the Jury was given for the plaintiff below when it should have been given for the defendant according to the evidence in the case and and the law of the land.

Third— The Court of Common Pleas Erred in overruling the motion filed by the Defendant in the Court of Common Pleas to set aside the verdict of the Jury and to grant a new trial—

Plaintiff further avers that a certified Copy of all of the Journal Entries in the Case below is attached to and filed herewith—

Wherefore the plaintiff in Error prays that the said judgment of the Court of Common Pleas may be reversed set aside and held for naught, and that the plaintiff in Error may be restored to all things which it has lost by reason thereof—

D. W. Ayers Atty for plaintiff in error.

Arthur D Holman
vs
New York Lake Erie
and Western Ry Co.

The State of Ohio Union County ss:
In Common Pleas Court April Term 1894.
Journal Vol. 16 & 17. Pages 440, 499, 17, 20 and 87—

J-16-P-440 Certified Copy of Journal Entries—

This day on motion of the Defendant leave was granted it to file answer to Plaintiffs petition in 30 days from September 20th 1893 and Cause continued by agreement—

J-16-P-449

This day this cause is continued upon the motion and showing of the defendant and at its Costs. It is therefore considered that the plaintiff recover of the defendant the costs of this Term taxed at $—

This day came the parties herein by their Attorneys: also came the following named persons as jurors.

over

(1) William Elliott (5) Samuel Westlake (9) G. D. Hawley
(2) Henry Poling (6) Asa Smart (10) Wathen Standalio
(3) John E Hartman (7) Thomas Palen (11) James Shirk
(4) Cris Stiles (8) John Baughman Jr (12) Frank Horton

Who were duly impaneled and sworn according to Law and therefore this Cause came on for hearing on the pleadings and Evidence.

This day again came the parties by their Attornies, and also came the jury heretofore impaneled and sworn, and the trial proceeded and and the said Jury having heard the remaining testimony the argument and Charge of the Court retired to their room in charge of the Sheriff for deliberation, and now comes the said jury into Open Court with their verdict in writing signed by their Foreman and say, We the Jury being duly impaneled and sworn find the issue in the case in favor of the Plaintiff and assess the amount due the Plaintiff from the Defendant at the sum of $135-44 Dated April 25th 1894 } M E Stanals Foreman

J-17-P 34 This day the cause came on again to be further heard upon the motion for a new trial in said Cause, and was argued by Counsel, in consideration whereof the Court overruled said motion to which ruling and decision of the Court the defendant then and there excepted and said Cause coming on to be further heard upon the verdict of the jury it is considered and adjudged that the plaintiff recover of said defendant the said sum of One hundred and thirty five dollars so found plaintiff due by the verdict of the jury and that the plaintiff recover of the defendant his costs herein taxed &c. &-

J-17-P 34 Now comes the defendant and presents to the Court his certain bill of Exceptions which being found by the Court to be true is allowed signed and sealed and on motion is hereby made a part of the Record of this Case.

The State of Ohio
Union County ss. } I J. N. Gosnell Clerk of the Common Pleas Court within and for said County and in whose custody the Files Journals and Records of said Court and required by the State of Ohio to be kept hereby certify that the foregoing is taken and copied from the Journals Sixteen and Seventeen of the Proceedings of the said Court within and for said County and that said foregoing copy has been Compared by me with the original entry in said Journals Sixteen and Seventeen and that the same is a Correct transcript thereof.

In testimony whereof I do hereto subscribed my name and officially and affix the Seal of said Court at the Court House in Marysville in said County this 24th day of September A.D. 1894.

J. N. Gosnell Clerk
By J. A. Gosnell Deply.

J-16-P-167 Current Court

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Vol P- 167 Circuit Court

The New York Lake Erie and Western Ry Co. Plaintiff in Error
vs
Arthur D Holman Defdt in Error

In the Circuit Court
Union County Ohio

This cause came on for hearing upon the petition in error the transcript and the original papers and pleadings from the Court of Common Pleas of Union County Ohio, and was argued by counsel; on consideration whereof the Court find that there is no error apparent on the record in said proceedings and judgment.

It is therefore considered by the Court that the judgment aforesaid be and the same hereby is affirmed, and that the defendant in error recover of the plaintiff in error his costs herein expended.

It is further ordered that a special mandate be sent to the Common Pleas Court of Union County Ohio, for execution upon this judgment.

To all of which findings and judgment the plaintiff in error thereand then excepted.

Pleas continued and held at the Court House at Marysville within and for the County of Union in the Third judicial District of the Circuit Court of the State of Ohio before the Honorable John. J. Moore James H Day and Henry. M. Seney Judges of said Court October Term on the 2nd day of October in the Year of Our Lord One Thousand eight hundred and ninety four.

Be it remembered That heretofore to wit: on the 12th day of March A. D. 1894. a Petition in error was filed with the Clerk of said Court to wit:

No 1233.

The P. C. C. & St L Ry Co. Plaintiff in error.
vs.
Charles Mc Cune Defendant in error.

In the Circuit Court
of
Union County. Ohio.

Petition in error.

The Plaintiff in error. the Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company, avers, that at the January Term A. D. 1894. of the Court of Common Pleas of Union County, Ohio. by the consideration of said Court. the Defendant in error recovered a judgment against the Plaintiff in error in a certain action then pending in said Court. wherein the said Defendant in error. Charles Mc Cune, was Plaintiff and the Pittsburgh, Cincinnati, Chicago, & St. Louis Rail way Company was Defendant. and that Plaintiff in error avers that there is error in the record and proceedings in the said cause.

wherein such judgment was rendered, in this, to wit:

1st. The verdict of the Jury was contrary to law and contrary to the charge and instructions of the Court of Common Pleas, and was also contrary to the evidence in the case.

2nd. The verdict of the Jury was given for the Plaintiff below, when it should have been for the Defendant, according to the evidence in the case and the law of the land.

3rd. The Court of Common Pleas erred in refusing to give the Jury, before the commencement of the argument, the special charge which the Defendant requested the Court to give to the Jury before the commencement of the argument, which special charge is set out in the bill of exceptions attached to and filed herewith.

4th. The Court of Common Pleas erred in overruling the motion, filed by the Defendant in the Court of Common Pleas, to set aside the verdict of the Jury and to grant a new trial.

The Plaintiff further avers that a certified copy of all of the Journal entries in the case below is attached to and filed herewith.

Wherefore, the Plaintiff in error prays that the said judgment of the Court of Common Pleas may be reversed, set aside and held for naught, and that the Plaintiff in error may be restored to all things which it has lost by reason thereof.

By Frank Chance.
Atty. for Plaintiff in error.

Transcript of Journal Entries Circuit Court.

The State of Ohio	In Court of Common Pleas.
Union County S.S.	
Charles McFune.	Plaintiff.
Vs	
The P. C. C. & St. Louis Ry. Company.	Defendant.

I. C. Clerk of the Court of Common Pleas, within and for the County of Union do hereby certify that the following entries and Judgments are truly copied from the Journals of said Court: to wit:

Monday March 13th A. D. 1893.

This day leave was granted the Plaintiff to file Petition herein in 5 days.

Friday, September 29th A. D. 1893.

This day came the parties by their Attorneys, also came the following named persons as Jurors. Viz:

1- Marion
2- Samuel
3- John
4- Jesse D.

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I. R. M for said transcript entitled entered condition of the damage

1- Marion Temple. 5- Bert Thompson. 9- Hugh McAdow.
2- Samuel Warner. 6- W. S. Burgoon. 10- C. D. Judd.
3- John Harris. 7- James Ladow. 11- Alonso Malone.
4- Jesse Williams. 8- G. S. Welch. 12- W. P. Hisey.

Who were duly impaneled and sworn and the said jury having heard the evidence, arguments of counsel and charge of the Court retired to their room for deliberation in charge of the Sheriff.
And now come the said jury into open Court with their verdict in writing signed by their foreman and say:- We the jury being duly impaneled and sworn find the issues in this case in favor of the Plaintiff and assess the amount due the Plaintiff from the Defendant at the Sum of $66.56

W. S. Burgoon. Forman.

Wednesday, January 17th A. D. 1894.
This cause coming on for hearing, on the motion of the Defendant to set aside the verdict, and for a new trial herein, the Court of consideration thereof, overrule the same.

It is therefore considered by the Court that the said Charles McCune recover from the said Pittsburg, Cincinnati, Chicago & St Louis Railway Company the Sum of sixty six and 56-100 dollars as heretofore by the verdict of the jury, found due him, with interest from the 17th day of September 1893. together with his costs herein expended.

And to the finding of the Court the Defendant then and there excepted.

Monday, February 12th A. D. 1894.
Now comes the Defendant and presents to the Court its certain bill of exceptions herein, which, being found by the Court to be true, is allowed signed and sealed and on motion, is hereby made part of the record in this case.

The State of Ohio. } S. S.
Union County.

I. K. McCrory. Clerk of the Court of Common Pleas, in and for said County, do hereby certify that the foregoing is a true transcript of the Journal Entries of said Court in the above entitled cause, and that the said
entered into a written undertaking with approved surety conditioned to abide and perform the order and judgment of the Circuit Court, and to pay all moneys, costs and damages which may be required of or awarded against said

by said Circuit Court; and I further certify, That the papers here with sent, numbered from one up to. are the orginal papers and pleadings filed in the above cause of Charles Mc. Cune. Plaintiff. Against the Pitts burg, Cincinnati, Chicago & St. Louis. Railway. Defendant.

(Seal) In Testimony Whereof, I hereunto set my hand and affix the seal of said Court of Common Pleas, at the Court House in M. Ohio. This 12 Th. day of March A. D. 1874.

R. Mc. Elroy Clerk.

P. C. C. & St. L. Ry Co. Vs Charles Mc. Cune.	Circuit Court of Union County Ohio

Entry

This cause came on for hearing upon the petition in error. The transcript and the original papers and proceedings from the Court of Common Pleas of Union County Ohio. and was argued by counsel; on consideration whereof the Court find there is no error apparent on the record in said proceedings and judgment.

It is therefore considered by the Court That the judgment aforesaid be and the same is hereby affirmed — and that a penalty of 5 per cent penalty be added to the said judgment of the said Court of Common Pleas — and That the Defendant in error recover of the plaintiff in error his costs herein expended and said 5 per cent penalty on said judgment. it is further ordered That a special mandate be sent to the Common Pleas Court of Union County Ohio for execution upon this judgment to all of which findings the plaintiff in error then excepted.

Ayers

Atty for Defts in error.

126

Petition in Error

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Statement by Defts in Error

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Please continued and held at the Court-House at Marysville within and for the County of Union in the Third Judicial District of the Circuit court of the state of Ohio before the Hon. John L Moore, James H Day and Henry W Sims, Judges of said Court Oct. to-wit: on the 2d day of Oct. A.D. (1894) Eighteen hundred and Ninety four.

Be it remembered that heretofore to-wit on the 15th day of June A.D. 1894 a petition in Error was filed with the Clerk of said Court to-wit:

The German Luthuran St. John Church and Congregation.

vs

C.B. Gartner

In the Circuit Court
Union County Ohio.

126
Petition in Error.

The said The German Luthuran St. John Church and congregation plaintiffs in Error complains of the said C.B. Gartner defendant in error for that the said C.B. Gartner at the April Term of the Court of Common Pleas A.D. 1894 for said County of Union, recovered a judgment by the consideration of said Court against the said Plaintiff in error, in a certain action then pending in said court wherein the said C.B. Gartner was plaintiff and the said The German Luthuran St. John Church and congregation was defendants, A transcript of the Docket and Journal Entries together with the original papers in said cause are herewith filed, and made a part hereof; and the plaintiff in Error avers that there is error in said record and proceedings in this to-wit:

1st The Court erred in sustaining the demurrer of the said C.B. Gartner to the Third (3d) ground of defense set up in defendants answer filed March 17th 1894 to the Amended Petition of plaintiff filed January 19th 1894—

2nd The judgment is given for the plaintiff C.B. Gartner when it should have been given for the said, The German Luthuran St. John Church and congregation.

The plaintiff in Error asks that the said findings and judgment may be reversed and set aside, and the plaintiff in Error be granted a new trial, and that it be restored to all things it has lost by reason of said judgment against it—

Rorlin & Rorlin Attys for plaintiff in Error.

I hereby waive the issuing and service of summons in error in this case, and I enter my appearance in said cause as a party defendant thereto.

June 15th 1894. C.B. Gartner by J.L. Cameron and W.T. Hoopes his Attys.

Waiver

Statement by Defts in error

The German Church &c

vs

C.B. Gartner

The sole question in this case is, does Judgment in forcible entry and detainer, bar and after action. Section 6601 of the Revised statutes expressly provides that a judgment under the provisions of that chapter shall not be a bar to any after action brought by either party. The reason for this provision is that the action is of such a limited nature—no appeal being allowed, or error prosecuted except by leave, that it would put important rights in jeopardy to pur- the judgment to be a bar. This view is sustained by our Supreme Court in the following cases. Carroll vs O'Connor 25 O.S.R. 617 — Rothwell vs Winterstine 42 O.S.R 249 J.L. Cameron for Defts

126 Entry

The German Lutheran St. John Church and Congregation
vs
C. B. Gartner

Journal No 1 Page 168.

And afterwards on the 2nd day of Oct. A. D. 1894 the following Journal Entry was filed to wit:

This cause came on for hearing upon the petition in Error, the the Transcript and the original papers and pleadings from the Court of Common Pleas of Union County Ohio, and was argued by Counsel: On consideration whereof the Court find that is no error apparent on the record in said proceedings and judgment:

It is therfore considered by the Court that the judgment aforesaid be, and the same hereby is affirmed, and that the defendant in error recover of the plaintiff in error his costs herein expended.

It is further ordered that a special mandate be sent to the Common Pleas Court of Union County Ohio, for execution upon this judgment.

To all of which findings and judgment the plaintiffs in error then and there excepted.

Attest Ed Porter.

Please continued and held at the Court House at Marysville within within and for the County of Union in the Third Judicial District of the Circuit Court of the State of Ohio, before the Honorable Henry W. Seney, James L. Price and James H. Day Judges of the said Court, February to-wit: On the 19th day of February in the year of Our Lord, One Thousand Eight Hundred and Ninety Five.

Be it remembered that heretofore to-wit: On the 26th day of December A. D. 1895 a Petition in Error was filed with the Clerk of said Court to-wit:

131 Petition in Error

Edwin H. Perkins et al
vs
Alfred Scott et al

In the Circuit Court
of Union County Ohio.

Plaintiffs in error say: that at the September term 1894 of the Court of Common Pleas of Union County Ohio defendants in error recovered a judgment by the consideration of said Court (a jury having been waived) against said plaintiffs in error, in an action then pending therein, wherein plaintiffs in error were plaintiffs and defendants in error were defendants.

A transcript of the docket and journal entries whereof is filed herewith and the original papers herewith presented.

There is error in the said record and proceedings in this to-wit:

1st: Said Court erred in overruling the motion of plaintiffs in Error for a new trial.

2nd: Said Court erred in overruling a demurrer of plaintiffs in Error to the second offense in the answer of the defendants in error.

3rd: Said Court erred in sustaining the demurrer of the defendants

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in error to the second reply of plaintiffs in error to the 2d ground of defense in defendants answer.

4th: Said Court erred in its Findings of Facts.

5th: Said Court erred in its Findings of Law.

6th: Said Court erred in giving judgment for said defendants in error when it ought to have given judgment for said plaintiffs in error as prayed for in their petition.

7th: Said court erred in not rendering judgment in favor of the plaintiffs in its Findings of Facts in the case.

And that there are other errors prejudicial to these plaintiffs in error manifest upon the face of the records.

Plaintiffs in error therefore pray that said judgment may be reversed and that they be restored to all things they have lost by reason thereof.

Jones Lytle & Jones & Wymer Merchant

Attys for Pltffs.

Waiver

I hereby waive the issuing and service of Summons and Voluntary enter my appearance in the within case.

Kinkade, Porter & Orlin attys for the sureties on said Administration Bond of said Luther Liggett

T. J. Arthur Atty. for estate of Absolom Liggett one of the sureties.

Entry

On the 20th day of December a.d. 1894, the following transcript was filed with the Clerk of the Court to wit:

Edwin H. Perkins et al
vs
Alfred Scott et al

In Common Pleas Court
April Term 1894. Journal 16. Page 394.

This day this cause came on to be heard on the demurrer of the Plaintiffs to the answer and cross petition of the defendants Alfred Scott and Francis J Arthur as Administrator of the estate of Absolom Liggett deceased, filed herein on the 28 day of January 1893 and was argued by Counsel, and the Court being fully advised in the premises do sustain said demurrer as to the first ground of defense set up in said answer and the Court overrules said demurrer as to the second grounds of defense in said answer, to which ruling and decision of the Court as to the overruling of plaintiffs demurrer to said second ground of defense the plaintiffs then and there excepted.

Edwin H. Perkins et al
vs
Alfred Scott et al

In Common Pleas Court.
April Term 1894, Journal 16 Page 458

Entry.

This day this cause came on to be heard on the demurrer of the defendants Alfred Scott and and Francis J Arthur as administrator of the estate of Absolom Liggett deceased, to the first reply of plaintiffs to the second ground of defense set forth in the answer and cross petition of the said defendants filed herein, on the 16th day of June 1893, and was argued by counsel and the Court being fully advised in the premises do sustain said demurrer. To which ruling and decision of the Court the plaintiffs then and there excepted.

Entry

Edwin H Perkins et al
vs
Alfred Scott et al

In Common Pleas Court
April Term 1894. Journal 17 Page 9

This day came the parties and by consent submitted this cause to the Court to find the amount due the plaintiffs from the defendants on the pleadings:
Thereupon the Court find the amount not denied in said answer to be $ 344.98 and interest thereon from the 25th day of June A. D. 1894 Amounting to $ 381.92.
Therefore it is considered and adjudged by the Court that the plaintiffs recover from the said defendants said sum of Three hundred and Eighty one and 92/100 Dollars the said amount not denied by the plaintiffs to be due as to the amount denied by said defendants Alfred Scott and T. J. Arthur as Administrators of Absolom Liggett. this cause is continued on the motion of the said defendants and at their costs of this term.

Entry

Edwin H Perkins et al
vs
Alfred Scott et al

In Common Pleas Court
September Term 1894. Journal 17 Page 46.

This day on motion it was ordered by the Court that W. W. Merchant be made party plaintiff in above case as Administrator de bonis non of Abner Liggett deceased, and that the judgment of $ 344.98 and interest thereon from the 25th of June 1894 heretofore rendered at this term of Court against defendants Alfred Scott and the Administrator de bonis non of Absolom Liggett deceased be paid to said Merchant as such Administrator.

Entry

Edwin H Perkins et al
vs
Alfred Scott et al

In Common Pleas Court
September Term 1894. Journal 17 Page 111.

Findings and judgment of Costs.

The parties having waived a jury this cause was submitted to the Court upon the issue joined between the plaintiffs and the answering defendants Alfred Scott and Francis J Arthur Administrator of the estate of Absolom Liggett deceased, and one of the parties to the suit having requested that the Court state in writing the conclusions of fact found, separate from the conclusion of law;
The Court herein states said conclusions of fact and conclusions of Law, separately, as follows to wit:

Conclusions of Facts.

At the time of the execution of the Administrators Bond sued upon in plaintiffs petition Luther Liggett was insolvent and remained insolvent until the time of his death.
At the time said Bond was given and for some time thereafter, said Luther Liggett was in good credit, and was able to, and did borrow money and carry on quite an extensive business,

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Motion for New Trial

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and had a large amount of property. but at the time of executing said bond his property was insufficient to pay his debts:
and at no time after giving said bond was his property sufficient to pay his debts.

Conclusions of Law:

Luther Liggett being insolvent at the time of the execution of said Administrators bond and remaining insolvent from that time until his death, his sureties on said Administrators bond are not liable for the private indebtedness of Luther Liggett to the estate of Abner Liggett deceased.

The finding and judgment of the Court is in favor of said answering defendants and against the plaintiffs for costs.

John A Price
Judge of Court of Common Pleas.

It is therefore considered and adjudged by the Court that said answering defendants Alfred Scott and Francis J Arthur Administrators of the Estate of Absolom Liggett deceased go hence without day and recover of the plaintiffs their costs herein expended taxed at $
To all of which findings of law and fact and judgment and orders of the Court the plaintiffs then and there excepted.

Motion for New Trial.

Edwin H Perkins et al
vs
Alfred Scott et al

In Common Pleas Court
September Term 1894. Journal 17 Page 112

Now comes the plaintiff and move the Court to set aside the verdict, findings and judgment of the Court and for a new trial in this case for the following reasons.
First- Because the Court erred in overruling the demurrer of the plaintiffs to the second defense of defendants answer.
Second- Because the Court erred in sustaining the defendants demurrer to the first reply of plaintiffs to the second ground of defense in defendants answer.
Third- Because the findings of the Court are not in accordance with the facts.
Fourth- Because the facts found by the Court are not sustained by sufficient evidence.
Fifth- Because the findings of facts by the Court are manifestly against the weight of the evidence.
Sixth- Because the Court erred in its findings of facts.
Seventh- Because the Court erred in its findings of the law.
Eighth- Because the decision of the Court is contrary to law.
Ninth- Because of errors of law occurring at the trial and excepted to by plaintiffs at the time.
Tenth- Because under the pleadings and the facts as found by the Court under the law judgment should have been rendered for the plaintiff and against the defendant Alfred Scott.

Ending

Edwin H Perkins et al
vs
Alfred Scott et al

In Common Pleas Court
September Term 1894. Journal 17 Page 109

This day this cause on to be heard on the motion for a new trial, and was argued by counsel, and the Court being fully advised in the premises, do overrule the same, to which plaintiffs excepted.

Edwin H Perkins et al In Common Pleas Court
vs September Term 1894 Journal 17 Page 110
Entry Alfred Scott et al

Now comes the plaintiffs and presents to the Court this certain Bill of exceptions herein which being found by the Court to be true, is allowed signed and sealed and on motion is hereby made part of the record of this case.

Edwin H Perkins et al Circuit Court Union County, Ohio.
vs
Entry Alfred Scott et al

This cause came on for hearing upon the petition in error the transcript, and the original papers & pleadings from the Court of Common Pleas, and was argued by Counsel; and, on consideration thereof, the Court find that there is error apparent upon the record in the proceedings of said Court to the prejudice of the plaintiff in error.

It is therefore considered by the Court that the judgment rendered by the said Court below be reversed and held for naught, and that the plaintiffs in error recover their costs herein expended, taxed to dollars.

And the Court further ~~find~~ proceeding to render such judgment as the said Common Pleas Court should have rendered, find for the plaintiffs, and find there is due from the defendants to plaintiffs, a balance on the cause of action set forth in the plaintiffs petition, including interest up to the first day of this term of Court, to wit: February 19th 1895 the sum of $1395.97.

It is therefore considered by the Court that the plaintiff W. W. Merchant as administrator de bonis non of the estate of Absolom Liggett deceased, recover from the said defendant Alfred Scott, and the defendant Thomas Arthur as Administrator de bonis non of the estate of Absolom Liggett deceased, to be levied of the property of said decedents estate, and Alfred Scott the sum of $ together with the costs herein expended, taxed to $

It is further ordered that a special mandate be sent to the Court of Common Pleas for the execution of this judgment.

To all of which ruling and judgment, the defendants in error did then and there and at the time excepted.

October 14th The following Entry from the Supreme Court of Ohio was filed

The State of Ohio City of Columbus.

Supreme Court of the State of Ohio

Of the Term of January A.D. 1896: To wit. Tuesday, October 6th

#4682 Alfred Scott et al
vs
Edwin H. Perkins et al

Error to the Circuit Court of Union County

Ordered by the Court, upon consent of parties that said cause be and the same is hereby dismissed at cost of Plaintiff in error. Josiah B Allen Clerk of the Supreme Court of the State of Ohio do hereby certify that the foregoing Entry is truly taken and correctly copied from the records of said court to wit from order Book No 15 Page 69. In witness I have hereunto subscribed my name and affixed the seal of said Supreme this Thirteenth day of October A.D. 1896 Josiah B. Allen Clerk
By John B Doime Deputy

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The State of
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Please continued and held at the Court House at Marysville within and for the County of Union in the Third Judicial District of the Circuit Court of the State of Ohio, before the Honorable Henry V. Seney, James L. Richard James H. Day Judges of the said Court, February to wit:

On the 19th day of February in the year of Our Lord, One Thousand Eight Hundred and Ninety Five

Be it remembered that heretofore to wit: on the 15th day of June 1894, a transcript was filed with the Clerk of said Court to wit:

Transcript of Journal Entries, Circuit Court.

The State of Ohio, Union County ss;

Fredrick Kurt | In Court of Common Pleas

127 vs

John L. Thompson |

I, R. McCrory, Clerk of the Court of Common Pleas within and for the County of Union do hereby certify that the following Entries and Judgments are truly copied from the Journals of said Court, to wit;

Tuesday December 6th A.D. 1893. Journal 16, Page 773.

Now comes the plaintiff and asks leave of the Court to file his reply to defendants answer herein within ten days, and such leave is granted by the Court this fifth day of December 1893.

Saturday April 28th A.D. 1894. Journal 17, Page 29.

This day this cause came on to be heard, and each party waiving his right of trial by jury by agreement submitted the same to the Court upon the pleadings of the parties the evidence and arguments of counsel and thereupon the Court being fully advised in the premises do find for the defendant on his first Cause of defense, and it is hereby ordered and decreed by the Court that the deed of conveyance by defendant to the land describe in plaintiffs petition be corrected as prayed for in defendants Answer.

And it is further ordered and considered and adjudged by the Court that defendants go hence and that each party pay his own costs herein expended taxed at $ And thereupon plaintiff moved for a new trial which motion was overruled by the Court and plaintiff then excepted to said ruling and aforesaid finding and order; and also gave notice of appeal and the Court fixed the Appeal Bond at Two Hundred Dollars.

The State of Ohio, Union County ss.

I, R. McCrory, Clerk of the Court of Common Pleas, in and for said County do hereby certify that the foregoing is a true transcript of the Journal Entries of said Court in the above entitled Cause and that the said Fredrick Kurt entered into a written undertaking with approved surety conditioned to abide and perform the order and judgment of the Circuit Court, and to pay all moneys, costs and damages which may be required of or awarded against said Fredrick Kurt by said Circuit Court: and I further certify that the papers hereunto annexed, numbered from one up to are the original papers and pleadings filed in the above cause of Fredrick Kurt Plaintiff, against John L. Thompson, Defendant.

In testimony whereof, I hereunto set my hand and affix the seal of said Court of Common Pleas at the Court House in Marysville, Ohio, this 15th day of June, A.D. 1894. R. McCrory, Clerk.

(seal)

Afterward on the 2nd day of October A.D. 1894, the following Motion to dismiss was filed to wit:

Fredrick Kurt vs John L. Thompson | Circuit Court- Union County Ohio.

127

Motion to dismiss Appeal.

The defendant comes and moves the Court to dismiss the appeal in this case for the reason that it is a cause in which the parties had the right of trial by Jury and therefore not an appealable by Law.

J. E. Robinson & Robinson & Woodburn.

Fredrick Kurt vs John L Thompson | Circuit Court- Union County Ohio.

127

Journal Entry- Journal No. 1 Page 168.

This cause came on for hearing this 2nd day of October A.D. 1894, upon motion of defendant to dismiss the appeal herein, and motion of plaintiff for leave to file an amended reply; and the court upon agreement of Counsel and after due consideration overrules said motion to dismiss appeal and grants leave to plaintiff to amend his reply instanter and continues said cause for hearing next term; on the showing of the plaintiff to which ruling defendant then and there excepted.

Approved

Robinson & Woodburn

Ed J. E. Robinson Atty for Defts.

Fredrick Kurt vs John L Thompson | In Circuit Court of Union County Ohio- Amended Reply.

127

Plaintiff replys to the first defense in defendants answer herein as follows:

1st " He admits that there was paper writing purporting to be such a written agreement as defendant claims; but denies that the deed of conveyance from defendant to him was made and delivered in pursuance of said alleged agreement; and denies that there was any mistake whatever on the part of the parties thereto, or either of them, in delivering and receiving said deed with full covenants of warranty.

2nd " Plaintiff avers that before and at the time he signed said alleged agreement defendant for the purpose of persuading him to so sign, stated to him that the land therein described was clear and unincumbered; that said statement was false and fraudulent, and well known to be such by defendant at the time he made it; that said land was then subject to the pike assessment set forth in plaintiffs petition, which defendant then well knew; that by reason of and relying upon said false and fraudulent statement of defendant, plaintiff was induced to, and did sign, said alleged agreement, and that he would not have so signed had he then known said statement to be false.

3d " Plaintiff avers that one A. A. Allen was employed by defendant to sell defendants farm described in the written agreement

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alleged by defendant; that said Allen then being and acting as defendants agent made said alleged agreement; that said alleged agreement was written upon a printed form; that in said form were the printed words and blank space following:

"The said party of the first part hereby agrees to pay the taxes and assessments on said premises up to and including - - - - - - - - - - - - and the party of the second part agrees to assume and pay all taxes and assessments becoming due thereafter"; that the word and figures "June 1888" were written in said blank space at the time said alleged agreement was written; that defendant was party of the first part and plaintiff was party of the second part in said alleged agreement; that plaintiff is a native of Switzerland and can not speak or understand the English language; that at the time of signing said alleged agreement he did not and could not read or understand the language or words thereof, and did not know the meaning of the word "assessments", and did not know that said word was contained in said agreement, all of which defendant then and there well knew; that at said time defendant and said Allen pretended to explain said writing to plaintiff, and stated that it was all right and in accordance with the verbal agreement arrived at between plaintiff and defendant; that plaintiff of his own knowledge did not then know whether said writing was or was not all right, but relied upon the representations of defendant and said Allen, as was then well known by defendant; that in fact it was not in accordance with the terms agreed upon by plaintiff and defendant; that it was agreed that plaintiff should assume only the general taxes becoming due after June, 1888; that nothing was agreed upon as to assessments; that defendant had before stated and then stated that said land was clear and unincumbered; that plaintiff had then the impression that there were no assessments upon said land; that defendant gave him said impression, and then well knew that he then had it; that the word "assessment" should have been erased from said printed form in the drawing of said alleged agreement; and that it was a mutual mistake and oversight of said Allen and of defendant and plaintiff not to erase said word, and to permit it to remain in said alleged agreement.

4th Because of aforesaid false and fraudulent representations of defendant and of aforesaid mistake in said alleged written agreement, plaintiff refused to be bound by the terms thereof, and on or about March 27th, 1888, defendant went to Cleveland, Ohio, where plaintiff then resided, and there and plaintiff for breach of said alleged agreement and in said proceedings attached plaintiffs money in bank of an amount exceeding $3800.00; and said action was settled by agreement of the parties thereto without trial and dismissed without record; and by the terms of said agreement in settlement of said action it was agreed that the alleged written agreement upon which it was based be thereby rescinded and be delivered up to plaintiff, and said alleged agreement was then and there so rescinded and delivered up by defendant to plaintiff. Plaintiff further states that after the settlement of aforesaid action, he entered into a new and verbal agreement with the defendant for the purchase of the premises described in the

deed herein sued upon, and said deed was delivered by defendant and received by plaintiff in pursuance of said new and verbal agreement, and fully conforms thereto.

Replying to defendants second defense by way of Cross-petition, Plaintiff says that though the Consideration mentioned in the deed is Seventy-four hundred dollars by the terms of said new agreement it was made seventy-one hundred dollars, as defendant states in his answer.

Plaintiff denies that any of said Consideration of Seventy-one hundred dollars remain unpaid, but asserts that he has paid the entire amount of said Consideration money in full.

Wherefore Plaintiff prays that the alleged written agreement claimed by defendant in his answer may be decreed null and void as against him, and that he may have judgment against defendant as prayed for in his petition.

State of Ohio Union County. ss:

Fredrick Kurt, being first duly sworn, says that he is Plaintiff in the above entitled action, and that the facts stated and allegations made in the foregoing pleading are, as he verily believes, true. Fred Kurt.

Sworn to before me and subscribed in my presence this 1st day of October 1894.

(Seal) J. M. Sanders
Notary Public.

In Circuit Court - Union County Ohio.

Fredrick Kurt
vs
John L Thompson
127

Affidavit for continuance.

State of Ohio, Union County ss:

J. F. Millar Attorney for the plaintiff herein, being first duly sworn, states that he cannot with justice to the interests of Plaintiff submit this cause to the Court for hearing upon its merits at this time for the reason that one Fredrick Kurt Jr. who is plaintiffs most important witness, is not present, and his presence cannot be obtained; when last heard of by affiant he was then near Dighton, Michigan; that affiant wrote him about ten days ago, directing said letter to him at said place, and stating therein that his presence would be needed here in this Court this 2nd day of October 1894, to give evidence in this action; that said Fredrick Kurt Jr. is a son of Plaintiff, and that Plaintiff had answered affiant that he would return for this hearing if notified so to do; and as his evidence is important and lengthy, affiant prefers him in person to his deposition; that affiant fully expected him to be present at this time, and cannot account for his absence, unless it be that he, being some distance in the country from Dighton, (and it being but a small place with infrequent mail) has failed to receive said letter in time to [illegible] said Fredrick
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time to permit him to get here; that affiant expects to prove by said Fredrick Kurt Jr. that the parties to this action revoked the written agreement set up as a defense in defendants answer herein, and that the deed mentioned in Plaintiffs petition was delivered upon a new and verbal agreement to which it fully conforms. J. F. Millar

Seal

Subscribed and sworn to before me this 2nd day of October A.D. 1894. George Smith
Notary Public

In Circuit Court Union County, Ohio.

Fredrick Kurt
vs
John L Thompson

127

Journal Entry, Journal 1. -Page. 173

This 20th day of February A.D. 1895, this cause came on for hearing upon the Appeal of Plaintiff from the decree, order and judgment of the Common Pleas Court reforming the deed of conveyance from Defendant to Plaintiff herein and upon, and the Court, upon the pleading, evidence and argument of counsel, and after due consideration, find in favor of Plaintiff and against Defendant, and that sufficient cause is not shown to warrant any information whatever in said deed and that it should not be reformed, to all of which Defendant excepted.

It is therefore considered and adjudged that Plaintiff recover of Defendant his costs herein accruing on account of said appeal taxed at $53.40 to which judgment defendant excepted.

It is further ordered that this action be remanded to the said Common Pleas Court of Union County to abide this decree, and for all further proceedings.

J. F. Millar - Atty for Plf.

Approved J. W. Robinson
Atty for defendant.

Please continued at the Court House at Marysville, within and for the County of Union, in the Third Judicial district of the ~~Third~~ of the Circuit Court of the State of Ohio, before the Hon. Henry H. Selney, James H. Day, Judges of the said Court February Ter wit: On the 19th day of February in the year of our Lord One Thousand Eight Hundred and Ninety four (1895),

Be it remembered that heretofore Ter wit: on the 12th day of November 1894, a Petition in Error was filed with the Clerk of said Court Ter wit:

In the Circuit Court
of Union County Ohio.

Christopher Grubbs
Plaintiff in Error.

132 Vs

Holiday Hay Company
Defendant in Error.

Petition in Error.

The Plaintiff in Error says:

That at the ~~time~~ September Term 1894 of the Court of Common Pleas of Union County Ohio, Defendant in Error rendered a Judgment by the Consideration of said Court against the Plaintiff in Error in an action and proceeding then pending therein, wherein Plaintiff in error was Defendant in error and defendants in error were Plaintiffs in error.

A Transcript of the Docket and Journal Entries thereof and the original papers in said cause are herewith filed, and made a part hereof.

There is error in said record and proceedings in this Ter wit:

First. Said Court of Common Pleas erred in reversing the Judgment of the Justice of the Peace.

Second. That said Judgment of the Court of Common Pleas was given for the said Holiday Hay Co. when it ought to have been given for the said Christopher Grubbs.

Plaintiff in error therefore prays that the said Judgment of the Court of Common Pleas be reversed, and that he may be restored to all things he has lost by reason thereof.

Porter & Porter, Attorneys for
Plaintiff in Error.

The defendant in error, Holiday Hay Company, hereby waives the issuing ~~of~~ and service of Summons in error, and voluntarily enters its appearance herein.

December 10th 1894. E. M. Wickham
Atty for Defendant in error.

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The State of Ohio } In Common Pleas Court
Union County ss }

Transcript Halliday Hay Company
Plaintiff
132 vs
Christopher Grubbs
Defendant

September Term, 1894.
Journal Vol. 17, Page 110.
Certified Copy of Journal Entry.

This cause came on this day for hearing upon the petition in error, and the Transcript of the proceedings and judgment of L. M. Crary a Justice of the Peace for the said County.

On consideration whereof, the Court find that there is Error in said proceedings and judgment in that said justice had no jurisdiction of the plaintiff in error; and the said judgment is therefore reversed at the costs up to the present time of the defendant in error; and execution is awarded therefor; to which finding and judgment of the Court the defendant in error then and there and at the time excepted.

Thereupon the defendant in error moved the Court to set said case down for trial on the merits, which motion the Court overruled, to which ruling and decision the said defendant in error excepted.

The State of Ohio, } ss.
Union County }

I, J. N. Gosnell Clerk of the Common Pleas Court within and for said County, and in whose custody the files, journals and Records of said Court are required by the laws of the state of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal No 17- Page 110 of the Proceedings of the Common Pleas Court within and for said County, and that said foregoing copy has been compared by me with the original entry on said journal 17- Page 110 & 111 and that the same is a correct Transcript therefrom.

In Testimony Whereof, I do hereto subscribe my name officially and affix the Seal of said Court at the Court House in Marysville in said County this 6th day of February A. D. 1895.

J. N. Gosnell - Clerk.
By Jno. A Gosnell Deputy Clerk.

Christopher Grubbs
Plaintiff in Error
132 vs
The Halliday Hay Co.
Defendant in Error

Circuit Court, Union County Ohio.
Entry Filed, February 19th 1895.

This day this cause came on for hearing upon the petition in error and the Transcript of the proceedings and judgment of L. M. Crary, Justice of the Peace, in and for said County, and also upon the Transcript and the original papers and pleadings in the Court of Common Pleas of said County of Union, and was argued by Counsel.

On consideration whereof the Court find that there is error apparent upon the record and proceedings of the Court

of Common Pleas to the prejudice of the plaintiff in error; in this to-wit; that the Court of Common Pleas erred in reversing the judgment of the said Justice of the Peace.

It is therefore considered by the Court that the judgment of the Court of Common Pleas aforesaid be reversed and held for naught, and that the judgment of said Justice of the Peace be, and the same is hereby affirmed, and that the plaintiff in error recover of the defendant in error his costs herein expended taxed to $8—

It is further ordered that a special mandate be sent to the Court of Common Pleas of said County for the proper proceedings to carry the judgment of the said Justice of the Peace into execution—

To which judgment, ruling and decision the defendant in error then and there excepted. Porter & Porter.

Please continued at the Court-House at Marysville within and for the County of Union, in the Third Judicial District of the Circuit Court of the State of Ohio, before the Hon Henry W Seney, James H. Day Judges of the said Court, February, to-wit;

On the 19th day of February in the year of our Lord One Thousand Eight Hundred and ninety Five,

Be it remembered that heretofore to-wit, on the 12th day of November 1894, a petition in Error was filed with the Clerk of said Court to-wit;

Circuit Court of Union County Ohio.

Halliday Hay Company
Plaintiffs in Error.
vs
130 Lester W. Cline
Defendant in Error

Petition in Error.

The said plaintiffs in Error claim that there is manifest Error prejudicial to them in the record and proceedings of the Common Pleas Court of said County, a transcript of the docket and journal entry whereof is filed herewith, and made a part hereof, marked "A" in this to-wit;

Said Court erred in affirming the judgment of the Justice of the Peace.

Plaintiff in Error prays that said judgment may be reversed, and that they may be restored to all things they have lost thereby.

E. M. Wickham
Attorney for Plaintiff in error.

Waiver of Summons in Error.

The defendant in error hereby waives the issuing of and service of Summons in Error, and voluntarily enters his appearance herein.

Porter & Porter Attorneys for
Defendants in Error.

November 12th 1894.

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The State of Ohio } In Common Pleas Court.
Union County ss: } September Term 1894.

Halliday Hay Company | Journal Vol 17. Page 109.
130 vs
Lester W Cline | Certified Copy of Journal Entry.

This day this cause came on for hearing upon the petition in error and the transcript of the proceedings and judgment of said Justice of the Peace, was argued by Counsel.

In consideration whereof the Court find that there is no Error apparent on the record in said proceedings and judgment.

It is therefore ordered and adjudged that the said judgment and proceedings before said Justice be, and the same is hereby affirmed, and that the defendant in error recover of the plaintiff in error his costs herein expended taxed at $-

And it is further ordered that execution be awarded from this Court to carry into effect the judgment of the said Justice of the Peace in the same manner as if rendered in this Court, as well as for the costs adjudged herein, To which finding, order and judgment of the Court the plaintiff in Error then and there excepted.

Porter & Porter

The State of Ohio. }
Union County ss: } I, J. N. Gosnell, Clerk of the Common Pleas Court within and for said County, and in whose custody the Files, Journals and Records of said Court are required by the Laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal 17- Page 109 of the proceedings of the Common Pleas Court within and for said County, and that said foregoing copy has been compared by me with the original entry on said Journal 17- Page 109, and that the same is a correct transcript thereof.

In testimony whereof, I do hereto subscribe my name officially and affix the seal of said Court, at the Court House in Marysville, in said County, this 7th day of November A. D. 1894.

J. N. Gosnell Clerk
By Jno A. Gosnell Deputy Clerk.

The State of Ohio } In the Circuit Court of Union County Ohio.
Union County ss }
The Halliday Hay Company
Plaintiff in error. | Journal Entry.
Journal No. 1- Page 174
130 vs
Entry Lester Cline
Defendant in error.

This day this cause came on for hearing upon the petition in error and the transcript of the proceeding, and Judgment of L. M. Crary Justice of the Peace, in and for said County, and also upon the transcript, and the original papers and pleadings

in the Court of Common Pleas of said County of Union, and was argued by counsel.

In consideration whereof the Court find there is no error apparent on the record in said proceedings and judgment of said Court of Common Pleas, nor in the proceedings and judgment of said Justice of the Peace.

It is therefore considered by the Court that the judgment of said Court of Common Pleas affirming the judgment of said Justice is hereby affirmed; and that the defendant in error recover from the plaintiff in error his costs herein expended taxed at $

It is further ordered that a special Mandate be sent to the Court of Common Pleas of said County for execution upon its said judgment of affirmance. To which judgment, ruling and decision of this Court the plaintiff in error then and there excepted.

Porter & Porter

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Petition 141

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Please before the Honorable James H. Day, James L. Price and John K Rhine Judges of the Circuit Court within and for the County & Union of the Third Judicial Circuit of the State of Ohio, begun and held at the Court House, the 6th day of October, in the year of our Lord One Thousand Eight Hundred and Ninety Six

On the 12th day of March A.D. 1896, Petition in Error and certified Copies of Journal Entrys were filed with the Clerk of this said Court, to-wit:

	The Toledo & Ohio Central Rail Road Company	Circuit Court Union County Ohio.
Petition 141	vs	Petition in Error.
	Samuel R. Burger	

The said plaintiff in Error says that at the January Term 1896, of the Court of Common Pleas of Union County, Ohio, to-wit, on the 24th day of January 1896, in said Court the defendant in Error Samuel R. Burger obtained judgment by the consideration of said Court in his favor against the plaintiff in Error "The Toledo & Ohio Central Rail Road Company in an action then pending in said Court wherein said defendant in Error was plaintiff and the plaintiff in Error was defendant; said judgment being for the sum of two hundred and fifty Six Dollars damages and $ costs of suit

Plaintiff filed a transcript of the docket and Journal Entries of said cause and the original files of said Cause as part of this petition and says there is error in the said record and proceedings wherein to-wit:

1st. The said petition does not state facts to constitute a cause of action.

2nd. The said Court of Common Pleas erred in striking from defendants answer the second defense therein set forth.

3rd. The Court erred in rendering judgment for said plaintiff when it should have been for said defendant.

4th. There are other errors apparent upon an inspection of the Record.

Plaintiff in Error prays that said judgment may be reversed and it be restored to all things it has lost by reason of the premises.

Robinson & Hoodlevine
Attys. for Plaintiff in Error.

	The State of Ohio, Union County ss.	In Common Pleas Court, September Term, 1895. Journal Vol. 17 Page 279.
6855	Samuel R. Burger against The Toledo & Ohio Central Rail Road Company	Certified Copy of Journal Entry.

This day this cause came on to be heard on the question heretofore ordered to be determined by a Jury, and thereupon came the following named persons as jurors to-wit:

E. C. Hoskins, Charles Orr, Edward Dilaver, Albert Adams, Louis C. Bunn, Sylvanus Billville, Garrison Longbury, William Gray, Cliff Darling, Charles Hanawalt, George Runo and Jeremiah Rinehart. And thereupon after hearing the evidence and the arguments of Counsel, the hour of adjournment having arrived, this case was continued until tomorrow morning.

The State of Ohio, Union County, ss. | In the Court of Common Pleas
September Term 1895.
Samuel R. Burger | Journal Vol. 17 Page 281
6885 vs
The Toledo & Ohio Central Rail Road Company. | Certified Copy of Journal Entry.

This day again came the parties by their attorneys, and also came the jury heretofore impaneled and sworn herein, and the said jury having heretofore heard the testimony and arguments of Counsel, heard the charge of the Court, retired to their room in charge of the Sheriff for deliberation.

And now comes the jury into open Court with their verdict signed by their Foreman and say:

We the jury being duly impaneled and sworn find the issues in this case in favor of the plaintiff and assess the amount due to the plaintiff from the defendant at the sum of Three Hundred and Fifty Dollars.

L. C. Bunn Foreman.

Dated Sept. 26th 1895.

The State of Ohio, Union County, ss. | In the Common Pleas Court,
September Term, 1896.
Samuel R. Burger | Journal Vol. 17, Page 296.
6885 vs
The Toledo & Ohio Central Rail Road Company | Certified Copy of Journal Entry.

This day came on this cause to be heard on the defendants motion to set aside the verdict and grant a new trial; Whereupon the Court being fully advised in the premises do sustain said motion and grant a new trial in this case; and thereupon this case is continued.

The State of Ohio, Union County, ss. | In the Common Pleas Court.
January Term, 1896.
Samuel R. Burger | Journal Vol. 17, Page 352.
6885 vs
The Toledo & Ohio Central Rail Road Company | Certified Copy of Journal Entry.

This day came on this cause to be heard by the Court on the motion of the plaintiff to strike out the 2nd and 3rd defense in said Amended petition.

Whereupon the Court treating said motion as a demurrer, do sustain said motion as to the second defense, but overruled the same as to the third defense, to which ruling defendant excepts as to said second defense, whereupon leave is granted to plaintiff to reply as to said third defense.

The State of Ohio,
Lorain County, ss.
Samuel R. Burger
vs
The Toledo & Ohio Central
Rail Road Company.

6885

In the Court of Common Pleas
January Term, 1896.

Journal Vol. 17, Page 362.
Certified Copy of Journal Entry.

This day came the parties by their attorneys, also came the following named persons as jurors to-wit:

John Hudson, David Griffen, Jno Brown, William Lee, Geo. Baldwin, E. P. Ellinwood, L. H. Baker, William Stricker, William Jolliff, Deville Ford, H. H. Epps, and James Poling; who were duly impaneled and sworn according to law; and thereupon the case came on for hearing on the pleadings and the evidence: and after hearing the evidence, arguments and charge of the Court, the jury retired to their room in charge of the Sheriff for deliberation.

And now comes said jury into Open Court with their verdict in writing signed by their foreman and say:

We the jury being duly impaneled and sworn find the issues in this case in favor of the plaintiff and assess the amount due the plaintiff from the defendant at the sum of Two Hundred and Fifty Six Dollars.

Dated Jany. 24th 1896.

George Baldwin Foreman.

The State of Ohio,
Lorain County, ss.
Samuel R. Burger
vs.
The Toledo & Ohio Central
Rail Road Company

6885

In the Court of Common Pleas,
January Term, 1896.

Journal Vol. 17, Page 374.
Certified Copy of Journal Entry.

This day this cause came on for hearing on the motion of defendant for a new trial, the Court being fully advised in the matter the Court overruled plaintiffs motion.

It is therefore ordered and adjudged by the Court that plaintiff do recover of defendant the sum of Two Hundred and Fifty Six Dollars, with costs in this action, to which ruling of the Court and judgment of the Court the defendant excepts: and the Court orders the Journal to be kept open according to law for the purpose of enabling defendant to prepare and present Bill of Exceptions for the allowance by this Court.

The State of Ohio, Lorain County, ss.

I, J. N. Gunn Clerk of the Common Pleas Court within and for said County, and in whose custody the Files, Journals and Records of said Court are required by the laws of the state of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal Vol. 17, Pages 279, 281, 296, 352, 362 and 374 of the proceedings of the Common Pleas Court within and for said County, and that said foregoing copies has been compared by me with the

original Entries on said Journal Vol. 17. Pages 279-281-296-352-362 and 374 and that the same is a correct transcript thereof.

In testimony whereof, I do hereto subscribe my name officially and affix the seal of said Court, at the Court House in Marysville in said County, this 11th day of March A.D. 1896.

(seal)

J. N. Gossett Clerk

By Jno. A. Gossett Deputy

Petition in Error 138

Afterward on the 6th day of ~~October~~ February A.D. 1896. the following Entry was filed, to-wit:

Entry 141

~~Samuel R. Burger~~

The Toledo & Ohio Central Rail Road Company vs Samuel R. Burger

In Circuit Court of Union County, Ohio.

Entry.

141

This day this cause came on for hearing on plaintiffs petition in Error, after argument by Counsel, the Court being fully advised in the matter, the Court doth find no Error, Judgment is affirmed with costs without penalty, judgment for costs, execution awarded and case remanded for execution

Thomas Reed

Attorney for Defendant in Error.

attest

J. N. Gossett

Clerk.

By Jno A Gossett

Deputy

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Petition in Error 138

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Please Issue the Honorable James H. Day, James L. Price and John K. Rhon Judges of the Circuit Court within and for the County of Union, of the Third Judicial Circuit of the State of Ohio, begun and held at the Court House the 6th day of October in the year of our Lord One Thousand Eight Hundred and Ninety Six.

On the 27th day of January A.D. 1896, the following Petition in Error was filed with the Clerk of this said Court, to-wit:

Petition in Error 138

The Board of Infirmary Directors of Champaign County, Ohio
Plff. in Error
vs.
The Board of Infirmary Directors of Union County Ohio.
Defts in Error.

The Circuit Court of Union County, Ohio

The said plaintiffs in Error claims that there is manifest Error prejudicial to them in the record and proceedings of the Common Pleas Court of said County in case No. 6682 on the Docket of said Court, a Transcript of which record and proceedings is filed herewith, in this to-wit:

The case having, by agreement of Counsel, submitted to the Common Pleas Court aforesaid, upon an agreed statement of facts, which agreed statements of facts is embodied in the bill of Exceptions filed in said Cause, the Court erred in rendering judgment for the defendant in error, defendant below, for the reason that said judgment is contrary to the law and evidence in the case.

And there are other errors prejudicial to the plaintiff in Error, manifest upon the face of the record.

Wherefore plaintiff in error asks that said judgment and proceedings be reversed, with costs and that they be restored to all things they have last thereby.

E. E. Cluney, Atty for
The Board of Infirmary
Directors of Champaign Co. O.

To the Clerk:

Issue this case issue a Summons in Error for the defendant in error to the Sheriff of Union County, Ohio, returnable according to Law.

E. E. Cluney, Atty. for
Plaintiff in Error

Jany. 23rd 1896.

On the 6th day of October A.D. 1896, the following Certified Copy of Journal Entry was filed with the Clerk of this Court.

The State of Ohio, Union County, ss.

In Common Pleas Court
September Term. 1895.

Journal Vol. 17, Page 291
Certified Copy of Journal Entry.

The Board of Infirmary Directors of Champaign County.
vs
The Board of Infirmary Directors of Union County.

6682

This day came the parties above, and a jury being waived this cause was submitted to the Court upon the pleadings

and an agreed statement of facts.

On consideration whereof the Court find on the issues joined for the defendant.

It is therefore considered and adjudged by the court that the defendant go hence without day and recover from the plaintiff its costs herein expended taxed at $11.04 and execution is awarded for the same, to which finding of the Court plaintiff excepts and also hereby gives notice of its intention to appeal this cause to Circuit Court and appeal bond fixed in the amount of $

The State of Ohio, Union County, ss. } In Common Pleas Court
September Term, 1895.

The Board of Infirmary Director of Champaign County,

Journal Vol. 17, Page 307.

6682 vs

The Board of Infirmary Directors of Union County,

Certified Copy of Journal Entry.

This day the plaintiff prepared and presented to the Court his certain bill of exceptions, which the Court allowed and signed and ordered the same to be filed with the pleadings as part of the record herein, but not to be spread upon the Journal:

Bill of exceptions filed.

Approved

John A. Price

Judge.

The State of Ohio, Union County. } ss.

I, J. N. Gosnell, clerk of the Common Pleas Court within and for said County, and in whose custody the Files, Journals and Records of said Court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal No. 17, pages 291 and 307 of the proceedings of the Common Pleas Court within and for said County, and that said foregoing copy has been compared by me with the original entry on said Journal No. 17, Pages 291 and 307 and that the same is a correct transcript thereof.

In testimony whereof, I do hereto subscribe my name officially and affix the seal of said Court, at the Court House in Marysville in said County, this 6th day of October A.D. 1896.

Seal

J. N. Gosnell Clerk.

By Jno A. Gosnell Deputy

On the 22nd day of November A.D. 1895, the following Bill of Exceptions was filed with the Clerk of this Court to-wit:

Bill of Exceptions 6682

The Board of Infirmary Directors of Champaign County, Ohio,

vs

The Board of Infirmary Directors of Union County, Ohio.

Common Pleas Court of Union County, Ohio.

Be it remembered that at the Trial of the above entitled cause, which was a Trial wherein a jury was waived and the issue submitted to the Court, there was introduced the following evidence, in the shape of an agreed Statement of facts, viz:

" State of Ohio, Union County ss.

" In the Court of Common Pleas

" The Board of Infirmary Directors of
" Champaign County, Ohio, Plaintiffs. } Agreed Statement of facts.
"
" v.
" The Board of Infirmary Directors of
" Union County, Ohio, Defendants }

" On March 27th 1893, one William Eli Spencer a "pauper, aged 19 years, at that time, became and was sick with Typhoid "fever in Rush Township, Champaign County, Ohio; that on said March 27th "1893. the Trustees of said Rush Township were duly notified that said "William Eli Spencer was in a condition requiring public relief; that "they visited him and made inquiry as to his settlement as required "by Statute, and were informed by him that he had first come to "Champaign County from Franklin County, Ohio, where he had resided "for some years.

The Warrant of the Trustees of Rush Township to the Infirmary Directors of Champaign County was made out and sent to them on March 29th 1893, and the Infirmary Directors of Franklin County were notified at once.

Franklin County Infirmary Directors denied that said William Eli Spencer had a settlement there, and the matter was reported to the Trustees of Rush Township and D.R. Emmons M.D. the attending physician, to ascertain if possible the settlement of said William Eli Spencer.

From information derived from the boy they again reported his residence at Columbus. O.

This was on May 6th 1898.

Further correspondence and investigation ensued and some time during the first week in June it was learned that the boy had formerly been an inmate of the Children's Home of Union County, Ohio, accordingly the Clerk of the Champaign County Board of Infirmary Directors sent notice to the Board of Union County Infirmary Directors concerning the said Spencer on June 6th 1898.

In the meantime the said William Eli Spencer not being in a condition to be moved, was cared for in Rush Township at an expense of $183.50.

On December 14th 1893, the Champaign County Board of Infirmary Directors sent an itemized bill for the amount expended in caring for said Spencer to the Board of Infirmary Directors of Union County, Ohio, and demanded payment thereof which they refused on Dec. 30th 1898, Whereupon this suit was brought to recover said amount of $183.50 and interest and costs &c.

William Eli Spencer was born of William H. Spencer and Elmira O. Spencer in June 1874.

For some time prior to April 29th 1883, said William H.

Spencer and Elmira O. Spencer were residents of Union County, Ohio.

On said April 29th 1883, said William H. Spencer father of said William Eli Spencer and husband of said Elmira O. Spencer abandoned his family and left for parts unknown.

On July 5th 1883, William Eli Spencer was placed in the Union County Infirmary where he remained until he was duly committed to the Childrens Home of said Union County, where he remained until July 5th 1888, when he ran away and was never afterwards an inmate of said Childrens Home.

On April 14th 1886, Elmira O. Spencer the mother filed a petition for divorce in Union County Common Pleas Court; said cause being No. 5086 on the docket of said Court, against the father, said William H. Spencer, on the ground of "Willful absence since April 29th 1883."

Plaintiff in that case made affidavit that defendants residence was unknown, and service was had by publication.

On June 11th 1886 the Court finding that said Elmira O. Spencer was a resident in good faith of Union County Ohio, granted her an absolute divorce from said William H. Spencer, but made no order concerning the minor children, the said William Eli Spencer among the others.

The said Elmira O. Spencer afterwards married and is now dead, and was dead some time prior to the time of furnishing said relief; but the said William Eli Spencer so far as is known, never lived with his mother after leaving the said Childrens Home.

After leaving the Union County Childrens Home said William Eli Spencer went to Franklin County Ohio, and thence to Champaign County in March 1893, when he was immediately taken sick.

The residence of the father was unknown at the time of furnishing the relief and until after notice to Union County Board of Infirmary Directors and the rejection by them of the claim and the bringing of this suit; but it is now known that he lives at Donnellson, Montgomery County, Illinois.

The son William Eli Spencer never lived with the father, and so far as is known never saw the father between the time of the abandonment by the father of his family and the bringing of this suit.

The father had acquired a residence in Grisham Twp. Montgomery County, Ills.

At the time of the furnishing of relief to the son; he still resides there, and no public relief has been furnished the father during the last 4 years by said Grisham Twp. Montgomery County, Ills.

It is further agreed that in case judgment shall be given against Union County, it shall be for $160.00 in full for the amount claimed in the petition.

No public relief has been furnished either the father or said William Eli Spencer by Union County, Ohio, for more than a year prior to the furnishing of the relief herein sued on

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Said above copied statements of facts was indorsed as follows:

"Agreed Statement of facts"

Approved C.C. Cluny Atty. for Plff.

D.T. Hopes Pros. Atty of Union County, O.

Said Agreed Statement of facts constituted the whole of the evidence adduced at the trial aforesaid, upon which evidence the Court found the issues in favor of the defendant which finding as a matter of law is prejudicial to plaintiff and to which finding and the judgment founded thereon, plaintiff at the time excepted, and herewith presents his bill of exceptions which he prays the Court to allow as true, which is accordingly done, this 19th day of November, A. D. 1896

John A. Price Judge of Court of Common Pleas.

Afterward on the 6th day of October A.D. 1896, the following Entry was filed with the Clerk of this Court, to-wit:

Entry 138

The Board of Infirmary Directors of Champaign County, Ohio
vs
The Board of Infirmary Directors of Union County Ohio.

In the Circuit Court of Union County, Ohio.

This day this cause came on for hearing upon the petition in Error, Transcript, Bill of Exceptions and original papers and pleadings from the Court of Common Pleas of Union County, Ohio, and was argued by counsel and submitted to the Court.

On consideration whereof the Court find that there are no Error apparent on the record in said proceedings and judgment.

It is therefore considered and adjudged by the Court that the judgment aforesaid be, and the same hereby is affirmed, to which finding and judgment of the Court plaintiff excepts, and that the defendant in Error recover from the plaintiff in Error their costs herein expended taxed at $7 cts.

And it is further ordered that this cause be remanded to the said Common Pleas Court of Union County for execution.

Attest

J.N. Gosnell
Clerk

By Jno A. Gosnell
Deputy.

Please before the Honorable James H. Day, James L. Price and E. B. Finley Judges of the Circuit Court within and for the County of Union of the Third Judicial Circuit of the State of Ohio, begun and held at the Court House the 2nd day of February in the year of our Lord One Thousand Eight Hundred and Ninety Seven.

Be-fore be-mit: on the 28th day of December A.D. 1896, a Transcript was filed with the Clerk of said Court, to-wit;

7178 The General Electric Company, vs The Village of Milford Center ‖ In the Court of Common Pleas, Union County Ohio.

Now comes the defendant, and by leave of Court, files its answer herein; Sept. 30th 1896.

The State of Ohio
Union County ss. In the Court of Common Pleas
The General Electric Company, plaintiff,
vs
The Village of Milford Center, defendant.

September Term, 1896.

Tuesday October 6th 1896. Journal 17 Page 567.

This day came on to be heard plaintiff's motion to the defendants answer and Cross-petition herein, and were argued by Counsel and submitted to the Court.

The Court being fully advised in the premises finds that said motions No. 1. No. 2 and No. 3 of the original motion, and the amended and supplemental motion filed herein are well taken, and accordingly sustains the same.

It is therefore ordered by the Court that the following parts be, and the same hereby are struck from said Answer and Cross-petition: No. 1, All that part beginning with the words "This defendant further answering by way of Cross-petition says that the finding of the Court &c, and ending with the words "Over-paid the amount due and owing said Thomas H. Botham by $436.34."

No. 2, All that part beginning with the words "Wherefore this defendant prays the Court" &c, and ending with the words, "and further relief as this defendant may in equity be entitled."

No. 3, All that part beginning with the words, "that this defendant" and ending with the words, "from November 23, 1896, or any other sum.

No. 4, All that part containing the averment as follows "that this defendant denies each and every allegation in the plaintiffs petition not herein specifically admitted."

And thereupon the defendant by its duly authorized Attorney being present in open Court, moved the Court for time within which further to plead herein, and the Court having duly considered said motion ruled and ordered that, if said defendant plead further herein, it must file its pleading this day, unless the said defendant desired to file a general denial to the plaintiffs petition, or unless the said defendant would make known to the Court a defense different from the pretended one in its original answer and Cross-petition, in either of which cases a reasonable time would

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Thereupon said defendant by its said Attorney, refused to plead said general denial, and refused also to make known to said Court any alleged defense different from the pretended one in its original answer and Cross-petition, and refused to plead further herein this day.

The defendant duly excepted to the foregoing rulings and orders of the Court.

The State of Ohio
Union County, ss. In the Court of Common Pleas.
The General Electric Company, Plaintiff,
vs
The Village of Milford Center, Defendant,

September Term A.D. 1896.

Tuesday, October 6th A.D. 1896, Journal 17, Page 553-554.

This day the defendants by its duly authorized attorney being in open Court, and refusing further to plead herein this day, and unless allowed further time to plead, this cause having been specially assigned for trial this day, came on to be heard on the pleadings, evidence and exhibits, and was argued by counsel, and submitted to the Court.

The Court having duly considered the same finds that said defendant the Village of Milford Center, has been duly, and legally served with Summons herein, and is through its said Attorney present in open Court.

The Court further finds that the answer of the said defendants confesses to be true all the allegations of the petition save and except only that the plaintiff is a corporation, that the plaintiff was duly incorporated under the laws of the State of New York, and that the plaintiff has a right to sue under the name of the General Electric Company, to which finding of the Court the defendant then and there excepted.

The Court further find from the evidence that the allegations of the plaintiffs petition are true; to which finding of the Court the defendant then and there excepted.

The Court further find from the pleadings and the evidence that this plaintiff is the party who duly received the judgment in the petition mentioned, and in whose favor the order was made as alleged in the said petition, and that this plaintiff has the right to bring this action as the General Electric Company; to which finding of the Court the defendant then and there excepted.

The Court further find from the pleadings and evidence introduced that the allegations of the plaintiffs petition are true, and that said defendant is indebted to the plaintiff in the sum of $936.00, with interest on $919.85 at 6 per cent per annum from the 23rd day of November, 1895, in all the sum of $983.91 and that said sum of $983.91 is due and unpaid the said plaintiff from the said defendant; to which finding of the Court the

defendant then and there excepted.

It is therefore considered by the Court that said plaintiff The General Electric Company, recover from the said defendant The Village of Milford Center the said sum of $988.91 with interest thereon at 6 per cent per annum from this 6th day of October, 1896, and costs herein expended taxed at $

To defendant The Village of Milford Center then and there excepts to the said finding and judgment of the Court herein.

The defendant The Village of Milford Center thereupon made and filed a motion for a new trial herein upon the grounds that said finding and decision were contrary to law and because the Court erred in sustaining the said motions striking out certain parts of the defendants answer herein as above stated, and for errors on face of record.

Which motion for a new trial the Court then and there Considering overruled; to which ruling of the Court the defendant then and there excepted.

The defendant The Village of Milford Center, then and there gave notice of its intentions to appeal from the finding and judgment of this Court herein to the Circuit Court, and the Court thereupon fixed the bond for appeal at $2000.00

The State of Ohio,
Union County ss. In the Court of Common Pleas,
The General Electric Company, Plaintiff

vs

The Village of Milford Center, Defendant

Sept. Term 1896,

Journal 17 Page 563.

This cause being heard on the motion to set aside the finding decision and judgment of the Court, and for a new trial, the Court on consideration whereof the same, to which ruling the defendant then and there excepted.

Oct. 6th 1896

J. K. Kinkade Atty. for Defl.

The State of Ohio
Union County, ss. In the Court of Common Pleas.
The General Electric Company, Plaintiff

vs

The Village of Milford Center, Defendant

Sept. Term A.D. 1896.

Journal 17. Page 564.

Now comes the defendant herein and gives notice of its intentions to appeal this cause to the Circuit Court, and the Court fix the penalty of the bond to be given in case of appeal at $2000.00

Oct. 6" 1896.

J. K. Kinkade Atty. for Defl.

The State of Ohio }
Union County, ss. } I, J. N. Grenell Clerk of the Court of Common Pleas, within and for said County, and in whose custody the files, Journals and Records of said Court are required by the laws of

Motion 146

Entry 146

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the State of Ohio is to keep, hereby certify that the foregoing is taken and copied from the journals of the proceedings of the said Court within and for said County, and that said foregoing copy has been compared by me with the original Entry on said Journal, and that the same is a correct transcript thereof.

In Testimony whereof, I have hereunto subscribed my name officially, and affixed the seal of said Court, at the Court House, in Marysville, in said County, this 28th day of December A.D. 1896.

(seal)

J.M. Gosnell Clerk

On the 30th day of January A.D. 1897, the following motion was filed with the Clerk of this Court, to-wit:

Motion 146

The General Electric Company vs The Village of Milford Center

Circuit Court
Union County, Ohio.

Now comes the plaintiff herein, The General Electric Company and appearing for the purpose of this motion and for no other whatever, moves the Court to dismiss the attempted appeal herein and to strike this action from the docket and files of this Court on the ground that said appeal has not been perfected according to the statute in such case made and provided and for the further reason that this action is not appealable.

Cameron & Cameron
H.J. Bovell Esq
James M. Butler for Plf.

On the 3rd day of February A.D. 1897. the following Entry was filed with the Clerk of this Court to-wit:

Entry 146

The General Electric Company vs The Village of Milford Center

In the Circuit Court of Union County, Ohio.

This day came the parties and it appearing to the Court herein that the appeal herein is not well taken because said cause is not appealable, therefore on motion of the plaintiff and due consideration had it is ordered and adjudged that the attempted appeal be dismissed and held for nid and that the defendant pay the costs herein.

J.M.K.

Attest
J.M. Gosnell
Clerk
By Jno. A. Gosnell
Deputy.

Pleas before the Hon. Jamo H. Day, James I. Price and Caleb H. Norris, Judges of the Circuit Court within and for the County of Union & the Third Judicial District Circuit of the State of Ohio, begun and held at the Court House in the 22nd day of September in the year of our Lord, One Thousand Eight Hundred and Ninety Seven.

Be it remembered that heretofore to-wit: on the 28th day of July A.D. 1897, the following Petition in Error and Transcript pras filed with the clerk of said Court, to-wit:

Petition in Error. 160

Circuit Court
Union County, Ohio.

Jamo C. Martin
Plaintiff in Error
vs
John Hudson
Defendant in Error.

The plaintiff in Error, who is now Samuel A. Martin, who is the only representative, successor, and heir-at-law, and the only party plaintiff in interest, in the subject matter of this action, and who by leave of the Court has heretofore entered his appearance as plaintiff in this case, because of the death of his father, which occured since the commencement of this action, now comes and says:

That at the April Term of the Court of Common Pleas of said County of Union 1897, the said John Hudson recovered a Judgment by the consideration of said court against this plaintiff in a certain action then pending in said Court, wherein the said Jamo C. Martin was originally plaintiff and in which the said Samuel A. Martin was substituted as plaintiff as aforesaid, and in which action said John Hudson was defendant, a copy of the record, judgment and proceedings in which case duly certified is hereto attached marked "A," and made a part hereof.

And the said Samuel A. Martin avers that there is error in said record and proceedings in this to-wit:

II. The said Court of Common Pleas erred in its conclusions of land arising upon the facts found by the said Court, and its Conclusions of law were contrary to, and against the law in this case.

III- The finding and judgment of said Court was for the defendant, when they should have been for the plaintiff under the evidence, and the facts found by the Court, and the law of the case.

IIII- The Court erred in allowing parol evidence on the trial to add to, vary and contradict, the deed

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Transcript

of the defendant, and of the plaintiff, as to which this action was commenced and prosecuted.

Plaintiff therefore asks that said conclusions, findgment of the Court be reversed and set aside, and that a new trial be granted herein.

Porter & Porter,
Attorneys for Plff. in Error.

Waiver

I hereby waive the issuing and service of Summons in Error upon me, and I hereby enter my appearance as a party defendant, in the above entitled action and proceeding.

July 25th 1897.

John Hudson By
W. T. Hopkins Ed Ayers Ed Ayers
His Attorneys.

Transcript

The State of Ohio,
Union County ss.
James E. Martin
vs
John Hudson

In Common Pleas Court
January Term, 1897.
Journal Vol. 18, Page 80.
Certified Copy of Journal Entry.

This day the death of the plaintiff is suggested, and leave is granted to substitute the heirs and all other necessary parties as plaintiffs, and cause continued.

State of Ohio
Union County, ss.
James E. Martin
vs
John Hudson

In Common Pleas Court,
April Term, 1897.
Journal Vol. 18, Page 183.
Certified Copy of Journal Entry.

Upon the trial and hearing of this cause the Court was requested by the plaintiff in its findings and judgment in this cause, and with a view of excepting to the decision of the Court upon the questions of law involved in the trial, to state in writing its conclusions of fact found separately from its conclusions of law in the trial herein.

The State of Ohio,
Union County, ss.
James E. Martin
vs
John Hudson

In Common Pleas Court
April Term, 1897,
Journal Vol. 18, Page 197.
Certified Copy of Journal Entry.

The Court on the request of the plaintiff, with the view on the part of the plaintiff, of excepting to the decision of the Court upon the questions of law involved in the trial of this case states in writing its conclusions of fact found, separately from its conclusions of law, as follows:

II. The Court find that on the 28th day of April, 1881, the defendant and one A. J. Caylor plaintiff's grantor, were the owners of, and were vested in common of the following tract of land, each owning one undivided one half thereof in fee simple, in the County of Union and State of Ohio; part of survey No. 5586, on the waters of Bokes-Creek, and bounded and described as follows, to-wit;

Beginning at a Buch and Ironwood, Southeast corner of said survey; Thence N. 83 deg. W. 70 poles to a stake; Thence N. 7 deg. E. 140 poles to a stake on the back line; Thence S. 83 deg. E. 70 poles to an Elm and Burr-Oak; Thence S. 7 deg. W. 140 poles to the beginning, containing 61 acres of land.

That by agreement between defendant and said Caylor, they caused to be surveyed off the east side thereof on said 28th day of April 1881, 30½ acres for said A. J. Caylor.

The plaintiff was present, and assisted in making such survey by carrying Chain.

That immediately after said survey the defendant and said Caylor built a partition fence on the line dividing said 61 acre tract.

That on the 22nd day of August 1894, the defendant conveyed to said Caylor, by quit claim deed the East one half of said 61 acre tract above described, describing same by the same miles and bounds as above given, and on same day said Caylor conveyed to said defendant, by quit claim deed the west half of said 61 acres with same boundary:

And on said August 22nd 1894, said Caylor deeded to plaintiff said east one half of said 61 acres tract, by warranty deed, given said description as above of said 61 acres.

That ever since said 30½ acres was surveyed off to said A. J. Caylor, and until the beginning of this action, said division line has been recognized as the true line.

Said Caylor understanding and believing that it was the true line dividing said 61 acres tract in equal parts.

That on the 6th day of May 1839, Alexander McKinley was the owner of a tract of 122 acres in said survey, conveyed to him by miles and bounds as follows =

Beginning at a Sugar Tree and Buch, original south line of said survey, and in the line of J. Frazier's survey and corner to a lot sold to James Manchester; Thence N. 7 deg. E. 140 poles to a beech; Thence South 83 deg. E. 140 poles to an Elm and Burr-oak; Thence S. 7 deg. W. 140 poles to a Beech and Ironwood in said

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Frazin's line and original line of said survey No. 5586: thence N. 83 deg. W. 140 poles to the beginning, containing 122 acres.

That on said last mentioned date (May 6th 1839) McKinley conveyed to Orilla Cameron 61 acres off the east side of said 122 acre tract, it being the same 61 acre tract above described: and on February 14th 1844, McKinley conveyed the balance of said 122 acres to J. B. Haines, which last mentioned deed described the whole of said 122 acre tract, excluding as follows" the part hereby conveyed is the west one half (1/2) of the aforesaid described tract, to contain 61 acres and more if any there be after taking off 61 acres off the east side of the above described tract of 122 acres."

That on the 4th of April, 1847, said Haynes conveyed all his interest in said 122 acres tract to Benjamin Hudson, the father of the defendant, who is now the owner thereof by decent and purchase.

On the said 28th day of April, 1881 the defendant being the owner of all of said tract of 122 acres, excepting said 61 acre tract off the east side thereof, and owning jointly with said Caylor, said 61 acre tract in equal shares, in the division thereof, said Caylor took the east half thereof, and the defendant the west part lying adjoining his other tract.

The deeds from Hudson to Caylor, and Caylor to Hudson being made as aforesaid on August 22nd 1884,

That shortly before bringing this action, the plaintiff caused a survey to be made of said 61 acre tract, by Mr. Harvey, the County Surveyor, who ran a line dividing said 61 acres in equal parts.

Said Surveyor found that in fact there were 63 3/5 acres therein instead of 61 acres only, and that the defendant was in the occupancy of all of said 61 acre tract excepting the 30 1/2 acres off the said east side thereof; and I find the fact to be that said Caylor had 1 4/5 acres less than the west one half of said 61 acre tract, and that said Hudson had 1 4/5 acres more than the west half of said 61 acre tract according to said survey of said Harvey, and that said Hudson had the same in possession and occupancy since the year 1881, and that this strip of one and one fifth acres is the amount sought to be recovered by the plaintiff of the defendant in this action.

A copy of the plat introduced in evidence, made by the Surveyor of said disputed strip is hereto attached, marked "C" and made a part of this finding: said disputed strip being between the letters "A and B" on said plat.

The Court further find the fact to be, that both plaintiff and defendant claim title from the same source, to-wit; under and through the said Orilla Cannon.

On the above facts the Court finds against the plaintiff and for the defendant.

Duncan Dow
Judge of Court of Common Pleas.

To which conclusion of law arising upon the facts found, the plaintiff then and there excepted.

Thereupon the plaintiff moves the Court to set aside said finding and conclusions of law arising upon the facts, and grant the plaintiff a new trial for reasons set forth in said motion, which motion the Court overruled, to which ruling and decision of the Court the plaintiff then and there excepted.

It is therefore considered and adjudged by the Court, (a jury having been waived by both parties) that the defendant is the legal owner of the premises described in plaintiff's petition, and is entitled to the possession of the same; and it is further considered that the defendant go hence without day and recover of the plaintiff his costs herein taxed at $, to which judgment and decision the plaintiff then and there excepted.

Ayres & Ayres
Attys. for Defl.
Porter & Porter
Attys. for Plff.

The State of Ohio,
Union County } ss.

I, J.N. Grenell, Clerk of the Common Pleas Court within and for said County, and in whose custody the Files, Journals and Records of said Court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal Number 18 of the proceedings of the Common Pleas Court within and for said County, and that said foregoing copy has been compared by me with the original entry on said Journal Number 18 and that the same is a correct transcript thereof.

In testimony whereof, I do hereto subscribe my name officially and affix the seal of said Court, at the Court House in Marysville in said County, this 23rd day of July A.D. 1877.

(seal)

J.N. Grenell Clerk.
By Jno A. Grenell Deputy

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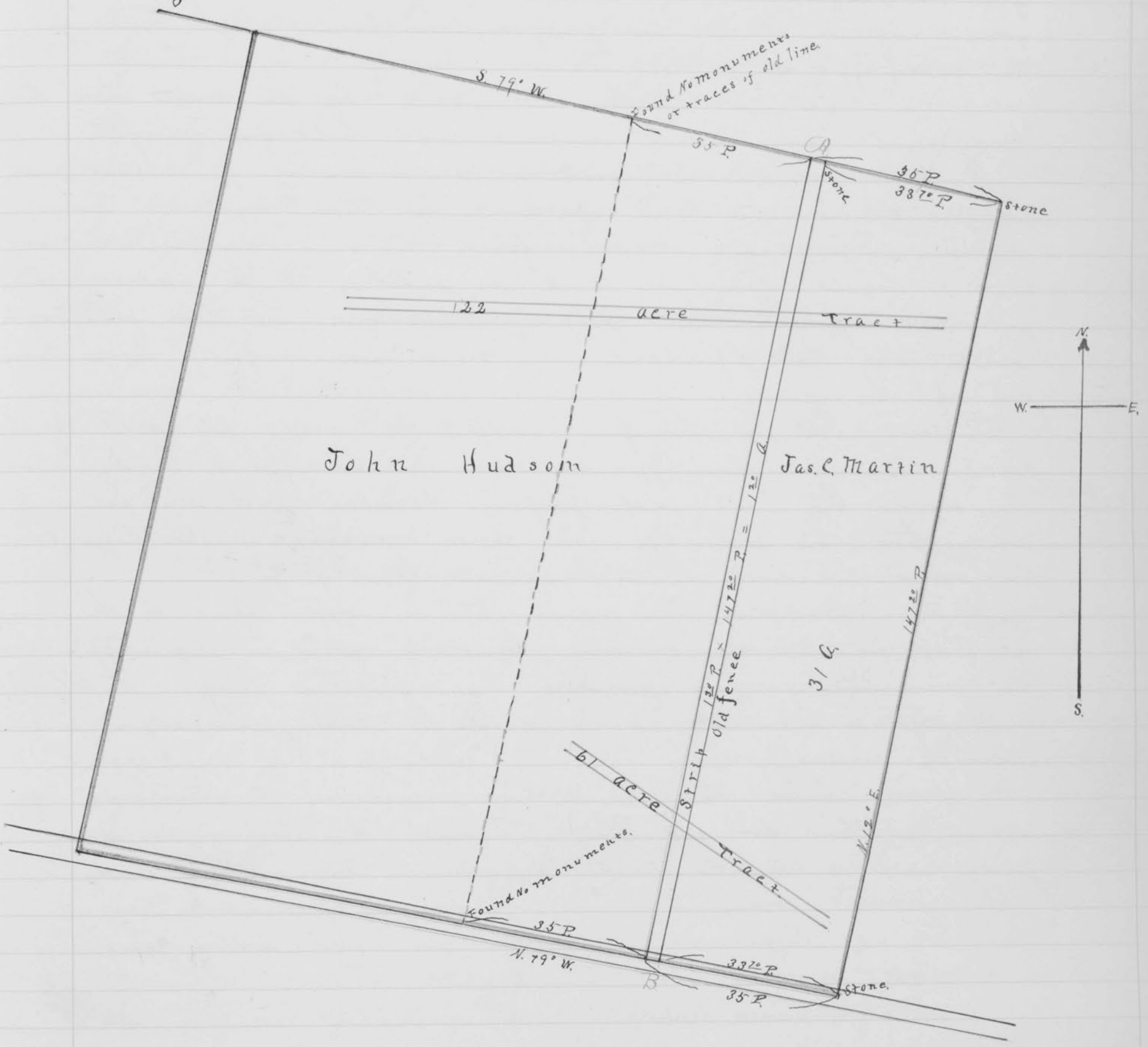

Disputed Strip from "A" to "B"

Lanson B. Harvey. S. U. Co. C. 7/15. 1896.

On the 24th day of September A.D. 1897, the following entry was filed with the clerk of this court, to-wit:

150 James C. Martin
vs
John Hudson

In the Circuit Court.

This day this cause came on for hearing upon the petition in error, the transcript and the original papers, and pleadings from the Court of Common Pleas of Union County and was argued by counsel.

On consideration whereof the Court find that there is error therein apparent upon the record to the

prejudice of the plaintiff in error in this, to-wit; that the judgment of the Court of Common Pleas was for the defendant in error, when according to the facts found by the Court the judgment should have been for the plaintiff in error.

It is therefore considered by the Court that the judgment aforesaid be reversed, and held for naught.

And the Court now proceeding to render such judgment as the Court of Common Pleas ought to have rendered in said cause, find that the plaintiff in error has a legal estate in, and is entitled to the immediate possession of the real property discribed in his petition, and that the defendant in error, unlawfully keeps him out of the same.

It is therefore considered and adjudged by the Court, that the plaintiff in error recover from the defendant in error the said real property discribed in his petition, and that the plaintiff in error recover of the defendant in error his costs herein expended, taxed at $

And it is ordered that a writ issue to the Sheriff of this County, commanding him to put the plaintiff in error in possession of said premises, and for this purpose the Sheriff will call to his aid, if necessary, the County Surveyor to establish the corners.

And this cause is remanded to the Court of Common Pleas for execution, to which decision, order and judgment of the Court the defendant then and there excepted.

James H. Day
Presiding Judge.

Attest
J.N. Gosnell Clerk
By Jno A. Gosnell, Deputy.

On the 28th day of April A.D. 1898, the following Entry was filed with the Clerk of this Court, to-wit;

Entry from Supreme Court 5-833

State of Ohio, } Supreme Court of the State of Ohio,
City of Columbus, } Of the Term of January A.D. 1898, to-wit, Tuesday April 12th,

John Hudson
vs
James C. Martin

Error to the Circuit Court of Union County.

Ordered by the Court, that said cause be and the same is hereby dismissed for failure to file printed record.

I, Josiah B. Allen, Clerk of the Supreme Court of the State of Ohio, do hereby certify that the foregoing entry is truly taken and correctly copied from the Records of said Court, to-wit; from Order Book No. 16 page 49.

In Witness whereof, I have hereunto subscribed my name and affixed the seal of said Supreme Court, this 19th day of April, A.D. 1898.

Josiah B. Allen Clerk
By John P. Dana Deputy.

Attest J.N. Gosnell Clerk, By Jno A. Gosnell Deputy.

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Petition in Error 148

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Pleas before the Honorable Jonno H. Day, Jonno L. Price and Caleb A. Norris, Judges of the Circuit Court within and for the County of Union, of the Third Circuit of the State of Ohio, begun and held at the Court House in the Town of Marysville, on the 22nd day of September, in the year of our Lord One Thousand Eight Hundred and Ninety Seven.

Be it remembered that heretofore on the 30th day of April A.D. 1897, the following Petition in Error was filed with the Clerk of this Court, to-wit:

Petition in Error 148

Amelia B. Applegate,
Plaintiff in Error

vs

Sarah A. Williams,
Florizella Smith Et al
Josephine M. Smith Et al
William Howard, as Admr.
of Asa Bates, deceased,
Defendants in Error

The State of Ohio,
Union County, ss.

In the Circuit Court.

The said Amelia B. Applegate, Plaintiff in Error for her petition in Error says:

That at the January Term A.D. 1897, of the Court of Common Pleas of Union County, Ohio, defendant in error recovered a judgment by the consideration of said Court, against the plaintiff in Error, and against William Howard as administrator of the estate of Asa Bates, deceased, in an action then pending therein, wherein the said Sarah A. Williams was plaintiff and the said Amelia B. Applegate and others were defendants, a transcript of the docket and journal entries whereof is filed herewith, together with the original pleadings and papers in said case.

That is error in the said record and proceeding in this, to-wit;

1st. The said Court of Common Pleas erred in entertaining the demurrer of the said Sarah A. Williams to the answer of the said Amelia B. Applegate.

2nd. The said Court of Common Pleas erred in entertaining the motion of the said Sarah A. Williams, to strike from the files the answers and cross-petitions of the said Josephine M. Smith and Florizella Smith and in dismissing them from said action.

3rd. The judgment was in favor of the said Sarah A. Williams when it should have been for the said Amelia B. Applegate according to the law of the land.

4th. There are other errors apparent upon an inspection of the record.

Plaintiff in error therefore prays that said judgment may be reversed, and that she be restored to all things she has lost by reason thereof. - Cameron & Cameron, for Pltff in Error.

Vol. 16 page 49.

Waiver. We hereby waive the issuing and service of Summons in Error and enter our appearance herein.

Robinson & Nordburn
Attys. for Defts.

On the 17th day of September A.D. 1897, the following Certified Copy of Journal Entry was filed with the Clerk of this Court, to-wit:

Certified Copy of Journal Entry 7147

The State of Ohio, } In the Court of Common Pleas.
Union County ss.

Sarah A. Williams
vs
Wm Howard, Administrator of the Estate of Asa Bates, et al

September Term, 1896.
Journal, Vol. 17 Page 553.
Certified Copy of Journal Entry.

This day came on this cause to be heard on the demurrer of the plaintiff to the first and second defense of the answer and cross petition of Amelia B. Applegate, one of the defendants.

Whereupon the Court being fully advised in the premises after full argument by Counsel of both parties, do sustain said demurrer as to both defenses set up in said answer of Amelia B. Applegate and this cause passed for further action of the Court, the defendant Amelia B. Applegate excepts to the ruling of the Court in sustaining the said demurrer.

Cameron & Cameron
Robinson & Nordburn.

Certified Copy of Journal Entry. 7147

The State of Ohio, } In the Court of Common Pleas.
Union County ss

Sarah A. Williams, Plff.
vs
Wm Howard, Admr of the estate of Asa Bates, et al. Defts.

January Term, 1897.
Journal Vol. 18, Page 46.
Certified Copy of Journal Entry.

This day came on this cause to be further heard on the motion of plaintiff to strike from the files the Cross-petition of Josphine M. Smith and Elizabeth Smith, and to dismiss them from this cause for reasons stated in her written motion.

Whereupon the Court being fully advised in the premises do sustain said motion, and said defendants are by the Court dismissed, but no papers are to be withdrawn from the files by the parties, to which ruling of the Court the said Amelia B. Applegate excepts.

Thereupon the said Amelia B. Applegate not desiring to further plead against said plaintiff in this case, and having excepted to the sustaining of the demurrer to her petition heretofore, and having no desire further to answer, the Court do find for the plaintiff, the right of trial by Jury being waived by the parties, and do find there is

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due on the note in the petition described, to the plaintiff from the said Wm Howard as the Administrator of Asa Bates deceased, the sum of Four Thousand Dollars, with interest thereon from the 12th day of February, 1896, at the rate of seven per cent per annum payable semi-annually.

And thereupon it is ordered and adjudged by the court that plaintiffs said claim be allowed and paid according to law by said Administrator as a valid claim against said estate and that the said Amelia B. Applegate pay the costs herein within thirty days and in default thereof that execution issue therefor, to all of which ruling and Judgment of the Court said Amelia B. Applegate excepts.

The State of Ohio,
Union County ss.

I, Jasper N. Gosnell, Clerk of the Court of Common Pleas, within and for said county, and in whose custody the Files, Journals and Records of said Court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal of the proceedings of the said Court within and for said county, and that said foregoing copy has been compared by me with the original entry on said Journal, and that the same is a correct transcript thereof.

In testimony whereof, I have hereunto subscribed my name officially, and affixed the seal of said Court, at the Court House in Marysville, in said County, this 17th day of September A.D. 1897.

(seal)

J. N. Gosnell Clerk

On the 24th day of September A.D. 1897, the following entry was filed with the clerk of this Court, to-wit:

Entry 148

Amelia B. Applegate
vs
Sarah A. Williams et al

In the Circuit Court.

This day came the parties and submitted this cause to the Court, whereupon the Court being fully informed in the premises do not find any error in the said record and that the Court of Common Pleas did not error in sustaining the demurrer to the answer and cross-petition of Amelia B. Applegate or in sustaining the motion to strike from the files the answer and cross-petition of Josephine M. Smith and of Florezelle Smith and find that said judgment of the Court of Common Pleas should be affirmed.

It is therefore considered and adjudged by the Court that said judgment be and the same is affirmed with costs, and the Court find that was reasonable ground for the plaintiff in error to prosecute this petition and do not adjudge any penalty and order the clerk to remand this Judgment back to the Court of Common

Pleas for execution, and that defendant in error re-
cover of plaintiff in error their costs herein taxed at $

Approved by
Cameron & Cameron.

Attest
J.N. Gosnell, Clerk
By Jno A. Gosnell, Deputy.

Pleas before the Honorable James H. Day, James L. Price and Caleb A. Norris, Judges of the Circuit Court within and for the County of Union of the Third Judicial Circuit of the State of Ohio, begun and held at the Court House in Marysville on the 22nd day of September in the year of our Lord One Thousand Eight Hundred and Ninety Seven.

On the 20th day of September A.D. 1897, the following

Order of Injunction / Transcript

Transcript was filed with the Clerk of this Court, to-wit:

The State of Ohio,
Union County ss

Theadore Reyner
vs
Amy S. Bell et al

In the Court of Common Pleas.

In Chambers.
Journal 18, Page 100.
Certified Copy of Journal Entry.

Motion for Temporary injunction in the Court of Common Pleas, Union County, Ohio.

And now on this 29th day of March, 1897, came the plaintiff by James M. Robinson his attorney, and it being made to appear that there is at this time no Common Pleas, Circuit or Supreme Judge within said County, the Motion of the plaintiff for a Temporary Injunction came on and was heard upon the petition of the plaintiff and the affidavit therewith and therein filed, and after hearing the argument of counsel, and being fully advised in the premises, it is ordered and considered that a temporary injunction be, and the same hereby is allowed in this case to restrain the said defendants from conveying or encumbering the said lands in the petition described, and from disturbing plaintiff in his possession thereof as prayed for in said petition of plaintiff.

It is further ordered that the clerk of the Court of Common Pleas issue Summons in this case endorsed Injunction allowed on said plaintiff giving an undertaking to the said defendants, conditioned according to law with security to be accepted by the said clerk of the Court of common Pleas, in the sum of $100.00

James McCampbell, Probate Judge.

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The State of Ohio, Miami County, ss.

I, James McCampbell sole Judge and ex-officio Clerk of the Probate Court, within and for the aforesaid County and State, do hereby certify that the foregoing is a true and correct copy of the original order of Injunction now on file in said Probate Court in the cause.

In Testimony whereof I have hereunto set my hand and affixed the seal of said Court at Marysville, O. this 29th day of March, 1897.

(seal)

James McCampbell - Judge and ex-officio Clerk

The State of Ohio, Miami County, ss | In the Court of Common Pleas.

Entry | Theadore Reynor by Next Friend, Plaintiff
vs
Amy S. Bell et al, Defendants | April Term, 1897. Journal, Vol. 18, Page 184. Certified Copy of Journal Entry.

The Court in the above case find that Theadore Reynor at the time of the execution of the deed to Amy S. Bell was non-compos-mentis, and incompetent to convey the lands in the petition described, situate in Miami County.

That undue advantage was taken of him by the defendant Howard E. Bell in procuring such deed to be made to the defendant Amy S. Bell.

That said Reynor did not receive an adequate consideration for such conveyance, nor was the transaction fair and reasonable, and that said deed was fraudulently procured.

Under the holding of the Supreme Court of Ohio in the case of Hosler vs Beard 54, O. S, 398 and the authorities therein and elsewhere cited. It is ordered that the prayers of the plaintiffs amended petition be granted and a decree entered accordingly.

Appeal Bond fixed at $300.

Judgment against Amy S. Bell & Howard Bell for costs.

D. Dow, Judge.

P.S.: Leave will be given A. B. Strathern to amend his answer asking for an Injunction restraining Amy S. Bell and Howard E. Bell from selling or incumbering the Piqua property if he so desires, and upon the testimony such order may be entered."

Dow.

The State of Ohio, Miami County, ss. | In the Court of Common Pleas

Theadore Reyner by his Guardian Uriah Cook. vs Amy S. Bell & others | April Term, 1897. Journal Vol. 18 Page 201 Certified Copy of Journal Entry.

Entry

This day this cause came on for hearing by the Court upon the pleadings and evidence on the arguments of counsel, and the Court being fully advised in the premises finds for the plaintiff, and that the allegations of plaintiff's amended petition are true, and that the said Theadore Reyner at the time of the execution of the deed to Amy S. Bell, was non-compos mentis, and incompetent to convey the lands in the petition described, situate in Miami County, Ohio,

And the Court further find that undue advantage was taken of him by the defendant Howard E. Bell in procuring such deed to be made to the defendant Amy S. Bell.

And the Court further find that said Reyner did not receive an adequate consideration for such conveyance, nor was the transaction fair and reasonable, and that said deed was fraudulently procured.

It is therefore considered, ordered and adjudged & decreed by the Court that said deed by the said Theadore Reyner to said Amy S. Bell be and the same is hereby rescinded and held for naught, and the said Amy S. Bell and H. E. Bell and A. B. Struthers are hereby enjoined from disturbing plaintiff's possession of said land, and that the temporary injunction heretofore allowed by the Probate Court of said County be, and the same is hereby made permanent, enjoining said defendant from interfering with said plaintiff's possession and peaceable enjoyment of said land, and that his title to said land be quieted, and that said defendant Amy S. Bell be restored to the title of said 194½ acres of land in Tennessee, and that the deed therefor from the defendant Sarah E. Reyner to the defendant Amy S. Bell be delivered to said defendant Bell, and that the defendants H. E. Bell and Amy S. Bell pay the costs herein, and in default for ten days that execution issue therefor as upon judgments at law.

Thereupon the defendants gave notice of appeal, and the Court fixed the amount of appeal bond at $300.00. and the Court further grant leave to the defendant A. B. Struthers to amend his answer.

The State of Ohio, Miami County, ss.

I, Jasper N. Gosnell, Clerk of the Court of Common Pleas, within and for said County, and in whose custody the Files, Journals and Records of

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said Court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal of the proceedings of the said Court within and for said County, and that said foregoing copy has been compared by me with the original entry on said Journal, and that the same is a correct transcript thereof.

In Testimony whereof, I have hereunto subscribed my name officially, and affixed the seal of said Court, at the Court House, in Marysville, in said County, this 20th day of Sept. A.D. 1897.

(seal)

Jasper N. Gorsuch Clerk.

Undertaking by Plaintiff for Injunction.

The State of Ohio, Union County, ss.

Undertaking. Theadore Reynor

vs

Amy S. Bell, H. E. Bell & — Strathers

Court of Common Pleas.

This Bond belongs in Common Pleas Court record.

We bind ourselves to the said defendants Amy S. Bell, H. E. Bell and — Strathers in the sum of One Hundred Dollars, that the plaintiff Theadore Reynor shall pay to the said defendants the damages they may sustain by reason of the injunction in this action, if it be finally decided that the said injunction ought not to have been granted.

Witness our hands, this 29th day of March, 1897.

Alvell Grubs
Theadore Reynor
U.S. Mann
Uriah Cook
D.H. Hennigwin

This undertaking approved by me, this 29th day of March, 1897.

(seal)

J.N. Gorsuch Clerk
By Jno. A. Gorsuch Deputy

Appeal Bond Know all men by these Presents;

That A. B. Struthers and Amy S. Bell are held and firmly bound unto Uriah Cook, Guardian of Theadore Reynor, in the penal sum of Three Hundred (300) Dollars, to the payment of which well and truly to be made we do hereby jointly and severally bind ourselves, our heirs, executors and administrators.

Sealed with our seals and dated this 14th day of July, 1897.

The condition of the above obligation is such that whereas the said A. B. Struthers and Amy S. Bell has taken an appeal from a certain judgment rendered against them and in favor of the said Theadore Reynor by Uriah Cook his guardian in the Court of Common Pleas, within and for the

County of Knox, and State of Ohio, at the April Term, 1897, in case No. 7340, entitled Theadore Rymer by Noah Cook vs Amy S. Bell et al, in the Circuit Court of said County. Now if the said A. B. Struthers and Amy S. Bell shall prosecute their appeal to effect without unnecessary delay and shall abide and perform the order and judgment of said Circuit Court and pay all damages and costs which may be awarded against them the said defendants, then this obligation shall be void; otherwise it shall remain in full force and virtue in law.

A.B. Struthers (seal)
Amy S. Bell (seal)
T. C. Danforth (seal)

In presence of
Edson G. Lee
J.R. Williams

The execution of the above Undertaking and the sufficiency of the sureties thereon approved by J.T. Gozzard this 14th day of July, A.D. 1897.

On the 24th day of September A.D. 1897, the following Motion was filed with the Clerk of this Court, to-wit:

Motion for New Trial 149

Theadore Rymer, by Noah Cook, Guardian
vs
Amy S. Bell et al

Circuit Court of Knox County, Ohio.

The plaintiff moves the Court to grant him a new trial in this case for the following reasons;

1st. That the Court ruled in the trial of the cause that it would not hear more than six witnesses on each side on the question of the capacity of Theadore Rymer to transact business at the time of the execution of the deed for the Rymer farm and of the execution of the deed for Tennessee land and refused to allow plaintiff to introduce other and further witnesses under Subpoena and in Court for the purpose of giving testimony on that point, to which ruling plaintiff objected.

2nd. That the Court find from the evidence that Theadore Rymer was a weak man, but not wholly incapacitated to transact business at that time, whereas it should from the evidence have found that he was at that time "non-compos-mentis", and incapacitated from transacting said business and the said deed for the Rymer farm was void.

3rd. The Court erred in finding from the evidence that the deed from defendant Struthers to Amy S. Bell was delivered at all or until after this suit was brought, and in deciding that that was not material if afterwards ratified by the parties thereto.

4th. The Court erred in holding from the evidence that A.B. Struthers was in law and fact an innocent purchaser of said Rymer farm an entitled to protection,

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Amy S. Bell

Entry 149

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through the court find that as between the Bells and plaintiff there was fraud and undue advantage taken by said Bells of said Rupner.

5th. The court found from the evidence for the defendant A.B. Struthers when it should have found for the plaintiff and said judgment should have been for the plaintiff.

Robinson & Wordburn
Attorneys for Plaintiff

On the 24th day of September A.D. 1897, the following Entry was filed with the Clerk of this court, to-wit:

Entry 149

Theadore Rupner, by his Guardian, Miah Cook
vs
Amy S. Bell et al.

In Circuit Court of Union County, Ohio.

This day came the parties, and their attorneys, and this cause came on to be heard upon the pleadings of the parties and the evidence, and was argued by counsel and submitted.

On consideration whereof the Court being fully advised in the premises find that the said Theadore Rupner at the time of executing the deed to Amy S. Bell mentioned in the petition was possessed of sufficient mental capacity to make and execute a valid deed of conveyance for the lands in said deed described, and that said deed was not valid.

The Court further find that the defendant Allen B. Struthers was an innocent purchaser of said land for full value and without any notice or knowledge of the consideration passing from said Amy S. Bell to said Theadore Rupner and wife; and the Court find the equity of the case to be with the said Allen B. Struthers, and that rescission of said contract cannot properly decree and that the plaintiff is not entitled to the relief demanded in the petition and that the injunction in this case ought not to have been granted.

It is therefore considered and decreed by the Court that the injunction heretofore granted in this case be, and the same is dissolved and held for naught, and this action is dismissed without prejudice as between the plaintiff and Amy S. Bell.

And it is further decreed that the defendant recover of the plaintiff their costs herein expended and execution is awarded therefor, and the cause is remanded to the said Court of Common Pleas for execution.

Thereupon the plaintiff files his motion for a new trial which is overruled by the Court, to which ruling the plaintiff excepted.

Attest
J.M. Gosnell Clerk.
By Jno A. Gosnell, Deputy.

Pleas before the Hon. James A. Day, James L. Price and C. B. Finley, Judges of the Circuit Court within and for the County of Union of the Third Judicial Circuit of the State of Ohio, begun and held at the Court House on the 2nd day of February, the year of our Lord One Thousand Eight Hundred and Ninety Seven.

Be it remembered that heretofore to-wit on the 28th day of December A.D. 1896, the following Transcript was filed with the clerk of said Court, to-wit:

Transcript

The Ohio Pipe Company
vs
The Village of Milford Center

In the Circuit Court of
Union County, Ohio.
Sept. Term, 1896.
Journal Vol. 17, Page 552
Certified Copy of Journal Entry.

Now comes the defendant, and by leave of the Court files its answer herein.

September 30th 1896.

The State of Ohio,
Union County ss.
The Ohio Pipe Company
vs
The Village of Milford Center

In the Court of Common Pleas, September Term 1896
Journal 17, Page 557.
Certified Copy of Journal Entry.

This day the defendant by its duly authorized attorney being in open Court and refusing to plead herein this day and unless allowed further time to plead, this cause having been specially assigned for trial this day, came on to be heard on the pleadings, evidence and exhibits and was argued by counsel and submitted to the Court.

The Court having duly considered the same finds that said defendant The Village of Milford Center, has been duly and legally served with summons herein and is through its said attorney present in open Court.

The Court further find that the answer of the said defendant confesses to be true all the allegations of the petition save and except only that the plaintiff is a corporation, that the plaintiff was duly incorporated under the laws of the State of Ohio, and that the plaintiff has a right to sue under the name of The Ohio Pipe Company, to which finding of the Court the defendant then and there excepted.

The Court further find from the evidence that the allegations of the plaintiffs petition are true, to which finding of the Court the defendant then and there excepted.

The Court further find from the pleadings and evidence that this plaintiff is the party who duly recovered the judgment in the petition mentioned and in whose favor the order was made as alleged in the said petition and that this plaintiff has the right to bring this action as the Ohio Pipe Company.

To which finding of the Court the defendant then and there excepted.

The Court further find from the pleadings and evidence introduced that the allegations of the plaintiff's petition are true, and that said defendants indebted to the plaintiff in the sum of $415.35 with interest from the 23rd day of November, 1895; and that said sum of $440.16, being principal and interest to the 6th day of October, is due and unpaid the plaintiff from the said defendant.

To which finding of the Court the defendant then and there excepted.

It is therefore considered by the Court that said plaintiff, The Ohio Pipe Company, recover from the said defendant, the Village of Milford Center, the said sum of $440.16, with interest thereon at 6 per cent. per annum from this 6th day of October, 1895; and its costs herein expended taxed at $

The defendant the Village of Milford Center then and there excepted to the said finding and judgment of the Court herein.

The defendant the Village of Milford Center, thereupon made and filed a motion for a new trial herein, upon the grounds that said findings and decision were contrary to law and because the Court erred in sustaining the said motion striking out certain parts of the defendants answer herein as above stated, and for error on the face of the record.

Which motion for a new trial the Court then and there considering overruled. To which ruling of the Court defendant then and there excepted.

The defendant, the Village of Milford Center, then and there gave notice of its intention to appeal from the finding and judgment of this Court herein to the Circuit Court, and the Court thereupon fixed the bond for appeal at $1000.00.

The State of Ohio
Union County ss.
The Ohio Pipe Company
vs
The Village of Milford Center

In the Court of Common Pleas,
September Term, 1896.

Journal Vol. 17, Page 553.
Certified Copy of Journal Entry.

This day came on to be heard plaintiff's Motion to defendants Answer and Cross-petition herein and were argued by counsel and submitted to the Court.

The Court being fully advised in the premises finds that said motion No. 1, and No. 2, of said original motion and motion No. 2 of the supplemental motion filed herein are well taken and accordingly sustains the same.

It is therefore ordered by the Court and the following parts be and the same hereby are struck from said Answer and Cross-petition;

No. 1, all that part beginning with the words "This answering defendant further says" and by way of Cross-petition states," and ending in the words " in the sum of $436.34 or erroneously over paid."

No 2. All that part beginning with the words "Therefore this defendant prays the Court" and ending with the words "as this defendant may in equity be entitled".

No. 3. All that part containing the following averment, "That this defendant denies each and every allegation in the plaintiffs, petition not herein specifically admitted."

And thereupon the defendant, by its duly authorized attorney being present in open Court, moved the Court for time within which further to plead herein, and the Court having duly considered said motion ruled and ordered that, if said defendant plead further herein, it must file its pleading this day, unless the said defendant desired to file a general denial to the plaintiffs petition or unless the said defendant would make known to the Court a defense different from the pretended one in its original answer and Cross-petition, in either of which cases a reasonable Time would be given within which to file a pleading, thereupon said defendant by its attorney, refused to plead said general denial and refuses also to make known to the said Court any alleged defense different from the pretended one in the original answer and Cross-petition and refused to plead further herein this day,

The defendant duly excepted to the foregoing rulings and orders of the Court,

The State of Ohio, Huron County ss. | In Common Pleas Court
The Ohio Pipe Company | September Term 1896,
vs | Journal Vol. 17, Page 564
The Village of Milford Center | Certified Copy of Journal Entry.

This cause being heard on the motion to set aside the finding, decision and judgment of the Court, on consideration, overrules the same to which ruling the defendant then and there excepts.

J. H. Kinkade, Attorney for Defendant.

Oct. 6th 1896.

The State of Ohio, Huron County, ss. | In Common Pleas Court.
The Ohio Pipe Company | September Term 1896,
vs | Journal Vol. 17, Page 563
The Village of Milford Center | Certified Copy of Journal Entry.

Now comes the defendant herein and gives notice of its intention to appeal this cause to the Circuit Court, and the Court fix the penalty of the bond to be given in case of appeal at $1000.00.

Oct. 6, 1896 J. H. Kinkade Atty. for Defe.

The State of
Huron County
Common Pleas Court
Journal Vol. 17, Page 565
Certified Copy of Journal Entry

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The State of Ohio, Union County, ss.

I, J.N. Gosnell, Clerk of the Common Pleas Court within and for said County and in whose custody the Files, Journals and Records of said Court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal of the proceedings of the Common Pleas Court within and for said County, and that said foregoing copy has been compared by me with the original entry on said Journal, and that the same is a correct transcript thereof.

In testimony whereof, I do hereto subscribe my name officially and affix the seal of said Court, at the Court House in Marysville, in said County, this 28th day of December A.D. 1896.

(seal)

J.N. Gosnell Clerk

On the 30th day of January A.D. 1897, the following Motion was filed by the Clerk of this Court, to-wit;

Motion 145

The Ohio Pipe Company
vs
The Village of Milford Center

In the Circuit Court of Union County, Ohio.

Now comes the plaintiff, The Ohio Pipe Company, and appearing before this Court for the purpose of this motion only, moves the Court for an order to dismiss the pretended and attempted appeal of this cause to this Court, and to strike the same from the dockets and files thereof, for the reason and on the ground that said appeal was not perfected in accordance with, and in the manner prescribed by the statute in such case made and provided, and for the further reason that this cause is not appealable.

J.E. Salyer Esq
Cameron Ed Cameron
Attys. for Plff.

On the 3rd day of Febmary A.D. 1897, the following Entry was filed with the Clerk of this Court, to-wit;

Entry 145

The Ohio Pipe Company
vs
The Village of Milford Center

In the Circuit Court of Union County, Ohio.

This day came the parties and it appearing to the Court herein that the appeal herein is not well taken because said cause is not appealable, therefore on motion of the plaintiff and due consideration had it is ordered and adjudged that the attempted appeal be dismissed and held for vid and that the defendant pay the costs herein.

J.P.K.

Attest
J.N. Gosnell Clerk
By Jas A. Gosnell Deputy.

Pleas before the Hon. James H. Day, James L. Price and Caleb H. Norris, Judges of the Circuit Court within and for the County of Union, of the Third Judicial Circuit of the State of Ohio, begun and held at the Court House in the City of Marysville, on the 2nd day of February, in the year of our Lord One Thousand Eight Hundred and Ninety Eight.

Be it remembered that heretofore on the 23rd day of October A. D. 1897, the following Appeal Bond was filed with the Clerk of this Court, to-wit;

Appeal Bond.

Know all men by these presents; That The Cleveland, Cincinnati, Chicago and St. Louis Railway Company are held and firmly bound unto The Incorporated Village of Marysville in the penal sum of One Hundred Dollars, to the payment of which well and truly to be made we do hereby jointly and severally bind ourselves, our heirs, executors and administrators,

Sealed with our seals and dated this ---- day of--- 18

The conditions of the above obligation is such that whereas the said, The Cleveland, Cincinnati and St. Louis Railroad Company has taken an appeal from a certain judgment rendered against them and in favor of the said The Incorporated Village of Marysville, in the Court of Common Pleas within and for the County of Union, and State of Ohio, at the September Term, 1897, in case No. 7331, entitled The Incorporated Village of Marysville vs The Cleveland, Cincinnati, Chicago and St. Louis Railway Company, to the Circuit Court of said County.

Now if the said The Cleveland, Cincinnati, Chicago and St. Louis Railway Company shall prosecute its appeal to effect without unnecessary delay and shall abide and perform the order and judgment of said Circuit Court and pay all damages and costs which may be awarded against it and in favor of the said The Incorporated Village of Marysville, then these obligations shall be void; otherwise it shall remain in full force and virtue in law.

In presence of. The Cleveland, Cincinnati Chicago
(seal) & St. Louis Railway Company.
E. F. Osborn, (seal)
Secretary.
National Security Company
By M. F. Wren (seal)
Res. Vice President.
Attest. C. H. Davidson (seal)
Res. Assistant Secretary.

The execution of the above Undertaking and the sufficiency of the sureties thereon approved by J. N. Gossett Clerk of Court, this 23rd day of October A. D. 1897.

Transcript.

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On the 11th day of November A. D. 1897. the following Transcript was filed by the Clerk of this Court, to-wit:

Transcript.

The State of Ohio, } In the Court of Common Pleas
Union County, ss. }
The Incorporated Village of Marysville.
against
The Cleveland, Cincinnati and St. Louis Rail Road Company

April Term, 1897.
Journal, Vol. 18 Page, 165.
Certified Copy of Journal Entry.

Leave is granted defendants to plead to the petition in this cause on or before the 12th day of June, 1897.

The State of Ohio, } In the Court of Common Pleas,
Union County, ss. }
The Incorporated Village of Marysville.
against
The Cleveland, Cincinnati, and St. Louis Rail Road Company.

April Term 1897.
Journal Vol. 18, Page 214.
Certified Copy of Journal Entry

This day on motion of defendant it has leave to withdraw its answer filed in said cause, and to file a general demurrer to the petition of plaintiff, same to be filed instanter.

The State of Ohio, } In the Court of Common Pleas,
Union County ss. }
The Incorporated Village of Marysville.
against
The Cleveland Cincinnati, Chicago & St. Louis Ry. Co.

September Term 1897
Journal Vol. 18, Page 235

Certified Copy of Journal Entry.

This day came on this cause to be heard by the Court on the demurrer of the defendants to the petition of the plaintiff.

Whereupon the Court being fully advised in the premises doth overrule said demurrer, to which ruling and decision of the Court the defendant then and there excepted, and thereupon defendant asked and obtained leave to refile his said answer forthwith, and said leave was granted by the Court.

Porter & Porter.

The State of Ohio, } In the Court of Common Pleas,
Union County, ss. }
The Incorporated Village of Marysville
against
The Cleveland, Cincinnati, Chicago and St. Louis Railway Company

September Term 1897.
Journal Vol. 18, Page 278

Certified Copy of Journal Entry.

This day came on this cause to be heard on the pleadings and evidence, and the Court upon full hearing being

fully advised in the premiss find for the plaintiff
against the defendant, and that there is due the plaintiff
from the defendant by reason of the premiss the sum of
One Hundred and Siftien and 25/100 Dollars, with interest
from October 31st, 1896, and the further sum of One Hundred
and Siftien and 25/100 Dollars, with interest from January
31st, 1897, making a total due this 12th of October, 1897, the sum
of Two Hundred and Forty Two and 25/100 Dollars, which is a
lien upon the real estate, right of way, Iron rails, Side tracks,
Depot grounds, and other property known as the Cleveland, Cin-
cinnati, Chicago and St. Louis Railway, situate within the County
of Union, and being its right of way, Iron rails, Rail Road tracks,
side tracks and Depot grounds as used by and occupied
by said defendant.

It is therefore considered, ordered and adjudged
by the Court, that the plaintiff recover of the defendant said
sum of Two Hundred and Forty Two and 25/100 Dollars and its
costs herein expended taxed at $ 32.41.

And further the Court order and decree, that said
lien be enforced, and if defendant fail for ten days to pay
said judgment and costs and interest that an order of sale
issue according to law to the Sheriff of this County, commanding
him to appraise, advertise and sell said right of way, Iron
rails, Side tracks, Depot grounds, within said County of Union,
or so much thereof as may be necessary to said judgment
costs and interest, to all of which defendant excepts, and
gives notice of its intention to appeal to the Circuit Court,
and the Court at the defendants request fixed the Appeal
Bond at One Hundred Dollars.

O. K.— Porter Ed Porter
Attorneys for Ry. Co.
J.W. Robinson.

The State of Ohio, Union County, ss.

I, J.N. Gosnell, Clerk of the Court
of Common Pleas, within and for said County, and in
whose custody the Files, Journals and Records of said
Court are required by the laws of the State of Ohio to be
kept, hereby certify that the foregoing is taken and copied
from the Journal of the proceedings of the said Court
within and for said County, and that said foregoing
copy has been compared by me with the original entry
on said Journal, and that the same is a correct Tran-
cript thereof.

In testimony whereof, I have hereunto subscribed
my name officially, and affixed the
(seal) seal of said Court, at the Court
House in Marysville, in said
County, this 14th day of November A.D. 1897.
J.N. Gosnell Clerk

Entry 15-4

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On the 2nd day of February A. D. 1898, the following Entry was filed with the Clerk of this Court, to-wit:

The Incorporated Village of Maysville
vs
The Cleveland, Cincinnati, Chicago and St. Louis Railway Company

In Circuit Court.

Entry 15-4

This day came the parties and submitted this cause to the Court upon the pleadings, evidence and arguments of Counsel.

Whereupon the Court being fully advised in the premises do find for the plaintiff against the defendant on the issues joined and that there is due the plaintiff from the defendant by reason of the premises the sum of One Hundred and Sixteen & 29/100 Dollars, with interest from October 31, 1896, and the further sum of One Hundred and Sixteen & 29/100 Dollars with interest thereon from January 31, 1897, making a total this 2nd day of February, 1898, due as aforesaid the sum of Two Hundred and Forty Eight Dollars which the Court finds is also a lien upon the real estate, right of way, iron rails, tracks, side tracks, depot grounds and other property known as the Cleveland, Cincinnati, Chicago and St. Louis Rail way, situate within the County of Union Ohio, and being its right of way, iron rails, Rail Road tracks, depot grounds as used by and occupied by said defendant.

It is therefore considered, ordered and adjudged by the Court that the plaintiff recover of the defendant said sum of Two Hundred and Forty Eight Dollars and its costs herein expended taxed to $

And further the Court orders and decrees that said lien be enforced, and if defendant fail for ten days to pay said judgment and costs and interest, that an order of sale issue to the Sheriff of this County, commanding him to appraise, advertise and sell said right of way, iron rails, Rail Road tracks, side tracks, Depot grounds within said County used and occupied by defendant or so much thereof as may be necessary to satisfy said judgment and costs.

The Court in deciding this cause; 1st overruled the demurrer of defendant to the petition of plaintiff, to which decision and ruling the defendant then and there excepted. Thereupon after said judgment and decree the defendant moved the Court to set aside the finding, decree and judgment made in this cause, and grant to defendant a new Trial therein, which motion the Court overruled; to which ruling and decision the defendant then and there excepted.

And the defendant then and at the time excepted to all judgments, decrees and decisions above rendered and made.

And the Court order the Journal to be kept open

for fifty days for time to defendant to prepare his Bill of exceptions in this cause, and this cause is remanded to the Court of Common Pleas for execution.

On the 23rd day of February A. D. 1898, the following Entry was filed with the Clerk of this Court, to-wit:

Entry 154

The Interpraise Village of Marysville vs The Cleveland, Cincinnati, Chicago and St Louis Railway Company | In the Circuit Court.

Now comes the said The Cleveland, Cincinnati, Chicago and St. Louis Railway Company, and presents to the Court its certain bill of exceptions taken on the hearing and trial of this case, and said bill of exceptions is allowed, signed and sealed and ordered to be placed on file, and made a part of the record in this case.

Attest
J.N. Gosnell Clerk.
By Jno A. Gosnell Deputy.

Be it remembered that heretofore to-wit; on the 20th day of October the following Petition in Error was filed with the Clerk of this Court, to-wit;

Petition in Error 15-3

Henry Mordic Plaintiff in Error vs Moses George Defendant in Error | In the Circuit Court of Union County, Ohio.

The said Henry Mordic complains of the said Moses George, defendant, for that the said Moses George, at the September Term of the Court of Common Pleas, A. D. 1897, by the consideration of said court, against the said plaintiff, recovered a judgment in a certain action then pending in said Court, wherein the said Moses George was plaintiff and the said Henry Mordic was defendant (a copy of the record of the judgment and proceedings in which case, duly certified, is hereto attached marked, marked "A" and made a part of this petition; and the said Henry Mordic says that there is error in the said record and proceedings, in this, to-wit;

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4th ... demurrer ...

6th ... the said ... there by ... to make ... it had ...

6 ... Moses Geo... Henry Mo...

7th ... Henry Mo...

1st --- That the said Court erred in refusing to give the instructions to the jury which the said Henry Mordie prayed the said Court to give to-wit: "That if the jury find that the said plaintiff failed to have said alleged damage assessed by three disinterested, residents of the county, properly sworn, by a Justice of the Peace of the Township in which the premises are situate, then and in that event the said plaintiff can not recover in this action

2nd --- That the Court erred in the instructions given to the jury on the trial of the said action in this, to-wit: "If you find that the fence was not a good husband-like fence, not such that would turn ordinary stock- if you find that defendants' cattle or a part of them were breachy and the defendant knew they were breachy at the time he placed them in the pasture lot adjoining plaintiffs' and you find or much or that they would have broken over even if the fence had been good husband-like fence, and the defendant knew they were breachy at the time they were in the field adjoining that of the plaintiffs' and if you find the defendants' cattle broke into plaintiffs' corn and ate and destroyed a portion thereof then the defendant will be liable for the value of the corn so destroyed.

If the jury find that the partition fence was not a good and sufficient fence, one that would turn ordinary cattle, then and in that event the plaintiff cannot recover in this action, unless the jury further find that defendants' cattle or a part thereof were breachy and known to the defendant to be such, they would have broken in over if the fence had been a good fence."

If the jury should find the fence to have been a good and sufficient fence, or that the cattle were breachy and known to be such and that the cattle broke over the same, then the jury will pass to the question of the plaintiffs damage."

3rd --- That the facts set forth in the said petition are not sufficient in law to maintain the aforesaid action thereof against the said Henry Mordie.

4th --- That the said Court erred in overruling the demurrer of the defendant to the plaintiffs' petition.

5th --- That the said Court erred, in permitting the said plaintiff to amend his petition, during trial, thereby cutting off the defendants' right to make a motion to make said petition more definite and certain and that it led the said defendant.

6th --- That the said judgment was given for the said Mrs. Gorge when it ought to have been given for the said Henry Mordie, according to law of the land

7th --- That the said Court erred in overruling said Henry Mordies motion for a new trial.

The said Henry Wardle defendant therefore prays that said judgment be reversed and the said defendant restored to all things he has lost by reason thereof.

N. N. Merchant

Atty. for Plaintiff in Error.

I hereby waive the issuing and service of Summons in this case and voluntarily enter my appearance as defendant in error in the above case.

Moses George

by Myers & Myers Attys for Defd.

On the 1st day of November A.D. 1897. the following Transcript was filed with the Clerk of this Court, to-wit:

Transcript

Moses George

Plaintiff

6614 vs

Henry Wardle

Defendant

Court of Common Pleas

Union County, Ohio.

Journal 18 Page 127

This day this cause came on to be heard on the demurrer of the defendant; the same being submitted on the agreement of Attorneys, the Court overrules the same.

It is therefore ordered and adjudged by the Court that the demurrer of the defendant be overruled with leave to file an action within 30 days, to all of which defendant excepts.

Moses George

Plaintiff

6614 vs

Henry Wardle

Defendant

Court of Common Pleas

Union County, Ohio.

Journal 18, Page 246

This day came the parties by their attorneys; also came the following named persons as jurors to-wit:

E. H. Morse, B. L. Robinson, Jay L. Rogers, A. E. Copper, John E. Harriman, Lewis Baker, Samuel Barnes, Sterling Evans, Wm Biddle, Robt. D. Finley, D. M. Freshwater and Benj. Carter;

Who were duly impaneled and sworn according to law, and after hearing the evidence and arguments of counsel, the hour for adjournment having arrived, this cause is continued until 8:30 o'clock tomorrow morning.

Moses George

Plaintiff

6614 vs

Henry Wardle

Defendant

Court of Common Pleas

Union County, Ohio.

Journal 18, Page 250.

This day again came the parties by their attorneys; also came the following named persons as jurors to-wit; Jay L. Rogers foreman, E. H. Morse, B. L. Robinson, A. E. Copper, John E. Harriman, Lewis Baker, Samuel Barnes, Sterling Evans, Wm Biddle, Robt. D. Finley, D. M. Freshwater and Benj.

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Carter; who were hereto before duly impaneled and sworn according to law; and after hearing the charge of the Court, the said Jury retired to their room in charge of the Sheriff for deliberation.

And now comes the said Jury into open Court with their verdict in writing, signed by their foreman and say:-

We, the Jury, being duly impaneled, sworn and affirmed, find the issues in this case in favor of the plaintiff, and assess the amount due to the plaintiff from the defendant at the sum of Thirty Dollars.

Jay S. Rogers. Foreman.

Dated Sept. 28th 1897.

Court of Common Pleas
Union County, Ohio.

Journal 18, Page 270.

Moses Sturgeon
Plaintiff
vs
6614
Henry Woodie
Defendant

This day this cause came on to be heard on the motion of the defendant to set aside the verdict heretofore rendered herein, and for new trial, was argued by counsel and submitted to the Court.

On consideration the Court overrules said motion for a new trial.

It is therefore considered, ordered and adjudged by the Court, that the plaintiff recover from the defendant, the sum of $30.00, with interest from the 28th day of September, 1897, and costs herein taxed at $ and that in default of payment thereof, that execution be issued therefor against said defendant, to all of which holding of the Court the defendant then and there excepted.

Ayers & Ayers
Attys. for Plff.
W.W. Merchant
Atty. for Defd.

On the 2nd day of February A.D. 1898, the following Entry was filed with the Clerk of this Court, to-wit:

Henry Woodie
Plff. in Error
vs
Moses Sturgeon
Defd. in Error

In the Circuit Court
Union County, Ohio.

Entry
153

This cause came on for hearing upon the petition in Error, the transcript and the original papers and pleadings from the Court of Common Pleas of Union County, Ohio, and was argued by Counsel.

On consideration whereof the Court find there is no error apparent on the record in the said proceedings & judgment.

It is therefore considered by the Court that the

judgment aforesaid be, and the same is hereby affirmed, without penalty, and that the defendant in error recover from the plaintiff in error his costs herein expended, taxed at $

And it is further ordered that a special Mandate be sent to the Court of Common Pleas of said County of Irwin for execution upon the judgment, in which ruling and judgment of the Court the plaintiff in error excepts.

D. V. Ayers, Atty for Plff. in Error
W.W. Merchant, Atty. for Defe in Error.

Attest
J.N. Gosnell Clerk
By Jno A. Gosnell Deputy.

Pleas before the Honorable James A. Day, James L. Price and Caleb H. Norris, Judges of the Circuit Court, within and for the County of Irwin, of the Third Judicial Circuit of the State of Ohio, begun and held at the Court House the 1st day of February in the year of our Lord One Thousand Eight Hundred and Ninety Eight.

Thereafter on the 2nd day of March A. D. 1897, the following Petition in Error was filed with the clerk of this Court, to-wit:

Petition in Error 147

Anna Taylor Love, Admx.
vs Plff. in Error
Cary Janes, Defe in Error

In the Circuit Court
Irwin County, Ohio.

Plaintiff in Error says that at the September Term, 1896, of the Court of Common Pleas of Irwin County, defendant in error recovered a judgment by the consideration of said Court against plaintiff in error in an action then pending therein, wherein plaintiff in error was plaintiff and defendant in error was defendant, a transcript of the docket and journal entries whereof is to filed herewith.

There is error in said record and proceedings in this to-wit:

Said Court erred in overruling the motion of plaintiff in error for a new trial.

Said Court erred in its charge to the jury on the trial of said action.

Said Court erred in ruling out the evidence offered by the said Anna Taylor Love, Admx.

Said Court erred in directing the jury to return a verdict for the defendant Cary Janes, and dismissing said cause.

Said judgment was given for said Cary Janes when it ought to have been given for said Anna Taylor Love, Admx &c.

There an other errors in said record and proceedings

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Transcript 6980

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vs
Cary Janes

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Cary Janes

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vs
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Plaintiff therefore prays that said judgment may be reversed and that she be restored to all things she has lost by reason thereof.

J.B. Cole
Attorney for Plff in Error.

Defendant in Error hereby waives issuing and service of Summons herein and enters his appearance herein, in error.

Cameron & Cameron
Atty for Cary Janes.

March 2, 1897.

On the 14th day of September A.D. 1897, the following Transcript was filed with the clerk of this Court, to-wit:

Transcript 6980

Anna Taylor Love Admt. &c.
vs
Cary Janes

In the Court of Common Pleas,
April Term, 1896.
Journal 17, Page 421
Leave granted plaintiff to reply within 3 days.

Anna Taylor Love, Admr, &c.
6980 vs
Cary Janes

Journal 17 Page 535

cause is continued

On motion and showing of the plaintiff, this at plaintiff's costs for the term.

Anna Taylor Love, Admr, &c.
6980 vs
Cary Janes

Journal 17, Page 537

This day came the parties herein by their attorneys; also came the following named persons as jurors to-wit; J. R. King, George Burns, William F. March, D. A. Henderson, Elbert Bonnell, David A. Harrington, B.F. Bean, William L. Cartmell, Joseph Powell, R. L. Stimmel, Peter Schintzer and Wm J. Barbour, who were duly impanelled and sworn according to law, and thereupon the case came on for hearing on the pleadings and evidence.

And after hearing the evidence, argument and charge of the Court, the said jury retired to their room in charge of the Sheriff for deliberation;

And now come said jury into open Court with their verdict in writing, signed by their foreman and say:

We, the jury, being duly impanelled and sworn, find the issues in this case in favor of the defendant.

D. A. Henderson Foreman.

September Term, 1896.
Journal 17, Page 537

Anna Taylor Love, Admr, &c
6980 vs
Cary Janes

The jury on a former day of this Term having rendered a verdict in favor of the defendant and a motion for new trial being overruled:

It is therefore considered and adjudged by the Court that the defendant recover of the plaintiff his costs herein expended. To be entered of date of Sept. 21st 1896.

John A. Price, Judge.

Anna Taylor Love, Adm't, &c,
6980 vs
Cary Jarno

September Term, 1896.
Journal 17, page 565

October, 6th, 1896- By consent, the time of thirty days from the rising of the Court is allowed in which to prepare, present and file bills of exceptions, taken at the trial and hearing as of this term, and it is ordered that the journal be kept open for said period for proper entries thereof.

Approved, John A. Price, Judge.

Anna Taylor Love, Adm't, &c,
6980 vs
Cary Jarno

Court of Common Pleas
Union County, Ohio.

Now comes the plaintiff and presents to the Court her certain bill of exceptions herein, which being found by the Court to be true, is allowed, signed and sealed, and on motion is hereby made part of the record of this case.

Anna Taylor Love, Adm't, &c,
6980 vs
Cary Jarno

January Term, 1898
Journal 18, page 338.

This day came the plaintiff by their Attorneys and submitted this cause to the Court upon the motion of the plaintiff to correct the records and entries in this case; after hearing the evidence and arguments of Counsel, the Court being fully advised in the premises find that the entry overruling the motion for a new trial, and judgment on the verdict of the jury is correctly entered on the date of September 21st 1896, and the bill of exceptions taken in said case was not allowed or signed by the Judge of this Court until the 4th day of December, 1896.

It is therefore considered and ordered by the Court that said motion be and the same is overruled, to which ruling the plaintiff by her Attorneys excepts.

Approved
D. Dow, Judge.

The State of Ohio, Union County, ss.

I, J. N. Gosnell, Clerk of the Court of Common Pleas, within and for said County, and in whose custody the files, Journals and Records of said Court are required by the Laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal of the proceedings of the said Court within and for said County, and that said foregoing copy has been compared by me with the original entries on said Journal, and that the same is a correct transcript thereof.

In testimony whereof I have hereunto subscribed my name officially and affixed the seal of said Court, at the Court House in Marysville, in said
(seal) County, this 14th day of September A. D. 1897.

J. N. Gosnell Clerk.

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Motion
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On the 23rd day of September A. D. 1897, the following Motion was filed with the Clerk of this Court, to-wit:

Anna Taylor Lowe, Admx.

Pltff. in Error

vs

Cary Jarvis

Defl. in Error

In the Circuit Court of Union County, Ohio.

Motion 147

The defendant moves the Court to strike the alleged Depositions of C. L. Hummer from the bill of Exceptions in this case, and for grounds of the motion say:

That said depositions was not attached to said Bill of exceptions at the time the same was signed and filed and was not attached to said Bill of exceptions when the same was filed in this Court, and was not or attached when this Term of Court commenced, but the same have been attached to said bill of exceptions since this Court began, without the consent of the defendant.

Cary Jarvis, Defl. in Error
By Cameron & Cameron
his Attys.

On the 2nd day of February A. D. 1898, the following Entry was filed with the Clerk of this Court, to-wit:

Anna Taylor Lowe, Admx.
of the Estate of Wm Fairbanks,

Pltff. in Error

vs

Cary Jarvis

Defl in Error

In the Circuit Court of Union County, Ohio.

Entry 147

This cause came on for hearing upon the petition in Error, the transcript and the original papers and pleadings from the Court of Common Pleas of Union County Ohio, and was argued by counsel.

On consideration whereof the Court find there is no error apparent on the record in said proceeding and judgment.

It is therefore considered by the Court that the judgment aforesaid be, and the same hereby is affirmed without penalty, and that the defendant in error recover from the plaintiff in error his costs herein expended taxed at $

It is further ordered that a special mandate be sent to the Court of Common Pleas of said County of Union, for Execution upon the judgment, to which ruling and judgment of the Court the plaintiff in error excepts.

Cameron & Cameron Attys. for Defl.
J. B. Cole, Atty for Defl.

Attest, J. N. Gosnell Clerk.
By John A. Gosnell Deputy.

Pleas before the Hon. James H. Day, James L. Price and Caleb H. Norris, Judges of the Circuit Court within and for the County of Union of the Third Judicial Circuit of the State of Ohio, begun and held at the Court House on the 4th day of October, in the year of our Lord One Thousand Eight Hundred and Ninety Eight.

On the 16th day of July, A.D. 1898, the following Petition in Error was filed with the Clerk of this said Court, to-wit:

The State of Ohio, Union County, Circuit Court.

Petition in Error 158

Mary J. Hill Et. Harriet Williamson
Plaintiffs in Error,

vs.

Henry V. Spicer, Administrator de bonis non, with the will annexed, of the estate of Edward Norris, deceased,
Defendant in Error

Petition in Error.

The said plaintiffs in error claim that there is manifest error prejudicial to them in the record and proceedings of the Court of Common Pleas of said County filed herewith, and made part hereof in this to-wit:

First: The Court erred in sustaining the demurrer to the amended petition.

Second: The Court erred in giving judgment for the defendant in error when, by the law of the land, judgment should have been given to the plaintiffs in error.

Third: Other errors prejudicial to the plaintiffs in error manifest upon the face of the record.

Wherefore the plaintiffs in error ask that said judgment and proceedings be reversed and they be restored to all things they have lost thereby.

J. L. Jolliff
Atty. for Plffs in Error.

The issuing and service of summons in Error is hereby waived, and the appearance of the defendant in error is hereby entered.
July 8th, 1898.

Henry V. Spicer Admr. &c
By his Atty. J. F. Millar.

Certified Copy of Journal Entry.

The State of Ohio, }
Union County, ss } In the Court of Common Pleas.

Transcript 7504

Mary J. Hill Et. Harriett Williamson } January Term, 1898.
vs } Journal 18, Page 337.
Henry V. Spicer, Administrator de bonis non, &c. }

This cause came on for hearing this 24th day of January, 1898, on the demurrer to the petition, and the Court after hearing argument of counsel, and upon due consideration sustained said demurrer, to which ruling the plaintiffs then and there duly excepted, and asked to be allowed 30 days in which to amend their petition, which leave of the Court was duly granted.

Mary J. Hill et al } Court of Common Pleas, Union County, Ohio.
vs } Journal 18, Page 397.
7404 Henry V. Spicer Admr &c }

This cause having been heard on the demurrer to the amended

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petition, the Court after due consideration thereof on the 10th day of May, 1895, pronounce the same, to which ruling plaintiff at the time duly excepted; and thereupon, the plaintiff not asking to be granted leave of Court to plead further it is considered by the Court that the defendant go hence without day, and that he recover from the plaintiff his costs herein expended, to all of which ruling and judgment the plaintiff at the time the same were made duly excepted.

The State of Ohio, Union County, ss.

I, Jasper N. Gosnell Clerk of the Court of Common Pleas, within and for said County, and in whose custody the files, journals and Records of said Court are required by the laws of the state of Ohio, to be kept, hereby certify that the foregoing is taken and copied from the Journal of the proceedings of the said Court within and for said County, and that said foregoing copy has been compared by me with the original entry on said journal, and that the same is a correct transcript thereof.

In testimony whereof, I have hereunto subscribed my name officially, and affixed the seal of said Court, at the Court House in Marysville, in said County this 16th day of July, A.D. 1898.

(seal)

Jasper N. Gosnell Clerk

On the 4th day of October A.D. 1898. the following Entry was filed with the Clerk of this Court, to-wit;

Entry 158

Mary J. Dill & Harriet Williamson
Plffs in Error
vs
Henry V. Spicer
Defdt in Error

In the Circuit Court,
Union County, Ohio.

This cause came on for hearing this fourth day of October, 1898, upon the petition in error, the transcript and the original papers and pleadings from the Court of Common Pleas of Union County, and was argued by counsel; on consideration whereof, the Court find there is no error apparent on the record in said proceedings & judgment.

It is therefore considered by the Court that the judgment aforesaid be, and the same hereby is, affirmed; and that the defendant in error recover from the plaintiff in error his costs herein expended taxed at $.

And the Court being of the opinion that there was reasonable cause for proceedings in error, allow no penalty.

It is further ordered that a special mandate be sent to the Common Pleas Court of Union County for execution upon said judgment.

J. L. Jolliff,
Atty. for Plff. in error
J. F. Millar
Atty. for Defdt in error.

Attest
J. N. Gosnell Clerk.
By Jno A. Gosnell Deputy.

Pleas before the Honrable James H. Day, James L. Price and Caleb H. Norris, Judges of the Circuit Court, within and for the County of Union & the Third Judicial Circuit of the State of Ohio, begun and held at the Court House, the 7th day of February, in the year of our Lord One Thousand Eight Hundred and Ninety Nine,

Heretofore the Appeal Bonds, Transcripts and original pleadings from the Court of Common Pleas were filed with the Clerk of the Circuit Court, said Appeal Bonds were filed on the 12th day of February A.D. 1898, and read as follows:

Appeal Bond

Know all men by these presents: That A.L. Brake and J.H. Manchester, are held and firmly bound unto Gaar Scott & Co. in the penal sum of One hundred dollars, to the payment of which well and truly to be made we do hereby jointly and severally bind ourselves, our heirs, executors and administrators. Sealed with our seals and dated this day of Feby. 1898.

The condition of the above obligation is such that whereas the said A.L. Brake has taken an appeal from a certain judgment rendered against him, and in favor of the said Gaar Scott & Co. in the Court of Common Pleas within and for the County of Union and State of Ohio, at the January Term, 1898, in case No. 7071 and entitled Gaar Scott &c. vs Isaac J. Sparks et al to the Circuit Court of said County: Now if the said A.L. Brake shall prosecute his appeal to effect without unnecessary delay and shall abide and perform the order and judgment of said Circuit Court and pay all damages and costs which may be awarded against the said A.L. Brake, then this obligation shall be void: otherwise it shall remain in full force and virtue in law.

In the presence of
Jason Coolidge
Jno A. Gemmill

A.L. Brake (seal)
J.H. Manchester (seal)
Wm H.H. Franklin (seal)

The execution of the above Undertaking and the sufficiency of the sureties thereto approved by J.N. Gemmell, Clerk of Courts, this 12th day of February, A.D. 1898.

On the 2nd day of March A.D. 1898, the following Transcript was filed with the Clerk of this Court, to-wit:

The State of Ohio, } In the Court of Common Pleas.
Union County ss }

Gaar Scott & Company, Plaintiff.
against
Isaac J. Sparks et al, Defendants.

Certified Copy of Journal Entries

September Term, to-wit, September 21st, 1896.

Journal Vol. 17 Page 537.

This day on motion of defendants this case is passed over and delayed until the 3rd day of October, 1896, on the motion and showing of defendants, and at their costs. It is therefore ordered that plaintiff recover of defendants the costs by said delay taxed at $

J.M. Kennedy for Defendants.
Price & Porter for Plaintiff.

Gaar Scott & Company
vs.
Isaac J. Sparks and Louisa Sparks
7071

September Term, 1896, to-wit Oct. 6th 1896.
Court of Common Pleas, Union County, Ohio.
Journal 17, page 661

This day this cause came on to be heard upon the mine joined between the parties, and neither party requiring a jury, but both parties waiving a jury trial, this cause is submitted to the Court, and the Court after hearing the evidence, find for the plaintiff, and find that there is due to plaintiff from said defendants the sum of One Hundred and Thirty Five Dollars ($135.00) with interest to be added at 8 per cent from September 22nd, 1895, making in all $145.80 00

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claimed by plaintiff in its petition. It is therefore considered and adjudged by the Court that the plaintiff recover of the defendants said sum of $145.80 (Interest to be computed from September 22nd 1896) and also its costs in this behalf expended taxed at $

J. M. Kennedy Atty for Defendant
Potter & Potter Atty's for Plaintiff

7071 | Gaar Scott Company vs Isaac J. Sparks and Louisa Sparks

January Term, 1897, Ve-writ: January 25th 1897.
Court of Common Pleas, Union County, Ohio.
Journal 18, Page 70.

This day this cause came on to be heard on the demurrer to the answer and cross-petition of the heirs of Michael J. Brake, Clinton Brake, William Brake and Alonzo Brake; on consideration whereof the Court sustains the said demurrer.

7071 | Gaar Scott Company vs Louisa L. Sparks et al

January Term, 1897, Ve-writ: Feb. 25th 1897.
Journal Vol. 18, Page 72.

On motion of defendant, and for good cause shown, it is ordered that this case, and the case of The Union Banking Company against Louisa L. Sparks et al Numbered 7196, in this Court be, and they are hereby consolidated, and that all further proceedings in said Consolidated action be had in and under the Number 7071 as aforesaid.

7071 | Gaar Scott Company vs Isaac J. Sparks et al

April Term, 1897.
Journal 18, Page 172.

On motion and notice to the defendants herein, the plaintiff herein, now by leave of the Court files a Supplemental petition in this case.

7071 | Gaar Scott Company vs Isaac J. Sparks, et al

Court of Common Pleas
Union County, Ohio.
April Term, 1897.

On motion of the plaintiff, and it appearing to the Court that Holly O. Brake, is one of five heirs who have been made defendants herein and is a minor over the age of 14 years, it is ordered that T. A. Thompson, Attorney at law of this Court be and he is hereby appointed guardian ad-litem of the said Holly O. Brake, and the said T. A. Thompson appeared in open Court and accepted the appointment.

7071 | Gaar Scott & Company vs Isaac J. Sparks et al

Court of Common Pleas, Union County, Ohio
April Term, 1897.

This day this cause came on to be heard on the motion of the heirs of Michael J. Brake, Ve-writ: A. L. Brake, Clinton V. Brake, William M. Brake, Amy B. Brake Morse and Holly A. Brake to set aside the sale of the lands heretofore made herein, and argued by counsel, upon consideration whereof the Court overrules said motion, to which ruling, decision and judgment the defendants except.

7071 | The Union Banking Co. vs Isaac J. Sparks et al. and Gaar Scott & Co. vs Isaac J. Sparks et al

Court of Common Pleas, Union County, Ohio.
January Term, 1898.

This day this cause came on to be heard upon the Supplemental petitions of the Union Banking Co. against Isaac J. Sparks, Louisa L. Sparks et al, defendants,

and Gaar Scott & Co. against Isaac J. Sparks, et al defendants, these two cases having heretofore been consolidated under the Title of Gaar Scott & Co. vs Isaac J. Sparks et al No. 7071, and was heard upon the pleadings and the evidence, and the Court being fully advised in the premises, find the equity and the law of the case to be with the plaintiffs.

And the Court find first: That the sale heretofore made by the Sheriff, on the writs of execution issued herein, and his return of the same, with his report of his proceedings, and the sale of said lands and tenements, under said writs of execution; and the Court having carefully examined said proceedings, and being satisfied that said sale has in all respects been made in conformity to the provisions of the statute in such case made and provided, finds the same to be legal, and does therefore approve and confirm the same.

And the Court further finds that at the date of said sale, the said Louisa L. Sparks was the sole owner of the premises so sold, in fee-simple, and in her own right, and that the said heirs at law of the said Michael J. Brake, and neither of them had any interest in said premises.

And it is further ordered, that the Sheriff make to the purchaser, Joshua Nevil, 7195
a deed in fee simple for the lands and tenements so sold.

And the Court finding that said sale was made by the former Sheriff, William G. Snodgrass, whose time of office has now expired, it is ordered that the present Sheriff, J. Ed Robinson, be authorized and required to execute and deliver such deed to the purchaser, Joshua Nevil, and a writ of possession is awarded to put said purchaser in possession of the said premises.

And the Court find, that at the time of the levies, and at the time of the sale of the said premises, said, Louisa L. Sparks was the owner of a homestead, and continued to be the owner of a homestead until the time mentioned in said supplemental petitions: and therefore find, order and decree that the plaintiffs are entitled to the payment of their judgments in full, in preference to said homestead claim out of said proceeds of sale to which she is entitled.

And the Court coming now to distribution of the purchase money in the hands of the Sheriff, orders;

First = To the Treasurer of this County, the taxes and penalty due on said property so sold, to-wit; the sum of $

Second = To the Clerk of this Court the Costs of this action, taxed at $

Third = To the Union Banking Co. and to Gaar Scott & Co. the amounts of their judgments with the interest thereon, neither being preferred to the other, amounting to $ and to $ respectively. Whereupon, the said Louisa L. Sparks, as to the disallowance of her claim of $600,00 out of said proceeds of sale, until plaintiffs judgments are first paid, gave notice of her intention to appeal said Justice to the Circuit Court of this County, and the Court fix the amount of her appeal Bond at the sum of $100,00 - And the said heirs of Michael J. Brake go to the finding of the Court, that the fee-simple of said lands were in Louisa L. Sparks, and that the said heirs of Michael J. Brake, had no interest in said premises gave notice of their intention to appeal, and the Court fix the amount of their bond at $100 ea.

The State of Ohio, } In the Court of Common Pleas.
Union County, ss }

The Union Banking Company } September Term, 1896. To-wit: Sept. 8th, 1896.
vs } Journal Vol. 17. Page 601.
7196 Louisa L. Sparks et al }

This day came the plaintiff by J. H. Kirkade. Attorney and filed its petition against said defendants and thereupon J. E. Griffith an attorney at law of this Court, by virtue of a warrant of Attorney for that purpose duly executed by said defendants, now produced in open Court proven, shown to the Court, and filed with the Clerk thereof, appeared in open Court in behalf of the said defendants, waive the issuing and service of process, entered the appearance of said

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Union County, ss

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defendants herein, and acknowledging that said defendants did owe and were indebted unto the plaintiff as it has in its petition alleged by virtue of said Warrant of Attorney confessed that there was due from said defendants to said plaintiff, on said indebtedness the sum of Two Hundred and Thirty-two Dollars, bearing interest at 8 per cent. per annum, and that said plaintiff ought to recover of said defendants a judgment for that sum.

It is therefore considered by the Court here that the said The Union Banking Company plaintiff do recover of the said Isaac J. Sparks, Louisa L. Sparks and Charles Phillis defendants, the sum of Two hundred and thirty-two Dollars so confessed as aforesaid, with interest from September 8th, 1896, at 8 per cent per annum, and also costs in its behalf expended and by virtue of said warrant of Attorney all errors in this action, judgment and proceedings, and all proceedings, petitions and writs of error herein, are by said defendants waived and released.

Union Banking Company
vs
Louisa L. Sparks et al
7195

September Term 1897.
Journal 18 Page 14.

This day on motion the heirs of Michael J. Burke are granted leave to be made parties defendants to this action, and are required to file their answer and cross-petition by the 16th day of January, 1897.

The Union Banking Company
vs
Louisa L. Sparks et al
7195

January Term 1897.
Journal 18, Page 70.

On motion of defendant, and for good cause shown, it is ordered that this case and case of Gaar Scott & Co. against Louisa L. Sparks et al. Numbered 7071, in this Court be, and they are hereby consolidated; and that all further proceedings in said consolidated action had in and under number 7071, this action as aforesaid.

The Union Banking Company
vs
Isaac J. Sparks et al
7195

April Term 1897.
Journal 18, Page 173.

On motion and notice having been given to the defendants herein, the plaintiff herein now by leave of Court files a Supplemental Petition in this case.

The State of Ohio,
Union County, ss

I, Jasper N. Gunsell Clerk of the Court of Common Pleas, within and for said County, and in whose custody the Files, Journals and Records of said Court are required by the laws of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal of the proceedings of the said Court within and for said County, and that said foregoing Copy has been compared by me with the original entry on said Journal, and that the same is a correct transcript thereof.

In Testimony whereof, I have hereunto subscribed my name officially, and affixed the seal of said Court, at the Court House in Marysville, in said County, this 2nd day of March A.D. 1898.

(seal)

Jasper N. Gunsell Clerk

On the 8th day of February A.D. 1899 the following Entry was filed to-wit:

In Circuit Court
Union County, Ohio.

Union Banking Company vs Isaac J. Sparks et al
Et al
Gaar Scott & Co vs Isaac J. Sparks et al
159

This day this cause came on to be heard upon the petitions

and supplemental petitions of the Miners Banking Company against Isaac J. Sparks and Louisa L. Sparks, et al and Gaar Scott & Co. against Isaac J. Sparks, Louisa L. Sparks et al; that two cases having been heretofore consolidated under the case and title of Gaar Scott & Co. against Isaac J. Sparks, Louisa L. Sparks et al. No. 7971, and was heard upon the pleadings, records and the evidence, and the Court being fully advised in the premises, find the equity and the law of both said cases in consolidated, to be with the plaintiffs, in each case.

And the Court find, first= that the sale heretofore made by the Sheriff on the writs of execution issued herein, and the return of the same, with his proceedings, and the sale of said lands and tenements under said writs of execution; and the Court having carefully examined said proceedings, and being satisfied that said sale has in all respects been made in conformity to law, and finds the same to be legal, and does therefore approve and confirm the same. And the Court further find that at the date of said sale, the said Louisa L. Sparks was the sole owner of the said premises so sold, in fee-simple and in her own right, and that the said heirs at law of the said Micheal J. Brake deceased, and neither of them had any title or interest in said premises.

And it is further ordered that the Sheriff make to the purchaser Joshua Norris, a deed in fee-simple for the lands and tenements so sold.

And the Court finding that said sale was made by the former Sheriff, William G. Snodgrass, whose time of office has now expired, it is ordered that the present Sheriff, J. Ed. Robinson be authorized to execute and deliver such deed to said purchaser Joshua Norris, and a writ of possession is awarded to put said purchaser in possession of said premises.

And the Court further finds, that the said Louisa L. Sparks is not a party to the case in this Court she not having executed any appeal bond as required by law.

Therefore, the Court find, adjudge, order and decree that the said plaintiffs are entitled to the payment of their judgments in full, in preference to the said homestead claim, out of said proceeds of sale.

And the Court coming on now to the distribution of said purchase money in the hands of the Sheriff, orders payment:

First: to the Treasurer of this County, the taxes and penalty due on said property so sold to-wit, the sum of $

Second: To the Clerk of this Court, the costs of these actions, taxed $

Third: To the Miners Banking Company and Gaar, Scott & Co. the amount of their judgments, with the interest thereon, neither being preferred to the other, amounting to $ to the Miners Banking Company; and $ to Gaar Scott & Co..

Fourth: D.W. Ayers or Hamilton Bros. attorneys for Louisa L. Sparks, the balance of said proceeds of sale amounting to $; To all of which ruling and orders of the Court, the heirs of Michael J Brake, except.

Approved

Hamilton Bros.

D.W. Ayers.

Attest

J.H. Tosnell Clerk

By Jno A. Tosnell Deputy.

Pleas
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Pleas Continued and held at the Court House at Marysville, Within and for the County of Union, in the Third Judicial district of the Circuit Court of the State of Ohio, before the Honorable James L. Price, Caleb H. Norris and James H. Day, Judges of the Said Circuit Court. To-wit. on the 6th day of February, in the Year of Our Lord, One Thousand Nine Hundred.

"Be it remembered that heretofore, To-Wit. on the 4th day of January A.D. 1899. The following Bond was filed with the Clerk of Said Court. To-wit.

Appeal Bond to Circuit Court.

Know all men by these Presents,

No 160 Appeal Bond

That John D. Mather as principal and Wm Ferguson and E.L. Mather are held and firmly bound unto William A. Wright James W. Wright and Margaret B. Wright in the penal Sum of One Hundred Dollars, to the payment of Which well and truly to be Made, we do hereby jointly and severally bind Ourselves, our heirs Executors and administrators,

Sealed with our Seals, and dated this 4th day of January, 1899.

"The Condition of the above obligation is Such that Whereas the Said John D. Mather has taken an Appeal from a Certain judgment rendered against him, and in favor of the Said William A Wright, James W. Wright and Margaret B. Wright in the Court of Common Pleas within and for the County of Union, and State of Ohio, at the September Term, 1898, in Cause No 7460, Entitled John D. Mather, vs. William A. Wright, Et. al. to the Circuit Court of Said County; - Now if the Said John D. Mather Shall prosecute his Appeal to effect without Unnecessary delay and Shall abide and perform the order and judgment of Said Circuit Court and pay all damages and Costs which May be awarded against him the Said John D. Mather, then this obligation Shall be Void; Otherwise it Shall remain in full force and Virtue in law

John D. Mather
Wm Ferguson
E. L. Mather

"The Execution of the above Undertaking, and the Sufficiency of the Sureties thereon Approved by J. M. Gosnell Clerk of Courts this 4th day of January A.D. 1899

J. M. Gosnell Clerk of Courts

On April 12th 1899. The following Transcript of Docket Entries was prepared and filed in the Clerks Office. To-wit.

160 Docket Entries

John D. Mather Plaintiff
vs
William A. Wright, James W. Wright, and Margaret B. Wright
Defendants

No 7460 In the Court of Common Pleas of Union County Ohio.

Docket Entries

October 22nd 1897. Petition and Recipe filed
October 22nd 1897. Summons issued to Sheriff of Union County, Ohio
October 29th 1897. Summons returned by the Sheriff of Union County Ohio Endorsed as follows To-wit.
"Received this writ, October 23rd A.D. 1897, at 8. O'Clock A.M. and Served

Same by delivering a true and Certified Copy of this Writ with all of the Within endorsments thereon to William A. Wright and James W. Wright personally on October 27th 1897. after diligent Search and inquiry Margaret B. Wright was Not found Within My Bailwick: — Service & Return 60. Mileage 17¢ Copies 45 Total. $2.84

J. Ed Robinson Sheriff.

November 10th 1897. Summons issued to Sheriff of Union County Ohio
November 11th 1897 Summons returned by the Sheriff of Union County Ohio. Endorsed as follows To-wit:

Received this Writ Nov 10th A.D. 1897 at 8. O'clock A.M. and Served Same by delivering a true and Certified Copy of this writ with all of the Within endorsment thereon to Margaret B. Wright personally on Nov. 10th 1897: Sheriff Fees: Service & Return 50 Mileage 17¢. Copy. 15. Total $2.41

J Ed Robinson Sheriff.

November 18th 1897. Demurrer filed
March 19th 1898 Amended Petition filed
April 27th 1898. Motion filed
August 13th 1898. Answer filed
January 4th 1899. Appeal Bond filed

The State of Ohio, Union County ss. I Joseph McConnell Clerk of the Court of Common Pleas, within and for the Said County, hereby Certify that the foregoing is taken and copied from the Docket Entries as appears upon the Appearance Docket in the above Entitled Case

Witness My Signature and the Seal of the Said Court of Common Pleas at the Court House in Marysville in Said County this 12th day of April 1899.

(Seal)

J McConnell Clerk

160 Amended Petty

On April 12th 1899. The following Transcript of Certified Copy of Journal Entries was Made and filed in the Clerks Office of this Court

The State of Ohio, Union County

Certified Copy of Journal Entries
In the Court of Common Pleas
January Term. 1897

No 7460

John D. Walker, Plaintiff
against
Wm A Wright et al. Defendants

Journal 18. Page 341
Certified Copy of Journal Entry

160

This day this cause came on to be heard upon the demurrer of defendants to the plaintiffs Petition and was argued by Counsel.

"In Consideration whereof the Court Sustains Said Demurrer on the ground that the Petition does not State facts Showing any damage Sustained by Plaintiff, and thereupon leave was granted plaintiff to amend his Petition in 30 days - time Extended to March 15th 1898. and Cause Continued

John D. Walker
vs
Wm A. Wright et

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John D. Mather
vs 7460
Wm A. Wright et al

Certified Copy of Journal Entry. Court of Common Pleas of Union County. Ohio

Journal 18. Page 426.

This day this cause came on for hearing on Motion of the defendants to Strike out parts of the Petition of Plaintiff as Specifically set forth in said Motion. and the Same was argued by Counsel and Submitted to the Court

"On Consideration whereof the Court do overrule said Motion. to which ruling and Judgment of the Court the defendants by their Attorneys then and there Excepted. Leave is granted to defendants to further plead within thirty days. and Cause Continued

John D. Mather
vs No 7460
William A Wright et al

Certified Copy of Journal Entry — Court of Common Pleas of Union County. Ohio.

Journal 18. Page 478.

This day this Cause came on to be heard. Upon the pleadings in the Case and the Evidence of both parties and was argued by Counsel

"On Consideration whereof the Court find the Equities of the Case to be with the defendant. and that the case of the Plaintiff is not Sustained

"It is therefore Considered and adjudged That the Petition of the Plaintiff be dismissed. and that the defendants go hence without day. and recover of the Plaintiff their Costs herein expended. Taxed at $

"Thereupon the plaintiff gave Notice of his intention to appeal Said Cause to the Circuit Court. and the Court fix the amount of his appeal Bond at $100.00

On January. 12th 1900 The following Amended Reply was filed with the Clerk of this Court to-wit.

160
Amended
Reply

John D. Mather
Plaintiff
vs
William A. Wright et al
Defendants

In the Circuit Court of Union County Ohio

Amended Reply.

Now Comes the Plaintiff and by leave of the Court Makes this his amended reply to the Second defense set up in the answer of defendants and Says.

"He admits that at one time the Said Edward Newhouse (whose full Name is John Edward Newhouse) owned a tract of land Containing about 14 acres lying west of Bokes Creek and adjoining the lands now owned by the plaintiff. He further admits that Said Styles Newhouse formerly owned the lands now owned by the Plaintiff. The Plaintiff further admits that at one time, long prior to the year 1893. there had been a Small temporary dam Constructed across Said Creek from the lands of Said John E. Newhouse to the lands now owned by the Plaintiff. and that Said John E Newhouse built a house on his lands which was Sometimes used as a hotel.

"Further answering the Plaintiff Says that in the year. 1893. the Said John. E. Newhouse for a valuable Consideration Sold and by his deed of general Warranty Conveyed to John D. and Walter Newhouse about one acre of his Said 14. acre tract. and that the tract So Conveyed was the part of Said lands upon which Said dam had been Constructed. and no reservation whatever

Was Made by the Said John E. Newhouse of any rights which he had or claimed to have in Said dam. or any privileges growing out of the Same, but Said one acre tract with all its Appurtenances and Privaleges. were passed by Said Conveyance. and thereafter the Said John E. Newhouse. ceased to have any right or Control over the Said dam or the land upon which it had been Constructed

"Afterward all the right Title and interest of the Said John & Walter Newhouse. in and to the Said one acre tract including the Said dam with all its privileges and appurtenances passed to and became Vested in the Said Adam Newhouse. Under and by Virtue of a proceeding and Sale had in and through the Orders of the Probate Court of this County. but at the time Said Adam Newhouse became the Owner of Said One acre Tract. the Said dam had been. Washed out and practicaley abandoned.

"After Making the Conveyance of Said one acre tract the Said John E. Newhouse Made Conveyances of the Undivided interests in the remaining portion of Said lands there being about thirteen acres remaining. and in the year 1876. proceedings in partition were had in the Court of Commen Pleas of this County. in which the Said thirteen acre tract was Brought to Sale Under an order issued from Said Court of Commen Pleas. and the Same was bid in by the Said Margaret B. Wright at a low figure. to-wit. for $1134.00 being less than the Value of Said land and buildings.

"At the time of Said Sale the two properties were Wholly disconnected and held by Seperate Owners. The one acre tract including the Site of Said dam were then owned by Said Adam Newhouse, and the thirteen acre tract by Said John E. Newhouse and his grantees who had purchased Subsequent to the Sale of Said one acre tract. "The Said dam was washed out and the Said Maple Dell Park was not in use as a pleasure resort for gain. No dam had ever been Constructed across Said Creek from Said thirteen acre tract to the lands of the Plaintiff. and No dam or dam Site was by the Said Margaret B. Wright purchased

"For further reply the Plaintiff Says that prior to the Commencement of this Suit the Said defendants Unlawfully entered upon the lands of the Plaintiff. and Said Adam Newhouse. and against the protest of this Plaintiff. and without any right or Color of right began the Construction of a New dam across Said Creek at the point where the Old one had formerly been.

"The Plaintiff Thereupon Consulted the Said Adam Newhouse and was informed by him that he did not Wish to keep up or Maintain any dam. and told the Plaintiff that Said defendants had been trying to get him to go in with them to try and hold the Said dam. but he had Refused to have any thing to do with it. and the Said Adam Newhouse gave the Plaintiff permission to enter upon his lands and remove Said dam. but when the Plaintiff attempted to do so. he was assaulted in the Manner Stated in his Petition. and then the Said Adam Newhouse and this Plaintiff came together to Marysville and Consulted the Plaintiffs Attorney about bringing this action. and the Said Adam Newhouse there Stated to the Plaintiff and his Attorney that he the Said Adam. did not Wish to keep up or Maintain Said dam. and that the Same was of No use to him and gave his Consent and permission to the bringing of this Suit. but Said he did not want to be put to any expense in the Matter or have his name Connected with the case. and thereupon the Plaintiff brought this action.

"The Plaintiff denies each and Every allegation and averement in the Second defense Set up in Said answer and not herein Especially admitted.

"Whereas

The State of Ohio
Union County

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Sworn to

On Februa
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John D. Matth
vs
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Decree for
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John M. Bredrick & Cameron & Cameron
Attorneys for Plaintiff

The State of Ohio
Meigs County ss

John D Mather, Plaintiff. being first duly Sworn Says that the facts Stated and the allegations Made in his foregoing reply are true as he Verily believes

John D. Mather.

Sworn to before Me and Signed in My presence this 9th day of January. 1900.

(Seal) J M Gosnell Clerk

On February. 6th 1900 the following Entry. Decree for Injunction was filed in the Clerks office. To-wit.

John D. Mather. Plaintiff
vs
William A. Wright. James W. Wright. and Margaret. B Wright. - Defendants

No 160
Decree for Injunction

Decree for Injunction

"This day this Cause came on for hearing. and the same was Submitted to the Court. upon the pleadings and Evidence. and was argued by Counsel.= On Consideration whereof the Court being fully advised in the premises finds upon the issues joined. in favor of the Plaintiff. and that the Plaintiff is entitled to the relief prayed for in his Petition

"It is therefore Considered. Ordered and decreed by the Court. that said defendants William A. Wright. James W. Wright and Margaret. B. Wright. be and Each of them are hereby forever and perpetually Enjoined from Erecting or Maintaining a dam across said Bokes Creek touching the Plaintiffs land or any part thereof from interfearing with the free and Unobstructed flow of the water in said creek along and adjoining the lands of the Plaintiff as prayed for in the Plaintiffs Petition

"It is further adjudged and decreed that the Plaintiff recover from the defendants his Costs in this action Expended Taxed to $

"It is further ordered that a Special Mandate be Sent to the Court of Common Pleas of this County for Execution upon this Judgment.

"Thereupon the defendants filed their Motion for a New Trial in this Cause which was overruled by the Court. and to which ruling and decision of the Court the defendants then and there Excepted. and fifty days is allowed for preparing and filing bill of Exceptions.

"To all of Which decisions and Judgment the defendants then and there Excepted

O. K Bates & Bates

Bredrick

On Feb 7th 1900 the following Motion for New Trial was filed in the Clerks office of this Court to wit:

No 160 Motion for New trial

John D. Mather, Plaintiff against William A. Wright James W. Wright and Margart B. Wright - Defendants

In Circuit Court. Union County, Ohio.

Motion for New Trial.

"Now Come the defendants, and Move the Court here to vacate and Set aside the decission and Judgment rendered by the Court in favor of Plaintiff, and against defendants, and to grant and allow defendants a New Trial in said cause for the reasons To-wit.

I. That the decission, and Judgment of the Court is against and Contrary to the Evidence in the Case

II. That the Judgment of the Court is against, and Contrary to the law of the Case

III. The Judgment of the Court was given for the Plaintiff, When by the law of the land it Should have been for the defendants

"The defendants therefore prays that Said Judgment be set aside, and a New trial granted in Said action for the reasons Set forth as aforesaid

Attest
J. M. Gosnell Clerk

"Pleas Continued and held at the Court House at Marysville, within and for the County of Union in the Third Judicial district of the Circuit Court of the State of Ohio, before the Honorable James L. Price, Caleb H. Norris and James H. Day, Judges of the Said Court, To-wit on the 7th day of February, in the year of Our Lord, one Thousand and Nine Hundred.

"Be it Remembered that heretofore, To-wit, on the 10th day of March A. D. 1899. the following Bond was filed with the Clerk of Said Court. To-wit,

Appeal Bond to Circuit Court

No 161 Appeal Bond.

Know all Men by these presents,

That Dorotha Pfarr & Charles Pfarr are held and firmly bound unto County Commissioners and others in the penal Sum of One Hundred Dollars to the payment of which well and truly to be Made, We do hereby jointly and Severally bind ourselves, our heirs, Executors and administrators.

"Sealed with our Seals and dated this 10th day of March, 1899.

"The Condition of the above obligigation is Such that Whereas the Said Dorotha Pfarr has taken an Appeal from a Certain Judgment rendered against her and in favor of the Said County Commissioners of Union County, Et al, in the Court of Common Pleas within and for the County of Union, and State of Ohio, of the January Term, 1899, in Case No. 7633, Entitled Dorotha Pfarr vs Board of County Comm et al to the Circuit Court of Said County

"Now if the Said Dorotha Pfarr Shall prosecute her Appeal to effect without unnecessary delay, and Shall abide and perform the order and Judgment of Said

Circuit Court
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No 161 Transcript

Dorotha Pfar
vs
Board of Comm
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No 161 Entry

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Circuit Court and pay all damages and costs which may be awarded against her in the said case then this Obligation Shall be Void: Otherwise it Shall remain in full force and virtue in law. J M. Kennedy / J N Gosnell / In the presence of / Dorothea P Parr (Seal) / Charles P Parr seal

"The Execution of the above Undertaking and the Sufficiency of the Sureties thereto Approved by J. N Gosnell Clerk of Court this 10th day of March A.D. 1899.

J N Gosnell Clerk

On April 2nd 1899. the following Certified Copies of Certified Docket and Journal Entries was Made and filed in the office of the Clerk of this Court to-wit:

No 161 Transcript

Dorothea P Parr - Plaintiff
vs
Board of County Commissioners of Union County, Ohio. Lauren B. Harvey, County Surveyor, of said Co M A Shuler and S. F Eckler Defendants

Union County, Ohio.
Court of Common Pleas

Petition for Injunction
No. 1633.

December 20th 1898. Petition filed
December 30th 1898 Order of Injunction filed
December 31st 1898 Bond filed
December 31st 1898 Summons issued to Sheriff of Union County, Ohio
December 31st 1898 Summons returned by Sheriff of Union County Ohio
February 20th 1899. Answer filed
March 20th 1899. Exceptions to County Petals filed
March 20th 1899. Notice of Appeal filed with board County Commissioners
March 15th 1899 Appeal Bond filed

"And on the 23rd day of February, 1899. the following entry was filed with the Clerk of this Court and recorded in Journal 18, Page 517.

No 161 Entry

Dorothea P Parr Plaintiff.
vs
Board of County Commissioners et al - - - - - - Defendants

No 1633
Entry

This day this cause came on for hearing on the pleadings of the parties, and the testimony, and the Court after hearing the same do find for defendants

"It is therefore ordered and adjudged by the Court that the Petition of the Plaintiff be dismissed, and the Injunction be dissolved and that the defendants recover their costs of Plaintiff, to all of which ruling and judgment of the Court, the Plaintiff gave Notice of Appeal and the Court fixes the bond at $ 100.00

The State of Ohio / Union County ss

I Josper N Gosnell Clerk of the Court of Common Pleas, within and for said County, and in whose custody the files, Journals and Records of said Court are required by the laws of the State of Ohio to be kept, hereby Certify that the foregoing is taken and copied

from the Docket and Journal proceedings of the said Court. within and for said County. and that said foregoing Copy has been Compared by me with the original Entries. and that the Same is a Correct Transcript thereof.

In Testimony Whereof I have hereunto Subscribed My name officially. and affixed the Seal of Said Court at the Court House in Marysville. in Said County this 2nd day of April A.D. 1892.

Jasper H Gorrell Clerk

(Seal)

"On February 7th 1900 The following Entry was made and filed with the Clerk of this Court. To-wit:

No 161 Entry

Dorotha Pfarr vs Board of County Commissioners of Union Co. et al

Circuit Court of Union Co. Ohio.

Entry.

This day this cause came on for trial upon the issues joined by the parties. and the Court after hearing the testimony of the witnesses and the Exhibits and records filed in said case. do find for the defendants.

It is therefore ordered and adjudged by the Court that the Injunction heretofore granted in this action be dissolved. and that the Plaintiffs Petition be dismissed and that the defendants recover their costs. and that said case be remanded to the Court of Common Pleas for Execution. To all of which Judgment and order and finding of the Court the Plaintiff Excepts. and Moved the Court for a New Trial. Which Motion was overruled by the Court. and the Plaintiff was granted fifty days from said Judgment by the Court to prepare and file his Bill of Exceptions in the Supreme Court of Ohio.

Approved. Jos E. Robinson
For Defendants

J M. Kennedy For Plaintiff

"On February 7th 1900. The following Motion for New Trial was filed in the Clerk of this Courts Office To-wit.

No 161 Motion for New Trial

Dorotha Pfarr Plaintiff in Error. vs The County Commissioners of Union County Ohio Isaac W. Harvey Engineer Samuel S Eaton and M. L. Shuler. Contractors. Defendants

Circuit Court of Union County. Ohio.

Motion for New Trial.

"The Plaintiff Moves the Court to set aside the Judgment and finding of the Court in the above Case herein for the following reasons.

1st. For the reason said judgment is against the Evidence in the case.
2nd. That the Same is against the law in the case.
3rd. That the Court Excluded evidence that should have been admitted offered by the Plaintiff
4th For Errors occuring at said trial

J M Kennedy & Judge Overturf Attys for Plaintiff

No 161 Entry

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Attest J N...

No 162 Entry

"Pleas ... Union. in the ... Jones & Price ... 8th day of Octo...

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against ...

The State of Ohio ... Def...

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"Done at C...

No 162 Entry

The State of Ohio ... Union County ...

E Salsbery Pl... against ...

The Village of Ri...

On February 7th 1900 the following Entry overruling Motion for New Trial was filed with the Clerk of this Court to-wit:

No 161 Entry

Dorathea Pfarr
vs
Commissioners of Union County Ohio et al

Circuit Court of Union County. Ohio.
Overruling Motion for New Trial.

This day the Motion heretofore filed herein by the Plaintiff came on to be heard by the Court, and the Court being fully advised in the premises do overrule said Motion. Which the Plaintiff excepts.

"And thereupon the Court on its said Motion gave the Plaintiff fifty days in which to prepare and have allowed and Signed his bill of Exceptions herein as of the present term, and for such purpose the Minutes of this Court for this term is left open

Attest J N Gosnell Clerk

"Pleas Continued and held at the Court House in Marysville within and for the County of Union, in the Third Judicial District of the Circuit Court of the State of Ohio. before the Honorable James A Price, Caleb H. Norris and James N. Day, Judges of the said Court. To-wit: on the 8th day of October A.D. 1898.

Be it remembered that heretofore to-wit: on the 28th day of March, A.D. 1898 The following Transcript of Journal Entries was filed with the Clerk of said Court-to-wit:

The State of Ohio
Union County

In Common Pleas Court. In Chambers.
Journal 18. Page 430.
Certified Copy of Journal Entries.

No. 162 Entry

E Salsbery, Plaintiff in Error
against
The State of Ohio
Defendant in Error.

"Before the Honorable Allen Smalley, one of the Judges of the Court of Common Pleas of Union County, Ohio.

"In Error to the Mayor of the Village of Richwood, Ohio.

"On Motion of Plaintiff, and good Cause being shown therefor, it is Ordered that leave be, and the same is hereby granted Plaintiff in Error to file a Petition in Error in the above Entitled Case, and that the Execution of the Sentence therein be, and the Same is hereby Suspended until the further order of the Court of Common Pleas of Union County, Ohio upon the Plaintiff in Error Entering into an Undertaking in the Sum of $100.00 to the Satisfaction of the Clerk of the Common Pleas of Said County, Conditioned according to Law.

"Done at Chambers at Marion, Ohio this this August 6th 1898.

Allen Smalley Judge.

No 162 Entry

The State of Ohio
Union County

In Common Pleas Court, January Term. 1899
To-wit. January. 30th 1899. Journal Vol 18. Page 572.
Certified Copy of Journal Entries

E. Salsbery Plaintiff in Error
Against
The Village of Richwood, Defendant in Error.

"This Cause came on for hearing upon the Petition in Error, and the Transcript of the record, and the original Papers in the Court below, on Consideration

whereof the Judgment of the said Mayor is affirmed at the cost of the Plaintiff in Error. for which Execution is awarded. to which ruling the Plaintiff in Error Excepts

"It is Ordered that a Copy. of this Entry be Certified to said Mayor. So that the Judgment affirmed May be Enforced as if such proceedings in Error had not been taken

The State of Ohio } ss
Union County } "J. Jasper McConnell Clerk of the Common Pleas Court within and for said County. and in whose Custody the files Journals and Records of said Court is required by the laws of the State of Ohio to be kept.

Hereby Certify that the foregoing is taken and Copied from the Journal of the proceedings of the Common Pleas Court within and for said County. and that said foregoing copy has been Compared by me with the original Entry on said Journal and that the Same is a correct transcript thereof.

In Testimony Whereof. I do hereto Subscribe my name officially and affix the Seal of said Court. at the Court House in Marysville in said County this 24th day of March. A.D. 1899.

(Seal)

Jasper McConnell Clerk

On March 28th 1899. the following. Petition in Error was filed in the office of the clerk of this Court. To-wit:

No 162 Petition in Error

In the Circuit Court.

The State of Ohio. Union County ss

E. Salsbery. Plaintiff in Error.
against
The State of Ohio and the Village of Richwood. Ohio.

Petition in Error.

"Now comes said Plaintiff in Error E. Salsbery and Complains of said defendants in Error "The State of Ohio. and the Village of Richwood "Ohio for that the said defendants in Error in a Certain proceeding then pending. in the Court of Common Pleas of said County. wherein said Plaintiff in Error was plaintiff in Error and said defendants in Error. were defendants in Error. said defendants in Error. on To-wit: the 30th day. of January A.D. 1899. at the January. Term 1899. of said Common Pleas Court. recovered a. Judgment. of affirmation and for Costs against said plaintiff in Error. as the original papers. Certified Transcript of all docket and Journal Entries. thereof. with the original bill of Exceptions are herewith. filed.

"There is Error appearing on the face of the Record of said Judgment and proceeding prejudicial to this Plaintiff in Error. in this To-wit:

"First = Said Court of Common Pleas Erred in rendering Judgment affirming the Judgment of the Mayor below. and in reversing the Same.

"Second = Said Court of Common Pleas Erred in rendering Judgment against said Plaintiff in Error. and in not rendering. Judgment in favor of said Plaintiff in Error.

"Third = Other Errors appearing on the face of said Record and proceedings prejudicial to this plaintiff in Error.

"Wherefore Plaintiff in error prays that said Judgment be reversed; that this Court may render the Judgment the Court below ought to have rendered and that he may be restored to all things he has lost by occation of the said Judgment below.

E Salsbery

By Schofield Dwyer and Schofield his Attorneys

No 162 Precipe

To the Clerk

"Plea
to the Sheriff of
Error in the Cir
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Court of said

On March
No 162 Summons
This Court. Direc

No 162 Summons & Error

The State of Ohio
Union County

Village of Rich
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at the January,
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of this Court.

No 162 Certified Entry

The State of Ohio

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The State of Oh
Richwood Ohio

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"This Order

No 162 Precipe

To the Clerk

Please issue Summons in Error in above case for the defendants in Error. directed to the Sheriff of Union County, Ohio. returnable according to law, and file with above Petition in Error in the Circuit Court of Union County all Original papers, Transcripts, bill of Exceptions Certified Transcripts of all the docket and Journal Entries of said case in the Common Pleas Court of said County.

E Salsbery

By Schofield Durfee & Schofield his Attorneys

On March 28th A.D. 1899. The following Summons in Error was issued by the Clerk of this Court. Directed to the Sheriff of Union County, Ohio. To-wit:

No 162 Summons in Error

The State of Ohio } ss
Union County }

Summons in Error.

"To the Sheriff of the County of Union:

You are Commanded to Notify the State of Ohio and the Village of Richwood, Ohio, That E. Salsbery, has filed a petition in the Clerks Office of the Circuit Court of Union County asking the reversal of a Judgment against said E. Salsbery at the January, Term of the Court of Common Pleas A.D. 1899. of said County, and that Unless the said The State of Ohio, and the Village of Richwood, Ohio, attend on the first day, of Next term of said Circuit Court, Said Judgment May, reversed

"You will Make due return of this Summons on or before the first day, of the Next Term of Said Court

Witness My hand and Seal of Said Court at Marysville this 28th day of March A.D. 1899.

(Seal)

J McConnell Clerk

No 162 Return Summons

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Copies		30
Total	$ 5	51

"Received this writ March 30th A.D. 1899. at 8. O'clock A.M.

"Pursuant to its Command I. Served the same by delivering a true and Certified Copy of this writ with all of the endorsements thereon to W.T. Hoffer Prosecuting Attorney of Union County, Personally, on March 31st 1899. To W.W. Hill Mayor of the Village of Richwood, O. on April 4th 1899. Personally.

J. Ed Robinson Sheriff.

On May 3rd The following Certified Copy of Journal Entry was filed with the Clerk of this Court. To-wit

No 162 Certified Entry

The State of Ohio Union County ss

E Salsbery, Plaintiff in Error
against
The State of Ohio, and the Village of Richwood Ohio, Defendants in Error

In the Court of Common Pleas. April Term. 1899.
Journal Vol. 14, Page 542.
Certified Copy of Journal Entry.

"This Cause coming on for hearing upon the suggestion of Counsel for the defendant in Error. The Village of Richwood, of a diminution of the record, and upon his application for leave to file a Corrected Transcript of the Mayors Court of said Village herein sought to be Judgment and proceedings of the reversed, the Court finding the Transcript of said Judgment and proceedings filed with the petition in Error herein to be defective, leave is granted to said defendant in Error to file a Corrected Transcript thereof instanter and it is accordingly so ordered and done.

"This Order is Entered here and Now Nunc Pro Tunc, as of and for the second day of

January, 1899. Upon the recollection of the Court. Making the same, and without the hearing of Evidence.

"It appearing that the Docket and Journal Entries herein have been certified to the Circuit Court of Union County, for Proceedings in Error thereon, It is further ordered that the Clerk be and hereby is directed to certify to Said Court a duly authenticated Copy of this Order, and Subject to the order of Said Court, to file the Same with the papers in Said proceedings in error, and to Note Said filing upon the Docket thereof. "To all of which finding and order Plaintiff in Error duly Excepts.

Duncan Dow. Judge of Said Court of Common Pleas.

The State of Ohio } ss
Union County }

'I Josper N. Gosnell Clerk of the Court of Common Pleas, Within and for Said County, and in whose Custody the Files, Journals, and Records of Said Court are required by the Laws of the State of Ohio, to be kept, hereby certify that the foregoing is taken and Copied from the Journal of the proceedings of the Said Court within and for Said County, and that Said foregoing Copy, has been Compared by me with the Original Entry on Said Journal, and that the Same is a correct Transcript Thereof.

"In Testimony Whereof, I have hereunto Subscribed my Name officially, and affixed the Seal of Said Court, at the Court House in Marysville in Said County this 3rd day of May, A.D. 1899

Josper N. Gosnell Clerk.

On October 3rd A.D. 1899. The following Mandate was made by the Clerk of this Court Entered upon Journal No 1 of the Circuit Court Journal, and filed To-wit

No 162
Mandate

The State of Ohio Circuit Court of Union County.

Mandate from Circuit Court in Error.

Judgment reversed and Cause remanded. Oct Term A.D. 1899.

"At a Term of the Circuit Court, within and for the County of Union in the State of Ohio, begun and held at Marysville, on the 3rd day of October A.D. 1899. before the Hon James K. Day Presiding Judge and Hon James L. Price and Hon Caleb H. Norris Judges, among other proceedings then and there had by and before said Court, as appears by its Journal is the following to-wit:

E. Salsbery, Plaintiff in Error
vs
The State of Ohio and the Village of Richwood Ohio, Defendants in Error.

'The said parties appearing, by their attorneys, and this came on to be heard upon the Petition in Error of the said E. Salsbery, Plaintiff in Error herein, together with the original papers and pleadings, and a duly certified Transcript of the orders and Judgment of the Court of Common Pleas of Union County, Ohio filed therewith in the said Cause wherein E. Salsbery was Plaintiff and the State of Ohio, and the Village of Richwood Ohio, were Defendants, Mentioned and referred to in said Petition in Error, and was argued by Counsel: Upon "Consideration whereof the Court find that in the Record and proceedings aforesaid, there is Error Manifest Upon the face of the Record to the prejudice of the Plaintiff in Error, in this To-Wit: Said Error: There is no Evidence to Support the Charge against Plaintiff in Error. Judgment of the County, Common Pleas and Mayor, Overruled at the Costs of Defendants and Cause remanded for Execution = Plaintiff Excepts.

'It is therefore Considered, Ordered, and adjudged by this Court, that the

Judgment and proceedings of the said Court of Common Pleas in said cause in favor of the said defendant in Error and against the said Plaintiff in Error be and the same hereby are set aside reversed and held for Naught and that the said Plaintiff in Error be restored to all things which he has lost by occation of the said Judgment That the said action be and it hereby is remanded to said Court of Common Pleas of Union County Ohio to be proceeded in according to law and the rights of said parties That the said defendants in Error pay the Costs of this proceeding in Error to be taxed and in default thereof that an Execution issue therefor and that a Special Mandate and writ of Procedendo be sent to the said Court of Common Pleas to Carry this Judgment and order for Costs into Execution.

"I J M Gosnell Clerk of the Circuit Court of Union County Ohio do hereby Certify that the foregoing Entry is truly taken and Correctly Copied from the Journal of said Circuit Court.

Witness My hand and the Seal of said Court at Marysville this 3rd day of October A.D. 1899

Seal

J M Gosnell Clerk

The State of Ohio } ss
Union County

To the Honorable Court of Common Pleas Within and for the County of Union Ohio Greeting

"We do hereby Command you that you proceed without delay to Carry the within and foregoing Judgment of our Circuit Court of Union County in the Cause of E Salabery vs The State of Ohio and the Village of Richwood Ohio into Execution and to proceed to final Judgment between the said parties according to law The Petition in Error herein and heretofore filed to the Contray Notwithstanding

Witness My Signature as Clerk of our said Circuit Court and the Seal thereof at Marysville this 4th day of October A.D. 1899.

J M Gosnell Clerk

Attest J M Gosnell Clerk

Pleas continued and held at the Court House in Marysville, within and for the County of Union, in the Third Judicial District of the Circuit Court of the State of Ohio, before James P. Price, Caleb H. Norris and James H. Day, Judges of said Court of the Term of February, to-wit:- On Feb. 8th, A.D. 1899.

Be it remembered that heretofore, to-wit:- On March, 12th, A.D. 1898, H. M. Ballinger filed in the Clerk's office of said Court, the following petition against Samuel Sherwood and Margaret D. Haines, to-wit:-

H. M. Ballinger, Plaintiff

Vs. Circuit Court, Union County, Ohio.

155 Petition

Samuel Sherwood, and Margaret D. Haines.

Plaintiff in error says: That at the January, Term, A.D. 1898, of the Court of Common Pleas of Union County, Ohio, the defendants in error, recovered a judgment, by the consideration of said Court against the said H. M. Ballinger, plaintiff herein, in an action then pending therein wherein the said H. M. Ballinger, plaintiff in error, herein, was plaintiff, therein, and the said Samuel Sherwood, assignee of Caleb P. Haines, and Margaret D. Haines, defendants in error, herein, were defendants. A transcript of the docket entries and journal entries whereof is filed herewith, and made a part hereof.

There is error in said record and proceedings in this, to-wit:-

First:- The Court erred in sustaining the demurrer of the said Margaret D. Haines, one of the defendants in error, to the petition of the plaintiff in error,

Second:- The Court erred in overruling the demurrer of the plaintiff in error, to the answer of said Samuel Sherwood, assignee, one of the defendants in error,

Third:- Said judgment was given for the said Margaret D. Haines, and Samuel Sherwood, Assignee the defendants in error, when it ought to have been given for the said H. M. Ballinger, the Plaintiff in error, herein. Plaintiff in error therefore prays that said judgment may be reversed and that he be restored to all things he has lost by reason thereof.

L. Piper, Porter and Porter, Attys for Plaintiff.

I hereby waive the reading and service of summons and appearance herein this 14th day of March, 1898.
Samuel Sherwood, Assignee
By John M. Brodrick Att'y
Robert McCoy Atty for Mrs. Haines.

155 Transcript

March, 12th, 1898, the following Transcript of Journal Entry was filed:-

The State of Ohio, Union County ss. In Common Pleas Court.

H. M. Ballinger, Plaintiff in error, January Term, 1898.

Vs. Journal 18 - Page 359.

Samuel Sherwood, assignee of Caleb P. Haines, et. al. defendants in error. Certified Copy of Journal Entry.

This day this cause came on for hearing upon the petition in error, The transcript, and the original papers and pleadings from the Probate Court of this County, and was argued by counsel, on consideration whereof the Court do sustain the demurrer of Margaret D. Haines to the petition of plaintiff H. M. Ballinger, to which decision and ruling of the said Court, said H. M. Ballinger, then and there excepted, and this cause came on further to be heard upon the demurrer of said H. M. Ballinger, to the answer of said defendant Sherwood to the petition of plaintiff H. M. Ballinger, and was argued by counsel, on consideration whereof the Court overruled said demurrer, to which ruling and

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151 Motion

February, 4th, 18
H. M. Ballinge
Vs.
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decision of this Court, said plaintiff H. M. Ballinger, then and there excepted, Thereupon the Court find that there is no error apparent, upon the record in said proceedings and judgment, It is therefor considered by the Court that the judgment aforesaid be and the same is hereby affirmed, and that the defendants in Error, recover from the plaintiff in error their costs herein expended taxed to $7.51. It is further by the Court ordered, that the Clerk of this Court make out and file in said Probate Court, a transcript of its judgment and proceedings herein, and that this cause be remanded to said Court to carry into effect, the said judgment. to all of which rulings and orders, the plaintiff in Error by his counsel then and there excepted. And on motion and application of plaintiff, by his counsel, the Court fix the amount of the Supersedeas Bond herein in the sum of $100.00.

Approved

D. Dow. Judge.

S. Piper & Counsel for H. M. Ballinger.
Brodrick of " " Sherwood, Assignee.

The State of Ohio, Union County ss.

I, Jasper N. Gosnell, Clerk of the Common Pleas Court within and for said County, and in whose custody the files, Journals and Records of said Court are required by the laws of the State of Ohio to be kept, Hereby certify that the foregoing is taken and copied from the Journal of the Proceedings of the Common Pleas Court, within and for said County and that said foregoing copy has been compared by me with the original entry on said Journal and that the same is a correct transcript thereof.

In testimony whereof, I do hereto subscribe my name Officially and affix the seal of said Court, at the Court House, in Marysville, in said County this 1st day of March, A. D. 1898.

Seal

Jasper N. Gosnell, Clerk.

151 Motion

February, 4th, 1899, the following motion was filed:-

H. M. Ballinger
Vs.
Samuel Sherwood et. al.

Circuit Court of Union County, Ohio.

The defendants in error move the Court for an order striking from the files in this case the following described papers, towit:- 1st- Paper filed herein Mar. 12th, 1898, entitled No. 4530, Samuel Sherwood Assignee &c. Vs. Caleb F. Haines et. als. Petition, It being a paper not filed or used in the Common Pleas Court, the judgment of which is sought to be reversed.

2nd- A paper marked Schedule of debts and liabilities, it not having been filed or used in the said Common Pleas Court.

3rd- A paper from the Probate Court, purporting to be the answer of wife, in case No. 4530, in the Probate Court, it not having been filed, or used in the said Common Pleas Court.

All uncertified papers, purporting to be Journal entries in Probate Court, or Court of Common Pleas.

For grounds of motion the defendants say said papers are not properly part of the files hereof and they encumber the record. - Cameron & Cameron. - Counsel for Df.

155
Entry

February, 8th, 1899, the following Entry was filed:-
H. M. Ballinger
Vs. Circuit Court, Union County, Ohio.
Samuel Sherwood and Margaret D. Haines

This cause came on for hearing upon the petition in error, the transcript, and the original papers and pleadings from the Probate Court and the Court of Common Pleas, and was argued by counsel; and on consideration thereof, the Court find, that there is error apparent upon the record, in the proceedings of said Courts, to the prejudice of the plaintiff in error, in this, towit:-
First:- The said Court of Common Pleas and Probate Courts erred in overruling the demurrer of H. M. Ballinger to the answer of the said Samuel Sherwood, assignee.
Second:- The said Court of Common Pleas and Probate Courts erred in sustaining the demurrer of the said Margaret D. Haines to the petition of the said H. M. Ballinger. It is therefor considered by this Court, that the judgments rendered by said courts below be reversed, and held for naught, and that the plaintiff in error, recover from the defendant in error, his costs herein expended taxed to $9.46.
It is further ordered, that this cause be remanded to the Probate Court of this County for further proceedings, according to law, and that a special mandate therefor be sent to said Court. To all of which findings, orders rulings and decrees of this Court, the defendants, Samuel Sherwood, assignee and Margaret D. Haines there and there by their counsel excepted.

Attest:- J. M. Gosnell Clerk

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156
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Pleas continued and held at the Court House in Marysville, within and for the County of Union, in the Third Judicial District of the Circuit Court of the State of Ohio, before James S. Price, Caleb H. Norris and James H. Day, Judges of said Court of the Term of February, towit:- on February 8th, A.D. 1899.

Be it remembered that heretofor, towit:- on March, 12th, A.D. 1898, H. M. Ballinger filed in the Clerk's office of said Court, the following petition against Samuel Sherwood, Assignee &c, towit:-

156
Petition

H. M. Ballinger
Vs. Circuit Court of Union County, Ohio.
Samuel Sherwood, Assignee &c.

Plaintiff in error says:- That at the January Term, 1898 of the Court of Common Pleas of Union County, Ohio, the defendant in error, herein recovred a judgment, by the consideration of said Court, against the said H. M. Ballinger, plaintiff in error herein, in an action then pending therein, wherein the plaintiff in error herein was exceptor to the third and final account of the said Samuel Sherwood, assignee of Caleb F. Hanies, the defendant in error herein.

A Transcript of the docket and journal entries, whereof is filed herewith and made a part hereof.

There is error in said record and proceedings in this, towit:-

First:- Said Court erred in overruling the exceptions to said third and final account of said assignee.

Second:- Said Court erred in overruling the motion of plaintiff in error for a new trial and hearing of said cause.

Third:- Said judgment was given for said Samuel Sherwood, assignee, the defendant in error, herein, when it ought to have been given for the said H. M. Ballinger, plaintiff in error herein.

Plaintiff in error therefor prays that said judgment may be reversed, and that he be restored to all things he has lost by reason thereof.

Piper, Porter and Porter, Attys for Plaintiff in Error.

I hereby waive the issuing and service of summons and enter my appearance herein this 12th day of March, 1898

156
Waiver

Robert McCrory Atty for Mrs. Hanies.

Samuel Sherwood, assignee,
By John M Brodrick his Atty,

Mar. 12th, 1898, the following Transcript was filed:-

156
Transcript

H. M. Ballinger
Vs.
Samuel Sherwood, Assignee &c.

Exceptions to Account. Court of Common Pleas.

This day this cause came on to be heard and was submitted to the Court on the transcript from the Probate Court the original papers in the and upon the exceptions of H. M. Ballinger to the third and final account & settlement filed by said Samuel Sherwood, as Assignee of said trust; on consideration whereof the Court overrule the said exceptions to said third and final account, except as to the 5th of said exceptions of said H. M. Ballinger, which the Court sustains. To which overruling of said exceptions and said decision and orders of said Court, said H. M. Ballinger by his counsel then and there

156 Entry

Feb. 6th, 1899
H. M. Ballinger
vs.
Samuel Sherwood

excepted; thereupon this matter coming on to be heard upon motion to confirm said final account, settlement as corrected, the Court find that notice of time of hearing said account has been given pursuant to law by publication in the Marysville Tribune, a newspaper of general circulation in said County, The Court further find that upon said account and settlement as corrected the said assignee is chargable with the sum of $819.80 and that he is entitled to credits in the sum of $736.47, Thereupon this matter came on to be heard further on motion of said assignee for allowance of $133.34 as his legal compensation and $50 for extraordinary services rendered by said assignee, on account of the real estate in this matter, also $60.00 reasonable attorney fees actually paid by said assignee on account of litigation arising out of the real estate assigned; on consideration whereof the Court being fully advised, the said assignee is allowed the sum of $53.80 as legal compensation and the sum of $110 for extraordinary services & attorney fees asked for. It is therefore by the Court ordered that said assignee retain out of the money in his hands the sum of the three items last aforesaid, to-wit: $163.80.

And the Court further finds that there is a balance of $783.60 derived from the sale of real estate due to the preferred creditor of said assignor in accordance with the order of distribution heretofore entered on sale of the land, of the said assignor.

It is further ordered that the Clerk of this Court make out and file in said Probate Court a transcript of the proceedings and judgment herein. It is further ordered and adjudged that the said Samuel Sherwood, as such assignee record of the said Appellant H. M. Ballinger, his costs herein expended taxed to $—; To all of which findings and judgments, rulings and orders of the Court the said Appellant, H. M. Ballinger by his counsel excepts.

Thereupon the cause came on to be heard on motion of the said H. M. Ballinger for a new trial and hearing in said case, whereupon the Court on consideration do overrule said motion; to all of which rulings and orders the said H. M. Ballinger by his counsel excepts, and on motion and application of said H. M. Ballinger by his said counsel the Court fix the amount of the supersedeas bond herein in the sum of $100.00

S. Piper, of counsel for H. M. Ballinger.
Brodrick for Sherwood, Assignee.

Attest: J

156 Motion

H. M. Ballinger
vs.
Samuel Sherwood, Assignee &c.

Motion Filed Feb. 4th, 1899.
Circuit Court of Union County, Ohio.

The defendants in error move the Court for an order striking from the files in this case the following described papers, to-wit:-
First- A paper marked "Application of Margaret D. Haines defendant."
Second:- All uncertified papers purporting to be copies of Journal, or other entries in the Probate or Common Pleas Courts.
For grounds of this motion the defendants in error say that said papers are not properly part of the files in this case and they encumber the record.

Cameron & Cameron, of Counsel for Defts.

156
Entry

Feb. 6th, 1899 the following Entry was filed:-

H. M. Ballinger

Vs. Circuit Court of Union County, Ohio.

Samuel Sherwood, Assignee &c.

This cause came on to be heard upon the petition in error, original papers, and pleadings, and the transcript of the docket and journal entries in the Probate Court and Court of Common Pleas, and was argued by counsel,

On consideration whereof, the judgment of the said Court of Common Pleas is affirmed without penalty.

It is therefor considered that said defendants in error, recover of said plaintiff in error their costs herein, and it is ordered that a special mandate be sent to the Court of Common Pleas to carry this judgment into execution. To all of which findings judgments, orders and decrees of the Court the said H. M. Ballinger by his counsel then and there excepted.

Approved by Cameron & Cameron, Robert McCray,
Brodrick and Piper Attys.

Attest: J. M. Gosnell Clerk