

No. **11994**

Supreme Court of Illinois

Collins.

vs.

Crotty.

71641  7

La Salle.

Edward Collins
vs.
Jeremiah Crotty.

110

11994

1852

State of Illinois }
Lasalle County }
Theophilus L. Dickey, Presiding
Judge of the Ninth Judicial

Circuit of the State of Illinois at a circuit court in and
for the County of Lasalle commenced and held at the
court house in Ottawa on Monday the 21st day of October
in the year of our Lord one thousand eight hundred and
fifty the same being the seventy fifth year of the American
Independence. Present the Honorable Theophilus L. Dickey Judge

Best remembered that heretofore to wit on the fourth day
of October A.D. 1850 Edward Collins by J. H. Mc Gregor his attorney
filed in the office of the clerk of the said Circuit Court his
preamble in the words and figures following to wit

Edward Collins } Lasalle Circuit Court October term
vs } A.D. 1850 In trespass
Jeremiah Crotty } Damages \$300
You a summons in this case
Oct 4th 1850

J. H. Mc Gregor
Attly for P'tiff

And thereupon issued a summons in favor of said Edward
Collins in the words and figures as follows to wit

State of Illinois }
Lasalle County }
The people of the State of Illinois to the
Sheriff of said County Greeting.

We command you to summon Jeremiah
Crotty if he shall be found in your County personally to be
and appear before the Circuit Court of said County on the first
day of the next term thereof to be holden at the court house in
Ottawa in said County on the 21st day of October Instant to
answer unto Edward Collins in a plea of trespass to the
damage of the said plaintiff as he says in the sum of
three hundred dollars.

And have you then and there this writ with an endorsement thereon in what manner you shall have executed the same,

Witness Philo Lindley Clerk of Said Court and the seal thereof at Ottawa in Said County this 4th day of October

1850 on the back of which summons Lindley Clerk



appears the following endorsement
not found in my file
Feb. 11th W. H. Hubert
No. 5 Goodfell 2499

Filed Oct 21st 1850

Lindley Clerk

And afterwards to wit on the 11th day of October 1850 the plaintiff filed his declaration in the words and figures as follows viz:

Circuit Court of LaSalle County of the term of October in the year of our Lord one thousand eight hundred and fifty,

State of Illinois vs

LaSalle County Edward Collins Plaintiff in this suit

By J. H. Mc Gregor his attorney complains of

Seremiah Crotty defendant who has been summoned &c in a plea of trespass for that the said defendant on the first day of May in the year of our Lord one thousand eight hundred and fifty, and on divers other days and times between that day and the commencement of this suit, with force and arms &c broke and entered a certain close of the said plaintiff of which the said plaintiff was then and there seised situate in the town of Marlins in the County aforesaid that is to say a certain close which is ⁱⁿ part on the east half of the ^{North} east Quarter and in part on the east half of the North east Quarter of Section twenty three of town thirty three North Range five east of the third principal Meridian and upon which the said plaintiff sited and cultivated Corn the present year and then and there with feet in walking trampled upon and with horses and ploughs ploughed up and destroyed the Corn of the plaintiff of great value to wit of the value of three hundred dollars then and there planted growing and being

41 41 2

And with cattle to wit horses, cows, oxen and sheep
eat up depastured and destroyed other corn of the
Plaintiffs of great value to wit of the value of three hundred
dollars then and there growing and bring in the said close of
the Plaintiff, and also then and there, cut down the corn
of the said Plaintiff then on there growing in his said close
and then and there seized, took and carried away the corn
to wit two thousand bushels of the corn of the Plaintiff of
great value to wit of the value of three hundred dollars off
and from his said close and converted and disposed thereof to
his the said defendants own use, and other wrongs to the
said Plaintiff then did to wit at the County aforesaid against
the peace and to the damage of the said Plaintiff three
hundred dollars; And also for that the said Jeremiah Crotty
on the first day of May in the year of our Lord one thousand
eight hundred and fifty at the County aforesaid and on
divers other days and times between that day and
the commencement of this suit with force and
arms broke and entered a certain other close of which
the said Plaintiff was then and there possessed
that is to say a certain close situate in the town
of Mansius in the County of Lasalle being about
forty acres on the easterly half of a certain large
enclosed field containing about eighty acres
the southerly part of which large enclosed field
runs down to or near the canal and which field
is on Section twenty three in town thirty three
North Range five East of the third principal
Meridian, the said close being that part of said
large enclosed field which is easterly of a cart
road which runs through the said large field

Near the Middle of the same, and which has ^{been} planted
or cultivated in corn by the said plaintiff the
present year and then and there with cattle to
wit horses and oxen and with carts and wagons
trod down broke down and injured the corn of the
said plaintiff of great value to wit of the value
of three hundred dollars, then and there growing
and being in the said close of the said plaintiff
and cut down the corn of the plaintiff then and
there growing in his said close, and then and there
sized took and carried away the corn to wit two
thousand bushels of corn of the plaintiffs of great
value to wit of the value of three hundred dollars
off and from said close and converted the same to
his the said defendants own use, and other wrongs
to the plaintiff then did to wit at the county afore
said against the peace and dignity of the State
of Illinois and to the damage of the plaintiff of three
hundred dollars, and therefore he brings his suit
vs.

J. H. McGregor
Atty for Plff

And afterwards to wit at the October term A. D. 1850 the following
proceedings appear of record in the said circuit court

Wednesday Oct 30. A. D. 1850

Eduard Collins

vs

Premiah Crotty

By the Court, on Motion of Plaintiff
By consent of parties, it is ordered that
this suit be continued with an alias
summons to you herein.

And on the 5th day of December A. 1850 an alias summons issued in the words and figures following to wit.

State of Illinois *Es.*

Sasalle County } The people of the State of Illinois, to the
Sheriff of said County greeting

as we have before commanded you we command you to summon
Simeiah Crotty if he shall be found in your County, personally
to be and appear before the Circuit Court of said County on the
first day of the next term to be holden at the court house in Ottawa
in said County on the 28th day of April next to answer unto Edward
Collins in a plea of trespass to the damage of the said plaintiff
as he says in the sum of three Hundred dollars,
And have you then and there this writ with an endorsement thereon
in what manner you shall have executed the same.

Witness Philo Lindley Clerk of said Court and the seal thereof,
at Ottawa in said County this 5th day of December A. 1850
Philo Lindley Clerk *Es.*

Said summons endorsed on back as follows.

"Executed this writ by reading to Deft."

December 27th 1850

Horaton Goodell Deft.

Spread & ret. 60

14 Miles $\frac{76}{\$1.30}$

Filed Dec. 28th 1850

Philo Lindley

And afterwards to wit at the April term A. 1851. the following
proceedings appear of record in said Circuit Court

Monday April 28 A. 1851.

It is ordered by the Court that a rule be entered for all motions
for irregularities in appeals and insufficiency in appeal bonds
and all motions for rules for security for costs be entered by
Wednesday Morning next. It is ordered that

And afterwards at the term aforesaid on the first day of May
A. D. 1857 the following further proceedings appear of record
Thursday May 1st 1857

Edward Collins

vs

Jeremiah Brotty

Trespass

This day ^{came} the defendant by Glover &
Cook his attorneys and made a motion

for a rule for security for costs which motion is denied
the general rule in such cases having expired and there
upon came the plaintiff by Hoos and McGregor his attorneys
and made a motion for leave to file double replications herein
which is granted.

Said defendant's plea was filed herein on said first day
of May A. D. 1857 in the words and figures following to wit

Edward Collins

vs.

Jeremiah Brotty

Sasalle County Circuit Court
April Term A. D. 1857.

And the said defendant comes and defends the force and
injury and says he is not guilty of the trespasses or any or either
of them in Manner and ~~Manner~~ and form as the plaintiff
hath above thereof complained against him & of this he
puts himself upon the country.

And for a further plea in this behalf as to the force and
arms or any thing against the peace he is not guilty thereof
& of this he puts himself upon ^{the} country.

As to the residue of the trespass in said declaration menti-
-ioned defendant saith acted Non &c because he saith
that the close in the plaintiffs declaration mentioned was at
the time when the trespasses above complained of are
supposed to have been committed, the soil and free hold

Of this dependant and this he is ready to verify
wherefore he prays Judgment &c

Glover & Cook

P. d.

And afterwards on the 2nd day of May 1851 the plaintiff
filed his replication to the dependants pleas in the words
and figures as follows, and for replication to said dependants
2^d plea the pl^{ff} by McGregor his atty says actio Non because
he says that the said close in the declaration mentioned
was not at the time when the trespasses complained of were
committed the Soil and freehold of defts. and of this he puts
himself upon the country. &c

J. H. McGregor

Atty for Pl^{ff}

And the said plaintiff by McGregor his attorney ^{comes} and as
to the said plea of the said defts. by him secondly above
pleaded by leave of the Court saith precludi Non because
he saith that whilst the said close in the said pl^{ff}s
declaration mentioned and described was the close soil
and freehold of the said dependant and before the said time
when &c to wit on the 30th day of October 1849 the said dependant
demised the said close to the said ~~plaintiff~~ ^{plaintiff} by virtue of
which said demise the said plaintiff afterwards to wit
on the 30th day of October 1849, became and was lawfully
posseped, ^{therein and continued so possessed thereof} from thence until the said dependant after
wards and during the continuance of the said demise
to wit. at the said time when &c of his gun mory
broke and entered the said close in the Plaintiff's declar-
ation mentioned and described and committed the
said several trespasses in the said declaration
mentioned in manner and form as the said plain-
tiff hath above thereof complained against the said
dependant and thus the said pl^{ff} is ready to verify
wherefore the said pl^{ff} prays Judgment &c

J. H. McGregor

Atty for Pl^{ff}

And afterwards to wit on the 5th day of May 1857 the following further proceedings appear of record.

Lasalle County Circuit Court Spring term 1857

Edward Collins

vs

Jeremiah Crotty

In trespass

This day again came the defendant by Glover Hook his attorneys who enter a motion for leave to rejoin date to the second replication to defendants second plea which motion is granted by the court, and on motion of defendant it is ordered that this suit be continued at defendants costs to be taxed.

* And afterwards to wit at the November term 1857 the following proceedings appear of record.

Saturday November 8, 1857

Edward Collins

vs

Jeremiah Crotty

In trespass

The said defendant by Glover Hook his attorneys moves the court to rule the said Plaintiff to give security for costs or show cause to the contrary

and afterwards to wit the following appears of record in said Court,

Edward Collins

vs

Jeremiah Crotty

Lasalle Circuit Court November term 1857. Tuesday Nov. 11

In trespass

I do hereby enter myself security for costs in this cause and acknowledge myself bound to pay or cause to be paid all costs which have accrued or may accrue in this action either to the opposite party or any of the officers of this court in pursuance of the laws of this State dated this 3rd day of November 1857.

David C Underhill,

* And afterwards to wit on the fiftth day of May
1857 The defendants filed his rejoinder to plaintiffs
replication to defendants second plea in the
words and figures following to wit

Edward Collins	}	Lasalle County
vs		Circuit Court
Jeremiah Crotty		April Term 1857

And for rejoinder to the second replication
of the Pliffs ~~to~~ defts 2nd plea, defendants says
actio Non because he says that the said
Plaintiff was not at the time when he lawfully
possessed of the said Close by virtue of a demise
from the said defendant in manner and
form as the Plaintiff hath in said plea
alleged and of this he puts himself
upon the Country.

Glover & Cook
Dd.

1857.

David C. Chandler,

and the following proceedings further appear
of record in said Court as of November term 1857
Tuesday November 11th

Edward Collins

vs

Jeremiah Crotty

vs

Trespass

This day came the Plaintiff by
McGregor, Hoos and Champin his

attorneys and the defendant by Glover & Cook his attorneys
and the issues herein having been made up the following
Jury of a Jury were ordered viz Eli Strawn Norman
Whitney, John Gibson Samuel Norton James Van
Doren Liza Powers Peter Miller, S. P. Wiswall H. Merritt
Israel G. Cooper J. Brenner and Bradish Cummings
who were elected tried and sworn to well and truly
try the issues herein according to the evidence, and
after hearing the evidence the further hearing of this
Cause is postponed until to Morrow Morning
and by agreement of parties it is ordered that the Jury
have leave to disperse under the usual instructions
of the Court. —

and the follow proceedings further appear of record as
aforesaid

Edward Collins

vs

Jeremiah Crotty

vs

November 12 1857

Trespass

This day again came the parties
herto by their said attorneys

together with the Jury sworn herein and after hearing the
arguments of Counsel the Jury retire to consider of their
verdict viz, ^{and after due deliberation they have returned into Court the following} the Jury find for the plaintiff and
awards damages at three hundred dollars and there
upon the defendant enters a motion for a new trial

And it does further appear of record of said Court
of November term, Monday November 17th 1857

Edward Collins *vs* Treppass

38. vs

Jeremiah Crotty

vs

This day again came the parties
hereby by their said attorneys, and
after hearing the arguments of counsel

It is ordered by the Court that defendant's motion for new trial
be overruled, It is therefore considered by the Court that the
Plaintiff have and recover of the defendant the said sum of
three hundred dollars for his damages and his costs and
charges by him herein expended and that he have execution
therefor; and thereupon the defendant prayed an appeal
to the Supreme Court which is granted upon condition that
he file an appeal bond herein payable to the plaintiff in the final
sum of five hundred dollars with William Reddick, Benjamin
J. Lamb and Burton Cook or either or any two of them as
his securities within forty days from this date

~~And it further appears of record of said November term
November 17th 1857.~~

~~Edward Collins~~

~~97. vs~~

~~Jeremiah Crotty~~

~~vs~~

~~Treppass~~

~~On motion of plaintiff by McGregor his
attorney, it is ordered that this cause~~

~~be dismissed at Plaintiff's costs, it is therefore considered
that defendant have and recover of plaintiff his costs and
charges by him herein expended and that he have execution
therefor.~~

And it further appears of record of said circuit
court of said November term.

November 24th 1851.

Edward Collins

vs

Jeremiah Crotty

vs

Jessie Fraps



This day the defendants
attorneys tendered a bill
of exceptions to the Judge to which the Plaintiffs
attorneys excepted to as inaccurate and by agreement
of the parties by their attorneys it is ordered that
the Judge take time to settle the same in vacation
and on the 22nd day of December 1851 the defendant filed
his appeal bond in the words and figures as follows to wit

Know all men by these presents that we Jeremiah
Crotty and William Puddick of the County of Cass
and State of Illinois are held and firmly bound unto
Edward Collins also of the same County and State
in the penal sum of five hundred dollars current
Money of the United States for the payment of which
well and truly to be made we bind ourselves our
heirs executors and administrators jointly
severally and firmly by these presents
Witness our hands and seals this 22nd day of
December A. 1851.

The condition of the above obligation is such
that whereas the said Edward Collins did on
the seventeenth day of November A. 1851. in the
circuit Court in and for the County and State afore-
said recover a Judgment against the above
bounden Jeremiah Crotty for the sum of three
hundred dollars damages and costs,

From which said judgment of said Circuit Court
the said Jeremiah Crotty has prayed for, and obtained
an appeal to the Supreme Court of said State.

Now if the said Jeremiah Crotty shall duly prosecute
his said appeal with effect and shall moreover pay the
amount of the Judgment ~~and costs~~ interest and damages
rendered, and to be rendered against him, in case the
said judgment shall be affirmed in the said
Supreme Court, then this above obligation to be void
otherwise to remain in full force and virtue

Jeremiah Crotty 
William Reddick 

And on the 13th July 1852 the defendant filed his bill of
exceptions in the words and figures following to wit
State of Illinois

Lasalle County and Circuit Court thereof of the November
Term, 1851

Edward Collins } Trespas

vs }
Jeremiah Crotty }
} Be it remembered that on the
} trial of this cause it was proven
} that in December A^d 1849, and for

Some years previous defendant was and had been in
possession of the close described in the declaration
claiming to own it; that sometime in December A^d
1849 a conversation took place between defendant and
plaintiff in relation to defendant renting to plaintiff
a part of the premises viz that part of a large field
situated on the premises lying east of a farm road or
wagon way which led through said field (nearly North
and South in its course) from dyts. residence on the
North to his ~~residence~~ warehouse on the South side of
said large field that part of said field being ^{about} forty
acres in quantity.

There was then evidence given by the ptff and
retutting and conflicting testimony by deft
from which (and ^{for} the purposes of this bill of exceptions
deft Concedes) the jury would have been sustained
in finding for the Plaintiff the following State of
facts viz that some time in December 1849 it was
verbally agreed between Plaintiff and defendant that
defendant would let Plaintiff have the occupancy and
use of said forty acres for farming purposes for one or
two years as Plaintiff should wish, at a yearly rent
of twenty dollars or fifty cents per acre annually, and
that defendant would fix up the fences and let Plaintiff
into possession ^{of said forty acres} early in the Spring of A. 1850 that afterwa-
-rds before Plaintiff had entered upon the possession of
said forty acres of land, defendant required Plaintiff
to enter into a written contract on the subject with
Plaintiff's Mother as security and forbade Plaintiff
from entering upon the possession thereof until such
contract should be thus written and executed:
that a crop ^{of} corn was raised on said forty acres of
land during the corn season of 1850 which in the
fall of that year as it stood in ^{the} field was worth
about three hundred dollars; that as to the raising
of said crop of corn part of it was ^{planted by} Plaintiff and part
by defendant that the first ploughing for corn done on
that forty acres that year (1850) was done by Plaintiff that at
divers times during that corn season ptff and deft
each with the assistance of his hired men ploughed
planted and cultivated corn on said forty acres each
claiming the entire crop to be his own; and on one
or two occasions they were both with their men
engaged in cultivating said corn crop each in different
places in the same but each claiming the same as
his own. — Besides the evidence above stated;

Michael Collins a witness introduced by plaintiff testified that sometime about the last of September or first of October witness went to said Cornfield with plaintiff to pick a load of said corn, when they had picked a load year full plaintiff left and went to his house for something, when defendants hired Men (by defendants direction) took forcible and violently possession of the wagon, team and load of corn and took them up to Crotty's house and put the corn in Crotty's cellar or corn house and took the horses off the pound; this the witness stated was just before the plaintiff came down to Ottawa to see a Lawyer about bringing this suit. Witness further stated that afterwards, he saw Crotty's Men hauling corn from the field. Plaintiff then asked said witness, "what became of the residue of the corn?" when depts. attorney enquired, "what is the object of the Question?" plaintiff's attorney replied, "we wish to show that plaintiff never got any of the corn raised that year on that forty acres." depts. attorney replied in open court and in presence of the jury: "we admit he never got a peck of it, depts. got it all you need not trouble yourselves to prove that." Said witness Michael Collins on cross examination testified that in the month of April 1858 before any ploughing had been done on said forty acres he (witness) let down the fence enclosing said field and was about to drive in a team for the purpose of ploughing for his brother the plaintiff, when depts. came and forbade him saying "you must not go in there until they have signed the writing;" thereupon witness went away on the next day witness returned and plaintiff came with him and when they were about going into the field defendant came and forbade their going into the field, plaintiff replied to defendant,

I am going in and you may drive us out if you can; plaintiff
and tennys then went into the field and plaintiff set tennys to
ploughing for corn on said forty acres and this was the first ploughing
done on said forty acres that spring; the above is the substance of all
the evidence given on the trial of said cause.

thereupon at the request of Plaintiff, the Court gave to the jury the
following instructions in writing viz That the terms and conditions
of the lease are to be determined by the jury from the evidence in
the case. - That the jury, if they believe from the evidence that
the trespasses were committed by defendant as alleged in affidavits,
are not limited to the damages actually sustained.

That if the premises were vacant and were leased by deft. to pliff
he had a right peaceably to enter and take possession although
the deft. forbade the entry.

That a verbal lease for ^{the term of} two years is good and valid as between
the parties unless the statute of frauds is set up by the party
desiring to avoid the same.

That if the jury believe from the evidence that the premises
in question were leased by deft. to pliff for the term of one year
with the privilege of two or more at pliff's election such lease is
valid although not reduced to writing, to the giving of each of which
instructions the defendant objected, the Court overruled said objection
and gave the said instructions, and to the decision and opinion
of the Court in overruling the objection to each of said instructions
the defendant by his counsel then and there excepted.

At the request of defendant the Court gave the following instruc-
tions in writing to the jury (the clerk, in making up this record
will here insert Defts. instructions marked (a), (b), (c), (d), (e), (f),
(g) viz. &c. will the Court instruct the jury that if they
believe from the evidence that the defendant being the owner
of the close in the declaration mentioned agreed that he
would lease it to the plaintiff for two years for the
consideration of forty dollars and there is no evidence

Tending directly or indirectly to show whether there was to be a credit or not, the plaintiff was not entitled to take possession of said premises until he had paid debt, said forty dollars, —

B. That the plaintiff can only recover damages for such trespasses as were committed by debt, before the commencement of this suit, and if the plaintiff has failed to prove that the breaking and entering the close and committing the trespasses were before the commencement of this suit the jury should find a verdict for the debt,

C. That the plaintiff can only recover in this suit for the trespasses which were committed by defendant before the 4th day of October A.D. 1850, and that unless the plaintiff has proved affirmatively that some part of the trespasses complained of were committed by the defendant prior to said fourth day of October A.D. 1850 they should find a verdict for ^{the} debt,

D. That evidence of verbal admissions of the parties is subject to much imperfection and mistake and ought to be received by the jury with great caution, —

E. If the debt verbally agreed with plaintiff to lease the ground in controversy to the plaintiff for the term of two years for the sum of forty dollars, and if the defendant before payment of said sum or any part thereof and before the plaintiff had taken possession of the ground thus agreed to be let concluded not to carry out the contract and so informed the plaintiff and forbade the plaintiff taking possession of said premises that in such case if the plaintiff forcibly and against the prohibition of the defendant entered upon the premises and planted and cultivated corn he did not thereby acquire the lawful possession of the premises nor any right of property in the crops, and in such case the verdict should be for the defendant, —

The jury found a verdict for the plaintiff. the deft
moved for a new trial, on the hearing of said motion
it was made to appear to the court that the taking of said
corn crop by defendant was on several different days, that
is several days intervened between the taking of the first
^{load} and the taking of the last thereof that was taken, and
that another action of trespass had been brought by plff.
against defendant on or about the 24th of August 1858, in which
plaintiff had in his declaration complained of the taking of this
same corn or a part thereof, which last mentioned suit
was at the hearing of this motion still pending. Whereupon
the plaintiff dismissed said last mentioned suit at his
own costs, and executed and delivered to defendant under
his hand and seal a release releasing defendant from all
liabilities on account of any trespass touching the corn ground
upon said forty acres, which were committed (if any) after
the commencement of this suit which had been tried viz
the 11th of Oct. 1858 to be good as a release under the verdict
herein should be set aside by the order of the Circuit Court
or Supreme Court, in such event to be of no effect and then
upon the Circuit Court overruled said motion for a
new trial, to which opinion and decision of the court
in overruling said motion for a new trial the deft
by his Counsel then and there excepted and prayed
that this his bill of exceptions be signed sealed and
made a part of the record

J. L. Dickey
Circuit Judge of 9th
Judicial District Mo.

State of Illinois
Lafayette County J. Philo. Tinsley Clerk of the
Circuit Court in and for said
County do hereby Certify that the foregoing
is a true and correct copy of the
proceedings and Judgment in the foregoing
Cause (except the affidavits on which motions
were founded) at this same appears of record
and on file in my office

W. F. Tinsley who of I have hereto
set my hand and affixed the seal
of said Court this 25th day of July
1852
W. F. Tinsley Clerk



State of Illinois }

Supreme Court }

Nov 20 1852

Frederick Crocker }
vs
Edw and Collins }

And now comes the said plaintiff in error & says that in the record & proceedings in said cause there is manifest error in this respect.

1st The Court erred in giving the plaintiff instructions & each of them to the jury.

2^d The Court erred in overruling the motion for a new trial.

3^d The Court erred in rendering judgment for plaintiff below for \$300.

4th The verdict of the jury ^{& judgment thereon} is for too large an amount including damages for trespass after the commencement of the suit.

5th The award & judgment were against the law & void.

Edward Collins
D.
Dissertation on the
Transcript

Filed July 27. 1852.
L. Deland Clerk.

checked
53 folios 5.30
cert 4.35
7.65

State of Missouri } Supreme Circuit Court
Lafayette County } November Term 1857
Monday November 17th 1857

Edward Gollins } For Plaintiff
38 Percecius Croddy } For Defendant

This day again came the parties hereto by their attorneys and after hearing the arguments of counsel it is ordered by the Court that the defendant's motion for a new trial be overruled. It is therefore commanded by the Court that the plaintiff bear and recover from the defendant the full sum of three hundred dollars for his damages and his costs and charges by him herein expended and that he have execution therefor. And thereupon the defendant prayed an appeal to the Supreme Court which is granted upon condition that he file an appeal bond herein payable to the plaintiff in the full sum of three hundred dollars with William H. Daniels, Benjamin L. Sims & Thornton C. Cooks or either for any two of them as his securities within forty days from this date.

State of Missouri }
Lafayette County } I Philo Lindsey Clerk of the
County do hereby certify that the above is a true copy of the Judgment and order granting an appeal in the above case and the same appears for record in my office and that an appeal bond with William H. Daniels and Thornton C. Cooks as securities was filed in my office on the 23rd day of November 1857. Witness my hand and the seal of said Court this 1st day of July 1858
P. Lindsey Clerk

Edward Collins
vs
Dorcasia Crotty

Transcript

Filed July 3^d - 1852
Leland Ck.

Supreme court - June term 1852
Collins vs Crotty -

By L. Dickey being duly sworn states that a bill of exceptions in this case was tendered in open court by Crotty's attorney during the term at which the trial was had - that the attorneys for Collins objected that it was not correct - and submitted in writing their objections - among other things it was objected that a certain book of accounts of Crotty which had been shown to the jury - was important - and that a certain page therein showed matter tending to discredit the testimony of Crotty's son - by contradicting him as to the amount of labor Crotty had expended in cultivating the corn in question - and by the agreement of parties the final settling of the same bill of exceptions ^{was postponed} - for the sole purpose of having that book produced to me by Crotty (the book having been taken to Crotty's house at the close of the trial a distance of some ten miles) -

That after the adjournment and before the next succeeding term said book was produced to me by Crotty's counsel - and upon my suggestion ~~as to~~ in pursuance of the suggestion of Collins' counsel made in term - Crotty's counsel consented to ~~submit~~ waive the point which might have been made on young Crotty's testimony - and the papers remained in my hands - By reason of my procrastination, in writing out the bill as I thought it ought to be

it was not signed until a few days before it was filed - That after it was prepared I submitted it to Mr Mc Gregor for his suggestions if any. He made no objections on account of the time - he suggested as had been done at first examination the phraseology of ~~some~~ Mr Glovers admission was not stated precisely as it had been made and some other suggestions of that kind - before submitting it to Mr Mc Gregor I ~~had~~ advised Mr Hoos that I had prepared the bill of exceptions and wished him to look over it - He replied in substance that he would rather I would show it to Mr Mc Gregor who he said had fuller notes of the evidence - That he ~~could not now remember the matter well enough to tell any thing about it in a reliable manner - & recollect the testimony better than~~

(Hoos)

I further state that I was ready to settle the bill at the time it was examined in town there - and did not think it necessary to say any thing about the book but upon the urgent request of Colins counsel it was postponed - After examining the book I was still of the same opinion as to its materiality
J. L. DeKey

I still have the original bill as tendered and there is no matter called in question in the present bill - that was not called in question in the original bill
J. L. DeKey

Subscribed & sworn before me this 30th day of July 1852

Henry G. Cotton

Judge Sabell Co Court

Samuel Cratty }
" } Error to Salome
Edward Collins }

This was an action of trespass & was returned
suit commenced Oct 14th 1850

Warr filed Oct 11th 1850 charging that deft broke
and entered plaintiffs close to wit part on
East half of N E 1/4 sec 23 Town 33 Range 5 East
3 P.M. ploughed the same & departed the land
and cart and carriage away, com

1st plea Genuine issue

2^d plea that the close was the soil & freehold of deft

Genuine replication to 2^d plea

2^d Replication to 2^d plea by leave of the court that on
the 30th day of Oct 1849 defendant demised to
plaintiff the premises ~~def~~ took possession
and during the term ~~def~~ deft broke & entered on

Rejoinder that ~~def~~ ~~plff~~ was not seignior of the premises
by virtue of a demise from ~~def~~

The Jury found a verdict for plff for \$300,

Motion for a new trial overruled & Exception

The bill of exceptions shows that on the trial of
this cause it was proven that in December
1849 and for some time previous defendant was
and had been in possession of the close claiming
& own it, that in Dec 1849 a conversation took
place between deft & plff in relation to deft renting
to plff a part of the premises to wit that part of
a large field situated on the premises lying east of
a farm road or wagon way which he through said
field (nearly North & South in its course) from defts
residence on the North to his Warehouse on the
South side of said large field that part of said
field being about forty acres in quantity
There was then evidence given by plff & rebutting
evidence by deft from which for the purpose of
this bill of exceptions deft concedes that the Jury

The Jury would have been sustained in finding the following state of facts. That some time in 1849 it was verbally agreed between plaintiff and defendant that defendant would let plaintiff have the use of said 40 acres for farming purposes for 1 or 2 years as plaintiff should wish at a yearly annual rent of \$20 or fifty cents per acre, defendant should fix up the fences & let plaintiff in possession early in the Spring of 1850, that afterwards before plaintiff entered upon the possession of said forty acres, defendant required plaintiff to enter into a written contract on the subject with plaintiff's mother as Security & for back plaintiff from entering into possession till such contract was executed, that a crop of corn was raised on said 40 acres which in the fall of that year as it stood in the field was worth about \$300, part of said corn was planted by plaintiff & part by defendant that the first ploughing for corn on that forty acres that year was done by plaintiff & on divers times in that year plaintiff & defendant ploughed & cultivated corn on said 40 acres each claiming the entire crop as his own and on one or two occasions the plaintiff & defendant were at the same time engaged in cultivating said corn ~~in~~ in different parts of the field each claiming the whole as his own

Besides the above testimony Michael Collins one of plaintiff's witnesses stated that about the last of Sept or 1st of Oct. witness went to the corn field with plaintiff to pick a load of corn when they had picked a part of a load plaintiff went to his house for something when defendant's men by defendant's direction took forcible and violent possession of the wagon took the corn to ~~Cratty~~ ^{Cratty} and the horse to the pond

This was just before plaintiff came down to Ottawa to see a lawyer about bringing this suit

Afterwards witness saw Cratty's men hauling corn from the field plaintiff then asked witness for the what become of the rest of the corn, when defendant's attorney inquired what was the object of the question plaintiff's attorney replied he want to show that plaintiff never got any of the corn raised in that field that year, ^{the} defendant replied in open court he admit he never got a peck of it defendant got it all You need not trouble yourself to prove that

An Cross Examination said witness testified that in April 1850 before any ploughing had been done on said forty acres the witness let down the fence enclosing the field for the purpose of driving in a team for the purpose of ploughing for the ptff when deft forbade him saying you must not go in there until they have signed the writing, thereupon witness went away next day witness returned & ptff deft forbade their going in. ptff replied, I am going in and you may drive us out if you can hit & ptff then went into the field & commenced ploughing this was the first ploughing done.

This was all the evidence

For the ptff Court instructed the Jury

- 1st That the terms and conditions of the lease are to be determined by the Jury from the evidence in the case that the Jury if they believe from the evidence that the trespasses were committed by defendant as alleged wilfully or not limited to the damages actually sustained that if the premises were vacant and were leased by deft to ptff he had a right lawfully to enter and take possession although the deft forbade the entry
- 2 That a verbal lease is good & valid between the parties unless the Statute of frauds is set up by the party to avoid the same that if the Jury believe from the evidence that the premises in question were leased by deft to ptff for the term of one year with the privilege of two or more at ptffs election such lease is valid although not reduced to writing

An exception was taken to the giving of each of said instructions

The jury found a verdict for plff. - deft. moved for new trial - on hearing of said motion it was made to appear to the Court that the taking of said corn crop by deft. was on several different days, that is several days intervened between the taking of the first load & the taking of the last thereof that was taken, & that another action of trespass had been brought by plff. against deft. on or about 14th Aug. 1857, in which plff. had in his declaration complained of the taking of the same corn or a part thereof, which last mentioned suit was at the hearing of this motion still pending. Whereupon the plff. dismissed said last mentioned suit at his own costs, & executed & delivered to deft. under his hand & seal a release - releasing deft. from all liabilities on account of any trespass, touching the corn ground upon said forty acres, which were committed (if any) after the commencement of this suit, which had been tried viz. the 4th of Oct. 1850 to be good as a release unless the verdict herein should be set aside by the order of the Circuit Court or Supreme Court in such event to be of no effect, and thereupon the Circuit Court overruled said motion for a new trial, to which opinion & decision of the Court in overruling said motion for a new trial the deft. by his counsel then & there' excepted -

We make the following points

1st The Evidence does not support the verdict in any particular

2 The Court should have awarded a new trial

3 No passing of the land from ~~plff~~ def to ~~def~~ is shown

4 The instructions of ~~plff~~ on each of their erroneous are exact to them severally

5 The Judgment was erroneous.

E. S. Leland

B. C. Cook, for ~~plff~~ in error

La Salle
Jermiah Crotty
vs.
Edward Collins
Abstract

Filed July 31st 1852
11 AM.

J. Leland Clerk
By W. Leland Depy.