

No. 11887

Supreme Court of Illinois

Walker, et al.

vs.

Ellis, et al.

71641  7

Provia
Isaac Walker et al.
vs
Joseph Ellis

6!

11887
Prepared

1851


Be it remembered that heretofore, to wit, on the ninth day of December in the year of our Lord one thousand eight hundred and forty eight there was filed in the office of the clerk of the circuit court in and for the county of Peoria in the State of Illinois an appeal bond from a judgment of a Justice of the Peace of said Peoria county, which bond was approved by the clerk of said court and is in the words and figures following, to wit,


Appeal bond
to circuit court


Know all men by these presents that we Isaac Walker Henry Lightner and Joshua P. Hotchkiss are held and firmly bound unto Joseph Ellis in the penal sum of Two Hundred Dollars lawful money of the United States, for the payment of which well and truly to be made we bind ourselves our heirs and administrators jointly severally & firmly by these presents Witness our hands and seals this ninth day of December A.D. 1848.

The condition of the above obligation is such that whereas the said Joseph Ellis did on the eighth day of December A.D. 1848 before Dennis Blakely a Justice of the Peace for the county of Peoria recover a judgment against the above bounden Isaac Walker and Henry Lightner for the possession of the following described premises to wit part of lot No Ten in Block No Six in the City of Peoria county of Peoria and state of Illinois and, bounded as follows to wit: Commencing on Main street, ninety one feet from the corner of said lot at the junction of Main & Washington streets thence running on Main street towards the alley in said Block twenty feet, thence across said lot parallel with Washington street to lot numbered, nine in said Block seventy two feet thence on the line between said lot ten and said lot nine towards Washington street twenty feet and thence to the place of beginning in an action of forcible entry and detainer, and the costs of said suit from which judgment the said, Walker & Lightner have taken an appeal to the circuit court of the county of Peoria aforesaid and state of Illinois. Now if the said Walker & Lightner shall prosecute their appeal with effect and shall pay whatever judgment may be rendered, by the court upon appeal or trial of said appeal, and also shall pay all costs becoming due if any from the commencement of the said suit until the final determination thereof on said premises then the

above obligation to be voids otherwise to remain in full force and effect.

Isaac Walker 

Henry Lightner 

J. P. Hotchkiss 

And thereupon the clerk of said court issued a supersedeas under the seal of said court in the words and figures following, to wit: The People of the State of Illinois. To the Sheriff of Peoria County greeting. Whereas on the eighth day of December instant before Dennis Blakely Esq. a Justice of the peace within and for the said ^{County} of Peoria Joseph Ellis in action of forcible entry and detainer recovered judgment against Isaac Walker Henry Lightner for the possession of part of lot number Ten in Block No. 14 in the City of Peoria County of Peoria and State of Illinois together with costs of suit; from which judgment the said Isaac Walker & Henry Lightner has appealed, to the Circuit Court in and for the said County of Peoria, and has entered into bond, with security, according to the statute in such case made and provided; We therefore command you forthwith to give notice thereof to the said Justice, and also to the constable in whose hands an execution or other process may be in relation to said action, that they are enjoined, to stay and suspend all further proceedings in relation thereto, untill the said Circuit Court shall otherwise order and direct; and make return thereof, with your doings herein, on or before the first day of the term of the said court, to be held, at Peoria, within and for the County of Peoria, on the fourth Monday of May next.



Witness Jacob Gale Clerk of our said court,
and the seal thereof, at Peoria, this ninth day
of December in the year of our Lord one thousand,
eight hundred, and forty eight

Jacob Gale, Clerk

And afterwards on the thirteenth day of December in the year
last aforesaid the said supersedeas was returned to the court aforesaid
by the said Sheriff endorsed as follows, to wit, State of Illinois,
Peoria County served the within supersedeas by reading the same to
Dennis Blakely as within commanded, Dec. 13th 1848. William Compher Shff. P. C.
By C. Cleveland, Deputy.

And on the said ninth day of September A.D. 1848 the Clerk of said Court issued a summons in said cause to the Sheriff of Peoria County under the seal of said Court in the words & figures following, to wit:

Summons =

The people of the State of Illinois. To the Sheriff of Peoria County Greeting We command you to summon Joseph Ellis if he may be found in your County, to appear before our Circuit Court, on the first day of the term thereof, to be held at Peoria, within and for the said County of Peoria, on the fourth Monday of December then and there, in our said Court, to prosecute his suit for forcible entry and detainer against Isaac Walker and Henry Lightner lately appealed from before Dennis Blakeley one of the Justices of the Peace of said County and make return of this writ with an endorsement of the time and manner of serving the same, on or before the first day of the term of the said Court to be held, as aforesaid, Witness, Jacob Gale, Clerk, of our said Court, and the seal thereof, at Peoria, this ninth day of December in the year of our Lord one thousand, eight hundred, and forty eight



Jacob Gale, Clerk

And afterwards to wit, on the twenty sixth day of January A.D. 1849 the said summons was returned to said Court by the said Sheriff endorsed as follows, to wit:

State of Illinois
Peoria County
served the within summons by reading the same to the within named Joseph Ellis
January 26th 1849 - William Kompher, Sheriff P.C.

And afterwards, to wit, on the tenth day of April in the year last aforesaid, there was filed in the office of said Clerk a transcript of the Docket entry of Dennis Blakeley one of the Justices of the Peace of said County of Peoria and of the proceedings had in said cause before him, which with the certificate thereto is in the words and figures following, to wit:

Joseph Ellis }
vs }
Isaac Walker } This is an action for forcible detainer
Henry Lightner } Re it remembered that on the second day
of Dec^r A.D. 1848 Joseph Ellis complained to
Dennis Blakeley a Justice of the Peace in and for the County of
Peoria, upon oath as follows -

Dec- 2nd 1848

State of Illinois / The complaint of Joseph Ellis of the County
Peoria County of Peoria & State of Illinois who being duly
sworn gives to Blakeley a justice of the peace of said county
to understand & be informed, that on or about the 8th day of July
A.D. 1843 Joseph Ellis did demise & lease to one Abraham VanEpe
by the name of A VanEpe of the City of Peoria aforesaid, all that
certain piece parcel or lot of Land, described, as follows to wit
Lying on Main Street. two lots above M. Pettingills new brick
building on main street being twenty feet front running back
seventy two feet from front to back part of lot for the term of three
years commencing on the first day of June 1843 & ending
the same date 1848 for the consideration or rent of \$15 per year
with taxes to be paid by said VanEpe which lot is more
particularly described, as follows to wit being part of lot No 10
in Block No 6 in the town of Peoria County of Peoria & State of
Illinois & bounded as follows to wit commencing on Main
street 91 feet from the corner of said last mentioned lot at
the junction of Main & Washington street thence running on
main street towards the ally in said Block 20 feet thence
across said lot & parallel with Washington street to lot 9 in said
Block 72 feet thence on the line between said lots 10 & said lot
9 towards said Washington street twenty feet thence to the place
of beginning being the same lot of ground formerly occupied by
said VanEpe & now or of late occupied by Walker & Lightner
herein after mentioned, & on which is a tinners shop,
And after the said demise of the said Joseph to the said
VanEpe & long before the expiration of said term of three years
to wit about the 19th day of September in the year 1846 the
said VanEpe departed this life & one James Taylor was duly
appointed administrator of the goods & Chattels of the said
deceased, who was duly qualified, to act as such & after wards
& long before said term had expired said Taylor administr-
ator as aforesaid, assigned, sold & transferred, to Isaac Walker
& Henry Lightner the lease and term aforesaid & the said
Walker & Lightner thereupon to wit on or about the day of
Dec in the year of our Lord, 1846 entered upon said premises
& held, & occupied the same & thence hitherto have held and
occupied said premises as the tenants of said Joseph & have
acknowledged him as their landlord, & as such have during
said term paid the rents to said Joseph & the said Joseph on the

first day of Dec^r A.D. 1848 demanded the possession of said premises of the said Walker & Lightner & notified them in writing to quit and deliver up said premises to him the said Joseph & yet attho said term has long since expired, & tho such notice notice & demand hath been made & since said Walker & Lightner wilfully & with out force after the expiration of said lease hold over & still holds over & continues in the possession of said premises without the permission & against the will & right of the said Complainant he therefore prays that the said Isaac Walker & Hervey Lightner may be summoned to answer to said complaint. Subscribed & sworn to before me the 2nd Dec^r 1848 W Blakeley J.P. signed, Joseph, Ellis

Whereupon the said Joseph Ellis on the 2^d day of Dec^r A.D. 1848 prayed of me the undersigned Justice of the peace to issue a summons in his behalf & having heard the said Complainant's prayer did issue a summons in his behalf to A.B. Fash Court requiring him to summon the said Isaac Walker & Hervey Lightner to appear before me at my office in Peoria, on the 8th day of Dec^r in & at 10 o'clock A.M. 1 subpoena issued to Fash Court & summons returned, duly served, by A.B. Fash Court as follows served the within warrant by reading the same to Isaac Walker & Hervey Lightner this 2^d day of Dec^r 1848

Verena was issued to said Court. Verena returned, served with the following persons summoned, as jurors by Fash Court, to wit S. Byington J. Alter S. S. Geber H. Oliver Clement Van Burskirk J. C. Flanagan M. M. Aiken J. C. Heyle J. Tarr E. C. Woodcock Pledge. And on the 8th day of Dec^r 1848, in pursuance of said summons the said Joseph Ellis appears by Cuslow Peters & the said Walker & Lightner by A. C. Meriman & said complaint having been read to defendants & they plead not guilty of the matters therein set forth & the Jurors having been called, tried & sworn did sit together before me & heard the proof & allegations of said parties which was delivered publicly in their presence & after hearing the proof & allegations the ^{said} Jurors were kept together in a convenient place by the said Constable untill they had agreed on this verdict whereupon the Complainant advanced the jury fee which was \$5. & the Jury having agreed, came into Court & delivered the same publicly & thereby found the said Isaac Walker & Hervey Lightner guilty in manner & form as set forth in the complaint

it is therefore considered by me the said Justice that the said Joseph Ellis recover & be restored to the possession of the lands, possession particularly described & distinguished in the complaint & that he have restitution therefore & it is further considered that he recover against the said Walker & Lightner the sum of \$16.24 for his costs & charges by him laid out & expended in and about the prosecution of this suit according to the form of the statute in such cases provided, & that he have execution therefor Cost \$16.24

In Witness whereof I the said W. Blakeley have hereunto set my hand & seal at Peoria this 8th day of Dec^r A.D. 1848 W. Blakeley J.P.

Costs

Affidavit	.25-
docket	.12½
summons	.50
subpoena	.50
Fash	6.49½
Venue	.50
swearing Jury	.23-
W. Oath	.23-
Entry words jury	.12½
Jury fee	3.00
Complete record	2.10
1 day on trial	2.00
Entry Judgment	.23-
Transcript	1.80
	\$18.04

Dec 8th Defendant gave notice of an appeal
 .. 12 W. Cleveland, dept Sheriff served a subpoena
 -dus on said Justice notifying him that defend-
 -ant had taken an appeal

State of Illinois
 Peoria County
 I Dennis Blakeley a Justice of the peace in & for said County do hereby certify that the above is a true transcript of an entry made in my docket & the proceedings had thereon & the papers accompanying this transcript are all that come to my hands relating to said suit Given under my hands at Peoria this 11th April 1849
 D. Blakeley J. P.

And also on the same tenth day of April with said Transcript there was filed in said clerk's office the complaint to said Justice of the Peace in said cause in the words and figures following to wit.


State of Illinois
 Peoria County
 The complaint of Joseph Ellis of the city & County of Peoria, State of Illinois who being duly sworn upon his oath gives Dennis Blakeley Esquire, a Justice of the Peace in and for said County to understand & be informed that on or

about the eighth day of July in the year of our Lord Eighteen hundred & forty five. he the said Joseph Elli did demise lease to one Abraham Van Epps by the name of A. Van Epps of the City of Peonia, aforesaid, all that certain piece parcel or lot of land described as follows. to wit. lying on main street two lots above M. Ped-tungills new brick building on main street. being twenty feet in front running back seventy two feet from front to back part of lot. for the term of three years commencing on the first day of June eighteen hundred & forty five & ending the same date eighteen hundred & forty eight. for the consideration or rent of fifteen dollars per year with tape to be paid by said Van Epps - and which lot is more particularly described as follows. to wit. being part of lot numbered, ten in Block numbered, six in the town of Peonia County of Peonia & State of Illinois. and bounded, as follows to wit. running on main street ninety one feet from the corner of said last mentioned lot at the junction of main & Washington streets thence running on main street towards the Alley in said Block twenty feet: then across said lot parallel with Washington street to lot numbered nine in said Block seventy two feet thence on the line between said lot ten & said lot nine towards Washington street. twenty feet & then to the place of beginning being the same lot of ground, formerly occupied by said Van Epps & now & of late occupied by Walker & Lightner hereinafter mentioned, and on which is a tinners shop. And after the said demise by the said Joseph to the said Van Epps & long before the expiration of said term of three years. to wit. about the nineteenth day of September in the year eighteen hundred & forty six the said Van Epps departed this life. and one James Taylor was duly appointed administrator of the goods & estate of said deceased, who was duly qualified to act as such: and afterwards & long before said term had expired said Taylor administrator aforesaid, assigned sold & transferred to Isaac Walker & Henry Lightner, the lease & term aforesaid and the said Walker & Lightner therefore, to wit. on or about the 1st day of December in the year of our Lord eighteen hundred & forty six entered upon said premises & hold & occupied the same & from thence hitherto have held & occupied said premises as the tenants of said Joseph & have acknowledged him as their landlord, and as such, have during said term, paid the rent to him the said Joseph and said Joseph, on the first day of December A^d 1848 demanded the possession of said premises of the said Walker & Lightner

& notified, them in writing to quit & deliver up said premises to him the said Joseph yet though said term hath long since expired, & though such demand & notice hath been made & given the said Walker & Lightner wilfully & without force after the expiration of the said lease held over & still holds over & continues in the possession of the said premises without the permission & against the will & right of this complainant; he therefore prays that the said Isaac Walker & Henry Lightner may be summoned, to answer the said complaint

subscribed, & sworn before me
this second day of December 1848-

Joseph Ellis

W Blakely 

Justice of Peace Peoria County-


And on the same tenth day of April A.D. 1849 there was filed with said transcript a warrant issued in said cause by said Justice of the Peace which with the return of the officer thereto as endorsed thereon is in the words and figures following, to wit,

State of Illinois ³³

Peoria County ³³ The People of the state of Illinois to the Sheriff or any Constable of said County. Whereas complaint has been made before Dennis Blakely Esquire one of the Justices of the peace of said County that Isaac Walker & Henry Lightner in or about the first day of December A.D. 1848 at Peoria precinct in the county of Peoria did unlawfully wilfully and without force detain from Joseph Ellis and still doth unlawfully, wilfully & without force detain from him the lands and possessions of him the said Joseph Ellis there situate known and described, as follows to wit lying on Main Street two lots above Mr Pettingills new brick building on Main Street being twenty feet in front running back seventy two feet from front to back part of lot, which lot is more particularly described, as follows to wit, being part of lot numbered ten in Block numbered six in the town of Peoria County of Peoria & State of Illinois. and bounded as follows to wit, commencing on Main Street ninety one feet from the corner of said last mentioned lot at the junction of Main & Washington Street thence running on Main Street towards the Alley in said Block twenty feet thence across said lot parallel with Washington Street to lot numbered nine in said block

seventy two feet thence on the line between said lot Ten and mine towards Washington Street twenty feet and thence to the place of beginning being the same lot of ground formerly occupied by Abraham Van Eppel & now of late occupied by said Walker & Lightner and on which is a Tannery Shop that the said Walker & Lightner were the tenants of said Joseph. that the term for which said premises were demised, has long since elapsed, and that the said Walker & Lightner though demand has been made upon them by said Joseph, in writing, for the possession thereof & they duly notified, in writing to quit & deliver up to him the said premises, and that the said Walker & Lightner notwithstanding such demand & notice still doth wilfully & unlawfully against right & without force, hold & detain the said premises from the said Joseph

We therefore command you to summon the said Walker & Lightner to appear before the said Justice at his office in Plover Precinct in said County on the eighth day of December at Ten o'clock in the forenoon to answer the said Complaint And have you then & there this precept hereof fail not at your peril, given under my hand and seal of the said Justice the second day of December A.D. 1848

W. Blakeley  J.P.

[Endorsed]. Served the within warrant by reading the same to Isaac Walker and Henry Lightner this 2nd day of Decr 1848
A. B. Gash Const.

Proceedings in the circuit court within and for Plover county in the State of Illinois at the May Term thereof in the year of our Lord one thousand eight hundred and forty nine.
to wit, Friday, June 8th A.D. 1849

Joseph Ellis

Isaac Walker

Henry Lightner } appts

13
Verbal entry and detainer - appeal from
This day came the plaintiff by Onslow Peters his attorney and entered a motion to dismiss the appeal taken from the Justice of the Peace herein -

Proceedings at a term of the Circuit Court begun and held at the Court-house in the City of Peoria in and for the county of Peoria in the State of Illinois on the fourth Monday of August in the year of our Lord one thousand eight hundred and fifty, it being the twenty sixth day of said month. Present the Honorable William Kellogg Judge of the tenth Judicial Circuit in the State of Illinois - to wit,
Monday, September 2nd A.D. 1850

Joseph Ellis

vs

forcible entry & detainer

Isaac Walker &
Hervey Lightner

This day came the defendants by G. O. & A. L. Merriman their attorneys and entered a motion to dismiss this cause for the following reasons. 1st The complaint is insufficient. 2nd The complaint shows that the defendants were not in default and no sufficient notice to quit the premises or other determination of the alleged tenancy.

Tuesday, September 3rd A.D. 1850

Joseph Ellis

vs

forcible entry & detainer

Isaac Walker &
Hervey Lightner

This day came the parties by their respective attorneys and this cause came on to be heard on the motion of the defendants entered herein on yesterday to dismiss this cause, on consideration whereof the Court overruled said motion. Ordered that a jury be impannelled to try the issues in this cause, whereupon came a jury of twelve good and lawful men to wit, John C. Mc Cluse, Sands Perkins, James Brown, Hugh Sears, Isaac Jenkins, Ebenezer Robinson, Israel G. Proctor, Collier B. Remble, George B. Divilbiss, Milton W. Nesmith, William A. Hall, and John Cameron, who being duly chosen, tried and sworn to well and truly try the issues in this cause, on their oaths aforesaid do say, we of the Jury do find the defendants guilty of the detainer in the complaint specified and of withholding from the plaintiff the premises therein described. Whereupon the defendants entered a motion to set aside the verdict in this cause and grant a new trial, for the

following reasons. 1st The verdict is against the evidence.
2nd The verdict is against law. 3rd It is against law
and evidence. 4th The verdict is against the instructions of
the court. The defendants also entered a motion in arrest of
Judgment.

Monday September 9th A.D. 1850

Joseph Ellis

vs

forcible entry & detainer

Isaac Walker

Hervey Lightner

This day this cause came on to be heard on
the motion of the defendants heretofore entered herein for a new
trial in this cause, and in arrest of judgment. and
the court being fully advised in the premises overruled said
motions: Therefore it is considered that the said Joseph Ellis
have restitution of the premises in the complaint mentioned
and that a writ of restitution issue therefor: and it is further
considered that the said Joseph Ellis have and recover of the said
Isaac Walker and Hervey Lightner his costs and charges by him
about his suit in this behalf expended as well in this court as
in the court below and that execution issue therefor. Thereupon
the defendants by Merriman and Bryan their counsel prayed
an appeal of this cause to the Supreme Court of this State which
is allowed them upon their entering into bond to the plaintiff in the
sum of one thousand dollars. Conditions according to law
with Joshua P. Hotchkiss or John Hamlin as surety and
filed in the office of the clerk of this court in thirty days.

And afterwards on the twelfth day of September A.D. 1850,
there was filed in said cause a Bill of Exceptions duly signed
and sealed by the Judge of said Court in the words and
figures following, to wit

Joseph Ellis

vs

Isaac Walker

Hervey Lightner

Peoria Circuit Court

Aug Term 1850

Appeal Forcible Detainer

Be it remembered, that the defendants on
the second day of September A.D. 1850 and during said term
made a motion to dismiss this suit and assigned the following

reasonable. 1st The complaint is insufficient.

2nd The complaint shows, that the defendants were not in default, and no sufficient notice to quit the premises or other determination of the alleged tenancy -


And on the third day of September A.D. 1830 and during said term said Court overruled said motion and said defendants then and there excepted to the decision of the Court in overruling said motion, and on the third day of September A.D. 1830 and during said term said Cause came on to be tried, and a Jury being empanelled, the plaintiff to sustain the issue on his part read in evidence a contract between Abram Van Eps of the one part and plaintiff of the other part as follows:

^{Peoria Ill. July 8th 1845-}
"Article of agreement entered into this eight day of July 1845 between A. Van Eps on the first part and J. Ellis the second part, all of the Town of Peoria - The said J. Ellis lets to A. Van Eps a certain Piece of ground laying on Main Street two lots above Mr. Pettengill's New Brick Building, being twenty feet in front running back seventy two feet from front to back part of lot for the terms of three years commencing on the first day of June 1845 and ending on the same date 1848. For the consideration of fifteen dollars per year, with the taxes to be paid, also A. Van Eps has the privilege of buying said lot within one year at the price of fore hundred dollars on time from one to two years, the walk is to be brick by J. Ellis. A. Van Eps - Joseph Ellis.

Witness to the same, James Taylor -

[enclosed as follows]

For value recd. of Isaac Walker & Henry Lightner, I the undersigned administrator and guardian of the infant heirs of Abram Van Eps decd. do hereby assign, transfer and set over to the said Walker and Lightner the within article of agreement, hereby transferring and confirming to them all the right, title and interest of the said Abram Van Eps decd. and of all persons claiming by, through or under him in and to the same and to the premises therein specified, so far as I as such administrator and guardian as aforesaid may or can lawfully and of right sell, dispose of and assign the same. Given under my hand and seal at Peoria this 9th day of December A.D. 1846 -

James Taylor 

Administrator & Guardian as above stated -

The Plaintiff then read in evidence and proved, the service on defendants of a notice in the words & figures following to wit

To Isaac Walker & Henry Lightner

Gentlemen

Take notice that

I hereby demand that you quit and immediately deliver up possession of the tenements & possessions which you now hold of me situate in Peoria precinct, in the County of Peoria being part of lot numbered Ten in Block numbered Six in the town of Peoria County of Peoria & State of Illinois and bounded, as follows. To wit. Commencing on Main Street ninety one feet from the corner of said lot at the junction of Main and Washington Street thence running on Main Street towards the alley in said Block twenty feet. thence across said lot parallel with Washington Street to lot numbered, nine in said Block seventy two feet. thence on the line between said Lot Ten and said lot nine towards Washington Street twenty feet and thence to the place of beginning. the same being the premises formerly occupied by A. Van Epe and now occupied by you - Mr Abram B. Pash is hereby authorized to receive possession of said premises for me - Dated the first day of December A.D. 1848

Yours &c

Joseph. Ellis

The Plaintiff then introduced William Ellis as a witness, who being duly sworn testifies that he is brother of plaintiff that Van Epe did in or about September 1846 that defendant went into possession of the premises described in said contract in the fall of 1846 or winter following and have continued in possession ever since - that the plaintiffs residence then was in Peoria - that in the summer and soon after the date of said instrument & of writing the plaintiff went into the northern part of Indiana on a trapping excursion and did not return until June 1848 that Van Epe called on witness in summer of 1846 and inquired where plaintiff then was, and said he wished to make the first payment on the purchase of said lot, one hundred dollars - that he had the gold and wished witness to receive it for plaintiff - that Van Epe frequently made the same request of witness - that witness declined, receiving the

money because he had no authority to act for plaintiff that Van Epe then desired to know where the plaintiff was, as he wished to write to him but witness could not tell him where he was that after Van Epe's death, about November 1846, James Taylor administrator of Van Epe told witness as he now thinks that he should not go on with the purchase of said lot - that said Taylor paid witness for plaintiff \$15. as the amount due plaintiff from Van Epe under said agreement. Witness supposed that defendants went into possession under the assignment of said contract to defendants. Witness said plaintiff was born in 1823 his mother thought he was born in 1826, but could not tell certainly as the family record was destroyed many years ago that witness was nine years older than plaintiff. That most of the time said plaintiff was gone from Peoria from 1845 to 1848 it was unknown to his family where he was. That \$400. was the full value of the lot at the time of said contract between plaintiff and Van Epe. This was all the evidence offered by plaintiff

Defendants then called James Taylor who having been duly sworn testified, that he was appointed administrator of the estate of said Van Epe soon after his death and still continues such administrator - that he was appointed Guardian for his infant heirs (and all of his heirs are infants) in the spring of 1848 or fall of 1847 - that he was called, by plaintiff and Van Epe in September 1845 to witness their contract, at which time at their request he signed his name as witness to said contract that at that time plaintiff earnestly solicited Van Epe to buy said property on the terms of said contract saying that he was going to Indiana to hunt, and that he had bought a horse from E. W. Powell, his brother in law and was to pay him \$100. That Van Epe then agreed, to buy the lot on the said terms, except that he declined paying any money down alleging as a reason that he had just been burnt out and could not do so, and that by the contract it was not due but said that the money would be ready at the time he was to pay according to the contract - that plaintiff agreed to this, and said that perhaps he might write to said Powell to receive the \$100, but that no such letter was received, and that Van Epe was not to pay interest but was to pay plaintiff \$15. a year until the last payment should be made - witness did not know whether the \$15.

was in law of Intrest. That at the time said contract was made
the lot was Vacant, and that Van Epe afterward, built a house
on it and used it as a tin shop that at the time witness sold
and assigned, said Contract to defendants he sold all the interest
the estate had to the contract. Shop on the lot and all tools & co. ~~left~~
bought all the rights under the contract whatever it might be,
and at the same time witness told defendants that Van Epe had
elected to buy the property under said Contract and that plaintiff
had agreed to it, and that defendants went into possession of
said lot under said purchase from ~~defendant~~ ^{witness}. Witness did not
recollect telling Mr Ellis that he should, not complete said con-
tract of purchase, but did recollect telling said Ellis that he
had been told, by the Probate Justice that he could not fulfil
said contract as administrator - and that he did not know that
as such administrator he had a right to complete said contract
but never intimated, that he would, be unable to make the
payments agreed upon. Witness also stated that upon taking
possession of Van Epe Effects after his death as administrator
he found a package containing \$100. in gold, stowed away
in a clock case belonging to Van Epe, and marked J Ellis
plff was in Peonia from about June 1848 until he went to California
in the fall of 1848. That soon after Van Epe death, witness paid
William Ellis for plaintiff \$15. the amount due from Van Epe to
plaintiff at the time of his death according to said agreement
That soon after Plaintiffs return to Peonia in summer of 1848
Witness was present when defendants tendered to plaintiff a
sum of money in gold, which witness understood, and defendants
then stated to be the full amount due plaintiff with interest
of the purchase money for said lot according to said contract
& that plaintiff refused to accept it alleging that he was a
Minor when said contract was made. In the fall of 1848 at
the time that he was not, defendants made a tender of \$100
which plff refused, that witness asked him if he was not of
age when he made the contract which he witness witnessed
and plff said he was, That afterwards when defendants
tendered the \$400. which plff refused, alleging his minority
and saying that he was mistaken when he admitted he was
of age. This was all the material evidence given in the cause
The Court instructed the Jury on behalf of plaintiff as follows
That if the Jury believe from the evidence that the defendants

went into the possession of the property in controversy under the lease they by their coming into the possession came in as tenants to plaintiff. And if they further believe from the evidence that the defendants held over after the term expired and a demand in writing, as alleged in complaint for the possession being made, they will find for plaintiff.

On behalf of defendants the Court instructed the Jury as follows to wit. If the Jury believe from the evidence that Walker & Sigh-tron entered into possession of the premises in controversy under a contract of purchase and so continued until this suit was brought they cannot be regarded as tenants of the complainant and the Jury will find for the defendants. And it is immaterial in this suit whether the plaintiff was a minor at the time the contract was made or not.

2^d It is also immaterial whether or not the contract of sale is void for any reason. The only question for the Jury to determine is the character of the defendants' possession whether as tenants or otherwise.

Unless the relation of landlord and tenant existed between the plaintiff and defendants during the continuance and at the expiration of the lease, and from that time until the commencement of this suit by holding over as such tenants, they will find for defendants.

The title to the property in controversy is not in issue in this suit.

The defendants also asked the Court to instruct the Jury that if they believe from the evidence that the plaintiff suffered defendants to hold over the possession of said premises for the space of six months after the expiration of the lease without objection, if defendants were in possession of the premises as tenants of plaintiff, the law would imply the creation of a new tenancy from year to year, which the plaintiff could not determine without notice nor until the expiration of the year. Which instruction the Court refused to give. To which decision of the Court in refusing to give said instruction the defendants counsel then and there excepted.

The Jury returned a verdict for the plaintiff.

The defendants counsel moved the Court to set aside said verdict and grant a new trial for the following reasons:

1st The verdict is against the evidence.

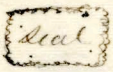
- 2nd The verdict is against Law
- 3rd It is against law and evidence
- 4th The verdict is against the instructions of the Court
- 5th The Court refused to give proper proper instructions to the Jury asked for by defendants.

The defendants counsel then by consent of Plaintiffs counsel moved the Court ~~in~~ arrest of judgment and assigned the following reasons. To wit.

That the complaint shows affirmatively that there was an existing tenancy on the part of depts created by laws and the acts of the parties undetermined at the commencement of the suit. and because said complaint is in other respects informal & insufficient

Bryan & Meriman
for depts

The Court overruled each of said motions, and defendants counsel then and there excepted, to the decisions of the Court in overruling said motions severally and prayed the Court to sign seal and make of record this their bill of exceptions. which is done

Wm Kellogg 

Know all men - That we, Isaac Walker and Henry Lightner as principals, and John Hamlin as surety, are held and bound unto Joseph Ellis in the penal sum of one thousand dollars for the payment of which we hereby bind ourselves our heirs and personal representatives.

Witness our hands and seals this 12th day of December A.D. 1830.

The condition of this obligation is such: that whereas at the August term of the Peoria County Circuit Court A.D. 1830 in a Complaint of forcible Detainer of part of Lot Number Ten in Block number six in the City of Peoria in said County as particularly described in said Complaint, wherein the said Ellis was plaintiff and the said Walker & Lightner were defendants a final judgment was rendered by said Court in favor of said plaintiff and against said defendants, and awarded a writ for the restitution of said premises. And, whereas at the time of the rendition of said judgment the said

defendants prayed, an appeal therefrom to the Supreme Court of the State of Illinois, and which appeal was granted, by said Circuit Court. Now if the said Walker & Lightner shall duly prosecute their said appeal and shall pay the judgments costs, interest and damages in case said judgment shall be affirmed then this Bond shall be void, otherwise to be in full force and virtue

Isaac Walker
Mervey Lightner
Jn. Hardin

State of Illinois
Poria County fs:

I Jacob Gale Clerk of the Circuit Court in and for said County do hereby certify that the foregoing is a full, true and complete transcript from the Record of all the proceedings in a certain case in said Court wherein Joseph Ellis is Plaintiff and Isaac Walker and Mervey Lightner are defendants as the same remain of Record and on file in my office.

In testimony whereof I hereunto set my hand and affix the seal of said Court at my office in Poria this day of May in the year of our Lord, one thousand eight hundred and fifty one -
Jacob Gale, Clerk.

Clerk's fee for Transcript, certificate and seal, seven dollars and seventy five cents - Received payment of Walker and Lightner defendants

Isaac Walker vs Joseph Ellis } Appeal from Florida
County

And the said plaintiffs in error come and assign for error upon the said Record

1. The Court below erred in refusing to dismiss the suit on account of the insufficiency of said Petition

2. The Court ^{below} erred in overruling the motion of plaintiff's in error for a new trial

3. The said circuit Court erred in refusing to give ^{the} instruction last prayed for by the plaintiffs in error.

For these and other errors apparent on the face the Record the plaintiffs in error pray that the said Judgment be set aside reversed annulled and wholly for naught entered.

H. C. Minner
for plaintiffs in error

And the appellee comes & says that in the record & proceedings aforesaid, & in the rendition of the judgment aforesaid, there is no such error as the appellants have above assigned, & they pray that the judgment of the circuit court be affirmed in all things aforesaid.
Peter S. Power for appellee

Peoria Co.
Walter Highten
vs
Joseph Ellis

Filed June 9, 1854.
S. Seland Clk.