

No. **11997**

Supreme Court of Illinois

Forbes.

vs.

Call.

71641  7

No. 15
Bureau County
Moses Forbes
vs.
Jacob Call

33

11997

1852

Bureau Circuit court

Pleas before the Hon^{ble}. Theophilus L. Dickey
Judge of the circuit court of the Ninth judicial circuit
of the state of Illinois at the October Term of the said cir-
cuit court in and for said county begun and held at
the court house in Princeton in said county on Tues-
day the fourteenth day of October in the year our Lord
one thousand eight hundred and fifty one

Present Theophilus L. Dickey Judge
Justin H. Olds Clerk

Edward W. Fisher Sheriff

Jo^{seph} J. Stone State atty. general

To Wit on the second day of said term

Moses Forbes

vs

Ejectment

Jacob Call

This day the plaintiff comes by Simon
Kinney his attorney and places on file his declaration
in the words and figures following to wit:

In the circuit court of Bureau County in
the State of Illinois - Of the October Term
in the year of our Lord one thousand eight
hundred and fifty one

State of Illinois

Bureau County

Moses Forbes plaintiff in this suit
Complains of Jacob Call defendant in this suit of a plea

whereupon he the said defendant with force and arms &c Entered into the following described premises.

For that heretofore to wit on the first day of October in the year of our Lord One thousand Eight hundred and fifty One the said plaintiff was possessed of certain premises situated in the County of Bureau in the said State of Illinois and described as follows to wit: The southwest quarter of section No. thirty two (32) in Township No fourteen (14) north of the base line of Range No Nine (9) East of the fourth (4) principal meridian, and being so possessed thereof the said defendant afterwards to wit: on the second day of October in the year of our Lord One thousand Eight hundred and fifty One entered into such premises and that he unlawfully with-holds from the plaintiff the possession thereof. And said plaintiff avers that he claims title to the said premises in fee, wherefore said plaintiff says that he is injured and has sustained damage to a large amount, to wit: One hundred dollars and therefore he sues &c

S. Kinney atty
for P'tff

To the above named defendant.

- 1 Take notice that on the second day of the October term of the Circuit Court of Bureau County State of Illinois to be held at the Town of Princeton in said County on the fourteenth day of October A.D. One thousand Eight hundred and fifty One or as soon thereafter as Counsel can be heard a declaration of which the above is a copy will be filed in said Court
- 2 That upon filing the same a rule will be entered requiring you such defendant to appear and plead to such declaration within twenty days after the entry of such rule

3 That if you neglect to do appear and plead a judgment will be entered against you and the plaintiff will recover possession of the premises described in said declaration

Yours &c

J Kinney atty for Plaintiff

State of Illinois
Murray County

Aaron C. May being first duly sworn deposes and says that he served the above declaration and notice by delivering to the aforesaid Jacob Ball a true copy thereof this thirteenth day of October A.D. 1851

Subscribed & sworn to this 13th day

Aaron C. May

of October A.D. 1851 before me

William F. Stearn Justice of the Peace

And thereupon enters his motion for a rule on said plaintiff to appear and plead to said declaration. And it appearing to the court that due notice of this proceeding had been given to said defendant, it is considered by the court that said motion be sustained, and a rule is taken herein on said defendant to appear and plead to said plaintiff's declaration within twenty days from this date, or judgment will be entered against him by default and said plaintiff will recover possession of the premises described in said declaration

(In vacation to wit: Oct 27, 1851 Defendant places on file his plea to said defendant's declaration as follows to wit:)

And the said defendant by N.H. Purple his attorney comes and defends the force and injury shown &c and says that he is not guilty of unlawfully withholding the possession of the premises in the said plaintiff's declaration ~~xxx~~ described in manner & form as is in said declaration stated & set forth and of this he swears himself upon the County &c

N.H. Purple Def's atty

December Term 1851

Pleas before the Hon^{ble}. Theophilus S. Dickey
judge of the ninth judicial circuit of the state of
Illinois at a special term of said circuit court in
and for the county of Bureau begun and held at the
Court House in Princeton in said county on Tuesday the
sixteenth day of December in the year of our Lord
one thousand eight hundred and fifty one

Present Hon^{ble}. Theophilus S. Dickey Judge

Justin H. Olds Clerk

Edward W. Fisher Sheriff

B. C. Cook State atty

To wit on the 9th day of said term }
Thursday December 25th 1851 }

Moses Forbes

vs

Ejectment

Jacob Call

Now comes the said Plaintiff by
Kinney his attorney and enters his motion herein
for a continuance of this cause, which motion is
sustained, and the court orders that this cause be contin-
ued to the next term of this court, and that the
said Plaintiff pay the costs accruing at the present
term of this court

March Term 1852

Pleas before the Hon^{ble}. Theophilus S. Dickey
Judge of the ninth judicial circuit of the state of Illinois
at the March term of the said circuit court in
and for the county of Bureau, begun and held

at the court house in Princeton in said County on
Tuesday the sixteenth day of March in the year of our
Lord One thousand Eight hundred and fifty Two

Present the Hon^{ble}. Theophilus S. Dickey Judge

Justin H. Olds Clerk

Edmund M. Fisher Sheriff

W. C. Cook State atty

(To wit on the fourth day of said term)

Moses Forbes
vs
Jacob Ball } Ejectment

Now comes the defendant by W. C. Cook
his attorney and files an affidavit herein and there-
upon enters his motion for a continuance of this
cause. And the plaintiff comes by H. C. Meriman
his attorney and the said parties make their agree-
ment in writing and place the same on file here-
in as follows to wit:

And the court here considers that said motion for
a continuance be overruled. Whereupon the court or-
ders that a jury be impannelled to try the issue here-
in; and there comes a jury of twelve good and
lawful men to wit: William Russell, William
Frankenberger, Sterling Graves, Stillman Stannard, Harvey
Bacon, Isaac Wilson, Jesse Perkins, Aaron S. Brokaw,
Edmund D. Kemp, Martin Corley, Benjamin C. Hill,
and Asa Barney who are duly elected tried
and sworn well and truly to try the said issue and
a true verdict render according to the evidence.

The parties here by their said attorneys agree in
open court that said jury be discharged from ren-
dering a verdict herein and that this cause be
submitted to the court for trial. Whereupon it is

considered by the court that said jury be discharged,
and the court after hearing the evidence and being
fully advised in the premises, doth find the
said issue for the defend ant, whereupon the
plaintiff by his said attorney moves the court
for a new trial herein, which said motion
is overruled by the court

It is therefore considered by the court that
the said defendant have and recover of the said
plaintiff all his costs and charges in and about
his defence in this behalf expended, and that he
have execution therefor. and the said plaintiff
by his said attorney excepts to the ruling finding &
judgment of the court herein, and by the considera-
tion of the court the said plaintiff has leave to
file his bill of exceptions herein in vacation

In Vacation

To wit: June 10th 1852 Plaintiff places on file
his bill of Exceptions as follows to wit;

Moses Forbes

vs

Bureau Circuit Court

Jacob Call

March Term 1852

Be it remembered, that on the trial
of this cause said plaintiff to maintain the
issue on his part read in evidence to the court
the judgment rendered at the April Term of the
Circuit Court of said county of Bureau A.D. 1841
against the land in controversy for the Taxes due
thereon assessed in the year 1840 which judgment
is in the words and figures following to wit:

State of Illinois }
Bureau County }¹¹

Whereas Carleton W. Combs collector
of said county returned to the circuit court of

Said county on the twenty seventh day of March A.D. 1841 the following tracts & parts of tracts of Land as having been assessed for taxes by the assessor of said County of Bureau for the year 1840 and that the taxes thereon remained due and unpaid on the day of the date of the said Collectors returns and that the respective owner or owners have no goods and Chattels within his County on which the said Collector can levy for the taxes interest & costs due and unpaid on the following described lots to wit:

Names of persons chargeable with Tax	Description of Lands	Valuation	Amount of Tax	Costs	Year for which Tax is due	County
	Fourth principal meridian		\$	cts		
Peter Bruce	S.W. 3 1/4 14 1/2 8 8	640	3.20	22	1840	Bureau
Mason B. Gamett	S.W. 32 1/4 14 9	480	2.40	22	"	"
Michael Pitts	S.W. 36 15 7					

And whereas due notice has been given of the intended application for a judgment against said Lands, and no owner hath appeared to make defence or show cause why judgment should not be entered against said lands for taxes interest and costs due ^{& unpaid} thereon for the year herein set forth - Therefore it is considered by the Court that judgment be and is hereby entered against the aforesaid tracts of land or parts of tracts in the name of the State of Illinois for the sums annexed to each parcel of land being the amount of Taxes interest and costs due thereon, and it is ordered by the court that the said several tracts of land or so much thereof as shall be sufficient of each of them to satisfy the amount of Taxes interest and costs annexed to them

severally be sold as the law directs

The plaintiffs then read in evidence the precept issued on said judgment which is in the words and figures following to wit:

State of Illinois

Bureau County

Thomas Carlton W Combs collector of said County returned to the circuit court of said County on the twenty seventh day of March A.D. 1841 the following tracts and parts of tracts of land as having been assessed for taxes by the assessors of said County of Bureau for the year 1840 and that the taxes thereon remained due and unpaid on the day of the date of the said collector's return and that the respective owner or owners have no goods and chattels within his county on which the said collector can levy for taxes interests and costs due and unpaid on the following described lots, to wit:

Names of Persons Chargeable with Tax	name of action	Description of Land	Value	Amount of tax	Cost	Year for which tax is due	County
State of Illinois vs Peter Bruce	Suit for Taxes	fourth principal Merida	\$ 640	\$ 3.20	.22	1840	Bureau
Mason B. Gamett		SW 32 - 14 1/2 R 9 E	480	2.40	" "	" "	" "
Michael Pitts		SW 36 - 15 1/2 "	240	1.20	" "	" "	" "

And whereas due notice has been given of the intended application for a judgment against said lands and no owner hath appeared to make defense or show cause why judgment should not be entered against said lands, except as herein after excepted, for Taxes, Interest and costs due and unpaid thereon for the year herein set forth. Therefore it is considered by the court, that judgment be and is hereby entered against the aforesaid tracts of land or parts of tracts (excepting those marked on the margin "paid

collector" the taxes and costs or which were paid to the collector previous to judgment) in the name of the State of Illinois for the sums annexed to each parcel of land being the amount of taxes interest and costs due thereon and it is ordered by the Court that the said several tracts of Land or so much thereof as shall be sufficient of each of them to satisfy the amount of taxes interest and costs annexed to them severally be sold as the law directs

In testimony whereof I Cyrus Bryant Clerk of the said Circuit Court have hereunto set my hand and affixed the seal of said Court at my Office in Princeton this seventeenth day of April A.D. 1841

Cyrus Bryant Clerk

(Sheriff returns)

State of Illinois

Bureau County

By virtue of the within precept to me directed I did on the 19th day of April A.D. 1841 attend at the Court House in the Town of Princeton in said County and assisted by the Clerk of the County Commissioners court between the hours of ten o'clock A.M. and three o'clock P.M. of each day proceed to sell each lot or parcel of Land named in the within list at public Auction commencing with the first lot or parcel named in said list and proceeded until the whole were sold, the whole tract or lot was offered for sale for the amount of taxes interest and costs due thereon including the fees and struck off to the persons who offered to pay the amount due as aforesaid for the least number of acres of land or the least parting of any town lot, and where no offer was made to pay the said amount for the whole

or any portion of said tract or lot the same was struck off to the State. The said Clerk attended at the said sale and kept a register thereof in which he entered each lot or parcel of land exposed to sale by me with the description thereof and therein entered the name of the purchaser his place of residence and the quantity of land sold with the amount due thereon - Dated at Princeton this 21st day of April in the year A.D. 1841

This return filed

April 21st 1841

Chapman Clark

Cyrus Langworthy Sheriff
B Co Ill

The plaintiff then offered to read in evidence a certified copy of a deed from the Sheriff of said County to Timothy H. Sterrell the same having been recorded in the office of the recorder of said County which said deed is in the words and figures following to wit:

I know all men by these presents that whereas at the April Term A.D. 1841 of the Circuit Court of Bunaw County Ill. A judgment was obtained in said Court in favour of the State of Illinois against the South west quarter of section thirty two in Township N^o fourteen North of base line Range N^o Nine East of the fourth principal meridian containing one hundred and sixty acres lying in the County of Bunaw for the sum of Two Dollars and ninety one cents being the amount of Taxes interest and costs assessed upon the said tract of land for the year A.D. 1840, and whereas on the nineteenth day of April A.D. 1841 Cyrus Langworthy then Sheriff of the said County aforesaid by virtue of a precept issued out of the Circuit Court of the County aforesaid dated the seventh day of April A.D. 1841, and to him

directed, did expose to ~~the~~ public sale at the door of the Court house in the County aforesaid in conformity with all the requisitions of the Statute in such case made and provided the tract of Land above described for the satisfaction of the judgment so rendered as aforesaid, and whereas at the time and place aforesaid Timothy K. Herrell of the County of Bureau and State of Illinois having offered to pay the aforesaid sum of two Dollars and Ninety One cents for One Hundred and Sixty acres of the South west quarter of Section thirty two in Township No fourteen north of base line Range No nine East of the fourth Principal Meridian which was the least quantity bid for the said tract of Land was stricken off to him at that price. Now therefore I Stephen Smith present Sheriff as aforesaid for and in consideration of the aforesaid sum of two dollars and ninety one cents to the said Sheriff in hand paid by the said Timothy K. Herrell at the time of the aforesaid sale and by virtue of the Statute in such case made and provided have granted bargained and sold and by these presents do grant bargain and sell unto the said Timothy K. Herrell his heirs and assigns the South west quarter of Section thirty two in Township No fourteen north of base line Range No nine East of the fourth Principal Meridian containing One Hundred and Sixty acres lying in the County of Bureau Illinois. To have and to hold unto him the said Timothy K. Herrell his heirs and assigns forever subject however to all the rights of redemption provided by law. In witness whereof I. Stephen

Smith Sheriff as aforesaid by virtue of the au-
thority aforesaid have hereunto set my hand and
affixed my seal this tenth day of June A.D. 1843
Seal Stephen Smith
Sheriff

State of Illinois

Bureau County }
I Cyrus Bryant Clerk of
the circuit court in and for the said County in
the State aforesaid, Do hereby certify that Stephen
Smith Sheriff of said Bureau County, being personally
known to me as the same person whose name
is subscribed to the annexed deed of conveyance
appeared before me this day in person and ac-
knowledged, that he signed, sealed and delivered
the said deed as Sheriff as aforesaid as his
free and voluntary act for the use and pur-
poses therein set forth. Given under my hand
and said Circuit Court Seal, at my Office in
Princeton in the County aforesaid this fifteenth day
of June A.D. 1843

{SS}

Cyrus Bryant
Clerk

I hereby certify that the foregoing is a correct
copy of a Deed filed for record September 2^d 1843
at 10 o'clock A.M. and Recorded September 13th
1843

Oliver Kingle Recorder

To the reading of which in evidence the
defendant objected and assigned as reasons
First: That the plaintiff should make the pre-
liminary proof to authorize the certified copy to
be read and secondly; that the deed showed on
its face that the land was sold for more cost

then was warranted by the judgment.

The plaintiff then read in evidence an affidavit of the plaintiff in the words and figures following to wit:
(No such affidavit has been filed in this suit, J. H. Clark)

The plaintiff then called Cyrus Bryant who testified that he was clerk of the Circuit Court of said County at the date of said deed and acknowledgment; that the Sheriff acknowledged a great many Deeds, and some to said Ferrell before him as such Clerk, and generally the Sheriff took the deeds after acknowledgment and delivered them to the parties himself; but the witness had no recollection of the particular deed. The plaintiff then called Adam O May who testified that he had called upon the administrator of Timothy K Ferrell he being deceased for said Deed and received for answer that it was not among the papers of said Estate and was not in their possession. That he had also written to - - - May who resides in the East for said deed and received for answer from him that he had not possession of said Original deed - that he acted in this matter as the agent of his brother the said - - - May he having purchased said land from said Ferrell and sold to the plaintiff by Warranty deed -

The plaintiff also offered to show title from said Ferrell to said - - - May and from him to plaintiff.

The plaintiff also offered to prove seven consecutive years ^{possession} of the taxes assessed on said land next prior to the commencement of this suit, and under said deed and that the defendant was in possession of said land at the time of the commencement of this suit.

The court overruled the said first objection to said certified copy of said deed and decided that the plaintiff had sufficiently laid the

foundation for the reading in evidence such copy in place of the original. The court then sustained the second objection to said deed and decided that it appeared from the face of the deed that the land was sold for more costs than the said judgment warranted and refused to allow said deed to be read in evidence to which decision of said court in sustaining said objection and refusing to allow said copy of said deed to be read in evidence the plaintiff then and there excepted.

The court found the issue for the defendant to which finding the plaintiff then and there excepted.

The plaintiff moved the court for a new trial, which the court overruled, to which last decision the plaintiff excepted.

The evidence above recited was all the material evidence offered on the trial.

The plaintiff prays the court to sign seal and make of record this his bill of exception which is done.

J. L. Dickey *Recd*

State of Illinois

Bureau County

} I

Justice H. Olds Clerk of the circuit court in & for said County do hereby certify that the foregoing transcript is truly copied, and is a full and complete record of all the proceedings in the above cause as the same appears of record and on file in my Office, except an affidavit for continuance filed by the defendant at the Ward, Term 1852 & the agreement of said parties thereon.

Witness my hand and the seal of said court at Princeton in

Said County this fifteenth day of
June in the year of our Lord One
Thousand Eight Hundred and Fifty two
Justin H. Olds
Clerk

Clerks Fees

Copy of Record 40 folio e 10	4.00
Certificate & Seal	<u>35</u>
	4.35

Bureau County.

Moses Forbes

^{vs}
Jacob Call

Copy of Record

Filed June 22^d 1852.
J. Seland Clk.
By P. W. Seland Depy.



STATE OF ILLINOIS, }
Supreme Court.

The People of the State of Illinois,

To the Sheriff of the County of *Bureau* — Greeting:

BECAUSE in the record and proceedings, and also in the rendition of the judgment of a plea which was in the circuit court of *Bureau* county, before the Judge thereof, between *Moses Forbes plaintiff and Jacob Call* —

defendant, it is said that manifest error hath intervened, to the injury of the said *Forbes*

as we are informed by *his* complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the state of Illinois, at Ottawa, before the justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said *Jacob Call* —

that *he* be and appear before the justices of our said supreme court, at the next term of said court, to be holden at Ottawa, in said state, on the *2nd* Monday in *June* — next, to hear the records and proceedings aforesaid, and the errors assigned, if *he* — shall see fit; and further to do and receive what said court shall order in this behalf; and have you then there the names of those by whom you shall give the said *Jacob Call* — notice, together with this writ.

Witness, the Hon. SAMUEL H. TREAT, Chief Justice of our said Court, and the seal thereof, at Ottawa, this *17th* day of *November* in the year of our Lord one thousand eight hundred and fifty *two*. —

L. Ireland Clerk of the Supreme Court.

Cape Cod, Massachusetts
April 27th 1853
Cape Cod, Massachusetts
Cape Cod, Massachusetts

No. 15
Moses Forbes
vs
Jacob Ball

Sci. Fa. to
Bureau Co.
To June Term 1853.

Filed April 22, 1853.
Melrose Co.

State of Illinois, set.

WRIT OF ERROR—FREE TRADER PRINT.

The People of the State of Illinois,
To the Clerk of the Circuit Court for the County of Bureau — GREETING :

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of Bureau county, before the Judge thereof, between _____

Moses Forbes _____ plaintiff — and Jacob Ball _____

defendant it is said manifest error hath intervened, to the injury of the aforesaid Forbes —

as we are informed by his complaint, and we being willing that error, if any there be, should be corrected in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our justices aforesaid at Ottawa, in the county of La Salle, on the 2nd Monday in June _____ next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

WITNESS, the Hon. SAMUEL H. TREAT, Chief Justice of our said Court, and the seal thereof, at Ottawa, this 22nd _____ day of _____ in the year of our Lord one thousand eight hundred and fifty two.

N. Ireland Clerk of the Supreme Court.

Cl. 15

Moses Forbes

vs
Jacob Ball

Mist of Error

Filed June 22^d 1852,
Holland Ok.



... and this ...
... in the year of our Lord one thousand eight
... at Ottawa, this ...
WITNESS, the Hon. Samuel H. Tuxell, Chief Justice of our said

F. F. ... Clerk of the Supreme Court

State of Illinois

... of the Court of the State of Illinois

PRINTED :