

8423

No. _____

Supreme Court of Illinois

Richard Dudding

vs.

Harnet Hill

71641  7

Pleas in the Circuit Court of Jackson County in the State of Illinois at the Term thereof began and held at the Court House in Murphysboro in and for said County on Monday the tenth day of May A.D. 1852 before the Honorable William A. Denning presiding Judge of said Court.

Be it remembered that heretofore, to wit: on the 22nd day of January A.D. 1851 there was filed in the Clerk's office of the said Jackson Circuit Court a Transcript; which said Transcript is in the words and figures following to wit:

" Transcript of Judgement December the 28th 1850.

" Harriet Hill	Act amount for house & lot rent	\$ 42.00
" Richard Dudding	Summons issued to A.M. Jenkins returnable 3 rd day of January A.D. 1851 at the hour of twelve o'clock of said day.	
Summons — 18 3/4		
Docketing — 12 1/2		
Indorsement — 37 1/2		
Judgement — 25		
Constable A.B. Richards	Subpoena issued to pl'tff for James Golliver, Charles W. Cummins Harrenton & Spiller, John Logan & John B. Clinton	
Sewing Sews Subp. — 56 1/2		
Const J. Bamberg		
Sewing Subp. — 1.22 1/2		

" also Subpoena to Stephen Holliday Joseph Beasley A.D. Reynolds and Boan Keith.

" January the 3rd A.D. 1851. Summons returned served by A.B. Richards Constable also one

" Subpoena returned by said Constable served on Spiller Golliver and Logan also one

" Subpoena returned by Julius Bamberg Const served on Stephen Holliday &

" Beasley and A.D. Reynolds. The parties came the plaintiff by her Att. A.M.

" Jenkins and the Defendant moved that the suit be dismissed on the plea of

" the none attendance of the Plaintiff or her authorized agent. It was decided

" by the Court that the Plaintiff's Att. had the right to appear for her A.M. Jenkins

" Att. for the Plaintiff made a motion that the Defendant should state his points

" of defence whereupon the Defendant stated that he never rented any house from

" Mrs. Harriet Hill, that he does not occupy any house belonging to Mrs. Hill

" Evidence heard judgement is entered against the Defendant for the sum

" of forty eight dollars \$48.00 debt with cost of suit.

" Witnesses claiming A.D. Reynolds 50 cents Joseph Beasley 50 cents John B. Clinton

" 50 cents W.A. Spiller 50 cents Stephen Holliday 50 cents

" The defendant claimed an appeal and on the 6th day of January A.D.

" 1851 he presented his bond in the penal sum of fifty three ^{22 1/2}/₁₀₀ dollars with

" D.H. Brush his security which was approved by the Court

" I hereby certify that the foregoing is a true transcript from my Docket Given

" under my hand and seal at Murphysboro this 22nd day of January A.D. 1851.

There was at the sometime writ: on the 22nd January AD 1851 filed in the Clerk's office of the said Circuit Court an Appeal Bond; which appeal Bond is in the words and figures following, writ:

" Know all men by these presents that We Richard Dudding and ^{Philip Kimmel} Daniel H. Brink

" are held and firmly bound unto Harriet Hill in the penal sum of one hundred

" and six Dollars & forty five cents lawful money of the United States, for the pay-

" ment of which well and truly to be made, we bind ourselves, our heirs and

" administrators, jointly, severally and firmly by these presents. Witness our

" hands and seals this sixth day of January AD 1851. The condition of the

" above obligation is such, that whereas the said Harriet Hill did on the 3rd

" day of January AD 1851 before The Honorable Jefferson Allen, presiding Judge

" of the Jackson County Court, and ex officio a Justice of the Peace in and for

" said County, recover a judgment against the above bounden Richard

" Dudding for the sum of Fifty three ^{22 1/2}/₁₀₀ Dols; from which judgment the

" said Richard Dudding has taken an appeal to the Circuit Court of County

" of Jackson aforesaid and State of Illinois. Now, if the said Richard Dudding

" shall prosecute his appeal with effect, and shall pay whatever judgment

" may be rendered by the Court upon dismissal or trial of said appeal, then

" the above obligation to be void, otherwise to remain in full force and virtue

" approved this 6th day of January 1851 } Rich^d Dudding (LS)

" Jefferson Allen } Daniel H. Brink (LS)

" Co Judge & Jus JP } Philip Kimmel (seal)

" acknowledged before me this day & }

" approved in open Court May 13. 1852 }

" "D. H. Brink CLK" }

That afterwards, writ: on the 22nd day of January AD 1851 there was issued from the Clerk's office of said Jackson Circuit Court a writ of Summons which is in the words and figures following, writ:

" State of Illinois } The People of the State of Illinois

" Jackson County } ss. To The Sheriff of Jackson County, Greeting

" We command you that you summon Harriet Hill if she may be found

" in your County, so that she be and appear in the Circuit Court within and

" for the County of Jackson and State of Illinois, on the first day of the next Term

" thereof, to be holden at the Court House in the Town of Murphysboro in said

" County, on the second Monday of April next, then and there to answer an appeal

"entered by Richard Dudding from a judgment of Jefferson Allen a Judge
"within and for the said County of Jackson in favor of said Harriet Hill and
"against said Richard Dudding and further to do and receive what the said
"Court shall consider of and concerning the premises - and have you then and
"there this writ with your return thereon

Circuit Court
Secd

"Witness D H Brink, clerk of our said Court at his office in
"Murphysboro this 22^d day of Jan'y in the year of our Lord
"one thousand eight hundred and fifty one, and the seal
"of said Court affixed D H Brink Clerk"

Which said writ having been placed in the hands of the Sheriff of said
County was thereafter returned by him with the following endorsement, viz:

"Returned not found in my County April 1851 J. B. Clinton Sheriff"

And afterwards, to wit: at a Circuit Court of the said County held
at the Court House in Murphysboro in the County aforesaid on the 16th day of
May A D 1851, the following order was made and entered of record, to wit:

"Harriet Hill }
"vs } appeal
"Richard Dudding }

"And now came the Defendant by Simons his attorney
"and by order of the Court this case is continued for want of service"

And afterwards, to wit: on the 22nd day of May A D 1851 there was
issued from the Clerk's office of the said Jackson Circuit Court a writ of summons
which is in the words and figures following, viz:

"State of Illinois, Jackson County - Ict

"The People of the State of Illinois

"Do The Sheriff of Jackson County - Greeting

"We command you to summon Harriet Hill if to be found in your
"County, to 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 Murphysboro
"on the Third Monday in the month of September next, to answer an appeal
"entered by Richard Dudding from a judgment of Jefferson Allen Esq
"a Justice of the Peace within and for said County in favor of the said
"Harriet Hill and against the said Richard Dudding, and further to do and
"receive what said Court shall consider of and concerning the premises, and
"hereof make due return to our said Court, as the law directs.

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"Witness Daniel H Brink, Clerk of our said Court, and

L.S.

"the judicial seal thereof, at Murphyboro this 22nd day of May
" A.D. 1851.
Dane & Frank Clark
" by Rich^d Dudding Depty "

Which said Writ having been placed in the hands of the Sheriff
of said County was thereafter returned by him with the following endorsement, viz:
"Returned not found in my County John B Clinton Shff"

That afterwards, to wit: at a Circuit Court of the said County held
at the Court House in Murphyboro in the County aforesaid, on the 17th day of
September A.D. 1851 the following order was made and entered of record, to wit:

"Harnet Hill
" vs
"Richard Dudding } appeal

"And now at this day came the Plaintiff by Jenkins
" & Logan her Attorneys, and the Defendant in person and by Sumois his
" attorney and issue being joined herein by order of the Court came a jury
" to wit: Joseph B Davis, Ignatius O'Daniell, O.E. Fletcher, John Pyatt, David
" Burkey, George Butcher, Samuel Levan, William H Davis, George Pool,
" Robert Hunter, E. B. Aldredge, & Samuel D Smith twelve good & lawful
" men who being duly empannelled and sworn well and truly to try
" the issue joined after hearing the evidence, arguments of Counsel and
" instructions of the Court retire to make up their verdict "

And afterwards to wit: at a Circuit Court of the said County
held at the Court House in Murphyboro in the County aforesaid, on the 18th
day of September A.D. 1851 the following order was made and entered of record to wit

"Harnet Hill
" vs
"Richard Dudding } appeal

"And now came the said parties by their Attorneys again
" and the jury herein empannelled returned into Court and on their oaths
" aforesaid do say. That the jury find for the Plaintiff the sum of Forty eight
" Dollars whereupon the said Defendant by his said Attorney entered a
" motion for a new trial in this cause which said motion is sustained
" by the Court and a new trial granted on payment of costs."

That afterwards, to wit: at a Circuit Court of the said County
held at the Court House in Murphyboro in the County aforesaid, on the 13th
day of May A.D. 1852 the following order was made and entered
of record, to wit:

"Harriet Hill
"Richard Dudding } Appeal

"And now came again the P^lf by Jenkins & Logan her
"Attys and the Deft in person and by Dougherty & Simons his Attys and issue
"being joined a jury came, to wit: Calvin Mann, Silman Hagler, Jacob
"Zimmerman, Edward Brown, David Holder, Asgill Conner, Solomon Eyerly,
"William Etherton, C. J. Walker, Lemuel White & Moses Fifer twelve good
"and lawful men who being duly empannelled and sworn well and truly to
"try the issue joined, after hearing the evidence, arguments of Counsel and
"instructions of the Court retire to make up their verdict"

And afterwards, to wit: at a Circuit Court of the said County
held at the Court House in Murphysboro in the County aforesaid on the 14th
day of May A^d 1852 the following order was made and entered of record, to wit:

"Harriet Hill
"Richard Dudding } Appeal

"This day again came the parties by their Attorneys
"and the jurors aforesaid came into Court and on their oaths aforesaid say
"that the jury find for the P^lf the sum of Thirty Six Dollars - thereupon the
"Defendant by his Attys entered a motion for a new trial in this cause."

And afterwards, to wit: at a Circuit Court of the said County held
at the Court House in Murphysboro in the County aforesaid on the 15th day of May
A^d 1852 the following order was made and entered of record, to wit:

"Harriet Hill
"Richard Dudding } Appeal

"This day it was certified by the Court that all the P^lf's
"Witnesses who were sworn and examined were material"

And afterwards, to wit at a Circuit Court of the said County
held at the Court House in Murphysboro in the County aforesaid on the 15th day
of May A^d 1852 the following order was made and entered of record, to wit

"Harriet Hill
"Richard Dudding } Appeal

"And now the Court being sufficiently advised of the motion
"entered herein for a new trial considers that the same be overruled and
"that said P^lf do recover of said Deft the said sum of Thirty Six Dollars
"by the jury aforesaid found to be due together with her Costs and

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"charges herein to be taxed &c" Thereupon the deft by his attys prayed an
"appeal to the Supreme Court which is granted on his entering into Bond
"in Thirty days in the sum of Two Hundred Dollars with Daniel H Brush
"as security, conditioned as the law directs.

"It is ordered that the Bill of Exceptions in this case be signed
"at the next Union Circuit Court"

That afterwards, to wit: on the 7th day of June A.D. 1852 there was
filed in the Clerk's office of said Jackson Circuit Court, an Appeal Bond,
which is in the words and figures following, to wit:

"Know all men by these presents, that we Richard Dudding and Daniel H
"Brush, are held and firmly bound unto Harriet Hill, in the penal sum
"of Two Hundred Dollars current money of the United States, for the pay-
"ment 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 7th day of June A.D. 1852.

"The condition of the above obligation is such that whereas the said Harriet
"Hill did, on the 15th day of May A.D. 1852 in the Circuit Court in and for the
"County of Jackson State of Illinois, recover a judgment against the above
"bounden Richard Dudding for the sum of Thirty six Dollars, debt and
"Nineteen & ⁴⁰/₁₀₀ Dollars costs of suit: from which said judgment of the said
"Circuit Court the said Richard Dudding has prayed for, and obtained
"an appeal to the Supreme Court of said State. Now if the said Richard
"Dudding shall duly prosecute his said appeal with effect, and shall
"moreover pay the amount of the judgment, 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 the above obligation
"to be void, otherwise to remain in full force and virtue

"Taken, and entered into, before me at my
"office in Memphis Tenn this 7 day of
"June A.D. 1852 D.H. Brush Clk
"of Jackson Cir Court"

"Richard Dudding Seal
"Daniel H Brush Seal

And afterwards, to wit: on the 8th day of June A.D. 1852 there
was filed in the Clerk's office of the said Jackson Circuit Court, a Bill of Exceptions
which is in the words and figures following, to wit:

"Be it remembered that at the May Term A.D. 1852 of the

" Circuit Court in and for the County of Jackson and State of Illinois
" commenced and holden in the Town of Murphysboro the
" County Seat of said County on the second Monday of the
" said month of May, before The Honorable William A,
" Denning, Judge of the 3^d Judicial Circuit of said State of
" Illinois in a suit then and there depending before said
" Circuit Court wherein Harriet Hill was plaintiff and
" Richard Dudding was the Defendant.

" This was an action commenced before Jefferson Allen, County Judge and
" ex officio Justice of the Peace in and for said County of Jackson; and on
" the 3rd day of January A D 1851 the said Justice, on a hearing, rendered
" a judgment against the said Defendant for the sum of \$48.00 and
" costs of suit. The said Defendant took an appeal to the said Circuit
" Court. At the September Term A D 1851 of said Circuit Court a jury found
" a verdict for the Plaintiff for the sum of \$48.00: whereupon, and at said
" Term, on application of the Counsel for the Defendant the said Circuit
" Court granted a new trial. At the May Term 1852 of said Circuit Court
" the said cause came up for trial and the following proceedings were had.

" The Counsel for the Plaintiff introduced a Deed in the words
" and figures following, to wit:

" This Deed made and entered into this fourth day of September in the year
" of our Lord one Thousand eight hundred and forty four between George Butcher,
" Peter Gill and Jefferson Allen County Commissioners of Jackson County in the
" State of Illinois of the first part and Thomas B Hill of the County State
" aforesaid of the second part Witnesseth That the said George Butcher, Peter
" Gill and Jefferson Allen Judges of the County Commissioners Court of
" Jackson County aforesaid for and in consideration of the sum of Fifty
" Dollars and Seventy five cents lawful money of the United States to them
" in hand paid or secured to be paid by the said Thomas B Hill to and
" for the use and benefit of the said County of Jackson, the receipt whereof
" is hereby acknowledged have granted bargained sold aliened released
" remised, conveyed and confirmed and by these presents do grant bargain
" sell alien remise release convey and confirm unto the said Thomas B
" Hill his heirs and assigns all of the following described Town Lots in the
" Town of Murphysboro in Jackson County aforesaid, and designated & known

" upon the Map of said Town now on record in the Office of the Recorder of
 " said County as Lots number Three (3) and Six (6) in Block number Twelve
 " and Lots number Two (2) and Five (5) in Block number Twenty one (21)
 " and being part of the Twenty acres of Land conveyed to Jackson County
 " by John Logan and wife by Deed dated the Seventeenth day of August
 " in the year of our Lord one Thousand Eight Hundred and Forty three,
 " which said Deed has been duly recorded in the Recorder's office of the
 " said County. Together with all and singular the rights profits privi-
 " leges and immunities to the said Lots belonging or in anywise
 " thereunto legally appertaining. To have and to hold the said hereby
 " granted and sold Lots in the Town of Murphyboro the new County
 " seat of Jackson County, with the hereditaments and appurtenances
 " thereof unto the said Thomas B Hill his heirs and assigns to his and
 " their only proper use benefit and behoof forever. And the said George
 " Butcher, Peter Gill and Jefferson Allen, County Commissioners as aforesaid,
 " for themselves and their successors in office the said hereby granted
 " premises, unto the said Thomas B Hill his heirs and assigns against
 " themselves as County Commissioners aforesaid and their successors in office
 " and against all and every other person and persons whomsoever
 " lawfully claiming or to claim, by from or under them or otherwise
 " shall and will warrant and forever defend by these presents. In
 " testimony whereof the said parties of the first part have hereunto in the
 " character and capacity of County Commissioners as aforesaid set their
 " hands and affixed their seals the day and year first herein written

Executed in presence of	}	Ge Butcher Seal
" Daniel B. Smith		Peter Gill Seal
		Jefferson Allen Seal

" State of Illinois } On this 4th day of September A.D. 1844 personally
 " Jackson County } appeared before the undersigned Clerk of the County
 " Commissioners Court of the said County George Butcher, Peter Gill & Jefferson
 " Allen whose signatures appear subscribed to the within Deed & who are
 " personally well known to me to be the real persons who executed the same
 " and also to be the County Commissioners of the said County & severally
 " acknowledged that they freely and voluntarily executed the said Deed
 " for the uses and purposes therein mentioned. Witness my hand and the

County Commrs Court

"my hand and the seal of the said Court at Murphysboro this
"the day and year aforesaid. Danl St Brink Clk"

"The Counsel for the Plaintiff introduced also a Deed in the words and figures

"following, to wit:

" This Deed made and entered into this the sixth day of December in the year of our
" Lord one Thousand eight hundred and forty three between George Butcher, Peter Gill and
" Thomas B Hill, County Commissioners of Jackson County in the State of Illinois of the
" first part, and Thomas B Hill of the Town of Murphysborough County and State aforesaid
" of the second part Witnesseth that the said George Butcher, Peter Gill and Thomas B
" Hill, Judges of the County Commissioners Court of Jackson County aforesaid for and
" in consideration of the sum of Fifty eight Dollars and sixty two cents lawful money
" of the United States to them in hand paid or secured to be paid by the
" said Thomas B Hill to and for the use and benefit of the said County of
" Jackson the receipt whereof is hereby acknowledged have granted bargained
" sold, aliened, released and conveyed and confirmed, and by these presents do
" grant bargain sell alien release convey and confirm unto the said Thomas
" B Hill his heirs and assigns all of the following Town lots in the Town of
" Murphysborough in Jackson County aforesaid, and designated and known upon
" the Plat of said Town now on record in the office of the Recorder of said County
" as lots numbered Four (4) and Five (5) in Block number Twelve (12) and
" Lots numbered one (1) and six (6) in Block number Twenty one (21) and
" being part of the Twenty acres of land conveyed to Jackson County by John
" Logan & wife by deed bearing date the 17th day of August 1843 which said
" Twenty acres is described as follows viz being a part of the South West
" Quarter of Section number four (4) in Township number nine (9) South
" of Range number Two (2) West beginning Twenty seven rods North 20 degrees
" West from the South east corner of said Quarter section of land and running
" thence North fifty seven rods, thence West fifty six and one half rods,
" thence South fifty seven rods, thence East fifty six and one half rods to the
" place of beginning Together with all and singular the rights profits privileges
" and immunities to the said Town lots in Murphysborough belonging or in
" any wise thereunto appertaining To have and to hold the said hereby
" granted and sold Lots in the said Town of Murphysborough the new County
" seat of Jackson County, with their appurtenances unto the said Thomas B Hill
" his heirs and assigns, to his and their only proper use benefit and behoof

forever. And the said George Butcher, Peter Gill and Thomas B Hill, County Commissioners as aforesaid, for themselves and their successors in office, the said hereby granted premises unto the said Thomas B Hill his heirs and assigns against themselves as County Commissioners as aforesaid and their successors in office, and against all and every other person and persons whomsoever lawfully claiming or to claim by, from or under them or otherwise shall and will warrant and forever defend by these presents. In testimony whereof the said parties of the first part have hereunto set their hands, and affixed their seals by way of seals, the day month and year first herein written

Signed sealed & delivered in presence of }
 " Daniel St Brink }
 Thos B Hill Seal
 Peter Gill Seal
 G Butcher Seal

State of Illinois }
 Jackson County } I, Daniel St Brink Clerk of the County Commissioners Court
 George Butcher, Peter Gill and Thomas B Hill, County Commissioners of Jackson County, personally known to me to be the real persons who executed the above and foregoing Deed, and acknowledged the execution thereof to be their free and voluntary act and deed for the uses and purposes therein expressed and set forth. In Witness whereof I hereunto set my name and affix the official seal of the said Court at Office at Brownsville this 6th day of December A.D. 1843. Daniel St Brink

Seal of County Commissioners Court

The Counsel for the Defendant objected to the reception of the Deeds which objection was over-ruled by the Court

The Counsel for the Plaintiff then introduced Daniel St Brink who after being duly sworn testified as follows

Was Clerk of County Commissioners Court when the Deeds were executed - they were signed by the parties in my presence and acknowledged them before me - and the persons who executed and signed those Deeds were the County Commissioners of Jackson County Illinois at the time of signing the same

Cyrus Thomas was then introduced as a Witness on the part of the Plaintiff and after being duly sworn testified as follows

All I know is from the Plat and the knowledge I have of the Place - The Stone is situated on Lot 5 in Block 12 - Lot 6 is in the enclosure - Dudding resided in House on Lot 5 in Block 12 and also occupied Lot 6 in Block 12. The Plat exhibited is the recorded Plat of the Town of Murphysboro - The two Lots

"indicated on said Plat as Lots No 586 in Block 12 are the same on which Dudding
"resided"

James M Golliver was then introduced as a Witness on the part of the Plaintiff
and after being duly sworn testified as follows:

"Hill lived in the House afterwards occupied by Dudding. Hill lived in
"the House at the time of his death. Hill's Widow was left there at the time of
"Hill's death. She lived there sometime after Hill's death. Had a conversation
"with Dudding. I do not recollect the time Dudding employed me to repair
"the House except by reference to my Book - thinks it was in 1849. I was
"employed by Dudding but do not recollect the time. Dudding employed
"me to line the House and sides. Dudding afterwards moved into the
"House. I do not recollect how long Dudding occupied - perhaps it was
"a year. I recollect the time I did the first work on the House. I was not
"employed by Dudding but by Mr Bird. First work I did for Dudding
"was on 25 October 1849. I do not recollect when Dudding went into the
"House - think it was in the Fall of 1849. Dudding left the House this
"Spring. Dudding lived in the House from the time he went in, and was in
"it at the time of the trial before Justice Allen"

This Witness was then cross-examined on the part of the Defen-
-dant and testified as follows

"I do not recollect the time Mr Hill left the premises - was
"perhaps a few days after Mr Hill's death and perhaps longer. The House
"was not long vacant when Mr Bird went in there. House was in middling
"bad repair when Bird went there - Roof of Kitchen was in bad repair -
"means the shed used as a kitchen - thinks the roof leaked. Was in the
"house and through all the rooms some 2 or 3 days before Mr Bird moved
"into it and saw no signs of sheep or hogs having been in it, or that any
"of the rooms had been used for a necessary or any other filthy or
"improper purposes. Saw no signs of any recent injury done to the
"House - do not think the House was in any worse condition than it was
"when Mr Hill died"

The said Witness was then re-examined on the part of the
Plaintiff and testified as follows:

"I think I would not have given more than 2½ dollars per month
"for the Houses and Lots, before the improvements made by Dudding -
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" I do not know how houses rented generally at that time I only speak as
" to what I should have been willing to have given had I have wanted to rent"

Mr H Bird was then introduced as a Witness on the part of the
Plaintiff, and, after being duly sworn testified as follows:

" I applied to Dudding about the first of June 1849, - he agreed to let
" me have the house for 2 dollars per month, and after it was ceiled I was to pay
" three dollars per month - moved into the House about the 19th of June 1849 -
" do not recollect the day I left the House - I resided in it until I moved into
" Hanson's house, which was the following Fall - Dudding moved into the
" House while I was occupying Hanson's house - at the time I made the
" agreement with Dudding for the house, he said it was worth more than I
" had agreed to pay" - Witness was then asked by Plaintiff's Counsel to state
whether or not Mr Dudding did not say the house was worth four Dollars
a month. Witness then stated " that Mr Dudding said it was worth more
" than he had agreed to pay, but how much more he did not recollect -
" Mr Dudding did not charge me any thing. I am acquainted with the
" house belonging to Mr Garner on next corner of public square. Mr
" Garner's House was ceiled, and the one rented me by Mr Dudding was not -
" Mr Garner's had 3 rooms and a fire place - the other had five rooms in-
" cluding Kitchen, - had no fire place, - one room of Dudding's house had
" a counter & some shelves in it at the time I moved into it, - there was also
" a bedstead which had been taken down and apart, sitting in the
" corner of one of the rooms and possibly there might have been some
" other articles of furniture about the house - Garner's House was said
" to rent for four dollars a month - I think it was worth double as much
" as the other for my use - I do not know what the price of rent was
" generally at that time"

Said Witness was then cross examined by Defendant's Counsel on
part of Defendant, and testified as follows:

" The House was worth \$3¹/₂ per month after it had been ceiled -
" was not worth more than \$1¹/₂ per month when I went into it. The house
" was not ceiled - there was loose lumber on upper floor - The two main rooms
" in the house, were not in very bad condition. The log Kitchen and Shed
" on the back part of the House were in very bad condition, the roof of
" Kitchen shed leaked very badly - there was not three feet square, during

"during a time of heavy rain, that was dry. - one of the rooms of the rooms of
"the kitchen part was filthy, looked as though it had been used improperly
"by person using it for a necessary - it smelt ~~to~~ very bad - the house
"was decaying - the paling around the garden fence were off in places
"so that sheep and hogs went in and out thereat freely - the front doors
"of the house were nailed up with small nails. the other doors were not
"secured. I do not know how long the back doors had been open,
"who opened them, or how long the house had been empty - Mrs Hill
"was living in house of Mr Garner's at the time I went into this house -
"Mrs Hill went North in the Fall of 1849 at the time when Mr Hall went
"to Conference - Mrs Hill never raised any objection to my knowledge
"to my occupying the house; but in a conversation with her she said
"she had some right to part of the property - that she had tried to
"redeem the whole according to an arrangement with Dudding, but
"was not able; and that Dudding had refused to let her have any part
"of the property because she was unable to redeem the whole" - Witness
said he got the rent of the house cheaper in consequence of his being
a residence preacher of the Presbyterian Church.

(Jas Mc Goliker a previous Witness here came forward and
said that in giving his testimony he had made a mistake - that
Dudding had employed him to make repairs to said house in
July 1849)

John A Logan was then introduced as a Witness as a Witness on
the part of the Plaintiff and testified as follows:

Thos B Hill and Harriet Hill were married. I was present and
saw them married. They lived together as man and wife for many years.
They occupied lots 5 & 6 in Block twelve the lots in question, and lived in the
houses on them from the time they were built, until the death of Mr Hill,
which took place the 7th May 1849.

A question was then put by Plaintiffs Attorney to this Witness
as to what Mrs Hill said about leaving the House after her husband's death.
The Defts Counsel objected to such testimony - The Court over-ruled the ob-
jection - and the Defts Counsel then and there took exceptions to that
decision of the Court.

29422-27 The examination of this Witness was then continued when he

(14)
testified as follows:-

Mrs Still left the house where her husband died shortly after his death and went with her children to my Father's house where she remained for a few days when at the request of Mr Garner she removed with her children to a small house near the residence of Mr Garner to remain there until the memory of her recent afflictions should become less vivid on her mind and she in some measure be reconciled thereto: she told me at the time of leaving the house that she was leaving it for the reasons & for the purpose I have just stated and that she intended to return and occupy it again in a short time - Mr Bird went into the house in June or July 1849. Dudding went in sometime in the Fall of 1849 and continued to occupy it until this Spring. The house was not ceiled when Mrs Still lived in it - the shed or kitchen part of it was in pretty bad condition and the palings were knocked off the garden fence - Mrs Still had been sick a long time and had not attended to repairing the premises - rents were very high - houses similar to this rented from three to four dollars a month - a log cabin rented for 2 dollars a month - a house next my Father's dwelling, having only two rooms and a small entry between, and only one of the rooms ceiled at the time rented for 3, 3½ and once 4 dollars a month, - house on opposite corner belonging to Mr Garner rented for 3 or 4 dollars a month - it had only three rooms.

This Witness was cross-examined on the part of Defendant when he testified as follows:

I do not know when Mrs Still removed her furniture - she had it done and moved to Mr Garner's house - she went away to her brother's sometime in the Fall of the same year - Mrs Still never went back to live in the house after she left it as Mr Dudding or Mr Bird had taken possession of the premises - Mr Bird moved into the house in a month, or perhaps a little longer, after she left it - Am satisfied that Mrs Still never left the houses and lots with an intention not to reoccupy them again - as she claimed them while she was here, and soon after she left, wrote to me about claiming or asserting her right to the possession of them - she lived in them but a short time after her husband's death.

Warrenton St Spiller was then introduced on the part of the

Plaintiff, and after being duly sworn testified as follows:-

I am acquainted with the price of rents generally in Murphysboro in 1849 and since that time - I made application to rent several houses, and rented one in the year 1849 from my knowledge of the price of rents about the time of Mr Hill's death, I think the houses and lots in question were worth 4 or 5 dollars per month - I paid rent at about those rates, I paid 3 dollars per month for a house which had but two rooms was ceiled on the sides but not overhead; it had no chimney nor garden spot attached to it - I know that rents were high in Murphysboro about that time - was present at trial of this case before Justice Allen, Mr Dudding said there he did not object to pay rent but did not know to whom he ought to pay it.

This witness was then cross-examined on the part of Defendant when he testified as follows:-

I do not know of any house that rented for 5 dollars a month, except the one where Clinton and Morgan resides does, - Houses as good as this, rented for 4 dollars a month - they were without stables a smoke house or place for garden - I do not recollect particularly what every house in town rented for, I do not know what Mr Bid paid for the house - taking all the surrounding circumstances with my knowledge of the price of rents, the house was worth between 4 & 5 dollars per month at the time, taking it in the condition it was at the time of Hill's death, - The repairs necessary about the garden fence he considered a small job - only required a few palings to be nailed on that had been knocked off - would have been willing to have done the repairs about the house and fencing for the sake of getting it at the time, & the house on the corner owned by Mr Garner was in better repair than Mr Hill's but it had only three rooms, no smoke house, no stable and less garden spot - Was not in the house after Mr Hill's death.

Andrew J Runnells was then introduced on the part of Plaintiff, and being duly sworn testified as follows:

Mr Crow rented a little house from me at three Dollars a month the summer when the Volunteers - Crow occupied the house a year,

This witness was then cross-examined on the part of the defendant

and testified as follows:

The home was used as a Grocery then, I do not know anything about the rents generally, - I occupied with Mr Keith the next year a house rented from Mr Garner, was to pay two or three dollars a month. Garner's house was a log house - had a chimney to it.

This Witness was re-examined in chief on the part of the Plaintiff when he testified as follows:

One of the rooms of Still's house had had a store kept in it, I was in the house a few days before Still died, I do not know if the room was then fitted up for a store room,

Thomas M Logan was then introduced as a Witness on the part of the Plaintiff and after being duly sworn testified as follows:

I was in Mr Morgan's Store sometime in the Fall of 1850 Mr Jenkins & Mr Dudding being there. Jenkins asked Dudding if he did not intend to pay the rent for the use of Mrs Hill's house, Dudding said he had no objections to paying rent but he did not know to whom he should pay it to, - Dudding said something about McMuntry but do not recollect what the words were -

Agnes Thomas was again introduced as a Witness on the part of the Plaintiff, when he testified as follows:

That on the day of the trial of this cause before Justice Allen, Mr Dudding said he was willing to pay rent for the place he occupied when he ascertained to whom it was due - I understood the conversation to relate to McMuntry and Mrs Hill.

This Witness was then cross examined on the part of the defendant when he testified as follows:-

I understood nothing about any claim to the property but that of Mrs Hill and McMuntry and the claim set up by Dudding in his defence to this action - Dudding said by way of defence on the trial that he owed Mrs Still nothing, thinks that the conversation relative to Dudding's being willing to pay rent took place in the forenoon previous to the trial of this cause before Justice Allen.

And this was all the evidence in chief introduced by the Plaintiff

The Defendant's Counsel then introduced Daniel St Brush, the Clerk of said Jackson Co Circuit Court and the said Clerk produced on the files the said Court a Transcript of a judgment rendered before a Justice of the Peace of said County as follows, viz:

" Henry Collett for the use
 " of John Bartlett who is
 " assignee of Ephraim Younkin
 " vs
 " Thomas B Hill

" Justice fees
 " Working suit — 12½
 " Spurring Judgment — 25
 " Spurring Execution — 25
 " Giving Transcript — 25
 " Court fees
 " Jonathan Heiple
 " on Execution 50 —

" In suit on Promissory Note given by the Defendant
 " dated the 2nd day May 1845 to Henry Collett which
 " Not was assigned to Ephraim Younkin by said Collett
 " and assigned by said Ephraim Younkin to John
 " Bartlett which Note was given for sixteen Dollars
 " by the Defendant Thomas B Hill on which Note
 " the said Thomas B Hill confessed judgment for
 " sixteen Dollars and cost of suit on the 29th day
 " of November 1845. Benj J Holliday J.P.
 " Execution issued December the 29th day 1845 de-
 " livered to Jonathan Heiple Const which Execution
 " was returned, no property found on the 12th January
 " 1846 by said Heiple Constable - Benj J Holliday J.P.

" I, John Bartlett the Plaintiff in the above suit do hereby assign the
 " above and foregoing judgment in full to Jonathan Heiple its being for
 " value received of him. Given under my hand and seal this 14th day
 " of February 1846
 " John ^{his} Bartlett ^{seal}

" State of Illinois } I, Benj J Holliday an acting Justice of the Peace in and
 " Jackson County } for said County, do hereby certify the above and foregoing
 " to be a true and correct copy and transcript of the proceedings had
 " before me in the above and foregoing entitled suit. Given under my
 " hand and seal this 28th day of February 1846 Benj J Holliday ^{seal}
 " Justice of the Peace

On the back of said Transcript was endorsed as follows
 " Filed Feb 28th 1846 DAN BRUSH Clerk of Jackson Co Court"

The Defendant's Counsel then introduced through the said Daniel St Brush Clerk of said Court, from the files of said Court an Execution, which is in the words and figures following, to wit:

" State of Illinois }
 " Jackson County } To The Sheriff of Jackson County, Greeting
 " His command you that of the goods and chattels lands and tenements
 (17)

" of Thomas B Hill in your County, your cause to be made the sum of Sixteen
 " dollars which John Bartlett assigned &c on the 29th day of November
 " A.D 1845 before B. J. Holliday J.P. recovered against the said Thomas B Hill
 " as appears by a Transcript from the Docket of said Justice filed in the Clerk's
 " office of the Jackson Circuit Court on the 28th day of Feb 1846 with legal interest
 " thereon from the said 29th day of Nov 1845 until paid, also the sum of
 " three dollars and twelve & one half cents which was adjudged to the said
 " John Bartlett for his costs and charges about his said suit expended, whereof
 " the said Thomas B Hill is convicted as appears to us of record, and have
 " you that money ready within ninety days from the date hereof, at
 " the Clerk's office of our said Court at Murphyboro to render unto the said
 " John Bartlett assignee &c for his debt interest and costs aforesaid, and of
 " this writ make due return. Witness Daniel H Brink, Clerk of the said

Seal of
Circuit Court

" Jackson Circuit Court and the Seal thereof at Murphyboro
 " this 28th day of February A.D 1846 D H Brink Clerk"

There was endorsed on said Execution the words & figures following, to wit:

" Debt \$16.00 Costs \$3.12 1/2 Int 48 Sheriff's Deering & returning 62 Advertising 25
 " Commission \$1.00 1.87 J M Willis Dpty Sht - Come to hand on the 2nd Feb 1846 at
 " 10 o'clock AM James Willis Sht April 25 levied on Lot No 6 in Block No 12 as
 " the real Estate of T. B. Hill in Murphyboro J M Willis Dpty. The above real estate
 " was sold according to law on the 23rd of May & there was five Dollars & fifty
 " bid for D^r term term dot levied on being the highest and best bid by
 " Jonathan Heiple J M Willis Dpty Sht - Filed 21 June 1846 D H Brink Clerk
 " Recd on this Execution of D H Brink Clerk fifty cents being my cost as
 " Constable and also fifty cents on the principal, the debt in this case
 " having been assigned to me June 6 1846 Jonathan Heiple Const"

The Defendants Counsel then adduced the Sheriff's Certificate of Purchase and assignment thereon which is in the words and figures following, to wit:

" John Bartlett } Jackson Circuit Court
 " Tho^{rs} B Hill } Sept Term A.D 1845

" I, James Willis, Sheriff of the County of Jackson, do certify that by virtue
 " of an Execution in the above cause, tested the 28 day of February in the
 " year 1846 by which I was commanded to make of the goods and
 " chattels of Tho^{rs} B Hill in my County the sum of 16.00 Dollars and -

" cents debt besides costs which John Bartlett assignee &c had recovered against
" him in said Court for his debt damages costs and charges; and if sufficient
" goods and chattels could not be found, that then I should cause the said
" debt damages costs to be made of the real Estate which the said Thomas B
" Hill had on the 28th day of February in the year 1846 or at any time after-
" wards in whose hands soever the same might be, as by the said writ of
" Execution, reference being thereunto had, more fully appears. I have levied
" on and this day sold at public vendue, according to the Statute in such case
" made and provided to Johnathan Heiple who was the highest bidder, for the
" sum of five dollars and fifty cents, which was the whole consideration, the
" real Estate described as follows, to-wit: Lot No 6 in Block number Twelve
" in Murphysboro. And that the said sale will become absolute at the ex-
" piration of fifteen months from this day, at which time the purchaser
" will be entitled to a conveyance pursuant to law, unless the said Land
" shall be redeemed or purchased from him. Given under my hand
" this 23^d day of May 1846 Jas Willis Sheriff of Jackson County Illinois
" for Isaac M Willis his Dpty

" 5 Sept^r 1848. For value received I assign to Richard Dudding all the right
" & title which I have in and to the premises sold to me as in the above
" Certificate, together with said Certificate & all my right to the same
" Jonathan Heiple "

The Defendants Counsel then introduced a Deed, which Deed
is in the words and figures following, to-wit:
" Whereas Henry Bollett for the use of John Bartlett, who was assignee of
" Ephraim Younkin, did on the 28th day of February A D 1846 recover
" a judgment in the Circuit Court for the County of Jackson and State
" of Illinois against Thomas B Hill for the sum of sixteen Dollars, debt,
" besides costs of suit, upon which judgment an Execution was issued,
" dated the 28th day of February A D 1846 directed to the Sheriff of
" said County to execute, and by virtue of said Execution James Willis
" who was then the Sheriff of said County, levied upon the Town Lot in the
" Town of Murphysboro herein after described, and the same was struck
" off and sold to Jonathan Heiple, he being the highest and best bidder
" therefor, and the time and the place of the sale thereof having been duly
" advertised according to law. And the said Jonathan Heiple having duly

" assigned his Certificate of Purchase to Richard Dudding Now therefore
 " know all by this Deed that I, John B Clinton, Sheriff of said County of Jackson
 " (the said James Willis, being now no longer Sheriff) in consideration of the
 " premises, have granted bargained and sold and do hereby convey to the
 " said Richard Dudding his heirs and assigns the following described
 " Town Lot viz Lot number six (6) in Block number Twelve (12) in Memphisboro.
 " To have and to hold the said described premises with all the appurtenances
 " thereto belonging to the said Richard Dudding his heirs and assigns
 " forever. Witness my hand and seal this Sixth day of January A D one
 " Thousand eight hundred and fifty one John B Clinton (LS)
 " Sheriff of Jackson Co Mo

" State of Illinois } I, Daniel H Bush, Clerk of the Circuit Court in and for
 " Jackson County } do hereby certify, that, on this day,
 " personally came before me, John B Clinton, whose name appears to the
 " foregoing Deed as the Grantor thereof, and who is personally well known
 " to me as such, and also as the Sheriff of said County, and he acknowledges,
 " that as Sheriff of said County, he had freely executed the said Deed, for
 " the uses and purposes therein mentioned. In testimony whereof, I have
 " hereunto set my hand, and affixed the seal of said Court,
 " at office in Memphisboro, this 6th day of January A D 1851
 " Daniel H Bush Clk

" Filed for Record Jan 6 1851 & recorded Jan 20 1851 D H Bush Clk "

The defendant by his Counsel then introduced a Record of
 the proceedings of the Board of Investigation for Jackson County appointed by the
 Legislature of Illinois by an Act entitled "An Act to repair the damage oc-
 "casioned by the destruction of the Records and public documents of
 " Jackson County" approved on the 1st day of February 1843, and of the orders
 made by said Board in relation to matters pertaining to the Records of
 the Circuit Court of said County, proved up before the said Board. The portion
 of said Record read to the jury is in the words and figures following, viz:
 " Brownsville Tuesday August 15th 1840. On application it is ordered that a notice
 " be issued to Thomas B Hill requiring him to appear before this Board on
 " the 8th day of September next to shew cause if any he have why a certain
 " judgment heretofore, to wit on the 29th day of April 1840 rendered against
 " him in the Jackson Circuit Court in favor of William Linnick for the sum

"of Seventy six dollars and fifty six cents debt, besides cost, should not be
"reinstated - a part of said judgment, and the costs still remaining unpaid"
"Bromsville Friday Sept 8. 1843. The Notice heretofore issued requiring Thomas
"B Hill to attend on this day before the Board to show cause why a certain judgment
"rendered against him in the Jackson Circuit Court in favor of William Linnick should
"not be reinstated was returned served. The said Thomas B Hill came and by his
"agreement it appears that on the 29th day of April A.D 1840 there was entered up
"in the Jackson Circuit Court a judgment in favor of William Linnick against the
"said Hill for the sum of Seventy six Dollars and 56 cents debt besides costs,
"as appears by an Execution issued from said Judgment. It further appears
"that the cost in said case at the time of issuing the said Execution was fifteen
"dollars and seventy five cents as appears by the Fee Bill issued with the said
"Execution, which said Fee Bill and Execution were issued on the 7th Decem-
"ber 1842. It further appears that the said Judgment was assigned &
"transferred by the said Linnick to Peter Kimmel. It also appears
"there are credits on said Execution as follows

"Jan'y 29 th 1841	amt Butchers Note	_____	\$25.00
" " " "	pr by J M Reynolds	_____	7.00
" July 11 " "	P. Kimmel as pr receipt	_____	18.00
" " " " "	do " do	_____	25.00

"It further appears that the Sheriff's costs on the last Execution issued ~~was~~
"is 8 $\frac{1}{2}$ cents "

The Defendant by his Counsel then introduced as a Witness Daniel
H Brush, Clerk of the Jackson Circuit Court. The Plaintiff by her Counsel
objected to this Witness on the ground of interest as his name was on the
Appeal Bond of the Defendant. The Appeal Bond, on motion, was amended
by taking off the name of said Daniel H Brush and substituting
that of Philip Kimmel. The said Daniel H Brush was then duly
sworn and testified as follows:

"There was an Execution out at the time the Records were
"burnt. That Execution was dated 7 Decr 1842 - By a fee Bill issued with that
"Execution it appears that that Execution was the fifth one from the ren-
"dition of the judgment of the Circuit Court on 29 April 1840. To the best
"of my recollection Execution issued within a year of the rendition of the
"judgment. As I am well acquainted with the law in relation to that

"matter I have never issued an Execution on a judgment after a year had elapsed without revival"

The Defendant by his Counsel then introduced an Execution, which is in the words and figures following, to wit:

"State of Illinois }
 " Jackson County } } The People of the State of Illinois
 To The Sheriff of Jackson County, Greeting
 " We command you that of the goods and chattels, lands and tenements of
 " Thomas B Still in your County you cause to be made the sum of Seventy
 " six Dollars and fifty six cents, which William Linnick on the 29th day of April
 " 1840 before the Circuit Court of Jackson County, recovered against the said
 " Thomas B Still for his debt. also legal interest thereon from the said 29th day
 " of April 1840 until paid - and also the sum of Seventeen Dollars and Eighty
 " one and one fourth cents, which was by the said Court adjudged to the said
 " William Linnick for his costs and charges by him about his suit in this
 " behalf expended whereof the said Thomas B Still is convicted as appears
 " to us of record; and that you have the money at the Office of the Clerk of
 " the said Court within Ninety days from the date hereof to render unto the
 " said William Linnick for his debt and interest, together with the costs
 " and charges aforesaid, and have you then there this Writ. Witness Daniel
 " H Bush Clerk of the said Court and the seal thereof at Memphis.
 " Done this 1st day of May A.D. 1846 Daniel H Bush clk

Seal of Circuit Court

" This Execution is entitled to the following credits viz
 " Jan 29th 1841 amt. Butchers Note ----- \$25.00
 " " " " paid by Jas McReynolds ----- 7.00
 " Feb 11 " " " P. Minimal as pr receipt ----- 18.00
 " " 12 " " " do do ----- 25.00 \$45.00
 " D H Bush clk

" The said judgment was transferred by the said William Linnick to Peter
 " Hummel D H Bush clk

" Debt ----- \$46.56 " Int to 29 Jan'y '41 ----- 3.44 " Deduct there paid ----- 32.00 " Int to 11 Feb'y '41 ----- .10 " Deduct payment then ----- 43.00 " Int to 12 May 1846 ----- 1.57 bal. Debt & Int ----- \$6.67	" Costs ----- \$6.67 " Shift costs levying & ret. ----- 17.81 " 2 certificates ----- 50 " Advertising ----- 25 " Commission ----- 1.25 ----- \$27.10 1/2
--	---

" Come to hand May 6th May 1846 J. McKellis Dpty Shff June the 11th 1846 Levied on
 " Lot 5 in Block 12 in Murphysboro James McKellis Shff
 " Sold the above described Lot to Daniel H Brush for \$27.10 cents which satisfies this
 " Execution in full this the 18th August 1846. James McKellis Shff J.B. Ills "

The Defendant by his Counsel then introduced a Sheriff's Certificate of Purchase with assignment thereon: which Certificate and assignment are in the words and figures following, to wit:


" William Linnick } Jackson Circuit Court
 " Thomas B Still } April Term A.D. 1840

" I, James McKellis, Sheriff of the County of Jackson, do certify, that by virtue
 " of Execution in the above cause, tested the 1st day of May in the year 1846 by
 " which I was commanded to make of the goods and chattels of Thomas B Hill
 " in my County Twenty seven Dollars and Ten cents which William Linnick
 " had recovered against him in the said Court for his Damages which he had
 " sustained as well by reason of his not performing certain promises as for his
 " costs and charges; and if sufficient goods and chattels could not be found,
 " that then I should cause the said damages to be made of the real estate which
 " the said Thomas B Still had on the 29th day of April in the year 1840 or at
 " any time afterwards, in whose hands soever the same might be, as by
 " the said Writ of Execution, reference being thereunto had, more fully
 " appears, I have levied on and this day sold, at public vendue, according
 " to the Statute in such case made and provided to Daniel H Brush who
 " was the highest bidder, for the sum of Twenty seven Dollars and Ten cents,
 " which was the whole consideration, the real estate described as follows, to wit:
 " Lot in Murphysboro number five (5) in Block number twelve (12). And
 " that the said sale will become absolute at the expiration of fifteen months
 " from this day, at which time the purchaser will be entitled to a conveyance
 " pursuant to law, unless the said Land shall be redeemed or purchased
 " from him. Given under my hand this 18th day of August 1846

" James McKellis Sheriff of Jackson County Ills

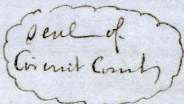
" For value received of Richard Dudding I hereby transfer and assign to him
 " all my right and interest in and to the within Certificate and the Term
 " Lot specified therein Daniel H Brush "

The Defendant by his Counsel then introduced a Sheriff's Deed; which Deed is in the words and figures following, to wit:

Whereas William Linnick did at the April Term of the Jackson County Circuit Court A.D. 1840 recover a judgment against Thomas B Hill for the sum of Seventy five Dollars and fifty six cents debt, and costs of suit, upon which judgment an Execution was issued dated on the first day of May A.D. 1846 directed to James Hillis Sheriff of said County to execute, and by virtue of said Execution the said Sheriff levied upon the Townlot in Murphyboro hereinafter described and the same was struck off and sold to Daniel H Brink on the 18th day of August A.D. 1846 for the sum of Twenty seven Dollars and ten cents, he being the highest and best bidder therefor, and the time and the place of the sale thereof having been duly advertised according to law, and the said Daniel H Brink having duly assigned his Certificate of Purchase to Richard Dudding: Now therefore know all by this Deed, that I, John Redfield, Sheriff of said County of Jackson, in consideration of the premises, have granted, bargained and sold, and do hereby convey to the said Richard Dudding, his heirs and assigns, the following described Townlot in Murphyboro, lot Lot number Five in Block number Twelve - To have and to hold the said described premises with all the appurtenances thereto belonging to the said Richard Dudding his heirs and assigns forever. Witness my hand and seal this 19th day of November in the year of our Lord one Thousand Eight hundred and forty seven John Redfield 

Sheriff of Jackson County Missouri

I, Daniel H Brink, Clerk of the Circuit Court of said County }
 do certify that on this day personally appeared before me }
 John Redfield personally well known to me to be the Sheriff of said County }
 and the real person who executed the foregoing deed and acknowledged that }
 he freely and voluntarily executed the same for the uses and purposes }
 therein mentioned. In Witness whereof I hereunto set my name and }
 affix the seal of said Court, at Office at Murphyboro this }
 19th day of November A.D. 1847 Daniel H Brink Clerk



Filed for Record Sept 28, 1850 Daniel H Brink Clerk - and recorded in Book letter F on page 488 the 30th September A.D. 1850 Daniel H Brink Clerk of Jack. Cir. Court By Richard Dudding depy

The Counsel for the Defendant then introduced Johnis Bambruge a Witness on the part of the Defendant, who after being duly sworn testified as follows, to wit:

"I lived 3 or 4 miles off. I wanted to live in Town. I applied to Mrs Hill
"to rent the premises in question and she refused to do so, and directed me to
"apply to Mr Dudding. I pay \$2 1/2 dollars a month. The house I rent is
"worth more than Duddings was at the time I applied to rent it. Think
"\$2 1/2 a month would have been a fair price or rent for the lots in question
"at the time. The house was vacant when I went to Mrs Hill."

This Witness was cross-examined on the part of the Plaintiff and
testified as follows, cont:

"I paid \$2 1/2 a month to Mr Garner for his house. I paid for another
"house 2 or 2 1/2 dollars a month. This was a log house with but one room, it
"had a fire place. I rented another room that was about 3 parts ceiled and
"paid two dollars a month for it. Mrs Hill's house in front had two
"rooms and two rooms in shed and log kitchen, the rooms in house were
"good as the ones I occupied. I do not know what the house I lately occupied
"is rented for \$5 a month. Mrs Hill was at the log house of Mr Garner
"when I applied to her to rent the house - it was before I moved to Murphys-
"boro - it was perhaps early in the Spring or early in the Summer or early in
"the Fall. I do not recollect at what time I moved into Town. I do not
"remember whether Mrs Hill had removed from Murphysboro when I
"moved to Town or not. I saw Mr Dudding sometime after in Town,
"and spoke to him about, and wanted to rent the house. I do not recollect
"whether I asked Mr Dudding for the whole or part of the house. Mr Dudding
"offered to rent the house to me before Mr Bird moved into it. When I applied
"to Mr Dudding, I asked him how much he would take for a part of
"the house. Dudding said I might have the whole house - do not know
"what price he asked me for the rent of the house - do not know whether
"it was because the rents were too high or because I could not get a part
"of the house from Dudding. I never told Mr Thomas that Mrs Hill
"did not refer me to Mr Dudding."

The Witness was then asked by Mr Jenkins one of Plaintiffs Counsel
if he had never told him in the presence of any other person that Mrs Hill had never
referred him to Dudding to rent the house in question

Witness answered "he had never told him in presence of any person
"that Mrs Hill did not refer him to Mr Dudding to rent the house in question.
"Mr Jenkins asked me about Mr Bush & Mr Duddings' deals."

The Defendant's Counsel then introduced Daniel H. Bush on the part of the Defendant, who after being duly sworn testified as follows:

"I am acquainted with the situation of the house in which Mrs Hill was living at the time he was sick - I do not know what houses rented for at the time - The house could not have been used in the winter by a family, unless stoves were used as it had no chimney and was not ceiled - I was not in the house after Mr Hill's funeral - Mrs Hill went North to her Brother John who, she told me, had sent for her"

This Witness was then cross-examined on the part of the Plaintiff and testified as follows:

"I occupied part of the house as an office and paid \$12 or \$13^{3/4} a month. This was soon after the County seat was established in 1844 or 1845"

And this was all the evidence in chief by defendant offered.

The Counsel for the Plaintiff then introduced James M. Golliver (a Witness previously sworn and examined) as rebutting testimony, when he testified as follows:

"When I was fixing the steps to the house previous to Mr Bird's moving into it Mrs Hill came to me and enquired of me by what authority I was working on the house, and what I was doing, I replied to her that I was fixing the steps to the house and had been employed to do it by Mr Bird who was going to move into it - Mrs Hill said "I reckon I have something to say about who shall occupy this house."

This is all the evidence in this cause.

The Defendant then by his Counsel asked the Court to instruct the Jury whereupon the Court granted instructions, in the words following, to wit:

"2nd That until the relation of Landlord and Tenant exists, no rent, as such, is recoverable at law. Still it is not necessary to shew a contract to constitute the relation of Landlord & Tenant. Given

"3rd Dower is a mere intangible right in law, and even in a Widow, until it be assigned, is no estate in the land, but is a right resting in action only, and cannot be transferred to the prejudice of the proprietor in fee. Given

"4th Rent is solely the creature of the relation of Landlord and Tenant and where this relation does not exist, no rent is due"

To this last, the Court added as follows:-

- "The Court does not, however, intend to instruct the jury that there must be
"a contract for rent to create the relation of landlord & Tenant. Under
"the Statute of this State rent may be recovered without any contract. Given
"8th That if the jury should believe from the evidence that Dudding had no
"right to enter upon the premises himself, he would not be a Tenant to the
"Plaintiff by allowing Bid to enter the premises" Given
"10th That if the jury believe from the evidence that the Widow of Thomas B
"still voluntarily deserted the premises with the intention of no further
"occupying them, and Dudding took possession and used the same by
"virtue of his own title - that title being valid, if it is so - they will
"find for the Defendant" Given

The Defendant by his Counsel asked the instructions which are in the words following, to wit:-

"1st That if they believe from the evidence that the Defendant is the pro-
"priator in fee of lots No 5 & 6 in Block 12 in Memphis, and entered
"into possession as such proprietor, and not as Tenant of the Plaintiff
"they will find for the Defendant. Refused

"4th A Widow who is entitled to Dower in lands and who does not avail
"herself of her right of assignment admits the tenant in fee into
"undisturbed possession cannot recover rent of such Tenant in fee,
"unless she reclaims possession of the Land" Refused

"5th That unless the plaintiff's husband died seized in fee in the land,
"she is not entitled to the whole of the homestead, but only one third
"thereof when assigned according to law" Refused

"6th That when a Widow is entitled to Dower in land, and not in possession,
"she is entitled to reasonable damages, to be recovered by her of the
"person in possession after, but not before the assignment of Dower
"- the damages to be ascertained from the date of her demand
"and refusal to assign Dower" Refused

"9th That a Widow cannot sue for and recover rent of Dower premises
"which have been obtained peaceably by the owner in fee, until her
"Dower has been assigned" Refused

The Plaintiff then by her Counsel asked the Court to instruct the jury as follows, to wit:

"1st That a Deed obtained from a Sheriff for Lands sold on execution a-
gainst the husband does not bar a Widows right of Dower Given

"2nd That the owner in fee has a right to have the Dower assigned should
the Dower fail to have it done. Given

"3^d That if a person in possession of property acknowledge themselves to one
rent to another for it, the relation of Landlord & Tenant is thereby created
so far as to enable person having right to possession or owner to
recover rent. Given

"4th If one person enters on the possession of another on real Estate and
the other acquiesce in the entry and permit him to remain thereon
the relation of Landlord & Tenant is thereby impliedly created so far
as to enable the owner to recover rent. Given

The instructions numbered 1, 4, 5, 6 & 9 asked by the Defendants
Counsel the Court refused to give.

Whereupon the Jury retired to consider and make up
their verdict, and afterwards returned with a verdict for the Plaintiff
for the sum of Thirty six Dollars, upon which, judgment was rendered for
that sum and for costs of suit.

Before the rendition of judgment, the Defendant by his
Counsel made a motion for a new trial which was over-ruled by the Court.

To the refusal of the Court to grant a new trial, - the rendition
of the judgment aforesaid in favor of the Plaintiff, - to the refusal to give
instructions Nos 1, 4, 5, 6 & 9 asked for by the Defendant, - to the introduction
of the evidence objected to by the Counsel for the Defendant, the Defendant
by his Counsel then and there excepted, and prays that this his Bill of
exceptions be signed, sealed and made a part of the record in this
cause: all of which is accordingly done &c.

William A Denning Seal

State of Illinois }
Jackson County } p. I Daniel H. Bush Clerk
of the Circuit Court in and for the County of
Jackson aforesaid do hereby certify the foregoing
to be a full perfect and complete transcript
of the record and proceedings had in said case

as shown by the records of my office -

In witness whereof I hereunto set
my name and affix my seal
of office at Murphysboro this
22nd day of October A.D. 1852.

Raul. H. Brush Clerk

And the said Richard Sudding by
Simons & Sargent his attorney came and
says that in the records & proceedings in this
cause & in the rendition of judgment - that there
is manifest error in this

- 1 The Court erred in overruling Defendants
motion for a new trial
- 2 The Court - erred in refusing proper
instructions asked for by the Plaintiff
- 3 The Court - erred in giving improper instruc-
tions asked by the Plaintiff.
- 4 The Court erred in giving judgment for
the Plaintiff.
- 5 The Court erred in permitting improper evidence
offered to the jury by the Plaintiff and objected to by both
Sides there and other causes of error manifest
upon the record & proceedings in this cause be-
cause that the same may be reversed
and for nothing entered.

Simons & Sargent for
Plff in Error

//
Harriet Hill
vs
Richard Dudding •

Copy of Record

Filed the 9th day
of November, A. D.
1853

A. D. Preston,
Clerk

1853
Continued

In the Supreme Court November Term 1852

Richard Dudding

Plaintiff in error

vs

Harriet Hill

Defendant in error

Appeal to S.C.

Apumpset for rent

Abstract

This was an action of Apumpset, originally commenced before Jefferson Allen County Judge of Jackson County by Mrs Harriet Hill pff against Dudding and judgment rendered for the Pff for the sum of \$48. The Dft took an appeal to the Circuit Court of said County when the Pff again recovered a judgment for the said sum of \$48. The Dft made a motion for a new trial - it was granted by the Court, and at the May Term 1852 the cause again came on to be tried, when the following proceedings were had. The Plaintiff first introduced a Deed to Thomas B Hill - signed by G. Butcher, Peter Gill and Jefferson Allen, conveying Lots 3 & 6 in Block 12 and 2 & 5 in Block 21 in the Town of Murphyboro.

The Pff also introduced a Deed to the said Thomas B Hill, signed by Thomas B. Hill, Peter Gill & G Butcher of Lots 4 & 5 in Block 12 and also Lots No 1 & 6 in Block 21, besides other Lands described by its numbers, which Lots are in said Town of Murphyboro.

The Dft objected to the introduction of both Deeds, but was over-ruled by the Court. The Pff then introduced as a Witness Daniel H Brush, who testified that he was Clerk of the Co Court at the time the Deeds were executed, that the Deeds were signed in his presence and acknowledged before him, and that the persons executing the Deeds were at the time Co Comrs of Jackson County. The first Deed was executed on the 4th September 1844, and the second on the 6th December 1843.

Cyrus Thomas was then introduced as a Witness for Pff and testified as follows. That all he knew about the matter was from the Plat - that the House stood on Lot 5 in Block 12 - Lot 6 was in the enclosure - Dudding resided in the house on Lot 5 in Block 12 and occupied Lot 6 in Block 12. The Plat exhibited is a Plat of Murphyboro - the Lots indicated as 5 & 6 in Block 12, are the same on which Dudding resided.

The Pth then introduced as a Witness James Collier who testified, that Hill lived in the House occupied by Dudding at the time of his death. Hill's Widow lived there at the time of his death and sometime after. Did not recollect the time Dudding employed him to work on the house, but thinks it was in 1849. Dudding employed him to live the House & sides, and afterwards moved into the house. Does not recollect how long he occupied - perhaps a year. Bird employed him to do the first work on the house. The first work for Dudding was done 25th October 1849. Does not recollect when Dudding went into the house but thinks it was in the Fall of 1849. He left it this Spring. He lived in it from the time he went in and was in it at the time of the trial before Justice Allen.

On his cross-examination he stated that he did not recollect the time Mr Hill left the premises, but it was ~~in~~ a few days after Hill's death - and perhaps longer. It was not long vacant when Mr Bird went in there. House was in midday had repair when Bird went there. Roof of Kitchen was in bad repair - means the shed used as kitchen. thinks it leaked. Was in the house and through all the rooms some 2 or 3 days before Mr Bird moved in and saw no signs of sheep and hogs having been in it, or that any of the rooms had been used for a necessary or any other filthy purpose.

Re-ex by Pth. Thinks that he would not give more than \$2 1/2 p month before improvements on Lots made by Dudding, but does not know how homes rented generally. Only speak of what I would have given.

William H Bird was then introduced by Pth who testified as follows:
I applied to Dudding about the 1st of June 1849 - he agreed to let me have the house for \$2 p month, and after it was ceiled I was to give \$3 per month. Moved into the house about the 19th of June 1849, resided in it until I moved into Hanson's House, which was the following Fall. Dudding moved into the House while I was occupying Hanson's house. At the time I moved into the house Dudding said it was worth more than I agreed to pay. Mr D. did not say how much more. Did not charge me anything. I am acquainted with the house belonging to Mr Garner on next corner of Square. It was ceiled but the one of Dudding's was not. Garner's house had 3 rooms and a fire place - the

other had 5 rooms including shed & kitchen, but no fireplace. There was a bedstead which had been taken down and apart and standing in a corner, and there might have been other articles of furniture in the house but does not recollect of any. I think that Garner's house (which was said to rent for \$4 pr month) was worth double as much as Dudding's. Don't know the price of rents generally.

On his crup. examination he stated, the house was worth \$32 pr month after it had been ceiled - was not worth more than \$12 when I went into it - the house was not ceiled - there was loose lumber on upper floor. The two main rooms of the house were not in very bad condition - the log kitchen and shed at back of house were in very bad condition - the roof leaked badly - there was not 3 feet square in time of rain that was dry - one of the rooms of kitchen was filthy - looked as though it had been improperly used as a necessary by persons using it for a necessary - it smelt badly - the house was decaying - the paling round the garden were off in places and sheep and hogs went in and out freely - the front doors of the house were nailed up with small nails - the other doors were not secured - Did not know how long the back door had been open - who opened them - or how long it had been empty - Mrs Still was living in Garner's house at the time - Mrs Still went North in the Fall of 1849 - Mrs Still never raised any objection to my going into the house, but said she had some right to part of the property.

James McGollicker was here recalled and stated that in his previous statements he was mistaken as to time - that he commenced work on the house on the 19th of July 1849.

John A Logan was then called by the Piff and stated - Thomas B Still and Harriet Hill were married - saw them married - they lived together as man and wife for many years - They occupied Lots 5 & 6 in Block 12 - lived there at the time of Still's death which took place 7th May 1849. A question was then put to Witness by Piff "What did Mrs Hill say about leaving the house after Mr Still's death?" This question was objected to by Dfots Counsel, but the objection over-ruled and the Dfiff then

and there excepted. The Witness then said that Mrs Hill went to his Father's for a short time with her children - then to Mr Garner's until she could become reconciled to her afflictions and she told me this was the cause of her leaving, and she intended to return in a short time.

Mr Bird went into the house in June or July 1849 - Dudding went in in the Fall of 1849, and occupied it until this Spring - the palings were off of the fence in some places - Hill had been sick a long time - He then speaks of the value of rents.

On his cross-examination he stated that he did not know when Mrs Hill removed her furniture - She had it moved to Garner's House - She went away to her Brother's in the Fall - she never went back to the house after she first left - Mr Bird went in, in the course of a month or longer after she left.

Warren Spiller was then called as a Witness and testified that he was acquainted with the value of rents in Murphysboro in 1849 and thinks the lots in question were worth 4 or \$5 per month.

Andrew J Reynolds was then introduced on the part of P/A and testified that Mr Crow rented a small House from me at \$3 per month the Summer the Volunteers went away.

On his cross-examination he said the building was used as a Grocery - but he does not know anything about the value of rents generally.

He was then re-examined by P/A and stated one of the rooms in Hill's house had had a Store kept in it.

Thomas McLogan was then introduced as a Witness and testified as follows: I was in Mr Morgan's Store sometime in the Fall of 1850 Mr Jenkins and Mr Dudding being there, Jenkins asked Dudding if he did not intend to pay the rent for the use of Mrs Hill's House? Dudding said he had no objection to paying rent but he did not know to whom he should pay it - Dudding said something about Mr country but do not recollect what.

Cyrus Thomas was then introduced by P/A and stated that on the day of the trial before Justice Allen, Dudding said he was willing to pay rent when

be ascertained to whom it was due. I understood the conversation to relate to Mc Murtry and Mr Hill.

On his cross examination he stated that he understood nothing about any claim to the property but that of Mr Hill's Mc Murtry's and Duddings - Dudding said he owed Mr Hill nothing -

This was all the testimony offered in chief by P.H. and they here rested.

The Deft then introduced Daniel H. Brink Clerk of the Circuit Court as a witness who produced from the files of said Court a Transcript of a Judgment wherein John Bartlett, assignee to Mr P.H. and Thomas Hill vsdt rendered by Benj. S. Holliday J.P. on 29th November 1845.

The Deft then introduced an Execution issued by the said Clerk of the said Circuit Court which showed a levy by the Sheriff on Lot No 6 in Block 12 in Memphis Tenn (Execution issued on 28th Feb'y 1846) and a sale on 23rd May 1846 to Jonathan Heiple, the highest and best bidder.

The Deft then offered the Certificate of purchase in evidence, duly assigned to Richard Dudding; and also a Sheriff's Deed for the same property duly acknowledged and recorded.

The Deft then offered in evidence a record of the proceedings of the Board of Investigation for Jackson County appointed by the Legislature of Missouri for the purpose of restoring certain records burned in said County, which proceedings showed the record of a judgment rendered on the 29th of April 1840 against said Hill in favor of Wm. Linnick for the sum of \$75⁰⁰ debt besides costs. He also showed the issue of an

Execution on said judgment within a year from its rendition - several succeeding executions and finally one dated 1st of May 1846

(This judgment was assigned to Peter Hummel) which execution was levied on Lot No 5 in Block 12 in Memphis Tenn as the property of Thos B Hill and sold to Daniel H Brink for \$27⁰⁰ it being the best bid.

The Deft then offered in evidence the Sheriff's Certificate duly assigned to Richard Dudding and also a deed from the Sheriff to him for the same property dated 19 November 1847 duly acknowledged and

The Defendant then introduced Julius Bamberg who testified that in the Summer of 1849 he applied to Mr Hill (after Hill's death) to rent the property before mentioned, who directed him to apply to Mr Dudding for it. He was cross examined but do not deem it material.

The Dft then introduced again Dr Bush who stated that he was not acquainted with the value of rents - was with the building in question - it was not fit to live in, in the Winter

Here Dft rested

The Pff then recalled Mr Gollcher who stated "while I was fixing the steps to the house previous to Bird's going in to the house, Mr Hill came and enquired of me by what authority I was working on the House & what I was doing. I replied that I was fixing the steps and had been employed to do it by Bird - He replied, I reckon I have something to say about it."

The above is all the testimony

The Dft then asked the Court to instruct the Jury

2^d "That until the relation of Landlord & Tenant exists, no rent, as such, is recoverable at law. Still it is not necessary to shew a Contract to constitute the relation of Landlord & Tenant" Given

3^d "Dower is a mere intangible right in law and even in a Widow, until it be assigned, is no estate in the Land, but is a right resting in action only, and cannot be transferred to the prejudice of the proprietor in fee" Given.

But is solely the creature of the relation of Landlord & Tenant, and where the relation does not exist no rent is due" To that the Court added "The Court does not, however, instruct the Jury, that there must be a Contract for rent to create the relation of Landlord & Tenant. Under the Statute of the State, rent may be recovered without any Contract"

Given
8th "That if the Jury should believe from the evidence that Dudding had no right to enter upon the premises, he would not be a Tenant himself

to the P^{ff} by allowing Said to enter the premises" Given
10th "That if the Jury believe from the evidence that the Widow of Thomas Still voluntarily deserted the premises [with the intention of no further occupying them] (words added by the Court) and Dudding took possession and used the same by virtue of his own title, that title being valid (if it is so) [added by Court] they will find for the Defendant" Given

The Def^{dt} also asked the following instructions which were refused by the Court

- 1st "That if they believe from the evidence that the Defendant is the proprietor in fee of Lots 5 & 6 in Block 12 in Murphysboro and entered into possession as such proprietor, and not as Tenant of the P^{ff} they will find for the Def^{dt}." Refused
- 2nd "A Widow who is entitled to Dower in lands and who does not avail herself of her right of assignment, admits the Tenant in fee into undisturbed possession, cannot recover rent of such Tenant in fee, unless she reclaims possession of the land" Refused
- 3rd "That unless the P^{ff}'s husband died seized in fee of the lands she is not entitled to the whole of the homestead, but only one third thereof when assigned according to law" Refused
- 4th "That when a Widow is entitled to Dower in land and not in possession she is entitled to reasonable damages to be recovered by her of the person in possession, after, but not before the assignment of Dower - The Damages to be ascertained from the date of her demand and refusal to assign Dower" Refused
- 5th "That a Widow cannot sue for and recover rent of Dower premises which have been obtained peaceably by the owner in fee until her dower has been assigned" Refused

The P^{ff} then asked the Court to instruct the jury as follows:

- 1st "That a deed obtained from a Sheriff for lands sold on Execution against the husband, does not bar a Widow's right of dower" Given
- 2nd "That the owner in fee has a right to have the Dower assigned should the Dorees fail to have it done" Given
- 3rd "That if a person in possession of property acknowledge themselves to owe
(84-23-12)

rent to another for it, the relation of landlord is thereby created so far as to enable persons having right of possession or owner to recover rent" Given

4th "If one person enters on the possession of another on real estate and the other acquiesces in the entry and permits him to remain therein the relation of landlord & tenant is thereby impliedly created so far as to enable the owner to recover rent" Given

The instructions numbered 1, 4, 5, 6 & 9 asked by the Defdt the Court refused

Whereupon the jury retired and returned with a verdict for the P^t for the sum of \$36 on which judgment was rendered.

The Defdt made a motion for a new trial which was over-ruled by the Court, to which Defdt then & there excepted, as well as to the admission of testimony, to the refusal of instructions marked as aforesaid, and now, having brought the action to this Court, assigns the following causes of error to the proceedings of the Court below

117

In the Supreme Court
November Term 1852

Richard Dudding
Plaintiff in error

vs

Harriet Hill
Defendant in error

Abstract

8473

Dougherty & Sullivan
Attys for P/A

This was an action of assumpsit for use and occupation, brought by Harriet Hill against Richard Dudding. The material facts in evidence were these. In September 1844, T. B. Hill, the husband of the plaintiff, became seized in fee of lots five and six in block twelve in the town of Northampton. In May, 1846, lot six was sold on execution against Hill, and bid in by Keiple, who assigned the certificate of purchase to Dudding. In August, 1846, lot five was sold under an execution against Hill, and bid off by Brush, who assigned the certificate of purchase to Dudding. Dudding obtained a sheriff's deed for lot five in November, 1847 and for lot six in January, 1851. Hill died in May, 1849, in possession of ~~both~~ the lots. There was a dwelling house on lot five, and an inclosure on lot six. Mrs Hill left the premises shortly after the death of her husband, but intended to return and occupy the same. In the fall of 1849, Dudding went into possession of the premises, and remained there until sometime in the following year. It did not appear that there was any arrangement between Mrs Hill and Dudding respecting the premises, or that he acquired the possession with her assent or permission. The jury returned a verdict for \$36, which the Court refused to set aside.

The action for use and occupation is founded upon contract. It will only lie where there is a contract express or implied. The relation of landlord and tenant must exist between the parties. This is the uniform language of the authorities. *Smith v Stewart* 6. Johnson 46. *Pott v Lesker*, 1 Yates, 576. *The City of Boston v Binney* 11. Pickering, 1. *Hofar v Dement* 5. Gill. 132. *Rogers v Wiggs* 12. B. Monroe, 504. *Brown v Craig*

3. Harison, 214. Pallentine v McDowell, 2.
Scammon, 28.

In this case there was no pretence for holding that the relation of landlord and tenant existed between the parties. Pudding went into possession of the premises under a claim of title, and not as the tenant of Mrs Hill. His possession was not subservient to her title, but purely of an adverse character. He consequently was not liable in an action for use and occupation. If Mrs Hill was entitled to the possession of lots, her remedy was in an action of trespass or ejectment. The verdict was clearly against the law and evidence, and the court erred in not granting a new trial.

The judgment is reversed and the cause remanded.

Pudding v Hill

Opinion

Reas

opined by the
Reports.