

No. 12001

Supreme Court of Illinois

^F
Teft.

vs.

Size.

71641  7

No. 19.
Erastus Teft
vs
John Size

1849

12001

United States of America
State of Illinois
Kane County, Ill

Rec'd & remembered
that on the 2^d day of June ^{AD 1848} then issued
out of the Clerk's Office of Kane County Circuit
Court, a Writ in Suspense of which the following is
a Copy to wit

(State of Illinois)
Kane County, Ill The People of the State of
Illinois to the Sheriff of said
County, Greeting

We Command You to Summon Eustace Left
if to be found in Your County, personally to be and appear
before the Circuit Court of said County on the first day of
the next term thereof to be holden at the Court house in
Geneva on the 11th day of September next to answer
unto John Sizs of a Plea of Suspense to his Carriage as
he says in the sum of three hundred Dollars and make
due return of this Writ

Seal

Witness Mark H. Fletche^{sr} of said
Court and the Seal thereof at Geneva
this 2^d day of June AD 1848
M. Fletche^{sr} Clk

Endorsed as follows: " Executed
June 27th by reading this Writ & Left
Geo. W. Niles 13 Broad St New York \$ 1.37²

A. P. Spalding
Shff

And Afterwards to wit on the 25th day
of August AD 1848 the Plaintiff filed a

Declaration of which the following is a Copy
to wit

State of Illinois)
Kane County, ss

August Term of Kane
Circuit Court AD 1848.

John Sizs }

Erastus Telf }

John Sizs the plaintiff in this suit
by his Attorney Wilem McIlvaine
Complain of Erastus Telf the defendant

first
Court

in this Court who has been summoned to a Plea of
Answer; For that the said defendant on the
first day of June AD 1848 at Elgin in the
County of Kane aforesaid with force and arms
seized, took, and drove away, fifty hogs, and
fifty some of the said plaintiff of great value
to wit of the value of Two hundred dollars, then
then found and being, and converted, and disposed
of the same to his own use.

third
Court

And also for that
the said defendant on the day last aforesaid at
the place aforesaid in and upon the plaintiff, with
force and arms made an assault, and beat and
said plaintiff did then and then beat wound and
ill treat and other wrongs to the plaintiff then and
then did against the peace; Is the damage of the
said plaintiff of Five hundred

second
Court

And also for that the said defendant to
wit on the 2^d day of June last past at the County
of Kane aforesaid, with force and arms seized took
drove away, and sold fifty hogs and fifty some

of the said Plaintiff of great value to wit of the
value of two hundred dollars then then found
and being and converted and disposed of the
same to his own use

To the damage of the said
Plaintiff of five hundred dollars and therefore he
brings suit He
Wilson McLean
Plaintiff's Attorney

And afterwards to wit on the 1st day of
February A.D. 1849 the Defendants by Wright Morgan
his Attorney filed Pleas of which the following are
Copies to wit

Erastus Post }
Advs }
John Sizer }
Hann County Circuit Court
Jan 21st 1849

And the said Defendant by
Wright Morgan his Attorney comes and defends
the force and vigour where He and says that he
is not guilty of the said supposed Invasions above
said Whis Charge or any of ^{them} or any part thereof
in manner & form as the said Plaintiff hath above
thereof Complain'd against him and of this he puts
himself upon the Country &c

Wright Morgan
Def's Atty
And the said Plaintiffs
both the like Wilson McLean
his Atty

And for a further plea in this behalf as to the
seizing taking away and selling certain hogs
in the first and second Counts of said Declaration

Mentioned the said defendant by leave of the Court He
says Actio non because he says that at the time and
for a long time before the said trespasses in the first and
second Courts mentioned was committed if committed
at all, to wit at Ely in the County of Kane As said
the said Town of Ely had been and was an incorporated
Town according to the Statute in such case made & provided
and that by virtue and authority of said Statute,
Certain Ordinances and by-laws were passed by the
President and Trustees thereof to wit, to wit on the
13th day of March AD 1848, which contained and
was in force at the time when He, whereby it was
declared and ordained, "that the running at large
of any swine within the bounds of said Corporation
be declared a nuisance"; and for the purpose of
abating such nuisance it was further ordained
that a public pound should be kept within the
bounds of said Corporation, which was duly established
and a pound Master appointed therefor by the said
President and Trustees and it was further ^{declared &} ordained
by the said President and Trustees at the time when
He that any Person finding any swine running at
large within the bounds of such Corporation after the
10th day of May AD 1848 to deliver the same to the
Pound Master at the public pound aforesaid; and
the said defendant after the making of the said Ordinance
and by-laws to wit at the time when He found said hogs
or swine in said first and second Courts mentioned; running
at large within the bounds of said Corporation, and took
and drove the same into said pound and there and
then delivered said hogs to said Pound Master

as it was lawful for the said Defendant to
do for the Cause aforesaid, (which in the same
Imposed Trespases in the introductory part of
this Plea mentioned, and whom the said Plaintiff
hath above thereof Complaind against him,
and this he is ready to verify when for he may
Judgment
Wright & Menzies
Dist^r Att^y?

And for a further plea in this behalf, as to
the Assaulting, beating, wounding, & ill-treating the said
Plaintiff in the said third Count of the said Declaration
mentioned, the said Defendant by leave He says & Cites
Now, because he says that at the time & for a long
time before the said Trespases in the said third Count
mentioned, was committed or committed at all, to wit
at Elyon in the County of Hereford aforesaid, the said Town
of Elyon had been and was an incorporated Town
According to the Statute in such case made & provided
and that by Virtue and Authority of said Statute
Certain Ordinances, and by-laws were passed by the
President and Trustees thereof to wit, on the 13th day
of March A.D. 1848, which continued and was in force
at the time when He, whereby it was declared and
ordained: "that the coming at large of any Swine within
the bounds of said Corporation be declared a nuisance
and for the purpose of abating said nuisance it was further
ordained that a public pound should be kept within
the bounds of said Corporation, which was duly established
and a Pound Master appointed therefor by said
President and Trustees, and the said by-laws also

Authorized any Person finding any Swine Running
at Large within the Bounds of said Corporation after
the 10th day of May A.D. 1811 to deliver the same to
the pound Master at the public Pound aforesaid:
And the said defendant after the making the said
by laws and ordinances to wit, at the time when he
found certain Hogs or Swine Running at Large within the
bounds of said Corporation, and that the said pound
Master authorized and requested the said defendant
to open the gate of said pound and put said Swine
therein, and the said defendant at the time when he
was attempting to drive said Swine into said public
pound, whereupon the said Plaintiff placed himself
against or near the gate of said pound and declared
that said Swine should not be driven into said pound,
and remained resisting and preventing the said defendant
from driving the said Swine into said pound; and
thereupon the said defendant requested the said
Plaintiff to stand away from before said gate, which
he the said Plaintiff refused to do; whereupon the said
defendant at the time when he greatly laid his
hand upon the said Plaintiff, and removed him
from before the said gate, doing the said Plaintiff no
unnecessary injury, as he lawfully might do for
the Cause aforesaid; which are the same supposed
Trespasses in the introductory part of this Plea
And in the third Count of said declaration recited:
and whereof the said Plaintiff hath above therein
Complained against him, and this he is ready to
verify whereupon he prays Judgment &c.

Wright & Morgan

The following amendments to the 2^d plea filed Feb 9th 1869
And it was further enacted and ordained by the
President and Trustees, that it should be the duty of
the Constable of said Town who was duly appointed
by the said President and Trustees, to attend for
sale all goods impounded as aforesaid in said
public pound by posting there written notices, con-
-taining the time and place of sale, the number and
description of goods to be sold in three public places
in the said Corporation, for the space of three days;
and it was further ordained by the said President and
Trustees that at the expiration of the said time the
said Constable shall sell the same (unless the said
goods was before that time claimed by the Owners thereof
as in said by-laws specified) at public auction to the
highest bidder for Cash which said ordinance and
by-laws was in force at the time when &c, and the
said goods or goods in the first and second Court mentioned
being impounded in said public pound at the time when &c
the said Constable in pursuance of said by-laws and
at the request of said President and Trustees of said
Town of Elgin, his defendant being one of the Trustees,
at the time when &c, advertised and sold said
goods or goods in said first and second Courts men-
tioned, which are the said supposed trespasses in the
introductory part of this plea mentioned, and when &c
the said plaintiff hath complained against said
defendant, without this that the said defendant
was guilty of the said supposed trespasses or any or
either of them at Elgin in the County of Mansfield or
Elsewhere or in any other manner, than as in this
plea mentioned, and this the said defendant

is ready to verify whenever he may judgment
Wright & Morgan
2^d Amended Plea filed Feb 8th 1849 Dist. Atty.
the Plaintiff demurs to this 2^d amended plea
Wilson & Wilcut
The defendant joins in demurrer
by Wright & Morgan

And on February 6th 1849 the plaintiff
filed the following demurrer to wit

John Sizer)
4
Erastus Peff)

Hann Circuit Court
January Special Term
1849

And the said Plaintiff says that
the said Amended plea of the defendant by
him secondly above pleaded is insufficient in
law and he is not bound to reply thereto He

By Wilson & Wilcut

And the said defendant joins in demurrer
by Wright & Morgan

And the Plaintiff says that the said
Amended plea of the defendant by him thirdly
above pleaded is insufficient in law He

Wilson & Wilcut

And the said defendant joins
in demurrer

Atty

by Wright & Morgan

" of which time he shall notify the Constable of said
" Corporation giving him the number and description
" of the stone so kept, and it shall be the duty
" of the said Constable forthwith to advertise the
" same for sale by posting three written notices con-
" taining the time and place of sale, the number
" and description of stone to be sold, in three public
" places in said Corporation for the space of three days
" at the expiration of which time he shall (unless the
" same are before that time claimed by the owners thereof
" as hereinafter provided) sell the same at public Auction
" to the highest bidder for cash and the proceeds of
" all such sales shall go into the treasury of the said
" Corporation; and this he is ready to verify &c

Wilson & Milcox
for P.D.

And the defendant says that said Special
Application is insufficient in law & he is not bound
to answer &c

Wright & Morgan
Atty for D.

And the plaintiff avers that the said
Constable by ^{the} order and directions of said defendant
sold said stone at public Auction and paid
the proceeds of such sale into the Treasury of said
Corporation and this he is ready to verify &c

By Wilson & Milcox

And the defendant demurs to the plaintiff's
Amended Special Application as insufficient in
law and he is not bound to answer &c

Wright & Morgan
Dfts Atty.

And Afterward, to wit on the 28th day
of April AD 1869 the defendant filed the following
Bill of Exceptions to wit:

State of Illinois }
 } Hann County Circuit Court
 } Term Special Term AD 1869

John Sizgo }
 } vs
Erastus Teft } Defendant

Be it remembered that
on the trial of this cause the plaintiff
to sustain the issues on his part offered the following
evidence: He called first

Anthony Parton; who testified that in the Spring and part
of the summer of 1868 he was in the employ of
Sizgo the Plaintiff; that he was in possession of and
running a Mill in Elgin Hann County Illinois.
Plaintiff owned fifty or sixty hogs; about the
23^d of May last I saw the defendant Teft drive
of eight or ten of Sizgo's hogs; I was standing
in the Mill door at the time, went up stairs and
told Sizgo that Teft was driving off his hogs, and
he went immediately down to get them; Teft was
driving the hogs towards the pond, Sizgo overtook him
about half way to the pond, which is about sixty
rods south of the Mill; the hogs were on the north lot
north of the Factory wool house in the hazel brush between
two streets. The hogs had been kept in a pen west of
and immediately adjoining the Mill until the Saturday before
they were taken, the pen had become so muddy that
they could not be fed there, and Sizgo told us to let
them out that the pen might dry off; He directed

us to keep them near the Mill and not let them
stray off and go down into the Fellage: He also
employed Elijah Day to keep watch of them - I kept
watch of them - drove them back to the Mill two or three
times, when they was getting too far off into the town,
and called them up repeatedly and fed them daily
at the Mill: Elijah kept watch of them - He was
around and near the Mill a good share of the time:
The Eight or ten driven off by Left was worth four
dollars a piece. I was at the Pound next day
counted thirty two hogs belonging to Seize in the
Pound worth $3\frac{1}{2}$ to 4 dollars a piece. At the
time Left drove off the Eight or ten, the balance
of Seize's hogs ever along the race on the west side
near the Mill: Saw more of Seize's hogs driven
off in the latter part of the same day: Most of them
driven from the Mill

Crop Examined

Seize did not give direction when to shut
up the hogs: Seize claimed the right of possession of
the Mill and was running it - Before that time Dr. Root
owned the hogs - he sold them to Seize - before the hogs
was driven off. think W. Cobb, W. Huley and W.
M. Lamb was with Left - the hogs was about twenty
five rods North and East of the wool house on the
Commons North of the Fellage - Most of them would
weigh two hundred pounds, fed them that morning
in the pen - had not seen them in some time before they
was driven off by Left - think I saw them about
two hours before - the boys got some of the hogs
back of the Mill - in the evening they come and

And stand them out of the pen - The ground
North of the Wool house when Left got the hogs was
unenclosed and open to the Commons, and there are
no Villages, ^{houses} North of the Wool house: The hogs were let
out two or three days before they were taken by Left:

Elijah May - Sworn -

Testified that he was employed by Sizs
to take care of the hogs - I watched them after
they were let out of the pen what time I had to watch
- drove them back to the Mill frequently when I saw
them straggling off into the Villages - Sizs directed me
to keep them in the bounds of the Mill - Worked part
of the time under a shed not far from where the hogs
were

Groff Examined

Drove them back six or seven times -
Sizs kept them shut up until they were let out for
the pen to any

John Carr - Sworn -

Left told me and a couple of other boys
to go and get all the hogs we could find in the Copwaters
not shut up in a pen - Offered us a Shilling a
piece for each hog: We went and got thirteen
Mill hogs - they were on the bank of the Race on the
East side, directly at the end of the bridge that
crosses the Race of the Mill - They were on the gravel
that was thrown out of the Race on the East side
by the Unders. When we began to drive them
Anthony Barton came out of the Mill with a
whip in his hand and ran down the Race on
the West side and caught over to head us

he came up and struck me with his whip - while
he was doing that the other boys run off the hogs
~~out~~ ^{except} ~~the~~ way. Barton did not get the hogs, we
drove them into the pen - was not among the
boys who got the hogs out of the pen that evening.
Did not get any hogs out of a pen nor see any
other boys getting them out of a pen. There were
so many boys around when Left told us that
he would give us a shilling a piece for each
hog that I could not tell the number - did
not know him particularly, address himself to any
boys so that I recollect except me and the
two other boys with me

Wm. S. Shaw - Seven -

The day that Seize hogs were taken Left
came along and said, Come Shaw, we are
going to drive all the hogs we can find into
the pen, a shilling a head; Hurrah!

August Post - Seven -

Am the owner of the Mill and lot
on which it stands - had rented the premises to Seize the
plaintiff - The lot extends up to the Street East of the race
- the space between the race and the Street on the East side
of the race is about fifteen feet wide; If the hogs were
on the banks of the race at the end of the bridge, they were
on part of the Mill lot which is enclosed and open to
the Street - saw about thirty hogs of Seize's in the pen
worth about three dollars - I sold them hogs to Seize

M. B. Nopman's - Seven -

A day or two after the driving of
the hogs, Left told me that he had made a good

haul of hogs: when asked who owned them, Left
said he did not know who owned them - that
Left claimed about thirty of them, that they were
a pretty good lot worth on an average three dollars
a head

J. L. M. Curran - sworn -

I was the Corporation Constable and sold
the hogs - Left and the other Justices directed me to
sell them; I asked the Justices if I should sell them
Left in presence of the other Justices said Yes, sell them; I
sold them at auction, but did not receive the ^{pay} money
Left took the paper and acted as Clerk and was to
receive the pay as he was Treasurer of the Corporation; the
hogs were not all paid for - My best recollection is
that some money was paid, but don't know how
much; don't recollect distinctly if any money was
paid; it was paid to Left who acted as Clerk
and was Treasurer of the Corporation
Prof Examined

The hogs were sold along the last of May
some of them pretty good hogs - perhaps 10 or 12 ^{of the best} - and
not consider them a good lot of hogs taken as a
whole - the ten or twelve worth from 2 1/2 to 3 or 4 dollars
each - I had taken pains to have all the Justices there
at the time I sold - they were all present except one -
and directed me to sell - I had previously advertised
the hogs for sale

The Plaintiff has asked -

The Defendant to sustain his second and
third ^{special} pleas then offered to prove, that the preliminary

Steps had been taken to incorporate the Town of Elyria and for that purpose first Offered the Certificates of the President and Clerk of the first Meeting of the Legal Voters of Elyria and to prove that the same had been recorded according to Law; and thereupon the Petitioner admitted that all such preliminary Steps had been taken, and that the Town of Elyria was incorporated. Defendant then produced a book, containing the Records of the Corporation, which the Plaintiff admitted as such as if proved, and that the same should be read to the Jury as Evidence of all things therein recorded, that could properly be proved by the Records - It was read in said Records, that Samuel J Knibb, Erastus Left Jonathan Hubbard, Erastus Sanford and Edmund Gifford were Elected Trustees of the Corporation of Elyria, and had been duly sworn before entering upon the duties of their Office - That they had frequent Meetings as Trustees during the Spring and Summer of 1848, and that on the 13th day of March 1848, they passed an ordinance and by-laws in the words and figures following to wit

Obtained - That the running at large of Stone within the bounds of this Corporation, be and the same hereby is declared a nuisance

For the purpose of abating said nuisance the following by laws are enacted:

1st. The Yard on the south part of the premises of Jonathan Left J^r - where he now resides is hereby declared to be a public pound.

2^d. Jonathan Left J^r is hereby appointed Pound Master for the ensuing Year

3^d
"

Any Irons finding any Irons (Mining at-
large) within the bounds of the Corporation, after the
10th day of May A.D. 1848 and shall deliver the same
to the Pound Master at the public pound shall be
entitled to twelve and a half Cents for each and
every Iron so delivered -

4th
"

It shall be the duty of the Pound Master upon
the delivery of any Irons, ^{as aforesaid to run rapidly but the pen of} in the said Pound for the
space of three days (unless before that time they shall
be claimed by the owners thereof as herein after specified)
at the expiration of which time he shall notify the
Constable of the said Corporation giving him the
number and description of the Irons so kept and
it shall be the duty of the said Constable forthwith
to advertise the same for sale by posting three
written notices containing the time and place
of sale, the number and description of same to be sold
in three public places in said Corporation for the
space of three days, at the expiration of which time
he shall (unless the same are before that time claimed
by the owners thereof as herein after specified) sell the
same at public auction to the highest bidder for
Cash, and the proceeds of all such sales shall go
into the treasury of the Corporation.

Wm. Hubbard was then called by the defendant as a witness
who testified that he was one of the Trustees and was
Clerk of the Board during the Spring & Summer of 1848
that more than ten days prior to the 10th of May
in that year, he posted up notices of certain Ordinances
and by-laws enacted by the Board in their public

places in the Corporation - that one of said
Notices was put up in the Post Office - that he
had since frequently seen it there - that he had
not searched for it - that the last time he took
notice it was still hanging there up ~~where~~ where he placed
it. The defendant offered to prove by said
Hubbard that the Notices so posted by him were
true Copies of the said By-laws herein
above set forth and which had been recorded by
him as Clerk in said Corporation book, to
which Plaintiff objected on the ground that
defendant must either produce the Notices
or one of them which were originally posted or
account for its absence - The Court sustains
the objection and rejects the evidence to which
reference of the Court sustaining said objection
the defendant by his Counsel excepted - The
defendant failing to produce one of the Notices
posted, the Court then said he would instruct
the jury to disregard all the Evidence in the Case
which tended to sustain the defendant's Special
pleas, unless the posting of Copies of said By-laws
was proved as indicated by the last decision of the
Court aforesaid, to which opinion and decision of
the Court the defendant by his Counsel excepted.

The defendant also offered to prove that
he the defendant and the other persons named in the
said Records as Trustees, were acting Trustees of the
Corporation ^{of the town} of Elyria during the Spring and Summer
of 1868, which was admitted by the Plaintiff.

The defendant then offered to read

and to the Jury from said records, said by-laws in-
- dicting that he could not prove that Copies had been
+ posted &c, which the ^{Court} refused to permit, to which
Decision of the Court is excepting said by-laws
defendant excepted -

The defendant then called Matthew
Tess Jr. as a Witness who testified that he
was Paul Master of the Corporation - That he gave
+ notice to the Constable, with the number and dis-
- cription of the hogs impounded, which evidence
was objected to by the plaintiff in the ground
that the by laws under which defendant prosecuted
were not proved to have been in force, and the Court
sustained the objection, to which Decision of the
Court the defendant Excepted

This is all the evidence in the case material to the
- issues.

The Court then gave the following
instructions asked by the plaintiff

1st

given

That the owner of personal property may
maintain an action of trespass against any person
who shall wrongfully seize and carry away any
such property against the will of the owner, whether
the owner be in actual possession or not, and if the
+ Jury believe from the evidence, that the plaintiff was
the owner of the hogs in question, and that the Defendant
wrongfully drove them away or any other person by his
request or direction, then the law is for the plaintiff

2d

That if the Jury believe from the evidence, that
the Witness John Cair committed a trespass in driving
away plaintiff's hog and that said Cair was

Given

acting at the instance or request of the defendant or by his directions, then the defendant is guilty and the jury ought to find for the plaintiff.

The Court also instructed the jury

+ Given

"that the plea of justification are not sustained, and that the jury will find the issues on the second and third pleas for the plaintiff."

The only questions for the jury to consider are whether the proof shows that defendant committed the trespasses in the declaration mentioned, if they find for the plaintiff on the general issue, they will assess the damages the plaintiff has sustained - if they find for the defendant on the general issue, then verdict will be not guilty.

To all of these instructions given by the Court, the defendant by his Counsel excepts

The defendant asked the Court to give the following instructions which the Court refused to do

1st

That if the jury believe from the evidence, that the Town of Elyria was incorporated, and the by-laws referred to in the second and third pleas were in force at the time when the trespasses proved by the plaintiff were committed, and that the defendant acted within the authority conferred by those by-laws, they must find for the defendant on the first Count

+ Refused

2d

Refused

That when the law requires certain acts to be done, to make a certain Corporation act operative, it is presumed that those acts have been done

The jury returned their verdict in favor of the plaintiff and assessed his damages at thirty dollars

The defendant moved for a new trial and on the argument insisted that the Motion should be sustained for the following reasons

1st

That the Court had mistaken the law and misunderstood the Jury

2^d

That the Court erred in ruling that defendant must prove that the said ordinance and by-laws were published according to law

3^d

That the Court erred in refusing to allow the defendants to prove by the testimony of Mr. G. Hubbard, that the notices which he posted were exact copies of the ordinance and by-laws contained in the records which had been admitted as evidence in this case

4th

That the Court erred in instructing the Jury that the plea of justification was not sustained

5th

That the Court erred in ruling out the records of the Corporation as evidence in the case inasmuch as there was evidence tending to prove that the said ordinance and by-laws were duly published

6th

That it appeared that the defendants Attorney acted in good faith, believing that he had supplied himself with all evidence necessary to support his defence, and that in a new trial the notices required could and would be produced or accounted for, and that if the present verdict is allowed to stand and judgment rendered thereon injustice would be done.

7th

That the verdict was against the law and evidence.


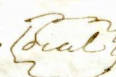
The Motion for a new trial was overruled by the Court to which decision of the Court the defendant by his Counsel also excepts and prays that this his bill of exceptions may be signed and sealed by the Court, and made part of the Record in this Case which is done
J. L. Dickey (Seal)

And Afterwards to wit on the 21st day of February AD 1869 the defendant filed his Appeal Bond of which the following is a copy to wit

Know all men by these presents, that we Erastus Jeff and Augustus Adams of the County of Kane and State of Illinois are held and firmly bound unto John Sizs of the County and State aforesaid in the penal sum of Five hundred dollars lawful money of the United States for the payment of which well and truly to be made, we bind ourselves our heirs, executors and Administrators jointly severally and firmly, by these presents; Witness our hands and seals this thirtieth day of February AD 1869.

The Condition of the above obligation is such that whereas the said John Sizs did at the January Special Term of the Kane County Circuit Court held by the Hon Theophilus L Dickey Judge of the Ninth Judicial Circuit at Geneva AD 1869, receive a Judgment

in an action of trespass against the above
bonedum Erastus Left for the sum of Sixty
dollars and Costs. From which judgment the
said Erastus Left has taken appeal to the Supreme
Court of the State of Illinois, next to be holden
at Ottawa for the Northern District of the ^{said} State:
Now if the said Erastus Left 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 this
obligation to be void. Otherwise to remain
in full force and virtue.

Erastus Left 
Augustus Adams 

Allea before the Hon. Throspen
S. Dickey Judge of the Smith
Judicial Circuit, at a special
term of the Circuit Court of the County
of Kane in the State of Illinois, began
and held at the Court house in Genoa
in the said County on the sixteenth day
of January in the Year of our Lord one thousand
Eight hundred and forty nine, the said term having
been called according to Law by an order of the Hon.
Throspen S. Dickey Judge of the Smith Judicial Circuit
of said State, dated the 4th day of December A.D. 1849
which was duly filed and recorded.

Plaintiff

Hon. Theophrastus L. Dickey Judge

P. C. Bates

Shuff

P. C. Cook

Star, Atty

Attor

C. P. Mills

Old

It is remembered that on the 19th day of January AD 1849 it being one of the days of said January special Term, the following among other proceedings were had to wit

John Seign

v

Impass

Erastus Duff

This day comes the plaintiffs by Wilson Wilcox his Attorney and

files his demand to the defendants third plea, in which the defendant by Wright & Morgan his Attorney joins; after argument of Counsel, it is ordered by the Court that the demand be overruled and that the defendant recover his costs about this demand of plaintiff, and have judgment and execution therefor. Leave to amend 2^d plea

And afterwards on the 7th day of February AD 1849 one of the days of the aforesaid term, the following proceedings were had

John Seign

v

Impass

Erastus Duff

This day comes on to be had the plaintiffs demand to the defendants second and third plea filed herein. after argument of Counsel, it is ordered

that the demand be overruled and that the defendant recover his costs about this demand of plaintiff, and have judgment and execution therefor. Leave to amend 2^d plea

No 92

No 92

by the Court that the Defendant to second plea
be sustained, and the Defendant overrule to the
third plea and each party have judgment and
Execution for their Costs. And each have leave
to answer over

And afterwards to sit on the 8th day
of February A.D. 1849 it being one of the days
of the aforesaid Spring Special Term. the following
proceeding was had

No 92
John Seize }
Erastus Deft } Proprietor
This day comes the
plaintiff by Wilson & Wilcox
his Attorneys and files his demand to the Defendant
second plea as amended. after argument of
Counsel. it is ordered that the Defendant be
overrule and the plaintiff have judgment and
Execution for his Costs herein.

And afterwards, to sit on the 9th day of
February A.D. 1849 it being one of the days of the
aforesaid Term the following proceeding was
had.

No 92
John Seize }
Erastus Deft } Proprietor
This day comes
the Defendant by Wright
& Morgan his Attorneys and files his demand
to each of plaintiffs applications to the second
and third pleas herein. in which the plaintiff

by Wilson & Wilcox his Attorney for, after
Argument of Counsel, it is ^{Concluded} by the Court
that the Answer be ~~admitted~~ to the first replication
to the second plea and third plea be admitted
and that the Answer to the second replication
to the third plea be sustained.

And afterward to wit on the 9th day
of February A.D. 1849 it being one of the days
of the aforesaid Spring Special term the
following proceeding was had

John Sizoo

Prospus

Erasmus Deft

This day comes
the plaintiffs by Wilson & Wilcox
his Attorneys and the defendant by Wright & Morgan
also come and on Motion of the plaintiffs, it
is ordered by the Court that a jury come, therefore
came a jury of good and lawful men to wit

David Munn

Joseph T. Sibley

Judnick Parker

David Shuts

Phillip Russer

William Wright

Job Knight

Edwin Clark

A. Gilbert

M. W. Johnson

J. P. Gardner

J. H. Whipple

being severally elected, tried and
sworn also come, and after hearing the evidence
it is agreed by the parties that the jury may
disappear under the instruction of the Court and
retire the Court at half past eight tomorrow
morning.

And on the next day the following
proceeding was had

No 92

John Seigo }
Ernestus Left } Disputed

This day comes
again the parties to this suit
and the jury hitherto unsummed also come. After
hearing the evidence and argument of Counsel
return under Charge of an Officer of the Court
to Consider of their Verdict. Subsequently return
into Court. and for a Verdict upon their Oathes
say that we the jury find the issues joined in
favor of the Plaintiff and assess his Damages at
the sum of Sixty Dollars. Whereupon comes
the Defendant and moves for a new trial

And afterwards to wit on the 17th day
of February A.D. 1849 it being one of the days
of the Absence of the Jury Special Term the following
proceeding was had

No 92

John Seigo }
Ernestus Left } Disputed

This day comes on
again to be heard the
Defendants Motion hitherto entered herein
for a new trial. after argument of Counsel
it is considered by the Court that the Motion
be overruled; and that the Plaintiff have
and recover of the Defendant the sum of Sixty Dollars
and his Costs herein and have Execution thereon.

And afterwards, to wit on the 20th day of February A.D. 1849 it being one of the days of the afsaid January Special Term the following proceeding was had

Page

John Sigi
Erastus Left

} Drapass

This day comes the Defendant and prays an appeal to the Supreme Court, which is allowed by the Court upon the Defendant filing bond in the sum of Five hundred dollars, with Augustus Adams as security within ten days from adjournment of this Court.

State of Illinois }
Kane County ss }

I Charles B Wells Clerk of

Kane County Circuit Court do hereby Certify that the foregoing ^{to be} are true ^{but} and perfect copies of the writ, declaration, Pleas, Replications, Demurred Plea of Exceptions, Appeal Bond; and the orders of Court as appears from the papers on file in my Office, and the Records of Court,

Witness my hand and the Seal of said Court at Lincoln this 19th day of May A.D. 1849

C. B. Wells
Clerk

And now comes the said appellant by Glom & Co. his attys and assigns the following decisions of the Court appearing in the record aforesaid as error 1st met

1st The Court erred in refusing to allow the defendant to prove by the testimony of William G. Newblane that the notices which he passed were exact copies of the Ordinances & by laws contained in the records which have been admitted in evidence in the case

2^d The Court erred in refusing to allow the defendants to read in evidence to the Jury the Ordinance and by laws of the Corporation of Ely as above set forth

3rd The Court erred in excluding from the Jury the evidence of Johnathan Leffert and refusing to allow the defendant to prove the facts of notice to the constable and as stated in the 2nd & 3rd pleas

4th The Court erred in giving to the Jury the first instruction asked for by plaintiff

5th The Court erred in giving to the Jury the 3^d instruction asked for by plaintiff

6th The Court erred in giving to the Jury the 4th instruction asked for by plaintiff

7th The Court erred in refusing the 1st instruction asked for by defendant

8th The Court erred in refusing the 2^d instruction asked for by defendant

9th The Court erred in overruling the motion for a new trial
Glover Dook
att. for appellant

And now comes the said Appellee by Isaac G. Wilson his
Attorney and says that there is not any such Error in the
Record aforesaid as is above assigned -

By Isaac G. Wilson Atty

And I have requested to see the same that I may
be enabled to see whether or not there is any Error
in the Record aforesaid as is above assigned -

John Scarp

Charles Jeff

Went for Kamele

Fido May 30. 1844
L. L. L. and Ch.