

No. 11878

Supreme Court of Illinois

Bloomer.

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vs.

Sherrel.

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28  
Robert Bloomer  
vs  
John Sherrell

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350

178

Robert  
Sherrell

State of Illinois }  
Jo Daviess County }

Pleas commenced in the Jo Daviess  
County Court before the Hon Hugh S. Lickley Judge  
of said Court on the second Monday of November  
A.D. 1848 & transferred by operation of law to the Jo Daviess  
County Circuit Court before the Hon Benjamin R. Sheldon  
Presiding Judge of the Sixth Judicial Circuit in said  
State on the second Monday in the month of March  
A.D. 1850.

John Sherrill } Plaintiff

Robert Bloomer } Defendant

Be it remembered that here to fore  
went on the 24<sup>th</sup> day of August A.D. 1848. the said Plaintiff  
John Sherrill by his Attorney J. P. Stearns Esq. sued out  
of the Office of the Clerk of said Jo Daviess County Court a writ  
of Summons to the said defendant Robert Bloomer which  
said writ is in the words and figures following to wit.

State of Illinois }  
Jo Daviess County } Dist

The People of the State of Illinois  
To the Sheriff of the County of Jo Daviess. Greeting  
We command you to summon Robert Bloomer to  
appear before the Jo Daviess County Court at the Court  
House in Galena at the next term to be holden at Galena  
on the 2<sup>d</sup> Monday of November next to answer John  
Sherrill in a plea of trespass. damages one thousand  
dollars. And have you then show this writ.

Sealed  
W

Witness the Hon Hugh S. Lickley Judge of said  
Court at Galena Illinois this 24 day of  
August 1848

Wm Gray M. Mitchell Clerk

Endorsed. Executed the within summons by reading to  
the within named Robert Hooper this 19<sup>th</sup> day of  
Sept. 1848  
W O Pierce Sheriff of  
Jo. Lamp County Ill.

And afterwards read on the second day of November  
AD 1848 the said Plaintiff by his Attorney, filed in said Jo  
Lamp County Court with the Clerk through his declaration against  
the said defendant which said declaration is in the words  
and figures following to wit,

State of Illinois  
In Darnock County In the St. Davids County Court to  
the next term thereof 1848

John Sherrill the plaintiff in this Suit complains  
of Robert Blommer the defendant in this Suit of a plea of  
trespass. For that the said defendant on the twenty ninth day  
of October in the year of our Lord one thousand Eight hundred  
and Forty seven with force and arms assaulted the said plaintiff  
to wit at Galena to wit at the County of St. Davids and then  
and there with great force and violence seized and laid  
hold of the said Plaintiff and then and there with a certain  
hand axe or hatchet and with his fist and hands gave  
and struck the said plaintiff, a great many violent blows  
and strokes on about divers parts of his body and also then  
and there with great force and violence struck and pulled  
about the said plaintiff and cast and threw the said  
plaintiff down to and upon the ground and then and  
there violently kicked the said plaintiff and gave and struck  
him a great many other blows and strokes by means of  
which said several premises the said plaintiff was then  
and there greatly hurt bruised and wounded and became  
and was sick sore lame and disordered and so remained  
and continued for a long space of time to wit for the space  
of five months, then next following during all which time  
the said plaintiff thereby suffered and underwent great  
pain and was hindered and prevented from performing  
<sup>any transacting</sup> his necessary affairs and business by him during that time  
to be performed and transacted and also thereby the said  
plaintiff was forced and obliged to and did necessarily  
pay pay out and expend a large sum of money to  
wit, the sum of \$50 - of lawful money, viz and about -

endeavouring to be cured of the bruises wounds Scalding Swellings  
Lameness and disorder aforesaid occasioned as aforesaid to  
sit at the County of Jo Damp aforesaid

And also for that the Said defendant on the  
day and year aforesaid with force and arms and c. against and  
towards the Said Plaintiff to wit at the County aforesaid and there  
and there again beat bruised and Wounded and ill treated the  
Said Plaintiff in so much that the use of the limbs of the Said  
Plaintiff were thereby then and there greatly impaired and  
other things to the Said Plaintiff then and there did to the great  
Damage of the Said Plaintiff and against the Peace and  
Regularity of the people of the State of Illinois - Therefore the  
Said Plaintiff says that he is Injured and has sustained  
Damage to the amount of \$1000 and therefore he brings this  
Suit of

Dutton & Stephens  
Atty for Plaintiff

Endorsed

Filed 2<sup>d</sup> Nov 1848

Geo W. Mitchell Clk

and afterwards to wit on the 7<sup>th</sup> Day of May a d  
1849 at the May term a d 1849 of said Jo Damp  
County Court the defendant by his atty comes and  
files his Plea to the Declaration of the Plaintiff  
in the words and figures following to wit

State of Illinois Jo Damp County Court p

Robert Bloomer } In Jo Damp County Court  
vs } May Term 1849  
Sherell } In Trespass  
And the Said defendant

by Hoge & Wilson his attorneys comes and defends  
he and says that he is not Guilty in manner  
& form as the said plaintiff hath Complaind  
against him and as this he puts himself upon  
the Country

Hoge & Wilson for Defo

and the said Plaintiff  
wrote the like

Stephens & McGinnis  
attys for Plff

Entered Filed 7<sup>th</sup> May 1849  
G. M. Dugdale  
CMB

and afterwards to Mt on the 15<sup>th</sup> day of May  
a d 1849 as yet of the May term a d 1849 of said  
Court in the Record of the Proceedings therein in  
said cause is the following entry to Mt

John Sherrill

vs

Robert Bloomer

Trespas

By agreement of the parties  
by their attys It is ordered by the Court that this  
Case be continued at the Costs of the Plaintiff and  
that Execution issue therefor

and afterwards to Mt on the 12<sup>th</sup> day of Janry  
a d 1850 at the January special term a d  
1850 of said Court in the Record of the proceedings  
therein in said Cause is the following entry  
to Mt

John Shurrel }  
vs } Trespas  
Robert Bloomer }

By agreement of the parties by their  
attorneys It is nowed by the Court that this case be  
Continued

and afterwards to wit on the 9<sup>th</sup> day of March  
A.D. 1850 the Defendant by his atty comes and  
files in the Clarks office of the J<sup>d</sup> Damp County  
Circuit Court his Pleas in the words and figures  
following to Wit

State of Illinois J<sup>d</sup> Damp County J<sup>d</sup>

Robert Bloomer }  
vs } In Court Court  
Shurrel } In vacation before  
Mar 5 1850

And the said Defendant for a further  
Plea in this behalf says that the said plaintiff  
ought not to have or maintain his aforesaid action  
thereof against him because he says that he the  
said Plaintiff just before the said time when  
the said supposed assault & trespass was committed  
to Wit on the day and year aforesaid & long before  
as the County aforesaid was lawfully possessed  
of and in a certain store with the appurtenances  
situate lying & being in the City of Galena  
County aforesaid & being so possessed thereof the  
said Plaintiff at the time when he with force &  
arms entered & came into the said store of the  
said Defendant and then made a great noise &

disturbance in the said store and then and there  
greatly disturbed & disquieted the said Defendant  
in the peaceful & quiet possession use and  
occupation of his said store and thereupon  
the said Defendant civilly requested the said  
plaintiff to go & depart out of the said store &  
to cease his said noise & disturbance which the  
said Plaintiff then & there refused to do & still  
stayed and continued in the said store making  
and continuing his said noise & disturbance there-  
in without the leave & license & against the will  
of the said Defendant. Whereupon the said  
Defendant at the said time & so in the said  
store, gently laid his hands upon the said Plaintiff  
in order to pull, put, push & remove the said  
plaintiff from & out the said store & was at the  
said time when he gently pulling at the said  
plaintiff from & out of the said store Whereupon  
the said Plaintiff being angry & in great wrath  
then & there with force & arms he in the said store  
made an assault on the said Defendant & would  
then & there have beat bruised wounded & ill treated  
the said Defendant if he said Defendant, had not then &  
there immediately defended himself against  
the said Plaintiff - Wherefore the said Defendant  
did then & there immediately defend himself  
against the said Plaintiff, as he lawfully might  
for the cause aforesaid & so the said Defendant  
says that if any mischief or damage happened  
to the said Plaintiff the same so happened <sup>unto</sup> ~~with~~  
him from the said assault by him made on  
the said Defendant & in the defence of him the  
said Defendant in manner aforesaid what



are the same supposed trespasses in the introductory  
part of the plea mentioned & whereof the said plaintiff  
knew above thereof declared against him the said  
defendant, And that the said defendant is ready  
to comply - wherefore he prays judgment if the said  
Plff ought to have or maintain his aforesaid action  
thereof against him

Douglas. Hoge Wilson  
for deftd

Endorsed

Filed March 9<sup>th</sup> 1850

W<sup>m</sup> H. Brady

Clk

And afterwards to Mot on the 13<sup>th</sup> Day of March  
 a d 1850 in the March term a d 1850 of said  
 Jo Damp County Circuit Court in the Record of  
 the proceedings thereof, <sup>in said cause</sup> is the following entry to Mot

John Sherill }  
 } }  
 Robert Bloomer } Ex parte

The Plaintiff by his atty  
 comes and moves the Court to strike the second plea  
 of the Defendant from the files in this case for  
 reasons filed

The Motion and reasons are in the words and figures  
 following to Mot

John Sherill }  
 } }  
 Robert Bloomer } State of Illinois Jo Damp County  
 } March term of the Circuit Court  
 } of said County a d 1850

And the said plaintiff by his  
 atty comes and moves the Court to strike the second plea  
 of the said Defendant from the files of Court & for cause shows that  
 said plea was filed by said defendant after the issue in said case  
 was made up without leave of Court & without the knowledge of said  
 Plaintiff Stevens & Mr Gibbs atty for Plaintiff  
 answers filed March 13<sup>th</sup> a d 1850 Wm H. Pringle clerk

and afterwards to Mot on the 14<sup>th</sup> Day of March a d 1850 as yet of the March  
 term a d 1850 of said Circuit Court in the Record of the proceedings thereof  
 in said cause is the following entry to Mot

John Sherrill

"

Robert Bloomer

Trespass

Now came on to be heard the Motion heretofore filed by the Plaintiff by his attorney to strike from the files in the case a special Plea which Motion after argument by counsel is sustained by the Court and the Plea comes to be stricken from the files

and afterwards to wit on the 16<sup>th</sup> Day of March a d 1850 was yet of the March term a d 1850 of the Jefferson County Circuit Court in the record of the Proceeding therein in said cause is the following entry to wit

John Sherrill

"

Robert Bloomer

Trespass

Now at this day came the parties by their attorneys and upon issue joined thereupon came a jury of good and lawful men to wit R R Oliver James Brown S K Goble E Hassen Jr Smith John L Clayton James E Stone John McRude Bryant Deas Theobald Metzger Spry Hattahin and Abel Proctor who were duly elected tried and sworn and after hearing the evidence and argument of the Plaintiff Counsel the jury retired to consider of their verdict and after a short absence they returned into Court with the following verdict to wit " We the jury find the Defendants Guilty and assess the Damages of the Plaintiff at the Sum of five hundred dollars It is thereupon considered by the Court that the Plaintiff have and recover of the Defendants the said Sum of five hundred dollars so as aforesaid assessed

by the jury together with his costs by him allowed  
his debt in this behalf expended and that Execution  
issue therefor

and afterwards to Wit on the 18<sup>th</sup> Day of March  
A D 1850 as yet of the Term term a D 1850 of  
Said Circuit Court in the Record of the proceedings  
thereof is the following entry to Wit

John Sherrill

vs

Robert Bloomer

Trespass

A Motion for a new trial hav-  
-ing been made in this case by the defendant by  
his attorney on Saturday last. It is thereupon con-  
-sidered by the court that the judgment rendered  
upon the verdict of the jury herein be set aside  
and that the motion for new trial be entered of  
Record

and afterwards to Wit on the 19<sup>th</sup> March A D  
1850 as yet of the Term term a D 1850 of Said Circuit  
Court in the Record of the proceedings thereof is the  
following entry to Wit

John Sherrill

vs

Robert Bloomer

Trespass

The defendant by his attorney  
comes and files his motion and reasons for a new  
trial herein

and afterwards to Wit on the 23<sup>rd</sup> Day of March

a d 1850 as yet at the March term a d 1850 of said  
Excent Court in the Record of the Proceedings thereof  
in said Cause is the following entry to "Wt"

John Sherrill  
vs  
Robert Bloomer } Responses

Now came on to be heard the  
Motion of the Defendant heretofore filed by his  
attorney for a new trial herein which motion after  
argument by counsel is overruled by the Court to  
which ruling and decision of the Court the Defendant  
by his atty excepts; and the Plaintiff by his  
attorney moves the Court for judgment upon the  
Verdict of the jury heretofore returned in this case  
It is thereupon considered by the Court that the Plaintiff  
have and receive of the Defendant the sum of  
five hundred dollars, so as aforesaid assessed by  
the jury together with his costs by him about his  
sent in this behalf expended and that Execution  
issue therefor - And the Defendant prays an  
appeal to the Supreme Court which is granted  
Conditioned that he enter into Bond in the sum  
of one thousand dollars with Jesse Garrison  
Edmund A Damon & James Bloomer or any  
two of them as security, within ten days from  
this date -

The Defendant by his counsel made the  
following exceptions which were allowed  
by the Court

Alta Sherill } Circuit Court March  
vs } term A D 1850  
Robert Blomer }

Be it Remembered that this Cause -  
Coming on to be heard the plaintiff to support his Cause of action  
offered in Evidence the following testimony of Thomas Gate a  
Witness produced and sworn who testified as follows to wit that  
two years ago last October he met the plaintiff Sherill at the  
door of the defendant - Mr Blomers Store, on Main Street in  
Galena - that Sherill Requested the Witness to Wait a while, that  
he wanted to see Mr Blomer - that Sherill spoke to Blomer,  
and asked him to come out, and, <sup>that</sup> Blomer replied by asking him  
to come in - that Blomer came half way along the Counter  
to meet Sherill, who advanced half way into the Store, Sherill  
being on one Side of the Counter & Blomer on the other - that  
the Witness Gate entered first inside of the threshold, & let down  
by the door a couple of Buckets of apples, which he was in  
the habit of carrying about to sell - that Sherill said to Blomer,  
that he had had some difficulty, with his Sherills wife; and  
Blomer replied, that Sherills wife had stolen some plants:  
that that was the only difficulty - Sherill then said he wanted  
some explanation, Blomer said "go out of the Store", and  
jumped over the Counter. Blomer laid his hand on the Shoulder  
of Sherill, and walked him to the door, but did not seem  
to push or shove him, but walked him to the door - that then  
from all the Witness saw - that said Witness went immediately  
away, supposing all the difficulty over - that Sherill when  
he first went into the Store, and all the time Witness was  
present, spoke mildly - that his Conduct was mild, and,  
that Blomer did not seem to be violent - that Sherill  
was only in the Store, about two Minutes - that Blomer told  
him to walk out - that the Witness heard the parties say  
nothing else - did not hear either of them say anything

As they came towards the door that Fitch saw no Strutting -  
did not recollect of seeing any person else present - that this was  
in the latter end of October 1844 - that when the French went  
away he took up his baskets, and walked, slowly, at his ordinary  
Rate, <sup>up street,</sup> and stopped a short time <sup>at</sup> the Corner of the Street <sup>at</sup> <sup>Campfield,</sup>  
Drug Store, the fifth Store, above Blomers Store, all being together  
in one Row of buildings, but did not look back - that he  
heard no further Words, between Blomer & Shorne, and was  
not attracted by a noise behind him, and heard no other difficulty.  
That Shorne is a shoe maker - that he did not know what  
family he saw - that he gets his living by his Industry, and -  
that Blomer was a Merchant, and doing a large business  
to all appearance.

The Plaintiff then produced William Sherwin a Witness who testified that he was a Son of the Plaintiff, that he followed his father around to the door of Mr Bloomer, that his father met Mr Tate at the door of Bloomers Store and said Tate for some reason then told Tate to wait that he Sherwin the Plaintiff wanted to see Bloomer that he William Sherwin walked up and leaned on a box standing on the best stone on the pavement in front of the Store and Remained there leaning on the said Box during the whole time, that Casson a Clerk of Bloomer was standing at the Counter in the Store near the door that the Plaintiff told Casson that he wanted to see Bloomer that Casson replied that Bloomer was in the County Room and was Busy that the Plaintiff advanced a short distance in the Store and called on Bloomer <sup>two</sup> different times to come out, that Bloomer asked him in and came out of the County Room part of the way down the Room that the Plaintiff and defendant talked together but that the two Witnesses could not hear what they said that Bloomer drove the Plaintiff out, Father said he could go that Bloomer undertook to show him out, that Thatcher said he could go <sup>over</sup> without showing that Bloomer said he should not occupy his premises that Father the Plaintiff went over on <sup>to</sup> the pavement of Thatchers Store across a little gutter standing Thatchers pavement from Bloomers that Bloomer said that the Plaintiff should not occupy his premises that Plaintiff replied he had <sup>a</sup> right to occupy <sup>the</sup> ~~the~~ walk that as soon as Bloomer got to his door with the Plaintiff that he instantly returned into his Store and came immediately out again as quick as he could with a hatchet in his hand that Bloomer was angry and violent in his manner and held up the Hatchet in <sup>an</sup> ~~an~~ striking position that it was a common <sup>hatchet</sup>



That when Blomer first came out the plaintiff did not see him  
until Patrick called <sup>Blomer</sup> his attention to defendant that first  
as he turned <sup>his head</sup> he saw the defendant - the defendant  
gave him a violent push down off the pavement - over  
the curb stone which was about half a foot high which  
broke the arm at the wrist of plaintiff that Patrick saw no  
kick nor any blow with the hatchet - no any blow at all the  
the plaintiff fell down backwards by the curb stone that  
Pate had not left when this occurred that the Patrick thought  
that Pate had not then left his attention was mostly directed  
to Plaintiff and defendant that Patrick then went forward that  
he was at his fathers job Back of the Store of Blomer;  
that when he came back his father the plaintiff was in the  
shoe shop of one Leizinger, that Patrick started with some  
talk up to Dr Newhall that plaintiff was sick by the way  
from his arm that they stopped by the way to see Dr Noble  
who was not at his office and then went on to Dr Newhall  
that Dr Newhall touched his arm which seemed broken and  
then the Patrick and plaintiff started home that the plaintiff  
couldnt work for about a month or something less that  
that the plaintiff used cold water on his arm that Patrick  
remained home all winter that the plaintiff had to bathe his  
arm and cut it to give him rest - that he did not remem-  
ber whether it was getting better at the holidays Christmas  
and new year - that it was in a sling that he couldnt  
tell how many times it was dressed before it got free that  
he would guess that it had been dressed 30 or 40 times  
that the arm was a sound new arm before this injury  
had not been broken before that he had never been injured  
as Patrick knew of that arm was broken when they arrived  
at Newhall who pronounced and pronounced it that the  
plaintiff was a shoe maker at the time that he had

A family of six that the Grand William was the oldest was 18 years old on the 19<sup>th</sup> of March next November that the Plaintiff was a poor man and that his family depended on him for support that he could not say when he went to work could not say whether <sup>he worked</sup> or not before the holidays could not say what shop he first worked at afterwards that Patrick just happened to follow his father up to Bloomer's door after dinner, that occurrence was on the 24<sup>th</sup> day of October 1847 which Patrick knew because it was his mother's birth day and said Patrick William Shinn also stated in Cross Examination by defendant's counsel that Dr. Newhall called to see Plaintiff every day for two weeks and each time unwrapped and splinted his arm anew, and in the Examination by Plaintiff's counsel stated that he could not exactly say how often Dr. Newhall visited his father & fixed his arm but thought it was about two weeks,

The Plaintiff then produced Thomas Curry a Grand Jury who testified that he was acquainted with the Plaintiff that the Plaintiff was working for Seizinger at the time of the occurrence with Bloomer that Patrick did not remember when it occurred and was not present that he saw the arm of the Plaintiff that it looked as if it had been broken that Patrick did not remember when it occurred or when he first saw the arm whether Sunday or Monday that Patrick had worked in the same Shop with the Plaintiff that Sherman wages were from six to nine dollars per week and that he had constantly worked before that that Patrick saw the arm once or twice, several times, after the injury looked as if no use in it looked inflamed & did not know when the Plaintiff commenced work again did not recollect that he could not remember as to the holidays, that Bloomer's Shop was near <sup>to</sup> Seizinger's

Five or Six days off - that Wrights Saw the arm two or three times in so many weeks that Sheride was a shoe maker by trade that it was about three months before Sheride went to work again, that the arm then looked weak and perished away and not so large as the other that the family of the Plaintiff depend on his labor that Sheride was a common catering poor man that Blomer at the time of the occurrence was a Merchant and doing an <sup>English</sup> Barings that when Sheride commenced work again it was at the shop of Leuzinger

The Plaintiff then produced Adam Smith a Witness who testified that he had known the Plaintiff four years that he saw his arm a couple of days after the occurrence with Blomer - happened, that it looked swollen and <sup>looked</sup> sore badly bruised that Wrights worked in same Shoemakers Shop with Wrights before and after his arm was injured that before then he the Plaintiff <sup>had</sup> done hard work at is his trade - usually did Wringing on boots - quite hard on the arms - that Plaintiff was making minor low Adams a week - that he commenced working again in Leuzingers Shop about three months afterwards - that his arm was then nearly new but one bone stuck out a little - that the arm looked about as the other looked - that Plaintiff the first day he worked earned only ten Cents - that he could not do as much work now as Wrights - about a month afterwards Plaintiff could do a good day work - that Plaintiff cannot wring now - that he used to wring boots - that Plaintiff cannot now do as much work as he used to do.

The Plaintiff then produced Horatio Newhall a Witness  
Who testified that he was a physician and that on the 29<sup>th</sup>  
day of October 1847 he was applied to by the Son of the Plaintiff  
to go and see his father and started from his Shop and found  
the Plaintiff sitting on a step a few doors below his drugstore  
that he took the Plaintiff to his drug Store and found his  
Wrist dislocated that he put it in place by Extending the arm  
and pulling <sup>it</sup> that the Plaintiff was Sick and fainted that  
the Wrist was Sprained and Swollen that it made the  
Arm lame and painful that a simple dislocation of  
the Wrist may enable a man to Work Immediately if  
is put in place that he saw the Plaintiff about two or  
three days or two after that Witness Dr. Michael visited the  
Plaintiff the next day and then a day or two after that  
he charged for setting his arm on the 29<sup>th</sup> day of October  
the sum of five Dollars and for <sup>of the</sup> other <sup>of the</sup> medicine  
that his whole bill was seven dollars and twenty five Cents the  
Latter part only for a solution that he made no other visits to the  
Plaintiff or administered no more to him on account  
of his arm and that the Plaintiff had never paid him for  
his services the Witness then Examined the Wrist of said  
Plaintiff and said he could discover no difference in the  
two Wrists that he Recollected no other visits about the arm that  
if he did he had made no charge for it

The Plaintiff then produced Selmore a Witness who  
testified that he was acquainted with the Plaintiff and  
boarded at his house some two or three months commencing  
boarding there about the time the arm got hurt that  
at Sherrills he complained a good deal about his arm  
<sup>and began to</sup> use his hand by holding a fork just as Witness  
quit boarding at his house Plaintiff is a Shoe Maker  
by trade

which was all the of the testimony at that time offered or admitted for the plaintiff

The defendant then produced Pitt & Curson a Witness who testified that in the month of October 1847 long before and afterwards he was a Clerk in the Store of the defendant that one day in the fall of 1847 the plaintiff came to the Store of the defendant and inquired to see him that a conversation occurred then in the Store between the plaintiff and defendant about the conduct of the plaintiff and defendant and some matter of difficulty between him and plaintiff wife about some late letters & that said defendant was busy packing up some goods & Superintending the packing and making up of some boxes and told defendant to go out of his store that he was busy and did not wish to be bothered that defendant told plaintiff several times to go out that the plaintiff went to the door of the Store and defendant to his work when plaintiff advanced up part of the way up toward the Counting Room again at the back part of the Store where the defendant was at work and that said plaintiff talked in a loud and angry manner and abused the defendant with harsh language and said a Kettle had been stolen from his wife and some plank and that he believed these things were in the Store of the defendant - that the defendant then ordered out the plaintiff & then he started out in the direction of the plaintiff who turned and went back to the door of the Store if the defendant again returned to his work at the back part of the Store near the Counting Room, that very soon the plaintiff again returned part way up the Store Room towards the Counting Room and that the defendant went towards him and then both plaintiff and defendant went to the door of the Store but did not see whether they went out the door or not saw or heard

Nothing of any difficulty in the Side Walk When the Witness  
Went into the Counting Room and that the defendant returned  
Again to the Boxes and <sup>at</sup> Work, which he had previously engaged  
Near the Counting Room and went to the door of the Store  
No Man at that time or whilst the plaintiff was about there  
that he did not see the defendant Come back to the  
Counting Room and get a hatchet and go again <sup>immediately</sup>  
to the door with it and thought it could not have happened  
without his seeing it that he did not Recollect of seeing  
any others about the Store that he was present on but one occasion  
When pl and defendant had any Controversy or dispute  
and that that was in the fall of 1847 that at that time he  
No blows struck and heard no sound of violence that the  
conduct of the plaintiff all the time he was in the Store  
seemed violent and abusive and that Mr Bloomer was  
at first moderate and told the plaintiff several times to  
go off that he did not wish to be bothered by him that  
he was angry and ordered him away that when Mr Mann  
returned at the third time he went into the Counting Room  
a moment and then up stairs into the second story of the  
Building

The defendant then produced Samuel Kelly  
a Witness who testified that in the fall of 1847 he was working  
A Carving Man about the Store of <sup>the</sup> defendant and that  
one day the plaintiff Came into the Store of the defendant  
that Mr Carson was at the Counter when he first Came  
in that Only one occasion even happened to his knowledge  
of any difficulty between the plaintiff and defendant that  
Kenny was making up some boxes at the back part of the  
Store when plaintiff Came in that some conversation  
occurred between the plaintiff and defendant that  
the plaintiff talked loud and abusively to the defendant  
said that defendant had not acted like a gentleman  
to his wife that he was no gentleman to abuse his wife

That defendant several times ordered the Plaintiff out of the Store and laid his hand on his shoulder and led him out that said Witness heard no blows or saw no blows nor any striking that said Bloomer talked quietly to said Plaintiff and several times ordered him off that said Witness was busy making up a Box and did not hear all that passed between the parties and did not see the defendant go out of the Store during the time said Sherrin was about said Store did not see any difficulty out a door on the side track

James Byrne a Witness was then produced by the defendant who testified that he was acquainted with Plaintiff and defendant that he said Witness was a shoe maker by trade and had worked in the same shop with the Plaintiff that the Plaintiff had worked in the shop of him the said Byrne since he worked with the said Seizinger and since the said difficulty with said Bloomer that whilst working at said shop of said Byrne the Plaintiff sometimes last season showed said Byrne one of his arms and an injury on it above the elbow a lump or knot and said that whilst working at Seizingers he had fallen against the door post of the shop one day when he came out of the shop that his foot slipped and he fell and that the fall injured his arm and raised that lump that said Witness could not remember or tell upon which arm said injury was that Plaintiff also showed him his wrist saying that that was where Bloomer hurt him that he often heard the Plaintiff speak of the arm that Bloomer hurt whilst working at the shop of said Byrne // which was the last witness offered by defendant

The plaintiffs Counsel having objected to said testimony of  
Said Byrne whilst being given as <sup>inmaterial</sup> ~~irrelevant~~ then asked  
the Court to Exclude from the jury the testimony of Said -  
Byrne as to the lump on plaintiffs arm spoken of by Byrne  
as Irrelevant and as having nothing to do with the Case  
which was done by the Court - first orally to which the defendant  
Counsel Excepted because done <sup>orally</sup> ~~in writing~~ the Court then gave  
the following direction in writing to wit

Copy of direction by the Court

All that Mr Byrne has stated in regard to what Sherries said  
as to the lump on his arm has nothing whatever to do with  
the Case and is only calculated to mislead the jury.  
to which opinion and Ruling of the Court the defendant's Counsel  
Excepted then and there

Which was all the testimony offered or admitted for  
said defendant or all that was offered or admitted for said  
Plaintiff - the Plaintiff then asked the Court to instruct  
the jury as follows to wit

1<sup>st</sup> The Plaintiff asks the Court to Instruct the Jury that  
if they believe from the Evidence that the defendant assaulted  
and wrongfully beat the Plaintiff then there are to allow as  
damages

1<sup>st</sup> all Expenses which the Plaintiff has been put to in and  
about his Cure

2<sup>d</sup> all loss of time occasioned by the said act of the  
defendant, preventing the Plaintiff from following his  
usual business or trade

3<sup>d</sup> for all permanent Injuries to the defendant - in -  
body or limb

4<sup>th</sup> For the bodily pain or mental suffering of the Plaintiff  
occasioned by the wrongful act of the defendant

Which Instructions were given in writing and the defendant  
asked the Court to Instruct the jury all follows to wit

Accepted to

Given



if the Jury shall believe from the Evidence that the plaintiff went to the Store of the defendant and used toward the defendant abusive and opprobrious language and that <sup>the</sup> defendant excited thereby and before him for deliberation assaulted the plaintiff it is a Circumstances in Mitigation of damages

If the Jury shall believe from the Evidence that the plaintiff went to the Store of the defendant and used harsh and abusive language to the defendant with the Intention of provoking a quarrel and that <sup>the</sup> defendant excited thereby and in Heat of passion assaulted and injured the plaintiff it is a Circumstance in Mitigation of damages

If the Jury shall believe from the Evidence that William Sherrill one of the Witnesses is the Son of the plaintiff that is a Circumstance to be considered by the jury in determining what Credit and belief to give to his testimony

If the Jury shall believe from the Evidence that the testimony of said William Sherrill is wholly false in any one material Point they should disregard his whole testimony

Which were given by the Court in Writing which were all the Instructions given or asked for by the Plaintiff or Defendant. The jury Returned into Court with the following Verdict to wit,

That the Jury find the defendant Guilty and assess the damages of the Plaintiff at the Sum of five hundred Dollars

The defendant then Moved the Court for a new trial for the following reason to wit

State of Illinois vs Davenport County

Robert Bloomer

vs

John Sherrill

}  
} Court Court Term J 1850  
}

The Said Defendant Comes by  
his attorneys and moves the Court for a new trial  
for the following reasons

- 1<sup>st</sup> Because the verdict of the jury was contrary  
to law
- 2<sup>nd</sup> Because the verdict of the jury was  
contrary to the evidence
- 3<sup>rd</sup> Because the verdict was contrary to the  
instructions of the Court
- 4<sup>th</sup> Because the Court gave the instructions  
asked for by Plaintiffs Counsel
- 5<sup>th</sup> Because the Court rejected & ruled out  
the testimony of James Byrne
- 6<sup>th</sup> Because the verdict of the jury was con-  
trary to the instructions asked for by the Defendants  
Counsel & given by the Court
- 7<sup>th</sup> Because the damages are excessive
- 8<sup>th</sup> Because the jury gave unnecessary  
damages
- 9<sup>th</sup> Because of the instructions of the Court  
as to the testimony of James Byrne
- 10<sup>th</sup> And for other reasons & because the  
Court struck from the files the Said Special plea  
of Defect

Campbell Douglas & Wilson  
for Defect

Endorsed

Filed March 19<sup>th</sup> 1850

W<sup>m</sup> H. Brady, C<sup>t</sup>  
which motion was overruled by the Court to  
which overruling of the Court the Defendant,  
by their Counsel then and then excepted - & to  
all of which Ruling & overruling of the Court

the Defendants counsel accepted & prayed  
that this his bill of Exceptions may be signed  
sealed & made part of the record in the Cause  
which is accordingly done this            day of  
March 4<sup>th</sup> 1850

Wm. R. Sheldon <sup>300</sup> Clerk

Endorsed

Filed March 23<sup>rd</sup> 1850

Wm. H. Bradley Clerk



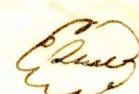
And afterwards to wit on the 26<sup>th</sup> Day of March  
A.D. 1850 the Defendant comes and files in the  
office of the Clerk of the said Circuit Court  
Circuit a certain writing obligatory commonly  
called an appeal bond which is in the words  
and of the tenor following to wit

Know all men by these presents that we Robert  
Bloomer and James Bloomer & Edward A. Damon  
all of the County of Adams and State of Illinois are  
held and firmly bound unto John Sherrill also  
of the same County and State in the penal sum  
of One thousand Dollars Current money of the  
United States for the payment of which well and  
truly to be made we bind ourselves our heirs & ex-  
-ors and administrators jointly, severally and  
firmly by these presents withup our hands  
and seals this 26<sup>th</sup> day of March A.D. 1850

The condition of the above obligation is such  
that whereas the said John Sherrill did on  
the 23<sup>rd</sup> day of March A.D. 1850 in the Circuit

Court in and for the County and State aforesaid  
 recovers a judgment against the above bounden  
 Robert Bloomer for the sum of five hundred  
 Dollars damages and Sixty <sup>16</sup>/<sub>100</sub> Dollars costs  
 from which said judgment of the said Circuit  
 Court the said Robert Bloomer has prayed for  
 and obtained an appeal to the Supreme Court  
 of said State. Now if the said Robert Bloomer  
 shall duly prosecute his said appeal with  
 effect and shall moreover pay the amount  
 of the judgment costs interest and damages and  
 and and to be rendered against him in case  
 the said judgment shall be affirmed in the  
 said Supreme Court then the above allegation  
 to be void otherwise to remain in full force  
 and virtue.

Given and entered into  
 before me this 26<sup>th</sup> day  
 of March a d 1850  
 W<sup>m</sup> H. Bradley  
 Clerk

R Bloomer   
 James Bloomer   
 C. A. Damon 

Endorsed  
 Filed March 26<sup>th</sup> 1850  
 W<sup>m</sup> H. Bradley Clerk

State of Illinois }  
In Damp County } set

I William H. Brady, clerk  
of the <sup>Circuit</sup> Damp County, Court in and for said  
County, do hereby certify that the foregoing Sum-  
-script is a true and correct copy from the  
Records of the said Damp County Court and the  
said Circuit Court of all the proceedings which were  
had in the aforesaid case of John Sherrill vs  
Robert Bloomer

In testimony whereof I have here-  
-unto set my hand and affixed  
the Seal of said Circuit Court  
at my Office in Gallena this  
16<sup>th</sup> Day of April A.D. 1850

Attest  
W<sup>m</sup> H. Brady, clerk  
By J. M. [Signature] Deputy

The appellant makes the following assign-  
-ment of errors.

- 1<sup>st</sup> The Court erred in striking from the files the said special plea of nullius inquit manus impositus.
- 2<sup>nd</sup> The Court erred in excluding from the jury the testimony of said James Byrne as to the lump on plaintiffs arm, spoken of by Byrne, as irrelev-  
-evant and as having nothing to do with the case.
- 3<sup>rd</sup> The Court erred in giving the jury the said oral instruction.
- 4<sup>th</sup> The Court erred in giving the said written direction to the jury as to the testimony of Byrne.
- 5<sup>th</sup> The Court erred in instructing the jury that Sherills statements as to the lump on his arm had nothing to do with the case & was calculated to mislead the jury.
- 6<sup>th</sup> The Court erred in giving the instructions ask-  
-ed for by plaintiffs counsel, as to damages.
- 7<sup>th</sup> The Court erred in overruling the motion for a new trial.
- 8<sup>th</sup> The Court erred in rendering judgment for the plaintiff, when by the laws of the land judgment should have been rendered for the defendant.

W. Hoge & Wilson attys  
for appellant.

And the said Sherill, Appellee in this  
cause, comes by J. P. Stevens, his atty, and  
opines in the above ~~supposed~~ errors. But  
denies that there is any error ~~in~~ J. P. Stevens atty.  
in said record and proceedings ~~therein~~ for Appellee

John Sherren

vs

Robert Bloomer

Transcript

Filed April 29. 1850.  
L. Ireland Clk.

Fees for transcript of 7.40  
Certificate of sale 35  
Total 7.75

June Term 1850.

Robert Bloomer }  
28.                    } *S*  
John Shevill        } *m*  
Appellants & costs

Appeal from Jodavies.  
Just. appo.

fil. transcript. 15;	fil. fees. 5;	fil. costs. 5;	appn. 25;	th. comm 10;	.60
Rule to join in ma 25;	fil. abets. v. 20;	Est. argt. 25;	Subn. 25;		.95
Ord. taking time 25;	bill of costs 25;	copy 25;	Car & f. v. 25;		1.00
fil. & d. 15;	Supps. v. 10;	th. ju 125;	Transpt. v. 7.75;	sat. ju. 25;	9.50
				Att. f.	12.05

State of Illinois, ss.

Supreme Court—Third Grand Division, at Ottawa:

The People of the State of Illinois to the Sheriff of *Jodavies* County---Greeting:

WE COMMAND YOU, that of the goods and chattels, lands and tenements of Robert Bloomer you cause to be made the sum of twelve dollars and five cents, the amount of the foregoing bill, which is due and unpaid, and is a true copy from the Fee Book in my office; and hereof make due return in ninety days.

WITNESS, the Hon. SAMUEL H. TREAT, Chief Justice of our said Court, and the seal thereof, at Ottawa, this seventh day of December A. D. 1850.

*S. Heland* Clerk of the Supreme Court.



Bloomer vs Shemill

Fee Bill \$12.05

Receipt in full  
from R W Carson and  
money transmitted to  
Clerk of Supr Court by transcript & Docket fee  
Dec 16<sup>th</sup> 1850 My Johnson  
Atty

Robert Bloomer

28.            "            "            " } Appeal from J. D. Davis.  
John Sherrill    "            "            " } Just. app.

Appellus cuts

Apper. 25,	fil. & cert. janded 30,	fil. briefs 22,	20,	.75	
Ord. appg. 25,	fil. oper. 15,	Ent. just. & opinion 1.25,	Copy of just. 50,	2.05	
Ent. & seal 25,	Ent. just. in cuts 25,	Ord. pre extn. 25,	Sh. just. 25,	1.00	
Execution 25,	bill of cuts 25,	copy 25,	fil. & sh. 15,	Sh. ff. utn. 10,	1.00
Postage 20,	Ent. satisfaction 25,			.45	
				<hr/>	
				Amount \$ 5.25	

A true copy from my file book is taken & recorded therein  
L. Seland Clerk.

State of Illinois, ss.

Supreme Court, Third Grand Division, at Ottawa :

The People of the State of Illinois, to the Sheriff of *Jo Davis* County---Greeting :  
WE COMMAND YOU, That of the goods and chattels, lands and tenements, and real estate of

*Robert Bloomer* \_\_\_\_\_

you cause to be made the sum of *five* \_\_\_\_\_ dollars and  
*twenty five* — cents damages, and the sum of \_\_\_\_\_  
~~dollars and~~ \_\_\_\_\_ ~~cents~~ costs in the said Supreme Court, which \_\_\_\_\_

*John Shevill* \_\_\_\_\_

lately recovered against *his* before the Justices of our said Supreme Court, as appears to  
us of record, and make return hereof in ninety days.

**WITNESS**, the Hon. SAMUEL H. TREAT, Chief Justice  
of our said Court, and the Seal thereof, at Ottawa,  
this *Seventh* — day of *December*  
in the year of our Lord one thousand eight hundred  
and *fifty* . —

*S. Ireland* Clerk of the Supreme Court.

<sup>28</sup>  
Supreme Court  
Robert Bloomer  
by  
John Sherrill

Execution vs Pff.

Bill of Costs  $\$5.25$

Fee Bill  $\$12.05$

Amount  $\$17.30$

Rec<sup>d</sup> payment in full  
from R W Carson and  
amount transmitted to  
Clk of Supr Court by trans of

Handwritten Dec 16 1850

G M Johnson  
Atty in

Filed Dec. 19. 1850.  
V. Ireland Clk.

State of Illinois Ottawa County

Robert Blomer appellant Supreme Court  
by John Merrill appellee } 3<sup>rd</sup> Grand  
} Division

On receiving enclosed transcripts  
& five dollars advance fee the Clerk  
will issue process to Jefferson County  
according to law -

W L Leland Esq  
Clerk Sup Court

Hoge & Wilson attys  
for appellant

Robert Bloomer  
vs  
John Sherrill

---

Receipt

Filed April 29, 1850.  
A. Deland Clk.