No. 11914

Supreme Court of Illinois

Gray

vs.

Rawson

71641 7

No. 2
Martin Gray
vs
Calvin Rawson

1850

Prepared
E.D.

11914

State of Illinois
Sixth Judicial Circuit
Jo Daviess County

Proceedings in the Circuit Court of said County (under the Landlord & Tenant act of said State) at the term of said Court begun and held at the Court House in Galena on the second Monday in the month of March AD 1848 before the Hon Thomas C Browne one of the associate Justices of the Supreme Court and Presiding Judge of the said Sixth Judicial Circuit.

Martin Gray } Plaintiff
vs
Calvin Rawson } Defendant

Be it remembered that heretofore on the third day of March AD 1848 the said Martin Gray by Pratt & Higgins his attorneys filed in the Clerks Office of the Circuit Court for said Jo Daviess County his distress warrant against the said Calvin Rawson together with an Inventory of property levied upon by virtue of his distress warrant which said Warrant and Inventory are in the words and figures following to wit.

State of Illinois
Jo Daviess County } To the Sheriff or any Constable of the said County.

Distrain the goods and chattels of Calvin Rawson, Isaac Evans and William H Olney, or either of them which are liable to be distrained, wherever they may be found in the County of Jo Daviess where the said Calvin Rawson, Isaac Evans, and William H Olney reside, for the sum of Two hundred and Eighteen dollars and Seventy five cents, being for seven months rent accruing prior to the date hereon and subsequent to the 15th day of July AD 1847 and due from on the first

day of February AD 1848 for the premises now in possession of the said Rawson, Evans and Olney which said premises were demised by me to Charles H Wheeler by written lease, under whom or said Wheeler assignee or assignees the said Rawson, Evans & Olney hold possession of said premises and which are situated in said County –

Galena February 29th
1848 –

Martin Gray

Inventory of property levied upon by virtue of a distress warrant of which the above is a copy, viz: One set of double harness; one Cow; one Calf; two blankets and two bay horses – all the property of Calvin Rawson.

N Mansfield, Bailiff
for the Landlord Martin Gray –

Endorsed Filed March 3d 1848
Wm H Bradley Clerk

And afterwards viz on the same day viz the 3d day of March AD 1848 the said Martin Gray by his said Attorney Pratt & Higgins sued out of the Clerks Office of the said Circuit Court a writ of summons against the said Calvin Rawson on the said warrant & Inventory filed as aforesaid which said Summons is in the words and figures following viz.

State of Illinois }
Jo Daviess County } ss

The People of the State of Illinois

To the Sheriff of the County of Jo Daviess Greeting

We command you to summon Calvin Rawson to appear before the Circuit Court of Jo Daviess County at the next term to be holden at Galena on the 2d Mon-

day of March Inst. to answer Martin Gray in a proceeding under the Landlord and Tenant act of Illinois (Chapter 80 Revised Statutes) and have you then there this writ.

Witness William H Bradley
Clerk of the Circuit Court of Jo Daviess
County at Galena Illinois this 3d day
of March AD 1848
Attest Wm H Bradley Clerk

Endorsed. Served the within Summons this 3d day of March 1848, by reading the same to the within named C Rawson.
W P Millard Shff

And afterwards to wit on the 14th day of March AD 1848 in March term AD 1848 of said Circuit Court in the record of the proceedings thereof in said cause is the following entry to wit.

Martin Gray
vs
Calvin Rawson
} Proceeding under the Landlord and Tenant act.

The defendant by his attorney comes and moves the Court for a continuance herein for want of a declaration being filed, and also a copy of the instrument of writing on which this action was brought.

And afterwards to wit on the next day to wit on the 15th day of March AD 1848 in said March term of said Circuit Court AD 1848 in the record of the proceedings thereof in said cause is the following entry to wit.

Martin Gray
vs
Calvin Rawson
} Proceeding under the Landlord and Tenant act.

Now come on to be heard the motion

heretofore made by the defendant & his Attorney for a Continuance of this proceeding for want of a declaration and a copy of the instrument of writing on which this action was brought which motion after argument is overruled by the Court to which ruling and decision of the Court the defendant & his Attorney excepts.

And now the defendant & his Attorney moves the Court to set aside the proceedings herein for irregularity thin being a variance between the Summons issued herein and the distress warrant in the names of the parties. Which motion after argument is overruled by the Court to which ruling & decision of the Court the defendant & his Attorney excepts. And now come the parties & their Attorneys and the plaintiff & Attorney moves the Court to assess the amount due him in this behalf. and the Court after the examination of witness and the argument of Counsel thereon takes the same under adisement.

And afterwards to wit on the 17th day of March AD 1848 in said March Term of said Court in the record of the proceedings thereof in said Cause is the following entry to wit.

Martin Gray
vs
Calvin Lawson
} Proceeding under the Landlord & Tenant act.

Now at this day came the parties & their Attorneys, and the said Martin Gray & his Attorney moves the Court to assess and enter of record the amount of rent due to the said Gray from the said Lawson and unpaid. and after hearing the evidence and due deliberation the Court finds for the said Calvin Lawson that no rent is or was at the time of the levy of the distress warrant in this case due from him to the said Martin

Gray. It is thereupon considered by the Court that the said Martin Gray take nothing by his writ and that the defendant go hence without day and that he have and recover of the said Martin Gray his costs by him about his defence in this behalf expended and that execution issue therefor.

And afterwards to wit on the 18th day of March AD 1848 in said March term of said Court in the record of the proceedings therein in said cause is the following entry to wit.

Martin Gray
vs
Calvin Lawson } Proceeding under the Landlord & Tenant act.

The Plaintiff by his attorney moves the Court to set aside the finding herein and for a new hearing for reasons filed.

And afterwards to wit on the 20th day of March AD 1848 in the said March term of said ~~Court~~ Court AD 1848 in the record of the proceedings therein in said cause is the following entry to wit.

Martin Gray
vs
Calvin Lawson } Proceeding under the Landlord & Tenant act.

Now at this day came on to be heard the motion heretofore filed by the plaintiff by his Attorney to set aside the finding of the Court herein and for a new hearing which is overruled by the Court to which ruling and decision of the Court the plaintiff by his Attorney excepts.

[119143]

On the hearing of this proceeding the said Plaintiff Martin Gray by his Counsel made the following exceptions which were allowed &c

Martin Gray
vs.
Calvin Ruggles

In the Jo Davis Circuit Court
of the March Term 1848.
Proceedings under the
Landlord & Tenant act to

assess & enter of Record the amount of rent due the said Gray. &c It remains agreed that on the trial and hearing of this cause or proceeding the said Gray produced and read in Evidence the following lease "Agreement made this 23d day of May in the year of our Lord one thousand eight hundred & forty five between Martin Gray of the first part and Charles A Wheeler of the second part as follows, that the said Martin Gray for the considerations herein after mentioned hath leased, demised & granted, and doth hereby lease demise & grant unto the said Charles A Wheeler his Executors Administrators & Assigns Lots numbers seventeen Eighteen & Eleven in the City of Galena situated on Franklin Street in said City & known as the lots on which are situated the Public House known as the "Western Hotel" the lot on the opposite side of the street on which are situated the Public Stables attached to said Hotel, and also the lot on which is situated the Log House adjacent to said Public House on the west together with all the appurtenances & privileges thereunto belonging - To have and to hold the said lots 11, 17 & 18 the premises above described with the appurtenances for and during the term of Five years from the first day of June A.D. 1845 - And the said Charles A Wheeler for himself, his heirs, Executors &

[11914-4]

Administrators do the covenant and agree to pay unto the said Martin Gray his heirs & assigns the monthly rent of thirty one dollars and twenty five cents or at the rate of $375-00 per annum to be paid monthly on the first day of each month.

And the said parties for themselves respectively each with the other and their respective heirs Executors & Administrators do for the covenant & agree as follows to wit; the party of the second part takes the premises hereby leased for the & lease & only purpose of using the same for a place of public entertainment and as the buildings thereon situate are in several respects inconvenient, not sufficiently large and otherwise unsuited to the wants of a good Hotel it is therefore agreed by the said Gray that the said Wheeler may from time to time, during the said term of five years make such alterations & improvements in the buildings & grounds on said lots as may be necessary & useful for his use during his occupancy of them as aforesaid. The said improvements to be made, if any, at the cost & expense of the said Wheeler without reference to the said rent as aforesaid

At the end of the said five years the premises hereby leased are to be returned to the said Gray in as good condition as at present the ordinary wear & effects of the elements alone excepted

If at the end of the said five years any permanent & valuable improvements which were necessary to render the said premises a good & commodious Inn shall be claimed to have been made during his term by the said Wheeler it is hereby agreed by the said Gray that he shall be paid for the same whatever they are reasonably worth at that time to the said Gray as permanent and valuable improvements remaining

on the said premises - If the parties cannot agree upon the value of said improvements it is hereby agreed that the same shall be assessed by three disinterested persons one to be chosen by each of the parties and the third by the first two selected by their judgment the said parties hereby agree to abide - In witness whereof the parties to these presents have hereto put their hands and seals the day and year first above written -

Witness Al. Pratt } Alanson Gray (Seal)
& Thos Blair - } Chas. H. Wheeler (Seal)

The said Gray then called William H. Olney who testified that he knew of the said Ransom's occupying a part of the premises specified & described in the foregoing lease, that said Ransom occupied the same from about the first of January A.D. 1848 and that said Ransom has ever since continued to occupy the same - That said Ransom told him that he (R.) leased the same from one Benjamin R. Sheldon the agent for the premises aforesaid -

Henry Allenfield being called testified that the goods & chattels seized and inventoried herein were taken as the property of the said Ransom upon the premises described in the aforesaid lease for certain rent & damages therein reserved to the said Gray by virtue of a Distress warrant issued by Alanson Gray aforesaid & the copy whereof is filed in this cause which is in the words & figures following to wit "State of Illinois, } Douglas County } ss - To the Sheriff or any Constable of said County - Distrain the goods and

211914-5

Chattels of Calvin Runyon, Isaac Evans, and William H. Olney or either of them which are liable to be distrained, wherever they may be found in the County of Davies where the said Calvin Runyon Isaac Evans and William H. Olney reside for the sum of Two hundred & Eighteen dollars and seventy five cents being for seven months rent accruing prior to the date hereof & subsequent to the 15th day of July A.D. 1847 - and due to me on the first day of February A.D. 1848 - for the premises now in possession of the said Runyon Evans and Olney which said premises were demised by me to Charles H Wheeler by written lease under whom or said Wheeler, Assignee or Assignees the said Runyon Evans and Olney hold possession of said premises and which are situated in said County

Dated Gallatin Feb 29th 1848 - Martin Gray -

And said witness further says that said Assignment was made about two or three weeks since -

Landon Lawrence being called testified that the possession of the premises aforesaid was transferred & delivered to him, witness by Chas. H. Wheeler in said lease named, and that witness paid the said Gray, the rent reserved in the aforesaid lease & that he occupied the said premises as the Assignee of the said Wheeler, until sometime in October A.D. 1846 at which time he assigned said lease to one John S Hedges (Counsel for Defendt objected to witness saying anything about assignment) Witness further stated, that he transferred & delivered the possession

of the said premises to one Aldrich the agent of said Haleigh, to whom witness transferred his interest in said premises—

Benjamin R Sheldon testified that he received the possession of the said premises from the said agent of the said Haleigh, and that he continued to act as agent for said Haleigh for some time—

But afterwards and when witness leased ~~[illegible]~~ said premises to said Rawson as ~~before~~ hereinafter stated, he was not the agent of said Haleigh but was acting for another person who witness supposed was a claimant under said Assignee of said lease, but witness did not know for he had never seen the assignment—

That witness had continued in possession ever since the possession was delivered to him by the said agent of the said Haleigh

Witness further stated that as agent as aforesaid he leased a part of said premises to said defendant Rawson who entered & occupied the same—

Defendant Rawson then called Thomas Rawson, who testified that he was present when his father Calvin Rawson aforesaid contracted with Benjamin R Sheldon Esq. aforesaid, for the portion of the premises described in the aforesaid lease, which was occupied by s'd Calvin Rawson and which was about one fifth part of them, that his father was to have the use and occupation of the 2d part of the said premises which he occupied for seven dollars per month which he agreed to pay said Sheldon that his father took said premises from said

Sheldon at that date on the 22d day of December A.D. 1847 and that he leased the same from said Sheldon until the 22d day of March A.D. 1848 and no longer and that his father had paid said Sheldon before the levy of the Distress warrant herein all the rent that he contracted to pay up to the 22d day of March inst. - that there was nothing due said Sheldon for rent that he witness did not know of his father at any time agreeing to pay said Gray any rent all the interest witness had in said premises he Hatha, claimed to have by virtue of his said lease from said Sheldon —

William H. Olney testified that for a short time before & while said Ransom occupied part of said premises witness occupied a portion of one of the stables on said premises & that he leased the same from the said Sheldon & received the possession from him & had paid him all the rent he contracted to pay that he never had paid Gray any rent.

Isaac Evans testified that he had a short time before and during said Ransom's occupancy, occupied a portion of one stable on said premises & paid said Sheldon the rent but never had paid said Gray, that he leased from Sheldon — The foregoing was all the testimony given or heard in this cause or proceeding. And the court after the argument of counsel finds for the ~~Defendant~~ that he

rent was at the time of the levy
of said Distress warrant due from
said Remsen to said Gray, and
that the said Remsen is not liable
to the said Gray for any rent received
in the said case to Charles A Wheeler
& that his goods & chattels are not
liable to be distrained by reason
of his occupancy of said premises
to satisfy the same - To which finding
of the Court the said Gray by his Counsel
then & there excepted & moved the Court
to set aside the finding and for a new
trial or hearing herein & filed his written
motion with the reasons therefor
which motion & reasons are in the words
& figures following to wit; Martin Gray
vs. Calvin Remsen. Jefferson Cir
cuit Court. March Term 1848.
And the said Martin Gray comes
& moves the Court to set aside the
finding herein and for new hearing
& trial: First because the decision
or finding was contrary to law -
Second, because it was contrary
to evidence, and for other reasons
Ruth & Higgins Atty
which motion the Court overruled
and ordered that the finding be entered
of record and that the said Gray pay
the costs of this proceeding. To the over
ruling of which motion the said
Gray by his Counsel excepted & prays
the Court to sign seal & deliver
this his bill of Exceptions and
make it a part of the

Record which is done -
agreed by
the Court

Thomas C Browne Pltff

Endorsed Filed 31st March 1848
Wm H Bradley Clerk

State of Illinois
Jo Daviess County } ss

I Wm H Bradley Clerk of the Circuit Court in and for said County do hereby certify the foregoing transcript to be a true and correct copy from the record of all the proceedings which were had in said Court in said cause of Martin Gray vs Calvin Lawson.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at my Office in Galena this 31st day of March AD 1848

Wm H Bradley Clerk

Fees for this transcript
$5, 12½

Filed Sept. 28. 1848
Wm Clark Clerk.

Gray vs Lawson
Record.

The writ of error, to issue in this case, will be made to operate as a supersedeas, on the pltff. in error, with Hugh Boyle as security, entering into bond to the deft. in error in the penalty of $100. conditioned as the law directs - August 22nd 1848.

Saml. H Treat, one of the
Justices Sup. Court.

Morton Gray
vs
Calvin Rawson

In the Superior Court
June Term A.D. 1858

And the said plaintiff in error comes and says that in the record and proceedings in said cause, and in the rendition of the judgment there is manifest error in this.

1st The Court erred in overruling the motion of Pltf's Counsel for a new hearing.

2nd The Court erred in finding that there was no rent due from the said defendant to the said plaintiff at the time of the levy of the said distress warrant.

3rd The Court erred in deciding that Rawson was not liable to Gray for any rent accrued in said lease to Charles F. Whale.

4th The Court erred that the goods and Chattels were not liable to be distrained by reason of his occupancy of said premises to satisfy the rent for the same.

5th The Court erred in permitting the defendant to introduce any evidence on the motion made by Pltf's Counsel.

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for the act to express and entry of record the amount of rent due to the said Gray from the said Rawson.

6th The Court erred in permitting the deft. to introduce testimony tending to show that said Rawson was not the tenant of the said Gray.

7th The Court erred in rendering judgment against said plaintiff for costs.

8th The Court erred in finding for the deft. and in not finding for the plaintiff.

Campbell
Atty for Pltff in Error

And the said deft comes & defends and says in the Record & proceedings aforesaid there is no error &c

Wm Johnson
Defts Atty

Abstract

State of Illinois ss

Martin Gray vs Calvin Rawson } In Peoria Circuit Court 3d Judicial Division
To June Term - 1850
Error to Tazewell

This was a proceeding under the Landlord & Tenant act, commenced in the circuit Court at the March Term AD 1850. On the 3d day of said term Martin Gray by his attys filed his affidavit & warrant against said Rawson, together with an inventory of property levied upon by virtue of said warrant

The warrant directed the sheriff to levy on the goods and chattels of Calvin Rawson Isaac Evans and William H. Olney, for the sum of $218.75. for seven months rent then due to said Gray prior to the 1st day of February AD 1848. and subsequent to the 15th day of July 1847. For premises in the possession of said Rawson Evans & Olney, which said premises were demised by said Gray to Charles H Wheeler by written lease, under whom or under said wheelers assignees, the said Rawson Evans & Olney held possession of said premises. On the 3d day of March AD 1848. a summons was sued out of the said circuit Court against the

said Rawson, in the usual form, which was returned serve on the 3rd day of March AD 1850.

On the 14th day of March of the same term the Deft. moved the Court for a continuance for want of a declaration being filed, and also a copy of the instrument of writing upon which the action was brought, which motion was overruled by the Court, to which decision the Deft by his Counsel excepted. The Deft then moved the Court to set aside the proceedings for a variance between the summons and the distress warrant in the names of the parties, which motion was overruled by the Court, to which the Deft excepted.

And on the 17th day of March AD 1848. The said Pff. by his attorneys moved the Court to assess and enter of Record the amount of rent due to the said Gray by the said Rawson. and the Court after hearing the evidence found for the said Rawson, that no rent was at the time of the levy of the distress warrant due from him to the said Plaintiff, and entered a judgment against said Plaintiff for costs.

And on the 18th day of March 1850 of the same term the Pff entered his motion to set aside the judgment of the Court and a

for a new hearing, which motion was overruled by the Court, to which the Def by her attorney excepted.

The said Morton Gray by her atty presented a bill of exceptions containing all the testimony in the case which was allowed by the Court.

The Def produced and read a lease executed by said Gray to Charles H. Wheeler, entered into on the 23rd day of May 1845 in which lease it was stipulated that the said Wheeler should hold the premises therein described for the term of five years, at the rate of $375 per year payable monthly. Said lease contained no stipulation that in case the rent should not be paid as provided in the lease, ~~the lessor should enter and take possession~~ of the premises.

The Def then called a witness who swore that said Rawson had occupied a part of the premises described in said lease, and that Rawson had occupied said premises from the 1st January 1848. and still occupied them, and that Rawson told him ~~the~~ (witness) that he had rented them from one R. R. Sheldon as agent for the same. The plaintiff also proved by one Henry Mansfield that the goods & chattels levied upon by certain

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of said distrs warrant were seized and taken as the property of the said Rowson upon the premises described in said lease for certain rent in arrear to the said Gray. A copy of the warrant is contained in said bill of exceptions.

The plaintiff then called one Leander Lawrence, who testified that Whelen the original lessee had transferred and delivered to him the possession of the premises, and that he, Wilmot, had paid to the said plaintiff the rent reserved in said lease, and that he had occupied said premises as the assignee of said Whelen, the original lessee, until same time in October 1846. at which he assigned said lease to one John S. Tuleigh. Wilmot also stated that he had delivered the possession of said premises to one Adsit the agent of said Tuleigh, and to whom Wilmot transferred his interest in said premises.

B. R. Sheldon testified that he had received the possession of said premises from the agent of Tuleigh, and that he acted as agent for Tuleigh for some time. But when he, Wilmot, leased said premises to said Rowson he was not the agent of said Tuleigh, but was acting for a person whom he supposed claimed under the assignee of said lease.

witness further stated, that he has continued in possession since the possession has been delivered to him by the agent of said Ralph; and that he as agent had ~~[illegible]~~ leased a part of said premises to said Rawson, and that Rawson entered and occupied the same.

The Deft. then called a witness who proved, that said Rawson rented the premises from Shelden, that is an fifth, and agreed to pay $7.00 per month for the same. That said Rawson took possession of the premises on the 22d day of December 1847, and that he has extended to the 22d day of March 1848, and that said Rawson had paid said Shelden all the rent he had contracted to pay up to the 22d March ~~[illegible]~~ and before the levy of the Constables warrant was made.

William H Olney testified that he had leased a part of said premises from said Shelden, and had occupied them during the time, and before, said Rawson had occupied his part. And that he had paid Shelden the rent, and had never paid Gray any rent.

Isaac Evans testified that he had leased a part of said premises from said Shelden and that he had paid him the rent, but had never paid Gray any rent. This was all the evidence given in the cause.

The court found that the said Lopez at the time of the said levy of the said distress warrant there was no rent due from said Rawson to said Gray. and that the said Rawson was not liable to the said Gray for any rent accrued on the said lease to Chase & Whaler, and that his goods and chattels are not liable to be distrained by reason of the occupancy of said premises by the said Lopez. To which finding the said Gray excepted.

The question involved in this case is. whether a lessor is entitled to distrain the goods of a sub-tenant found on the premises for rent due on account of his occupancy of said premises.

Gray vs Rawson

Abstract

14 — 16

1400
10/4.20.00

Filed June 24. 1882.
L. Leland Clk.

Know all men by these presents that we Martin Gray and Hugh Boyd of the County of Jo Daviess and State of Illinois are held and firmly bound unto Calvin Rawson also of the same County and State in the penal sum of One Hundred Dollars current money of the United States for the payment of which well and truly to be made we bind ourselves, our hrs. executors and administrators jointly, severally and firmly by these presents.

Witness our hands and seals this 31st day of March A.D. 1848.

The condition of the above obligation is such that whereas the said Calvin Rawson did on the 17 day of March A.D. 1848 in the Circuit Court in and for the County and State aforesaid recover a judgment against the above bounden Martin Gray for the sum of Twelve 12/100 ——— Dollars Costs in a proceeding commenced by said Martin Gray in said Court against said Calvin Rawson under the Landlord and Tenant act, from which said judgment of the said Circuit Court the said Martin Gray has applied for and obtained from The Hon Thomas C Browne one of the associate justices of the Supreme Court of said State of Illinois a Supersedias to stay the execution of said judgment until a writ of error shall be taken and a hearing thereon had in the Supreme Court of said State. Now if the said Martin Gray shall duly prosecute his writ of error 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 open court this 31st day of March AD 1848

Martin Gray (Seal)
Hugh Boyd (Seal)

[11914-13]

Martin Gray
Plff. in Error
vs
Calvin Pawson
Deft. in Error

Bond

Filed Sept. 28. 1848.
S. Leland Clk.

State of Illinois } ss.
Supreme Court

The People of the State of Illinois,
to the Sheriff of Jo Daviess County.

Because in the record & proceedings, and also in the rendition of the judgment, of a plea which was in the Circuit Court of Jo Daviess County, before the judge thereof, between Martin Gray plaintiff and Calvin Rawson defendant, it is said that manifest error hath intervened to the injury of the said Martin Gray as we are informed by his complaint, the record & proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the justices thereof, to correct the errors in the same, in due form & manner, according to law; therefore we command you, that by good & lawful men of your County, you give notice to the said Calvin Rawson that he be & appear before the justices of our said Supreme Court, at the next Term of said Court, to be holden at Ottawa, in said State, on the first Monday of February next, to hear the records & proceedings aforesaid, & the errors assigned, if he shall think fit; and further to do & receive that the said Court shall order in this behalf; and have you then & there the names of those by whom you shall give the said notice, together with this writ.

Witness, the Hon. William Wilson, Chief justice of our said Court, & the seal thereof, at Ottawa, this 28th day of September A.D. 1848.

Lorenzo Leland Clerk of the ~~Circuit~~ Court of La Salle County & ex-officio Clerk of the Supreme Court of said State.

No. 3.

Supreme Court

Martin Gray = Plff in Error
vs
Calvin Rawson = Deft in Error

Sci. Fa. –

Filed Nov. 13. 1848.
L. Leland Clk.

Clk. Fd. 5 cts postge –

Executed the within sci fa by reading to the within named Calvin Rawson this 31st day of October AD 1848

Thos P. Pierce Sheriff
by Lathrop Comty Dep

Sheriffs Fee
Serving 50
Mileage 6/4
Returning 12½
68¾

Rec'd the from Plaintiff
Dec 1848

State of Illinois, Set.

The People of the State of Illinois,

To the Clerk of the Circuit Court of Jo Daviess County—Greeting:

Because in the record & proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of Jo Daviess County, before the Judge thereof, between Martin Gray plaintiff and Calvin Ransom defendant it is manifest error hath intervened to the injury of the aforesaid Martin Gray — as we are informed by his complaint, & we being willing that error, if any there be, should be corrected in due form & manner, & that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly & openly without delay, send to our Justices of our Supreme Court the record & proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa in the County of La Salle, on the first Monday of February next, that the record & proceedings being inspected, we may cause to be done thereon, to correct the error, what of right ought to be done according to law —

Witness, the Hon. William Wilson, Chief Justice of our said Court, & the seal thereof at Ottawa, this 28th day of September A.D. 1848.

S. Leland Clerk of the Circuit Court of said La Salle County & ex officio Clerk of the Supreme Court. =

[11914-15]

William Gray
vs
Calvin Ransom

Writ of Error

This writ of error is made a Supersedeas & is to be obeyed accordingly
S. Leland Clerk.

Filed Sept. 28. 1848.
S. Leland Clk.

SCIRE FACIAS.—FREE TRADER OFFCE, OTTAWA.

State of Illinois, } SS. **The People of the State of Illinois**
Supreme Court, }

TO THE SHERIFF OF Jo Daviess County.

Because in the record and proceedings, and also in the rendition of the judgment, of a plea which was in the circuit court of Jo Daviess county, before the Judge thereof, between Martin Gray plaintiff & Calvin Rawson

defendant it is said that manifest error hath intervened to the injury of the said Gray as we are informed by his complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to ~~the said~~ William Rawson & Thomas Rawson executors of the said Calvin Rawson deceased —

that they be and appear before the Justices of ~~our~~ said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the Second Monday in June A.D. 1850 ~~next~~, to hear the records and proceedings aforesaid, and the errors assigned, if they shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said William Rawson & Thomas Rawson — notice, together with this writ.

WITNESS, the Hon. Samuel H. Treat Chief Justice of our said Court, and the seal thereof, at Ottawa, this 18th day of June — in the year of our Lord, one thousand eight hundred and forty-nine.

C. Leland
Clerk of the Supreme Court.

Gray 3
v.s.
Rawson et al

Sup^r court Ottawa

Received the within by reading to the within named Wm Rawson July 6th AD 1849 and to Thomas Rawson the 7th day of July AD 1849

Sheriffs fees
Serving 1.00
Mileage 12 of Godfrey's Corners County $4.5
Return 12½
$1.25

Rec^d above fees from Morton Gray Novr 3 1849

M. B. Pierce Sheriff

M. B. Pierce Sheriff

Filed Nov. 8th 1849.
S. Leland Clk.

5 cts fees. pd. by Clk.

Gray leased to Wheler for 5 years from June 1. 1845 - Wheler assigned the lease - the assignee leased to Rawson for 1 or 2 months only, the part of the stable & 2 rooms in the house, not more than one fourth of the premises, & paid the rent agreed upon to the assignee - Gray distrained Rawson's goods on the premises for rent due from Wheler to him on his lease to Wheler, for the months Rawson leased from the assignee & pd. him rent.

"An under-lessee not having the whole of the lessee's interest assigned to him, cannot be sued by the original lessor for any breach of covenant contained in the original lease" 1. Chit. Pl. 56. (cites Dough. 183.) title to defendants in actions of contracts, where interest assigned &c. "An under-lessee cannot be sued by the lessor in covenant or debt on the lease". 2 Chit. Pl. 552b (note o) cites Holford vs Hatch Dough. 183. 445 Lowf. 766. / Declaration in covenant on leases by lessor against assignee of lessee. "But such derivative lessee (meaning an under-lessee) is not liable to the rent reserved on the original lease, otherwise than as his cattle may be liable to a distress for rent arrear to the original lessor, as any stranger's Levant & Couchant may be; for there is no privity between him & the original lessor as there is between a lessor & assignee; & therefore such a one though he take the whole, except one day shall not be liable to any of the covenants in the original lease". 3 Bac. Abr. 399.

Our Statute exempts from distress the property of any other person found on the premises Stat. 334. Sec. 7.

The Statute for use & occupation applies only to the case of a demise & where there exists the relation of landlord & tenant founded on some agreement either express or implied. 6 Johns. R. 46 Smith vs Stewart 1 Wend. R. 134 Feathistonehaugh vs Bradshaw

[11914-17]

But if that Statute did apply it would not embrace this case as Gray during the term of Wheeler's lease was not the owner of the premises, but Wheeler was the owner until the Expiration of his term.

The assignee of a lease who enters upon & occupies the demised premises, is liable for the rent, in like manner with the assignor. But the assignee cannot be made liable by action of debt for the rent of any part of the demised premises except that which has been possessed and enjoyed by himself, and the rent in such cases may be apportioned. The action being founded on the privity of Estate and not on the privity of Contract Norton vs Sutlee 1 H 384. 2 N Y Dig P 576 Sec 40

Deff's Authorities

When Relation of Landlord & Tenant once Established is attached to all who may succeed the tenant immediately or remotely. Lowe R. 123 - 7 Co. 325 - 3 Johns. R. 499 -

A Party entering into possession of Landlord consent or permission of tenant will be considered in respect to the rights of the Landlord as substituted in the place of the tenant by whose permission he entered. Bleecker vs Bellis 8 Wen. 175

& cases in N. York where the goods of strangers found on the premises have been held liable to be distrained for rent. but this is the common law which our statute has varied in this respect.

Rawson is only liable to his own landlord for rent, but even if he were liable to Gray the landlord of Wheeler, he would only be liable for a proportional part of the rent due under the lease to Wheeler in proportion to the part of the premises occupied by him - this would be the case if Rawson were the assignee of the lease

W J Johnson
Atty of Defts

Newton
ads
Gray