JOHN BLOOM, Appellant, *v.* CONRAD GOODNER, Appellee.

APPEAL FROM ST. CLAIR.

The Statute in relation to forcible entry and detainer requires that all the jury should sign the verdict. A mere clerical mistake, omitting the name of one of the jurors, can not operate to reverse a judgment. Under the act of 1819, actual force is necessary to constitute a forcible detainer, and the inquisition can be held at any other place than the premises.

It is discretionary with a court to hear evidence after the argument of a cause is opened by counsel.

Opinion of the Court by Chief Justice REYNOLDS. Goodner sued out his writ of forcible detainer, under an act of the legislature, entitled, "an act against forcible entry and detainer," from two justices of the peace of St. Clair county, and obtained a verdict and judgment of restitution. To reverse that judgment, Bloom, by writ of *Certiorari*, removed the case into the circuit court. On the hearing of the cause, the circuit court affirmed the judgment of the justices. There are many errors assigned for the reversal of this judgment, and those which we deem at all material or worthy to be noticed, we will consider, as follows:

1. Eleven jurors only signed the verdict.

2. The court in their instructions to the jury did not correctly define a forcible detainer.

3. The trial before the justices was held at Belleville, when it ought to have been held at the premises.

4. The court permitted new evidence to be given to the jury after argument of the cause had been commenced by the counsel.

The statute requires that all the jurors should sign the verdict. In the record and proceedings before the justices, it appears that twelve jurors were summoned and sworn, and the verdict appears to have been entered as the verdict of the whole; hence we are bound to conclude that the omission has been occasioned by the mistake of the clerk; we are the more confirmed in that opinion, when we find that this objection was not raised in the circuit court. It being then a mere clerical mistake, can not operate to reverse the judgment.

2. Did the justices correctly define a forcible detainer? We think the justices were rather cramped and contracted in their views of this subject. Actual force is necessary to constitute this injury, and such force as is spoken of in the statute. This is the more evident, when we consider that peaceable holdings over or detainers, are provided for in the

act entitled, "An act as to proceedings in ejectment, distress for rent and tenants at will holding over." However, as the jury have found that the detainer was committed forcibly, and with a strong hand, the instruction of the justices, though not sufficiently broad, has worked no injury, and ought not therefore to be cause for the reversal of the judgment. (1)

3. The trial was at Belleville when it ought to have been on the premises. It is a sufficient answer to this objection, that the law does not require that the inquisition should be on the premises; it is, therefore, discretionary with the justices.

4. New testimony was heard after argument of the cause was opened by counsel. This is at all times and before all courts matter of discretion—and before justices of the peace, much more ought that discretion to be indulged. We can not say that in this particular that discretion has been abused. (2)

Let the judgment of the circuit court be affirmed, and the defendant recover his costs.

Judgment affirmed.

SAMUEL TUFTS, Plaintiff in Error, *v.* THOMAS K. RICE, Defendant in Error.

ERROR TO MADISON.

An action of assumpsit was commenced in 1822, upon a contract made in 1812, to which the statute of limitations was pleaded. This statute was passed in 1819, and is no bar to such action.

It seems, that if the five years had run under the territorial government, it might have been pleaded in bar.

TUFTS brought his action of assumpsit, at the April term, 1822, of the Madison circuit court, against *Rice*, on a promissory note, for the payment of twenty-five dollars, executed by *Rice* to *Tufts*, at Boston, and dated the tenth day of April, 1812. To this action, *Rice* pleaded the Statute of Limitations, that he did not undertake or promise, within five years next before the commencement of the suit. To this plea, there was

(1) This is now changed by statute, Sec. 1, p. 582, Purple's statutes, Scate's Comp., 521, provides that if any person shall willfully and *without force* hold over, &c., they shall be deemed guilty of a forcible entry and detainer, or a forcible detainer, as the case may be.

(2) Affirmed in *Russell et al.* v. *Martin*, 2 Scam., 495. *Welsh et al* v. *The People*, 17 Ill., 339.