

8690

No. \_\_\_\_\_

# Supreme Court of Illinois

John W. Pulliam, et al

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vs.

Charles Pencennea<sup>u</sup>~~x~~

State of Illinois }  
St Clair County } Pleas and proceedings had  
in the Circuit Court within and for said  
County of St Clair at the September Term  
thereof A D 1859, to wit:

Be it remembered that on  
the 29<sup>th</sup> day of August 1859 the following  
Declaration was filed to wit:

State of Illinois } In the St Clair County Circuit Court  
St Clair County } Of the September Term A D 1859

Charles Penceameau Plaintiff in this  
Sust, by J. B. Hay his Attorney Complain of  
John W. Pulliam and Percipse Penceameau, Defend-  
ants in this Sust, of a Plea that they render unto  
him the Sum of one Thousand Dollars which they owe  
to, and unjustly detain from him.

For that whereas the said Defend-  
ants, heretofore, to wit: On the tenth Day of September,  
A. D. 1858, at the County of St Clair aforesaid, by  
their certain writing obligatory sealed with their seals,  
and now shown to the Court here, the date whereof is  
the day and year aforesaid, acknowledged themselves  
to be held and firmly bound unto the said Plaintiff  
in the Sum of one Thousand Dollars above demanded  
to be paid by the said Defendants to the said Plaintiff,  
Which said writing obligatory was and is subject to a  
certain Condition thereunder written to the effect following

to wit: If the above mentioned John W. Sullivan and Narcisso Ponceineau should within Six months from the Date of this obligation make or cause to be made a good and sufficient warranty Deed for three hundred and twenty acres of Land of the same value and quality as a tract of Land furnished them by the said Charles Ponceineau which is situated in Town (8) eight South Range (3) three West in Jackson County State of Illinois; Then the within obligation to be null and void, otherwise to remain in full force as by the said writing obligatory, and the Condition thereof, will more fully and at large appear. And the said Plaintiff avers that the said Land mentioned in the Condition of the said writing obligatory, as having been furnished them the said Defendants by the said Plaintiff, is described as follows, to wit: The North half of Section (31) thirty one in Township (8) eight South range (3) three West in Jackson County and State of Illinois, and that the same was and is of great value, to wit: of the value of fifteen hundred Dollars: And the said Plaintiff further avers that after the expiration of six months from the date of the said writing obligatory, he demanded a good and sufficient Deed of and from the said Defendants for three hundred and twenty acres of Land of the value and quality of the said Land mentioned in the Condition of the said writing obligatory. & Nevertheless the said Plaintiff in fact says, that although six months have long

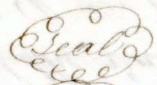
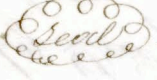
since elapsed from the date of the said writing  
obligatory, yet the said Defendants have not,  
(although often requested so to do) made or caused  
to be made a good and sufficient warranty Deed for  
three hundred and twenty acres of Land of the same  
value and quality as a certain tract of Land furnished  
them by the said Charles Penceinneau, which is  
situated in Town (8) eight South Range (3)  
three West in Jackson County State of Illinois,  
nor for any other Land of any kind what so ever; but  
they the said Defendants have hitherto wholly neg-  
lected and refused, and still neglect and refuse so  
to do. By means of which said several premises  
the said Plaintiff has sustained damages to a large  
amount, to wit: To the amount of fifteen hundred  
Dollars; whereby an action hath accrued to him  
the said Plaintiff to demand and have from the  
said Defendants the sum of one thousand Dollars  
above demanded. Yet the said Defendants (although  
often requested so to do) have not as yet paid the said  
sum of one thousand Dollars above demanded, nor any  
part thereof to the said Plaintiff; but have hitherto  
wholly neglected and refused, and still neglect and  
refuse so to do. To the damage of the said Plaintiff  
of fifteen hundred Dollars as aforesaid, and therefore he  
brings his Suit.

J. B. Hay atty  
for Plaintiff.

Copy of writing obligatory Due upon:  
 Know all men by These Presents, That we the  
 undersigned John W. Pulliam and Percipse Penceame,  
 saw both of the City of Belleville County of St Clair  
 State of Illinois are held fairly bound by these  
 Present- unto Charles Penceameau of the same City  
 in the sum of one thousand Dollars lawful money  
 of the United States of America, Now the  
 condition of this Obligation is such that if the  
 above mentioned John W. Pulliam and Percipse  
 Penceameau shall within six months from the date  
 of this Obligation make or cause to be made a  
 good and sufficient warranty Deed for three hundred  
 and twenty acres of Land of the same value and  
 quality as a tract of Land furnished them by the said  
 Charles Penceameau which is situated in Town  
 (8) eight South range (3) three West in Jackson  
 County State of Illinois, Then the within  
 obligation to be null and void otherwise to remain  
 in full force.

In Witness whereof we have herunto  
 set our hands and seals this the 10<sup>th</sup> Day  
 of September A. D. 1858.

Witness at

J. W. Pulliam   
 Signing. Wm W. Rich. Percipse Penceameau 

And on the same day following summons ~~is~~ issued

State of Illinois, }  
County of St Clair. }<sup>5</sup> ret. The People of the State of Illinois  
To the Sheriff of said County, Greeting

We command you to summon John  
W Pulliam & Narcisse Pencenneau if they can be found  
in your County, to be or appear in the St Clair Cir-  
cuit Court on the first day of the next term thereof, to  
be holden at the Court House in the City of Belleville,  
in said County, on the third Monday of September  
next, then and there to answer unto Charles Pencenneau  
of a plea that they render unto him the sum of \$1000<sup>00</sup>,  
which they owe to and unjustly detain from him to  
his damage as he says of \$1500<sup>00</sup>.

And not to fail under the penalty of what the law  
directs. And this writ you shall have at our said Court  
with your return entered thereon

Witness, William S. Thomas, Clerk of  
said Court, and the Seal thereof hereto affixed  
at Office, this 29. day of August A. D.  
One Thousand eight hundred and fifty nine  
Wm S Thomas Clk

Which said Summons was returned with the following  
endorsement thereon to wit: Served September the 5<sup>th</sup> 1859  
by reading to the within Defendants.

F. Mayer Sheriff St. C. C.

And on the 21<sup>st</sup> September 1859 it being the first Wednesday  
of the term the following Plea was filed to wit:

6

Charles Penneau }  
vs } Debt  
John W Pulliam & }  
Marcise Penneau }

And the said Defts come & defend the wrong & injury where and say the said writing obligatory in the said declaration mentioned is not their due & of this they put themselves upon the Country &c.

Underwoods

Atty. for Deft.

And the said plaintiff doth likewise

Hay atty for Plaintiff.

And at the September Term A.D. 1859 the following proceedings were had to wit:

Charles Penneau }  
vs } Debt  
John W Pulliam & }  
Marcise Penneau }

On the third Wednesday of the term comes the Plaintiff by Hay & Hoerner his attys and also come the Defendants by W H & J B Underwood their attys and the parties being now ready for trial the Court orders that a jury be called and twelve good men to wit &c are chosen and sworn to try the issue and a true verdict to render according to law and evidence. After hearing the evidence

and arguments of Counsel <sup>7</sup> the Jury retire to consider upon  
their verdict. When the Jury return into Court they pub-  
lish the following verdict to wit: We the Jury find  
for the Plaintiff \$ 744 <sup>30</sup>/<sub>100</sub>.

And now the Defendants by their said attys move the  
Court to set aside the verdict of the Jury which motion  
is denied by the Court to which decision of the Court  
the Defendants by their atty excepts. And now it is  
considered and adjudged by the Court that the Plaintiff  
recover of the Defendants the said sum of \$ 744 <sup>30</sup>/<sub>100</sub> as  
found by the Jury as aforesaid and also his proper costs  
to be taxed and that he have execution therefore.

And now the Defendants by their said attys prays an  
appeal to the Supreme Court which is allowed by the Court  
upon the Defendants filing their <sup>Bill of exceptions and</sup> appeal bond within  
forty days from this date in the sum of \$ 1500<sup>00</sup> with  
security to be approved by the Clerk of this Court.

And on the 24<sup>th</sup> October the following Appeal Bond  
was filed to wit:


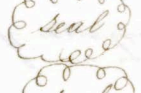
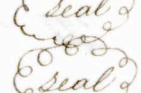

I know all men by these presents that we John W.  
Philliam & Percipe Penconneau John Pittenhouse  
Louis Mc L Kane of the County of St Clair and State  
of Illinois are held and firmly bound unto Charles Pen-  
conneau, also of the same County and State in the penal  
sum of Fifteen Hundred Dollars Current 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 20<sup>th</sup> Day of October A.D. 1859.

The Condition of the above obligation is such that whereas, the said Charles Pencenneau did on the 5<sup>th</sup> Day of October A.D. 1859 in the Circuit Court in and for the County and State aforesaid did receive a Judgment against the above bounden J. W. Pulliam and Narcisse Pencenneau for the sum of seven Hundred and forty four Dollars and thirty Cents and Costs of Suit. From which said Judgment of the said Circuit Court the said J. W. Pulliam and Narcisse Pencenneau have prayed for and obtained an appeal to the Supreme Court of said State. Now if the said J. W. Pulliam and Narcisse Pencenneau, shall duly prosecute their said appeal with effect, and shall moreover pay the amount of the Judgment, Costs Interest and Damages rendered against them. 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.

J. W. Pulliam	
Narcisse Pencenneau	
John Pittenhouse	
Louis McLane	

Given and approved by me at my Office this 20<sup>th</sup> Day of October A.D. 1859. W<sup>m</sup> J. Thomas Jlk  
Circuit Court

And on the 2<sup>nd</sup> November the following Bill of Exceptions was filed to wit:

Charles Peneonneau	} Debt
vs	
John W Sullivan & Co	
(Parcise Peneonneau)	}

Be it remembered that on the trial of this Suit before the Jury the Plff introduced Jas. L. D. Morrison who testified that the Land in question was in the poorest part of Jackson County. It was 'bit' Land and lay either on the edge of the bluff or in the bottom near Goose Lake and was worth about one Dollar an acre. He know of no Sales of Land in that neighborhood for some time. It might be sold to non residents for some \$5 an acre - but no person who know the Land would pay over \$1.00 an acre and Witness would not have it at any price. Did not know the Land in question at all, but Judge from his general knowledge of the part of the Country where it lay, that it was situated about where he has above stated, did not know from his own knowledge that it was bit land.

Henry Leidsheimer for Plff testified that he owned Land about a mile or a mile and a half from the Land described in Plffs bond, That the Land of witness was appraised at \$2 1/2 per acre, about fifteen acres of the Land of witness was improved & it lay farther from the bottom, than the Land of Peneonneau. That witness resides in Belleville and has been at his farm within a year

That he did not know the Land itself nor whether it was in the bottom or on the bluff. There were farms and Settlements in the neighborhood of it:

Louis P Pencenneau for Plff, testified that Narcisse Pencenneau told Plff shortly after he entered this tract for Plff as "bit" Land that it was worth \$5 or \$6 an acre. I know the value of the Land from what one of the Defendants has informed me he sold it for - Narcisse Pencenneau had specially selected it and sold it, as he informed me at a very high figure

This was all the material evidence in the case. After the verdict Defts moved for a new trial because the because the verdict was contrary to law and contrary to evidence which motion was overruled by the Court & to which Decision of the Court the Defts, at the time excepted and pray this their bill of exceptions may be signed, sealed & made a part of the record which is done, The verdict of the Jury was as follows to wit: We the Jury find for the Plff \$ 744 <sup>30</sup>/<sub>100</sub> & it is so entered in the Minutes of the Court

Wm JB Snyder Seal

State of Illinois }  
St Clair County } I the undersigned Clerk  
of the Circuit Court in and for said County of St Clair  
do hereby Certify that the foregoing is a  
true and complete copy of the Declaration

the Summons together with the Sheriff's endorsement thereon, the plea, the proceedings and Judgment of the Court, the Appeal bond and the Bill of Exceptions as the same are respectively on file and of record in said entitled Cause in my office

In Testimony whereof I hereto sign my name and affix the Seal of said Court at office in the City of Belleville this 4<sup>th</sup> day of November A D 1859  
Wm S Thomas Clerk

John W. Pulkham & } In the Supreme  
Narcise Penseigneur } Court of Illinois  
vs. } 1st Grand Division  
Charles Pencennean } Appeal from St Clair.  
And now come the appellants and say there is manifest error in the record and proceedings aforesaid in this to wit. 1<sup>st</sup> The court below erred in refusing to grant appellants a new trial. 2<sup>d</sup> In entering judgment against appellants on the verdict of the jury; wherefore they pray that the judgment below be reversed &c.  
Underwood Atty for appellants.

John W Pulliam &  
 Narcisse Penneque  
 vs.  
 Charles Penneque  
 appeal from St Clair

The Clerk of the  
 Supreme Court will  
 file this record &  
 docket the cause

Underwoods  
 Atty. for appellants.  
 Filed Nov 11. 1857.

St. Louis Mo City  
 Paid by J. W. Underwood \$3.00  
 \$3.10 Clerk's fees paid  
 by Pulliam W. S. Thomas

FIRST GRAND DIVISION.

FALL TERM, 1859.

JOHN W. PULLIAM, and NARCISSE PENCENNEAU, Appellants,

VS.

CHARLES PENCENNEAU, Appellee.

} Appeal from St. Clair.

PAGE 1 & 2. This was an action of debt commenced by appellee against appellants, and tried at the September Term, 1859, of the St. Clair Circuit Court.

“ 1. The plaintiff below sued in debt, claiming debt \$1,000—damage \$1,500. Declaration in the usual form on a penal bond dated 10th September, 1858, alleged to be given by defendants below to plaintiff below, with \$1,000 penalty—conditioned that if defendants below should convey to plaintiff below within six months 320 acres of land of same value as the N. 1-2 of Sec. 31, T. 8, S. R. 3 W., in Jackson Co., Illinois, which the said plaintiff below had furnished defendants below, then the bond to be void.

“ 6. PLEA—GENERAL ISSUE.

Oct. 5th, 1859. Trial by jury and verdict for plaintiff for \$744 30.100; motion for new trial overruled, and exception taken; judgment for plaintiff against defendants for \$744 30.100, and costs to be taxed, and that he have execution therefor.

“ 7. Appeal prayed, and allowed, upon filing bill of exceptions and bond within forty days from date, in the sum of \$1500, with security to be approved by the clerk. Oct. 24th, 1859, appeal bond filed and approved by clerk.

The bill of exceptions filed Nov. 2nd, 1859, shows the following testimony:

“ 9. J. L. D. Morrison testified that the land in question was in the poorest part of Jackson county. It was “bit” land, and lay either on the edge of the bluff, or in the bottom, near Goose Lake, and was worth about one dollar an acre. He knew of no sales of land in that neighborhood for some time. It might be sold to non-residents for some \$5 an acre, but no person who knew the land would pay over \$1 an acre; and witness would not have it at any price. Did not know the land in question at all, but judged from his general knowledge of the part of the country where it lay, that it was situated about where he had above stated. Did not know, from his own knowledge, that it was bit land.

“ 10. Henry Deidesheimer, for Plaintiff, testified that he owned land about a mile or a mile and a half from the land described in plaintiff’s bond; that the land of witness was assessed at \$2 1-2 per acre; about 15 acres of witness’ land was improved, and it laid farther from the bottom than Pencenneau’s. That witness resides in Belleville, and has been at his farm within a year; that he did not know the land itself, nor whether it was in the bottom or on the bluff. There were farms and settlements in the neighborhood of it.

Louis P. Pencenneau, for plaintiff below, testified that Narcisse Pencenneau told plaintiff shortly after he entered this tract for plaintiff as “bit” land, that it was worth \$5 or \$6 per acre. I know the value of the land from what one of the defendants has informed me he sold it for. Narcisse had specially selected it, and sold it, as he informed me, at a very high figure.

“ 11. The above was all the material evidence in the case. After verdict, defendants moved for a new trial, because the verdict was contrary to law, and because it was contrary to evidence. Motion overruled. Defendants then and there excepted; and appellants bring this cause here by appeal, and assign for error.

1st—The court below erred in refusing to grant appellants a new trial.

2nd—In entering judgment against appellants on the verdict of the jury.

**Brief:**

1st—The measure of damages in this case was the value of the land at the time it should have been conveyed.—[1 *Scam. R.*, 310; 2 *Id.*, 339; 12 *Ill. R.*, 193, 194.] The weight of testimony was manifestly that the land was worth \$1 per acre; whereas the jury allowed \$2 1-2 per acre. The statement of N. Pencenneau, as to its value, was only good against himself, and not against Pulliam, his co-defendant.—[19 *Ill. R.*, 172.

2nd—The verdict should have found the debt as well as damages. The court cannot amend such a verdict after the jury is discharged. This error is fatal.—[1 *Gil. R.*, 347; 2 *Id.*, 266, 3 *Id.*, 475; 4 *Id.*, 136; 11 *Ill.*, 59, 20 *Id.*, 120.

UNDERWOODS,

Attorneys for Appellants.

William & Pencenman  
vs  
Charles Pencenman  
Abstract & brief

No 38 - 3 -

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Nov Term 1859.

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Pelliam et al

vs

Percennan

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Appeal from St. John's

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Reverend Percennan

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