

8476

No. _____

Supreme Court of Illinois

Josiah Clark

vs.

John A. Morgan

71641  7

Donald Clark }
 " }
 John A. Morgan }

Trespas against

Be it remembered that on the
 17th day of December in the year 1835 at
 the December Special Term of the White Cir
 cuit Court the above entitled Cause came
 on to be heard before the Honorable Edwin
 Beecher and a Jury.

Writ

State of Illinois }
 }
 White County }

The People of the State of Illinois to
 the Sheriff of said County greeting
 We command you that you summon John
 A. Morgan if to be found in your County per
 sonally to be and appear before our Circuit
 Court on the first day of the next Term there
 of to be held at the Court House in Carlin in
 the first Monday in the month of April
 next to answer Donald Clark of a Plea of
 Trespas to his damage \$100 as he says and
 have you then this writ

Witness Solomon Jones Clerk of our
 {said} Court and the Seal thereof at
 Carlin this March the 7th 1835

Solomon Jones Clerk
 Entered as follows - Writ Donald Clark vs
 John A. Morgan - Executed by reading to the

within named John A. Morgan this 14th day
of March 1855. - Leaving 50 4 miles travel 20 -
returning 10 - 80. Wm. S. Eubank, Shiff H. Co.

Declarative State of Illinois

White County ¹⁸⁵⁵ White Circuit Court

April Term A.D. 1855

Dozials Court Plaintiff by John W. Lewis
his attorney complains of John A. Morgan
Defendant being summoned &c. of a Plea
of Trespass &c.

For that the said Defendant on
the 12th day of December in the year of our
Lord one thousand eight hundred and fifty
four and on divers other days and times
between that day and the Commencement
of this suit at the County and State aforesaid
said with force and arms &c. broke and
entered a close belonging to and being in
the Possession of the said Plaintiff situated
lying and being in the County of White
and State of Illinois and designated and
described as pt of the farms formerly owned
by Benjamin Smith and lying in the Big
Prairie East of the Leonard White Farm &
in the north west Corner of said Smith farm
measuring forty rods North & South & 80 rods
East & West South of & along side of the Lemery
Hay farm and known by the further des

- Capture of the Harriet M. Lewis or said
 Benjamin Smith or M^c Nally place and
 then and there pulled apart broke down and
 destroyed a great part to wit three rods of
 the fence of the said Plaintiff of and belong-
 ing to the said Close, and then and there
 with feet in walking trod down trampled
 upon Corn and destroyed the grass
 and Corn of the said Plaintiff of great val-
 ue to wit of the value of one hundred Dollars
 then and there growing and being
 And with Cattle to wit horses mares geldings
 Cows oxen heifers bullocks and Calves sheep
 hogs, and pigs eat up and depastured the
 grass, Corn hay stacks and Corn stacks of
 the said Plaintiff of great value to wit of
 the value of one hundred Dollars then and
 there grown growing and being in said
 Close. And with divers other Horses mares
 geldings Cows bullocks Steers heifers and
 Calves, sheep hogs and pigs and also with
 the wheels of divers Carts wagons and other
 Carriages crushed damaged and spoiled
 other the grass and Corn of the said Plain-
 tiff in said Close grown growing and
 being of great value to wit of the value
 of one hundred Dollars

And with the feet of the said horses mares

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and geldings oxen Bullocks &c and with
the wheels of the said Carts wagons and other
Carriages tire up & subjected damaged and
spoiled the earth and soil of the said close
of the said Plaintiff and also there and there
mowed and cut down the grass and stuck
ed and pulled off the Corn from the stalks
of the said Plaintiff green and growing
in said close. and there and there seized
took and carried away, and hauled away
the grass and Corn of the said Plaintiff
of great value to wit of the value of one
hundred dollars then and there in said
close green growing and being

And also with divers other wagons Carts
and Carriages and with divers other horses
mares and geldings oxen bullocks and steers
the said Defendant on another day to wit
on the 12th day of December A.D. 1884 and
on divers other days and times between
that day and Commencement of this
suit with force and arms &c entered the
said close of the said Plaintiff herein
before described by pulling down breaking
open and apart and destroying the
said Plaintiffs fence as herein before des-
cribed to wit at the County and Circuit
aforesaid. and so entering did there

and there cut down pull off and destroy
 take carry and haul away the grass stubs
 and Corn of the said Plaintiff of great value
to wit of the value of six hundred Dollars
to wit of the County and State aforesaid
 and other wrongs to the said Plaintiff
 then and there did in Contempt of and
 against the Peace and dignity of the
 People of the State of Illinois and to the
 great damage of the said Plaintiff and
 against the form of the Statute in such
 case made and provided

To the damage of the said Plain-
 tiff one thousand Dollars and therefore
 he sues to

John M. Lewis

for Pliffs-

To which said Declaration Defend-
 ant filed Pleas as follows 'viz'

"1st Plea" State of Illinois

White County

John A. Morgan

vs

Sorab Belmont

White Circuit Court

April term 1855-

Trespass &c

And the said Defendant by
 Writing his attorney comes and defends
 the wrongs injuries whereof and for Plea
 says he is not guilty of the said several tres-
 passes specified and set forth in the said

Plaintiffs declaration or any part thereof
in manner and form as the said Plaintiff
has against him Complaind and for trial
puts himself upon the Country &c

J & Whiting.

att. for Deft.

"2" Plea

John A Morgan

at

Trespers

Josiah Leach

In the White Circuit Court

April term 1855

And for further plea in this behalf the said
Defendant by leave &c says Actio non because
he says that the said Case in the Declar-
ation mentioned and in which &c was the
Case Soil and freehold of the said John A
Morgan tenet at the County aforesaid
wherefore the said John A Morgan in his
own right at the said several times when &c
committed the said several ^{supposed} Trespers in
the said declaration mentioned in the
said Case in which &c so being the Soil
Case and freehold of the said Defendant
as he lawfully might for the Cause of the
said which are the said several supposed
trespers whereof the said Plaintiff hath
above thereof Complaind against him
and this the said defendant is ready to
verify wherefore he prays Judgment

if the said Plaintiff ought to have or maintain
his aforesaid action thereof against
him &c

Whiting & Marshall

"3 Plea"

And for further plea in this behalf the
said Defendant says, that the said Plain-
tiff ought not to have or maintain his aforesaid
action against him because he says
that heretofore to wit on the eighth day of
January in the year of our Lord one thousand
eight hundred and fifty five before
Philip P. Keanter a Justice of the Peace in
and for said County, at the County of White
and State of Illinois a certain action
came on to be tried in which the said
John A. Morgan was Plaintiff and the said
Josiah Clark was defendant in which
said action all such and every of the said
several trespasses complained of in the
said Plaintiff's Declaration were litigated
adjusted and legally settled and a Judgment
rendered against this Defendant
for the sum of four dollars and fifty cents
and this he is ready to verify &c

J. R. Whiting for
Defendant

To which said Pleas the Plaintiff filed
Applications as follows viz

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Replication State of Illinois

White County,

White Circuit Court

Josiah Belant

August term 1885

vs

Trespers &c

John A Morgan

And the said Plaintiff by John M. Leach, his attorney for replication to the first Plea of the said Defendant comes and likewise does the same

And the said Plaintiff as to the said Plea of the said Defendant by him "secondly" pleaded as to the said several trespasses in the introductory part of that plea mentioned and therein attempted to be justified says that the said Plaintiff by reason of anything by the said Defendant in that Plea alleged ought not to be barred from having and maintaining his aforesaid action thereof against the said Defendants because he says that whilst the said Case was the Case and free hold of the said Defendant and before the said time when &c took on the 1st day of March 1884 took at the County, of White and State of Illinois the said Defendant demised the said Case with the appurtenances to the said Plaintiff to have and to hold

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the Return to the said Plaintiff for and during
and unto the full end and term of one
year from the time aforesaid and thence
next ensuing and fully to be completed and
ended by virtue of which said demise the
said Plaintiff afterwards and before the
time when so entered into the said lease
and became and was possessed from
thence until the said Defendant afterwards
and during the continuance of the said
demise took at the said time when so
of his own wrong, broke and entered the
said lease and committed the said
several trespasses in the introductory part
of the said "second" plea mentioned in
manner and form as the said Plaintiff
hath above thereof complained against the
said Defendant and this the said Plain-
tiff is ready to verify wherefore the said
Plaintiff prays Judgment and his damages
by him sustained by reason of the commit-
ting of the said trespasses to be adjudged
to him &c.

And the said Plaintiff to the said
Plea by said Defendant "thirdly," also plea
did say that said trespasses in said
Declarations mentioned were not committed
and adjudged as in said Plea Defendant

hath set forth, nor any part thereof and of
this the said Plaintiff puts himself upon
the Country, &c

John McClell

for Plaintiff

Rejoinder And to the Replication of Plaintiff to Defen-
ants "Second" plea above pleaded the said
Defendants for rejoinder thereto says that
said Defendant did not on the first day
of March 1854 demise said Clerk into
the appurtenances to said Plaintiff to have
& to hold the same for and during and
unto the full end and Term of one year
from the time aforesaid thence next en-
suing and to be fully complete and en-
ded and this he prays may be engaged
of by the Country &c

And to the Replication of Plaintiff to
Defendants "third" plea above Plead the
said Defendants for rejoinder thereto comes
and does the like &c

Whiting W. Brough for
Defendant

"Says" And the said Plaintiff to the Rejoinder
Rejoinder of Defendant to the Replication of said
Plaintiff to Defts 2d plea above Plead
comes and likewise doth the like &c

John McClell for Pltff

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And afterwards to wit at the apine term 1855 of the White Circuit Court the following order was had in said Cause viz Josiah Clark

vs } Trespas
John A Morgan }

Ordered that this Cause be Continued to

And again at the August term 1855 the following further order was had in said Cause "viz"

Josiah Clark }
vs } Trespas,
John A Morgan }

At this day comes the Defendant by his Attorney, and moves the Court for an order, requiring the Plaintiff to give security for Costs herein and the Court being fully advised of the inability of said Plaintiff to pay the Costs It is ordered that he be required to give security, for payment, of Costs, by 9 o'clock A.M. of Thursday to

And again at ^{the} ~~August~~ ^{September} term 1855. the following further order was had in said Cause "viz"

Josiah Clark }
vs } Trespas,
John A Morgan }

at this day, again comes the said Plaintiff by his attorney and presents his bond for Costs as required of him by order of this Court made on Yesterday which bond on being examined by the Court

Em-6

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is approved and ordered that the same be placed on file and the rule heretofore entered against said Plaintiff be discharged.

And again at December Special term of said Court held on Monday the seventh day of said term and 17th of said month the following additional order was had in said cause viz

Sosial Clark

vs

John A. Mergan

} Suspense granted

At this day came the Parties by their Counsel and the issues herein being made and joined Let a Jury And thereupon came a Jury consisting of William Walter Felix H. Miller Nicholas Pyle, Charles Oliver Simons H. Porter Alfred Key Kendall, Patrick Doonan, Charles William Andrew Connolly Isaac Davis Mark Shaw, and Samuel How twelve good and lawful men who being duly elected and sworn to the truth to speak upon the issues joined herein upon their oaths do say, "We the Jury find the Defendant not Guilty" Whereupon the Plaintiff by his attorney moves the Court for a new trial and arrest of Judgment, and the Court not being sufficiently advised took time so

And again on Friday the 11th day of said term and 21st day of said month the following further order was had in said Cause "viz"

Social Security

vs

Treppass guards

John A Morgan

At this day again came the Parties by their Counsel, and, the Court and the Court being now being sufficiently advised what Judgment, to render herein on the motion for new trial and in arrest of Judgment, herein entered on Monday last, It is ordered adjudged and decreed by the Court now here, that said motion be overruled, and said new trial dismissed and it is further ordered, and adjudged by the Court, that said Defendant recover of the said Plaintiff his Costs by him about his defence in this behalf, expended and that he have execution therefor

State of Illinois
White County

I Solomon Dorris Clerk of the Circuit Court in and for said County & State do Certify that the foregoing is a true and correct copy of all the papers and orders of Court had, in this cause as appears from the files & records of my office

Witness my hand and Seal of office
at Carmi this Oct 6th 1856

S Dorris Clerk

Josiah Clark
 vs
 John A Morgan }



Juspair quare &c

Be, it remembered, that on the
 17th day of December in the year of our
 Lord one thousand eight hundred and
 fifty five the above entitled Cause came
 on to be heard before the Honourable Edwin
 Becket & a Jury

And the issues ~~now~~ having been made and
found and a Jury impaneled, Plaintiff then
introduced Ems Hunt who being of lawful
age and being duly sworn according to
Law deposes as follows

Ems Hunt In the Spring of 1854 heard John A Mer-
gans say he had rented 20 acres of his ground
to Josiah Clark witness knows that Clark
was in possession of part of Mergans farm
& cultivated it in view the lands cultivated
by Plaintiff situated in Big Prairie in White
County 1/2 mile north of the road leading
from Cassin to Williams Ferry in the Big
Hatch both parts in White County, Illinois
and land lying on east side of the lane
running north between the lands of Judge
Wilson and said John A Mergans

Josiah Clark Plaintiff then introduced John Clark
who being of like lawful age and being
duly sworn says,

In the Spring and Summer of 1854
he cultivated lands belonging to John A Mer-
gans lying in Big Prairie in White County,
that Josiah Clark likewise cultivated 20
acres each of said lands lying side and
side that the land Clark cultivated was
situated 1/2 mile north of the road leading
from Cassin to Williams Ferry in said

about, and east the lane running north
between the lands of Judge Wilson and
said Morgan and immediately alongside
of said Lane and lying in the north west
corner of said Morgan's farm that said
land was cultivated in corn in said year
by said Clark

Plaintiff then introduced Andrew Bowen
who being of like lawful age and sound
senses,

A. Bowen That in the Spring and Summer of
1854 he saw Josiah Clark at work in the
farm of Morgan in White County and
in the Big Prairie farm now owned by
said Morgan but known as the Lewis and
the Mc Nally farm the land cultivated by
Clark lies situated $\frac{1}{2}$ mile north of the
road leading from Currie to Hillier's
Ferry and east of and along side of a
lane running north & south between
the lands of Judge Wilson and the said
Morgan he further states that said lands
were cultivated in corn by said Clark
he also saw Hozehead's means at work there
does not know whether he was in part-
nership with Clark or not, says the fence
around the farm was only an ordinary
one But as good in the fall as in the Spring

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Saw some Rigs in the fall of 1884 in said field does not know where they were know the corn in the field after men others were done gathering corn.

Thomas Hoddery was then introduced by Plaintiff who being of like lawful age and seven days.

Thos. Hoddery In Decr 1884 he was employed by Morgan to assist him in gathering Corn they gathered in the field cultivated by Clark, Clark was not with them the corn was hauled to the house of Morgan says they hauled three or four loads Clark, it was three they hauled, wagon used was Morgan does not know how much it held

John Hoddery of like lawful age was then sworn for Plaintiff who says

John Hoddery In Decr 1884 he was employed by Morgan to assist in gathering Corn gathered in field owned by Morgan but cultivated that year by Clark only assisted in gathering a part of a load when he was called away, wagon used to haul corn was Morgan does not know what number of Bushels it would hold;

Plaintiff then introduced Alexander Means of like lawful age who being duly sworn says,

day means Hee was present in Decr 1854 at a time when
 Daniel & Jones as Special Constables and
 said Morgan came into the field that Clark
 cultivated belonging to Morgan and at a time
 he was assisting Clark to gather Corn when
 said Jones for Morgan laid a Landlord
 warrant on the Corn then standing in the
 field that they were gathering in Morgans
 wagon that he assisted in measuring it
 that Morgan made the Calculation and
 said it held $23\frac{3}{4}$ bushels that they after that
 time gathered Corn and hauled to Mor-
 gans to pay rent that in the evening
 Morgan said one more load would
 overspay the rent of bushels that the other
 load was hauled to Morgan, that 10 rows
 of Corn made a load for the wagon and
 that when the rent was paid 87 ears were
 left by Clark standing in the field thought
 it a fair average of what they had gathered
 Lorenzo Clark of like lawful age was then
 introduced by Plaintiff who being sworn says

& Clark Hee was present assisting Lorenzo Clark
 to gather Corn when Daniel & Jones in Decr
 1854 laid the warrant he was also present
 shortly afterwards when the wagon was mea-
 sured heard Morgan say it held $23\frac{3}{4}$
 bushels heard him (Morgan) say in the

evening one mule load would overpay him
his rent 9 bushels helped to haul that load
to Morgans crib next morning and after
hauling said load there was left in the
field 70 rows ungathered, seen a man
(afterwards) living with Morgans afterwards
in the field and helped to gather one load
and haul to Morgans.

John Giles was then introduced who being
dearly sworn says,

Ans Giles In the month of Decr 1884 he seen a man
coming from towards Morgans house
could not say who he was - followed by
a number of cattle some of which he knew
to be Morgans. See the man pull down the
fence and shortly after seen cattle he knew
to be Morgans in the corn standing in the
field cultivated that year by Beland could
not say what damage they done.

Says the custom of renting in the Big
Prairie is from the first of March to the
first of March where no contract is made
to the contrary says a cow was worth ⁱⁿ ~~about~~
full ^{of 54} 50 or 60 cents per bushel.

Plaintiff then introduced Hozy Meas
Meas who being of lawful age and seen
says,

Hozy Meas
28471-107

That Beland rented 20 acres of land

from Mergem in the Spring of 1884 and that he rented a like number of acres of Judge Wilson that they cultivated together each to have half they both raised.

In the fall after having gathered part of the Corn on the ground Clark rented a trial was had before Philip P. Hunter JP. about the rent due from Mergem to Mergem and that after said trial he thinks 15 ears of Corn were still standing in the field "And this was all of Plaintiff testimony"

Defendant then introduced Daniel S. Jones as a witness who being of lawful age and sworn deposes and says

Daniel S. Jones He as Special Constable being a land lord warrant in the Corn raised in the farm of Mergem by Clark in the year 1884 was out being in Decr 1884 that Mergem and Clark then and there had a conversation in which Clark said he was willing the Corn he had delivered Mergem should go to pay him Corn he Clark had borrowed of said Mergem and Mergem said if he would do so he Mergem would deduct one third of the rent Clark was to pay making it 6 $\frac{2}{3}$ bushels per acre instead of ten which was the first contract, which was

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agreed to by both parties Alexander Means
& Lorenzo Clark were present in the field
at the time assisting Josiah Clark to gather
Cem - which was all the Evidence introduced by Plaintiff

The Defendant then introduced the Deeds
of Philip P. Houghton J.P. which was permitted
by the Court to be read which set out facts
as follows "viz" To which Plaintiff then then excepted

"Deed J.P." John A. Morgan

or

} distress warrant for \$29

Josiah Clark } issued 13 Dec 1854

To David L Jones Constable return
red Dec 14 1854 find upon 20 acres of Cem
standing in the field David L Jones Special
Constable - Dec 22^d 1854 a Commission return
made in the 30th Inst at 1 o'clock P.M. Decem
ber 22^d 1854 Service acknowledged by Josiah
Clark the Defendant, Dec 30th 1854 the
Parties appeared and upon the oath of
the Plaintiff the Case is continued until
the 6th of January 1855 at 10 o'clock A.M.
- January 6th 1855 the Parties appeared
& upon the oath of the Defendant this Case
is continued until the 8th Inst at 10 o'clock
P.M. - January 8th 1855 the parties appear
ed & the Defendant demanded a Jury
whereupon Comes a Jury Jurist Myraell
William Levi Ho Chapman Samuel

Ray Kendall Francis M Blackford Jesso
 Lebery & James to Stokes who being elec-
 ted tried and sworn brought in the fol-
 lowing verdict "The the Jury find for the
 Defendant \$450." whereupon it is adjud-
 ged that the Defendant have Judgment
 against the said John A Morgan for
 the sum of \$450 Cents damage & also per
 Cents of cost

Defendant then introduced
 Philip P Hunter Esq, who being sworn Def-
 endant was permitted to ask him the
 following questions viz "To which Off the excepts

P.P. Hunter "If upon the trial before you upon the
 8th day of January 1835 between John A
 Morgan & Josiah Clark tried before you
 as Justice of the Peace Clark claimed all
 the Corn that Morgan had gathered him-
 self and all that Clark had gathered and
 delivered to Morgan as an off set against
 Morgan for rent

"Answer" "I do understand it"

To which question & answer Plaintiff ^{then} excepts

Which was all the Evidence
 offered by Defendant, The Plaintiff then
 asked the Court to instruct the Jury as
 Plaintiff follows viz which was done

Instructions

No 1

That if they believe from the evidence that there was a renting by Morgan to Clark and that during the time Clark was entitled to the possession of the premises laid in the Declaration the Defendants Morgan entered upon the same and took therefrom the Corn standing and growing or grown without the permission of Clarke or without sufficient legal authority, then the Jury should find the Deft guilty, and assess such damages as the Plaintiff is entitled to recover taking the value of the Property, as the basis of the assessment of damages. Given

No 2

That under a distress for rent it is not within the Jurisdiction of a Justice of the Peace to investigate any other matter without the express consent of the Party sought to be charged and any other investigation by Justice or Jury is unwarranted and will not estop the party from afterwards proceeding from the Cause investigated Refused to which refusal ^{then} Plaintiff Excepted Refused -

No 3

The Court also instructs the Jury that if after Morgans rent was paid there remained any part of the Corn in the field ungathered & Morgan took it without the assent of Clarke then the Jury will find

find the damages amount or value thus taken in damages for Pltffs (unless the Pltff has released said Deft therefor or unless there has been a former investigation in a court having Jurisdiction thereof, of said trespasses & a Judgt entered thereon) "Given"

N^o 4

If after the issuing of the distress warrant by Morgan or Clark Morgan without the authority of Clark took the Cows from the field by himself or his agents & not in pursuance of authority, vested by the warrant then he was guilty of trespass and liable in damages to the value of the Cows taken "Given"

N^o 5

If Morgans Cattle were turned into Clarks field by his (Morgans) authority, and without Clarks permission during the time Clark had the right to enjoy the possession (if they believe from the evidence he had such right) then the Jury will find the Defendant Guilty, and assess his damages & if the Proof does not show the amount of injury they should find Nominal damages "Given"

N^o 6

It must appear from the Proofs in this Cause that the trespasses complained of were considered by the Jury in the trial before the J.P. or they are it is no bar here "Given"

No 7 If the ~~Pl~~ Defts Plea allidges a Judgt in trespass in some former trial as a bar to this action such Judgt shoud appear of record or the Plea is not sustained

"Given"

No 8 The Court instructs the Jury that the Book of P P Hunter introduced is conclusive as to the Cause of actions litigated between Beland & Morgan before Justice on the 8th July 1885

"Given"

No 9 That the Judgt of the Justice is a bar to any claim for rent on the part of Morgan in this trial

"Given"

No 10 If Beland ever owed shoud be indebted to Morgan for rent it could not be set up to defeat this action (if a trespass is proven to have been committed by Deft)

"Given"

No 11 If a Landlord enter upon the premises of the tenant during the time the tenant has the right of enjoyment and such entry is unlawful it is a trespass and if Morgan has so entered upon the premises used by Beland the Jury will find him guilty

"Given"

No 12 That if the trial before Hunter Justice was by Jury the answer of the witness Hunter, as to what his understanding

was is not testimony but the Question as to whether the Jury in their retirement considered any other matter than the record indicates should be shown by some one or more of the Jury themselves

Refused to which refusal ^{the} Plaintiff Excepted "Refused" which were all the instructions asked for by Plaintiff.

The Defendant then asked the Court to instruct the Jury as follows "viz"

No. 1 If the Jury Believe from the evidence that in the trial before Esq. Hooper in the 8th of January, the Plaintiff took claimed as an offset to Morgan's demand against him land for rent all the Corn proven to have been taken by Morgan & delivered by land and that the same was allowed as an offset in said suit then the verdict should be for the Defendant as to the taking of the Corn unless the Plaintiff has proven trespasses committed by Defendant since the trial before said Justice "Ginn"

To which Instructions Plaintiff ^{then} Excepted which were all the instructions asked for or given by the Court in the Cause

Whereupon the Jury then retired to consider of their verdict, and after consultation returned the following verdict

2 } "If the Jury find the Defendant not Guilty"
The Plaintiff then entered a motion for
a new trial, which motion was over-
ruled by the Court, and Judgment entered
in the verdict; To the overruling of
which motion Plaintiff then and there
excepted, and tenders this his Bill of
Exceptions and prays the same may
be signed sealed and allowed a part of the
Record in the Cause which was done
accordingly.

Edwin Beecher. Seal

Isiah Clark,
Plaintiff in Error

John A. Morgan
Defendant in Error

Error to White

~~_____~~

Clark Supreme Court
will please issue writ
of Error, in the above
cause, and send fa-
cias directed to the
Sheriff of White Co.
against the said
defendant in error

J. Nelson & Son
for Plaintiff in Error

Filed 22nd October 1858.

A. Johnston Ck

Paid on Return \$5.00
" " " " " " 3.00
\$8.00

Josiah Clark plaintiff in error

vs error to White

John A. Morgan Defendant in error

In the Supreme Court State of
Illinois first Grand Division at St. Louis
November term 1858

On this day the plaintiff by Nelson his
attorney & says that in the record &
in the condition of the Judgment aforesaid
process aforesaid, there is manifest
error in this that the Circuit Court
of White County in the proceeding
aforesaid rendered Judgment in favor
of the deft in the Court below whereas
by the law of the land the Judgment
of the said Court ought to have been
in favor of the pless & this in the said
pless ready to verify. And for assign
errors specially on the record aforesaid
the pless says that the Circuit Court
erred ^{first} in refusing to grant a new trial
and in overruling the pless motion
for a new trial, because first, the verdict
of the Court below is contrary to Law
secondly because the verdict is contrary
to evidence and thirdly because it is
contrary to Law & evidence
secondly the Circuit Court of White County

erred in refusing the instructions asked
for by plea and giving the instructions
asked for by debt.

and for these & other
errors in record & process aforesaid
& in the rendition of the Judgment
aforesaid the Circuit Court of
White County manifestly erred
whereupon the plea prays that the
Judgment aforesaid may be reversed
& held for naught.

W. S. Lumberjackoff
Pro

Josiah Clark

" "

John A. Morgan

vs
vs to what

Supreme Court

First Grand Division

November term 1838

Josiah Clark Plaintiff in Error

vs

John A Morgan Defendant in Error

Respan. 10

The Clerk will please issue
summons in the above entitled cause
directed to the Sheriff of Wabash County,
and returnable at the November term
1838 of said Court

and oblige

Nelson Hovey

In Office in Error

Supreme Court
First Grand Division
November term 1858.

Doctah Clark

vs

John A. Morgan

Precepe

Jiled Oct. 22. 1858.

N. Johnston CM

**IN THE SUPREME COURT—STATE OF ILLINOIS—FIRST GRAND
DIVISION—TO NOVEMBER TERM, A. D. 1858.**

ROWLEY, SMITH & Co., Appellants, }
vs. } Appeal from Washington.
BOND, GRAY & SMITH, Appellees. }

ABSTRACT OF APPELLANT'S CASE.

The appellants filed their bill in the Circuit Court of Washington county on the Chancery side of said Court, alledging that the Appellants were, excepting Appellant Post, non-residents of this State. That the Appellee McShane and several others sued the appellants before a Justice of the Peace. The appellee, James Smith, the said Justice, the appellants being all, except said Post, absent from the State at the time said suits were commenced, and were absent all the time until the judgments were rendered against them on appeal in the Circuit Court.

Post only appeared, the Justice rendered judgment in favor of the appellee, McShane, Lewis, Dampsey, Dorsey and Cain, and appeals were taken by said Post in all said suits without any knowledge of his doing so, on the part of the other appellants, and without any authority from them whatever.

That Post had witnesses subpoenaed on his behalf, and employed an attorney to defend the suits of appellees which suits were brought on open accounts and had been called up by the said Justice, beforewhom the suits were commenced and who knew they were unjust.

That at the Circuit County of Washington County held in October 1856, by contract between the appplees and their attornies, and the attorney of said John L. Post, and without his knowledge or consent, and without a trial by jury or before the Court, the judgments of Justice were all affirmed with full costs in each case.

That the witnesses in all the above cases were the same—the said Justice being one of them, and claimed his attendance, and execution has been awarded on said judgments of said Circuit Court and levied on the property of Smith, one of the appellants. The appellants charge judgments af said Circuit Court to be a fraud upon them.

And that neither Smith nor any of his co-appellants knew or consented to, or in any manner authorized said judgment of the Circuit Court, an injunction and a new trial or relief was prayed for and an injunction awarded at the March term 1858, of the Washington circuit court. On motion of appellees the injunction was dissolved and the cause dismissed at costs of appellants.

The appellants prayed an appeal to this Court, and assigns for error the decree of the Washington Circuit Court, dismissing cause and refusing appellants time to file a sufficient injunction bond.

R. S. NELSON, for Appellants.

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Regrate time to file a sufficient injunction bond.

JOHN B. NELSON, for Appellants.

JOHN B. NELSON, for Appellants. The appellants prayed an appeal to this Court, and assigns for error the irregularity of the Circuit Court, dismissing the case at costs of appellants. On motion of appellants the March term 1858 of the Washington Circuit Court. On motion of appellants a new trial or relief was prayed for, and an injunction awarded to them. And that neither Smith nor any of his co-appellants knew or consented to the Circuit Court to be a fraud upon them.

And that neither Smith nor any of his co-appellants knew or consented to the Circuit Court to be a fraud upon them. The appellants charge judgments of said Court, one of the appellants. The appellants charge judgments of said Court, one of the appellants. The appellants charge judgments of said Court, one of the appellants. The appellants charge judgments of said Court, one of the appellants.

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THE SUPREME COURT—STATE OF ILLINOIS—FIRST GRAND
DIVISION—TO NOVEMBER TERM, A. D. 1858.

STAIN
PRESS

STATE OF ILLINOIS, }
SUPREME COURT. } ss.

First Grand Division

THE PEOPLE OF THE STATE OF ILLINOIS;

To the Sheriff of *Wabash* 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 *White* County, before the judge thereof; between *Josiah Clark, Plaintiff*

and John A. Morgan

defendant, it is said that manifest error hath intervened to the injury of said *Josiah Clark* 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 Mt. Vernon, 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 *John A. Morgan*

that he and appear before the Justices of our said Supreme Court, on the first day of the next term of said Court, to be holden at Mount Vernon, in said State, on the *first Sunday after* Second Monday in November next, to hear the records and proceedings aforesaid, and the errors assigned, if *he* 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 *John A. Morgan* notice; together with this writ.

John D. Coates

Witness, the Hon. ~~SAMUEL H. TILLEY~~, Chief Justice of our said Court, and the seal thereof, at Mount Vernon, this *twenty second* day of *October* in the year of our Lord, one thousand eight hundred and fifty-*eight*.

Joseph Johnston
Clerk of Supreme Court.

Executed by reading the same to the within named
John A. Morgan this 28th day of October
O. D. 1858

STATE OF ILLINOIS
County of Madison
Charles Cugua
Sherriff of Madison Co. Ills

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Josiah Clark
Plff. in Err
vs } Sec' fa

John A. Morgan
Def. in Err.

Sheriff's Fees
Serving 50
Returning 10
Postage 3
63



Witness my hand and seal of office this 28th day of October 1858
Charles Cugua
Sherriff of Madison Co. Ills

STATE OF ILLINOIS
SUPREME COURT,

SS. *1st Grand Division* WRIT OF ERROR.
THE PEOPLE OF THE STATE OF ILLINOIS;

To the Clerk of the Circuit Court for the county of *White* GREETING,

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of ~~*Jefferson*~~ *White* county, before the Judge thereof, between

Josiah Clark — — — — —

plaintiff, and *John A. Morgan* — — — — —

defendant it is said manifest error hath intervened, to the injury of the aforesaid *Josiah Clark* — — — — —

as we are informed by *his*

complaint, and we being willing that error, should be corrected if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly without delay, send to our Justices of the Supreme Court, the record and 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

Mount Vernon, in the county of Jefferson, on the *first Sunday after the 2^d Monday of November* next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law:

John D. Coaton
Witness, the Hon. ~~WALTER B. STATES~~ Chief Justice of our said court, and the seal thereof, at Mount Vernon this

twenty second day of *October*,

in the year of Our Lord One Thousand Eight Hundred and Fifty-*eight*.

Noah Johnston
Clerk Supreme Court.

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Josiah Clark
Puff in Ann
as } Mitferrin

John A. Morgan
Duff in Ann

Issued and filed
22. October 1858.
A. Johnston Cll

IN THE SUPREME COURT—STATE OF ILLINOIS—FIRST GRAND
DIVISION—TO NOVEMBER TERM, A. D. 1858.

JOSIAH CLARK, Plaintiff in Error,

vs.

JOHN A. MORGAN, Defendant in Error.

} Error to White.

Page 1. Action of trespass, quare clausum fregit, in White Circuit Court, tried before Beecher, Judge and jury, at a special term of Court, held in December, 1855.

Page 2. Pl'ff. complained that the def't himself and by his agents, servants, cattle &c., broke and entered his field and had destroyed the corn &c. of the pl'ff. to his damage of \$100. Def't pleaded first, the general issue. 2d. Freehold. 2d. A former trial in bar. Issue was taken on the first plea. The pl'ff. replied to the 2d plea, a demise from the 1st of March for one year, during which the alleged trespasses were committed, which the def't. traversed. To 3d. plea the pl'ff. replied traversing the facts set up in the said plea by the def't.

Page 15. Enos Hart, Jno. Gaines and A. Bowan, testified that Clark occupied the field in which the supposed trespasses were committed, at the time when, &c.,—that is to say, in the month of Dec. 1854, and said Bowan stated that he saw pigs in the field in the fall of 1854, but did not know whose they were, and that he knew there was corn in the field after most others were done gathering.

Page 17. Thos. Hodderly hauled corn out of field in Dec. 1854 for Morgan, 3 or 4 loads—3 loads certain. And John Hodderly assisted Morgan in gathering corn in said field; had Morgan's waggon; had gathered half a load when called away; it was the same field cultivated that year by Clark.

Page 10. Alexander Means stated that he was present in Dec. 1854 when warrant was sued on Clark's corn—was assisting Clark to gather corn—they had Morgan's waggon, which held 23 3-4 bushels. They afterwards hauled corn to Morgan's, to pay rent. In the evening of same day, Morgan said one more load would overpay rent 9 bushels; the other load was hauled to Morgan's. 10 rows made a load, and when the rent was paid there were 87 rows left standing in the field. It was a fair average of what they had gathered. Page 19. L. Clark deposed to same facts, and that he saw a man who was at the time living with Morgan, afterwards in the field.

John Giles, in Dec. 1854, saw a man coming from Morgan's with cattle following him, go to field and let down fence and let cattle into field. Did not know cattle, for certain, but took them to be Morgan's.

Page 20. Hiram Means stated that Clark rented the field of Morgan, and that there was 15 rows of corn standing in field after the trial between Clark and Morgan before Hunter.

Page 21. Daniel L. Jones is a constable, and levied warrant on corn—heard Clark say he was willing Morgan should keep all the corn he had got of him for the corn he, Clark, had borrowed of Morgan, and that Morgan there agreed to take 6 1-3 bushels instead of 10 per acre for rent—being one third less, and that Clark and Morgan both agreed to it. This was same time he levied distress warrant, and that Lorenzo Clark and H. Means were both present.

Page 22. This was all the pl'ff's. evidence. On behalf of def't., was introduced, 1st. The docket of the Justice, P. P. Hunter, which was objected to by pl'ff. Objection overruled at the time excepted to by pl'ff. From the docket it appeared that on the 13th of Dec. 1854, a distress warrant for \$99 was issued by def't. and levied by Jones, a constable; that a trial was had on the 8th of January in said suit, and a judgment was rendered for pl'ff. for \$450. The def't. also asked the Justice if Clark did not on said trial, claim the corn he hauled to Morgan's, and that Morgan himself hauled—as an offset to Morgan's claim for rent—to which Justice replied, "I so understood it." Pl'ff. objected to the question and answer, but the objection was overruled, to which the pl'ff. at the time excepted.

Page 23. The pl'ff. then asked the court the following instructions, viz: No. 9, which was refused, to which refusal pl'ff. at the time excepted. Also No. 12, which was refused, and such refusal excepted to at the time, and the court then gave an instruction for the def't., which was excepted to at the time.

Page 27. The jury found for the def't., and pl'ff. moved for a new trial, but the court overruled the motion, and rendered judgment on the verdict.

Page 28. The pl'ff. in error assigns for errors the refusal of the court to grant a new trial, and also the refusing to give said instructions for pl'ff. and giving instructions for def't. R. S. NELSON, for Pl'ff. in Error

No 41

Nov. A.D. 1858.

Joshua Clark

PT in evm

in

John A. Morgan

PT in evm

Evms to White

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