No. 11905

Supreme Court of Illinois

Ambrose

vs.

Root, et al

71641 7

76

Rufus Ambrose
vs
Anson Root et als.

350

11905

Prepared
E.P.

State of Illinois }
Kane County ss } I Mark W Hitchcock Clerk of the Circuit Court of said County Certify that Reed Ambrose on the 17th day of November AD 1846 filed in my office a Praecipe which is in the words & figures following to wit

"State of Illinois }
County of Kane } ss

In the Circuit Court
So the April Term 1847

Reed Ambrose
vs
Anson Root
Anson W Root
William Root
Anthony Barker
Almyron Sotter

Trespass A & B
Damd $2,000

The Clerk will issue Summons in the above entitled Cause directed to sheriff as above
Nov 16th 1846
Harvey & Thomas for Pff

that on the the same day there issued from my office a Summons which is in the words & figures following to wit

"State of Illinois }
Kane County ss } The People of the State of Illinois to the Sheriff of said County Greeting

We Command you to Summon Anson Root Anson W Root William Root Anthony Barker and Almyron Sotter if to be found in your County personally to be and appear before the Circuit Court of said County on the first day of the next Term thereof to be holden at the Court House in Geneva

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on the fifth Monday after the third Monday of March next to answer unto Reed Ambrose of a plea of Trespass to the damage of the said Ambrose as he says in the sum of two thousand Dollars and make due return of this writ

Seal

Witness Mark W Hitchcock Clerk of said Court and the seal thereof at Geneva this 19th day of November AD 1846

W W Hitchcock Clk

which writ was afterwards returned to my office by the Sheriff of said County with the following Endorsement thereon to wit

"Executed Nov 23d 1846 by reading this writ to Anson Root A W Root Wm Root Anthony Bowker Almyron Sills

Fees 2.50 Mil 60 Mile 3.75 Ret 12½ $ 6.37½

N B Spalding Sheff

that afterwards to wit on the 7th day of April AD 1847 the said Ambrose filed in my office his declaration which is in the words & figures following to wit

State of Illinois } Kane Circuit Court
Kane County ss } April Term AD 1847

Rial Ambrose
vs
Anson Root
Anson W Root
Wm Root
Anthony Barker
Almison Sollis

Rial Ambrose Plaintiff in this suit by Harvey & Wright his Attorneys Complains of Anson Root Anson W Root William Root Anthony Barker and Almison Sollis defendants in this suit who have been summoned &c in a plea of Trespass For that the said defendants on the nineteenth day of October in the year of our Lord one thousand Eight hundred and forty six with force & arms &c made an assault upon the said Plaintiff at Elgin in the County of Kane aforesaid and then and there with great force and violence seized and laid hold of the said Plaintiff and then and there with sticks clubs and with other instruments and weapons and with their fists gave and struck the said Plaintiff a great many violent Blows and strokes on the head and back and on and about divers other parts of his body; and also then and there with great force and violence shook and pulled about the said Plaintiff and cast and threw the said Plaintiff down to and upon the ground

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and gave and struck him a great many other blows and strokes, By means of which said several premises the said Plaintiff was then and there greatly hurt bruised and wounded and became and was sick sore lame and disordered and so remained and continued for a long space of time to wit for the space of three months then next following during all which time ~~to wit for the space~~ the said Plaintiff thereby suffered and underwent great pain and was hindered and prevented from performing and transacting his necessary affairs and business by him during that time to be performed and transacted and also thereby the said Plaintiff was forced and obliged to and did necessarily pay lay out and expend a large sum of money to wit the sum of fifty dollars in and about endeavouring to be cured of the bruises, wounds, sickness, soreness, lameness and disorder aforesaid, occasioned as aforesaid to wit at Elgin in the County of Kane aforesaid, And also for that the defendants on the day and year aforesaid, with force and arms &c made another assault on the said Plaintiff to wit at the place aforesaid and then and there again beat bruised wounded and ill treated him and other wrongs to the said Plaintiff then and there did against the peace of the people of the State of Illinois And to the damage of the said Plaintiff of two thousand Dollars, and therefore he brings his suit &c

2 Count.

Harvey Wright Atty for the Plaintiff

And afterwards to wit on the 22d day of April AD 1847 Came the said defendants and filed in my office their Pleas which are as follows to wit

"Anson Root et al
ads
Paul Ambrose
Trespass A&B

April Term of the Kane Circuit Court AD 1847

And the said defendants

1 plea

Come and defend &c and say that they are not guilty in manner & form as the said Plaintiff hath above thereof in his said declaration Complained against them, and of this they put themselves on the Country &c

Wilson & Wilcox

And the Plaintiff doth the like Harvey & Wright

And for a further plea in this

2 plea behalf (as to the said Assaulting and laying hold of the said Plaintiff as in the first Count of the said declaration mentioned, and as to the striking of the Plaintiff with sticks & Clubs and as to shaking pulling about Casting & pulling down on the ground the said Plaintiff as in that Count mentioned, the said defendants by leave of the Court &c say actio non because they say that the Plaintiff just before the time when &c in the said first Count mentioned Did on the day & year in that Count mentioned At &c, with force & arms &c made an assault upon the said defendants and would then and there have beat & ill treated the said defendants if they had not immediately defended themselves against the Plaintiff, whereupon the said defendants defended themselves against the Plaintiff as they lawfully might for the Cause aforesaid and in so doing did a little beat bruise and ill treat the said Plaintiff in said first Count mentioned, doing no unnecessary damage to the said Plaintiff on the occasion aforesaid and so the said defendants say that if any hurt or damage then happened to the Plaintiff the same was occasioned by the assault so made by the plaintiff on them the said defendants and in the necessary defence of the said Defts against the said Pltff which are the same supposed trespasses in the introductory part of the plea mentioned and where of the Pltff hath Complained against them the said Defts. And this they are ready to verify &c By Wilson & Wilcox Attys

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3 plea. And for a further plea in this behalf (as to the assaulting the plff as in the 2d Count of the plffs declaration and as to the beating bruising wounding and ill treating the plff) the said defendants by leave of the Court here say actio non because they say that the said plff just before the said time when &c with force & arms &c made an assault on the Defts & would then & there have beaten & wounded the Deft if they had not defended themselves against the plff, whereupon they did defend themselves as they lawfully may do and in doing so did a little beat bruise & wound the plff and so the said defendants say that if any hurt then happened to the Plff the same was occasioned by the assault so made by the Plff which are the same supposed trespasses in said second Count mentioned, and this they are ready to verify wherefore &c Wilson & Wilcox

4 plea And for a further plea in this behalf (as to the said assaulting &c in said first and second Counts of the Plffs declaration mentioned, the said Defts say actio non because they say that at the time when &c and for a long time previous thereto the said deft Anson Root was the owner of a Certain Grist Mill situate in the Village of Elgin County of Kane aforesaid and being the owner thereof the said plff just before the time when & ~~and for a long time previous thereto the said deft~~ in said declaration mentioned was unlawfully in said mill without the leave or license and against the will of the said Deft Anson Root, and being therein he the said Plff forcibly and with a strong hand attempted and endeavoured to force & keep out the said Anson Root from the possession of said Mill & would have accomplished ~~said~~ such unlawful attempt & endeavor if the said Anson Root and the other defts, as his Agents and servants have not resisted said attempt of said Plff, and thereupon the said Deft Anson Root

requested the said Plff, to go and depart out of said Mill which the said Plff, then & there wholly refused to do whereupon the said defendant Anson Root, and the said defendants Anson W Root, Wm Root, Anthony Barker & Elnirom Solls as his agents and servants at the same time when &c gently laid hands on the said Plff, in order to remove him from said Mill, using no more or greater force than was necessary to accomplish said attempt, and the said Defts say that if any damage or injury then and there happened to the said Plff the same happened of the proper wrong of the said Plff without this that they the said Defts were guilty of any of the supposed trespasses as in the said declaration mentioned or in any other manner than as in this plea mentioned & wit at the County of Kane aforesaid, and this they are ready to verify, wherefore they pray judgt &c Wilson & Wilson for Defts

And afterwards to wit on the first day of September AD 1847 Came the said Plaintiff and filed his ~~declaration~~ Replication which is as follows to wit

"Rufus Ambrose
vs
Anson Root et al } Trespass A & B } of August Term AD 1847 of Kane County Cir Ct

Replication to 2. 3. & 4 pleas } And as to the said second third and fourth pleas by the said defendants last above pleaded in Bar to the said several trespasses in the introductory parts of said pleas mentioned, the said Plaintiff says that by reason of any thing therein alleged he ought not to be barred from having & maintaining his aforesaid action thereof against the said defendants because he says that the said defendants at the said time when &c of their own wrong and without the causes in the said last mentioned 2d 3 & 4th pleas alleged, committed the said several trespasses in the introductory parts of the said pleas mentioned, in manner and form as the said plaintiff

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hath above thereof Complained, And this he prays may be enquired of by the Country Harvey & Wright &
Morris & Brown

And the said defts doth the like Wilson & Wilcox

And afterwards to wit on the 9th day of September AD 1847 Came the said Defendants and filed their further pleas which are as follows to wit

State of Illinois
Kane County ss } August Term Kane Circuit AD 1847

Rul Ambrose
vs
Anson Root Anson W Root
William Root, Anthony Barker
& Almyron Soles } Trespass (Aft & Tr)

5 plea

And now Come the defendants by Wilson & Champlin their Attorneys and defend the wrong & injury when &c, and say that the said Plaintiff ought not to be admitted to say that the said defendants at the time and place in his said declaration above alledged, Committed the said several supposed trespasses above laid to their the said defendants charge in the said declaration because they say, that heretofore to wit on the 5th day of March AD 1845 at Kane County aforesaid the said Plaintiff executed signed sealed and delivered to said defendant Anson Root a Certain Deed or instrument in writing under the hand and seal of him the said Plaintiff & the said Root & which the defendants bring into Court & which is to the substance & effect following that is to say "Articles of Agreement Made and Concluded this 5th day of March A D 1845 between Anson Root of the Town of Elgin in the County of Kane & State of Illinois of the first part and Rul Ambrose of the same place of the second part Witnesseth, that the said party of the first part in Consideration of the money to be paid & the Covenants as herein Expressed to be performed

by the party of the second part has granted bargained sold aliened Conveyed & Confirmed and by these presents doth grant bargain sell alien Convey and Confirm unto the said party of the second part one quarter part of the undivided lot number four (4) in Block number Eighteen (18) of the Village of Elgin aforesaid, also one undivided quarter part of the Grist Mill saw Mill yards & all the undivided quarter part of land purchased by the said party of the first part from James T Gifford including the Mill dam and water power that is to say all the undivided part of said property now owned by said party of the first part in Company with Dexter Raymond and Gifford, also all of Lot number three (3) in Block number twenty (20) also a strip sixteen feet wide off from the north side of lot No four according to the Village Plat of Elgin aforesaid as surveyed by Peter J Wagner Surveyor with the privileges and appurtenances thereunto belonging or in anywise appertaining, and the said party of the second part in Consideration of the premises hereby agrees to pay to the said Aaron Root his Executors administrators and assigns the sum of three thousand Dollars in manner following viz in six equal annual instalments of five hundred dollars each with interest at Eight per cent per annum payable annually ~~payable~~ on the whole sum remaining unpaid (forty dollars to be paid on the 23d day of May next, which is to apply on the first instalment of interest which will be due in one year as aforesaid, which will reduce the said amount of interest to two hundred dollars) possession to be had by the said party of the second part on the 23d day of May next and the said party of the first part further Covenants and agrees with the said party of the second part his heirs executors administrators & assigns that upon the payment of the principal and interest of the sums above mentioned in the manner above set forth

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to the party of the first part he the said party of the first part shall and will without delay immediately well and faithfully execute & deliver good & sufficient full Covenant deed or deeds and thereby assign and Convey to the said party of the second part his heirs and assigns a good perfect and unincumbered title in fee simple to the above described premises with the appurtenances and it is mutually Covenanted and agreed between the parties hereto that in Case default shall be made in any of the payments of principal and interest at the time or any of the times above specified for the payment thereof then this agreement and all the preceding provisions hereof shall be null and void and no longer binding at the option of the party of the first part his representatives or assigns and the said party of the first part reserves out of the water power above mentioned a sufficient quantity of the water for one saw of stones either on a reaction or breast wheel and the said party of the first part agrees that in Case of an actual break in the east half of the Dam that he will bear one Seventh of the expense of repairing the same, and it is further mutually understood and agreed that said party of the second part shall fulfil (or become liable to fulfil) the Covenants and liabilities of a certain Instrument of writing made between Wm C Kimball and the party of the first part and others to maintain or keep in repair the Mill dam so far as the said party of the first part is now liable, and it is further agreed that the first Instalment shall be made in one year from the 23d day of May next (the time of taking possession) and in Case of the non payment of any of the above Instalments the said party of the first part may re enter and take possession

of said mill above named. In witness whereof the said parties have hereunto affixed their hands and seals the day and year first above written. Sealed and delivered in presence of R W Padelford — Rufus Ambrose (Seal) — Anson Root (Seal)

The Words "also a strip sixteen feet wide off from the north side of lot No four" (interlined by consent of parties) "on 21 line from top on 1st page R W Padelford"

And the said defendant further say that afterward to wit on the twentieth day of May AD 1846 another Article of agreement under the hands and seals of said Plaintiff and said Defendant Anson Root was executed between them, which the said defendant bring into Court, and which is in substance and effect following that is to say, "Whereas by the terms of a sealed Agreement executed on the 5th day of March AD 1845 by and between Anson Root and Rufus Ambrose and Recorded in the Recorders office of the County of Kane on the 3rd day of September 1845 it was among other things agreed that the first instalment of $300 should be paid on the 23d day of May AD 1846 and that in the event of the non payment of said Instalment that the said Root might re enter and take possession of the property mentioned in said Article of Agreement, which property included Lots 3 & 4 in Block 20 of the Elgin Town Plat on which said Ambrose has since erected a Stone Grist or flouring Mill: Now therefore the said Root in Consideration of the Covenants of the said Ambrose hereinafter Contained hereby Covenants and agrees to extend the time of the payment of said Instalment until the 23d day of July next time to permit the said Ambrose to retain the possession of the said lot and Mill until that time And the said Ambrose in Consideration thereof Covenants with the said Root to pay him on or before the said 23d day of July said Instalment

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of $700 and interest from the 23d day of May instant and in default of paying said Instalment on or before the said 23d day of July the said Ambrose Covenants and agrees to and with the said Root that he said Root may enter and take possession of said Mill using all the force necessary to obtain the actual possession thereof and such entry shall not be regarded as a trespass nor sued for as such, nor in anywise unlawful. In witness whereof the said parties have hereunto set their hands and seals this 20th day of May AD 1846 Anson Root (Seal)

In presence of J G Wilson " Reed Ambrose (Seal)

And the said Defendants in fact further say that the said sealed agreement ~~last mentioned~~ referred to in the said last mentioned Articles of Agreement is the same Articles of agreement first set forth in the preceding part of this plea, and the said defendants in fact further say that the said Reed Ambrose did not pay or cause to be paid to the said Anson Root or any other person for him the said Instalment of seven hundred Dollars in said last mentioned Articles of Agreement mentioned by the said 23d day of July in said last mentioned Articles specified nor at any other time whatsoever, whereupon the said Defendant Anson Root by reason of the non payment of the said Instalment of seven hundred Dollars as specified in said last mentioned Articles of Agreement, and the said other defendants as his servants and assistants and at his request, did on or about said ~~Eighth~~ 9th day of October AD 1846 enter and take possession of said Mill in said last recited Articles mentioned, and did use all the force on that occasion necessary to enter the same & obtain the actual

possession thereof, And the said Defendants in fact say that the said defendant Anson Root in entering and taking possession of said Mill and the said other Defendant as his servants and assistants in making the said entry and taking possession of said Mill in the last mentioned articles of agreement mentioned under and by virtue of said last mentioned Articles of Agreement or Deed of said Plaintiff & Defendant in Connection with said first mentioned Articles of Agreement or Deed in this plea mentioned did in using all the force necessary to obtain an Entry into & possession of said Mill necessarily a little beat bruise wound and ill treat the said Plaintiff doing no more injury to the said Plaintiff on the occasion aforesaid than the use of the force then and there necessary to be used to enter the said Mill and take possession thereof as aforesaid then and there required, And the said defendants in fact say that they did not use on the occasion aforesaid any more force than was then and there actually necessary to enter into and take possession of the Mill aforesaid, which are the same supposed Trespasses by the said Plaintiff in his declaration above complained of and not other or different trespasses, wherefore the said defendants pray judgment whether the said Plaintiff ought to be admitted against his own acknowledgement aforesaid by his said Deed or Instrument of writing aforesaid under his hand and seal as aforesaid to say that the said defendants made an assault upon the said Plaintiff and with great force and violence seized and laid hold of the said Plaintiff and with sticks or clubs & with other instruments & weapons and with their fists gave and struck the said Plaintiff a great many violent blows & strokes on the head and back and on and about divers other parts of

[SU 905-7]

his (the said Plaintiffs) body, and also with great force and violence shook and pulled about the said Plaintiff and cast and threw the said Plaintiff down to and upon the ground, and gave and struck him a great many other blows and strokes and beat bruised wounded and ill treated the said Plaintiff in manner and form as the said Plaintiff hath above thereof in the first and second Counts of his declaration complained against these defendants, and this they the said defendants pray may be enquired of by the Court &c. Wilson & Champlin Attys for Defts

that afterwards viz on the 8th day of September A.D. 1847 came the said Plaintiff and files his Demurrer which is in the words & figures following viz

"State Ct. Court Aug T 1847

Reed Ambrose
" } Trespass C B
Anson Root

Dem. to 5 plea

And the said Plaintiff as to the said fifth Plea of the said defendant, saith the same and the Matters therein contained in manner and form as the same are above pleaded & set forth are not sufficient in law to bar or preclude him the said Plaintiff from having or maintaining his aforesaid action thereof against the said defendant & that the said Plaintiff is not bound by law to answer the same and this he is ready to verify wherefore he the said Plaintiff prays judgment & his damages by him sustained, on occasion of the committing of the said Trespasses to be adjudged to him &c

Morris Brown & Wright Attys for Plff

Plea before the Hon John Dean Caton associate justice of the Supreme Court of the State of Illinois and Presiding Judge of the Circuit Court of Kane County at the August Term thereof began and held at the Court House in Geneva on the 30th day of August AD 1847 to wit the 10th day of September AD 1847

Reed Ambrose
v
Anson Root
Anson W Root
Anthony Barker &
Alnison Jobs

} Trespass V. & Arms

This day comes the Plaintiff and files his demurrer to the defendants fifth Plea and after joinder in Demurrer by the defendants and Arguments of Counsel it is Ordered by the Court that the Demurrer be overruled and the Plaintiff having excepted to the decision of the Court in overruling the Demurrer & avowed that he should stand by his Demurrer it is Considered by the Court that the Defendants have judgment and Execution against the Plaintiff for their Costs herein

[1905-8]

State of Illinois }
Kane County ss } I Mark W Fletcher Clerk of the Circuit Court of said County Certify that the foregoing is a full and Complete Record in the above Mentioned Cause excepting the Copy of the affidavit for Costs, Bond for Cost and Copy of the Costs

Witness My name and the seal of said Court at Geneva this 6th day of December AD 1847

M W Fletcher Clerk

Clerks fees $10-00 paid

State of Illinois
Supreme Court } Set.

Reel Ambrose
vs.
Anson Root, Anson W. Root,
William Root, Anthony Barker
and Abraham Doles } Error.

And the said Reel Ambrose says there is error to his prejudice, in the foregoing and annexed Record in this to wit.

First That the circuit court erred in overruling the demurrer to the 5th plea.

Second That the circuit Court, in overruling the demurrer to the 5th plea and giving Judgment for the Defendants for costs, erred in every branch & part thereof. Whereforeby proper a superseded as and that said Judgment may be reversed &c.

Bledsoe, Morris & Brown for
Plff in Error

And the said defendant says that there is no Error in the Record & proceeding aforesaid such as is supposed by said Plff in Error

By Wilson & Wilson
his Attys.

[1905-9]

Supreme Court

Ruel Ambrose
vs
Anson Rockstal

120
17
840
120
2,040

Filed 15 Decr. 1847
R B Slocum
C.S.C

Filed June 20. 1850.
L Leland Clk

Recd 45. R.B.S. By Ad.

Supreme Court Dec
Term A.D. 1847

Ruel Ambrose
v
Anson Root et al

Error to Kane

A. T. Bledsoe being first duly sworn says, that he is informed & believing that the defendants in the above entitled cause, have since the commencement of this Suit, removed out of the State of Illinois & reside without it, so that the writ of error cannot be served on them.

Subscribed & sworn to before me this 14th day of Jany 1848
Noah Divelbiss Cl. C.
S. Ct.

A. T. Bledsoe

[11905-10]

Supreme Court

Ruel Ambrose
vs
Amos Root et al

affidavit

Filed Jany 14th 1848
R B Slocum Clk S C
By A. Dwelliss D C

Filed June 20. 1850.
L. Leland Clk.

State of Illinois, sct.

THE PEOPLE OF THE STATE OF ILLINOIS,

To the Clerk of the Circuit Court for the County of Kane 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 Kane county, before the Judge thereof, between Ruel Ambrose

plantiff aud Anson Root, Anson W. Root, William Root, Anthony Barker and Almyron Tolles

defendant It is said manifest error hath intervened to the injury of the aforesaid plaintiff as we are informed by his complaint, and we being willing that error, if any there be, should be corrected 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 our 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 Springfield in the county of Sangamon, on the second Monday in December 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.

WITNESS, the Hon. William Wilson, Chief Justice of our said Court, and the seal thereof at Springfield, this fifteenth day of December in the year of our Lord one thousand eight hundred and forty-seven.

R. B. Slocumb

Clerk of the Supreme Court.

By Noah Dwelliss

D. C.

[11905-11]

Supreme Court.

Ruel Ambrose

Plantiff in error,

vs.

Anson Root et al

Defendant in error,

Writ of error,

Filed June 20. 1850.
Ashland Clk.

Filed. Dec 15th 1847
R B Slocumb C.S.C
By A. Divelbiss D.C.