Platte County Circuit Court
Justice of the Peace
No term given. February 1841

Box 3 File 15

Ellington, Alpheus, by his next friend
Pleasant Ellington

vs

Eley, Thomas L

Forcible Entry & Detainer

Case moved to Platte County Circuit Court by Writ of Certiorari
Some documents refer to the presence of African American slaves working for the plaintiff

Alphens Ellington

Vs

Thomas S. Eley

Forcible Entry & detainer

Summons & Complaint

" " "

Constables fee 25

I do certify that I receive the within Summons & Complaint there to annexed by reading the same in the hearing of Thomas S. Eley the defendant on the 8th March A.D. 1841

Sam'l H. Shurlock

C. J. P.

I Alphens Ellington a minor under the age of twenty one Years ask Peter Crocket Justice of the peace of Preston Township in Platte County, to appoint Pleasant N. Ellington as my next friend to commence and Prosecute a Suit of forcible entry and detainer against Thomas F. Ely

Alphens Ellington

I Pleasant N Ellington hereby consent to act as the next friend of Alphens Ellington as stated in the above request

Pleasant N. Ellington

I Peter Crocket Justice of the peace do hereby appoint Pleasant N. Ellington next friend of Alphens Ellington for the purpose named in the above request & consent

Feb [illegible] 1841

Peter Crocket

Justice of the peace

2

To Peter Crockett a Justice of the peace of Preston Township in Platt County Mo Alpheus Ellington by his next friend Pleasant W. Ellington complains of Thomas J Eley of a plea of forcible Entry and detainer for that the said Alpheus Ellington heretofore to wit on the 2d day of June AD 1840 at the township of Preston & County of Platt aforesaid was in the lawful and peaceable possession of a certain tract of land situate in the township and County aforesaid and known as the south west quarter of section Thirty of township fifty four and of range Thirty three and afterwards to wit on the day and year aforesaid at the township and County aforesaid the said Thomas J. Eley with force and arms and with a strong hand entered upon the said tract of land so known as aforesaid and Evicted and Expelled your complainant Alpheus Ellington from the possession of the same and hath forcibly detained and still forcibly detaines the same from the possession of your said Complainant from hence hitherto your complainant therefore by his said next friend prays you to issue the States writ to the said defendent to appear before you to answer your complainant in the primises according to the statute in such case made and provided — Alpheus Ellington

Febr 25th 1841

By P. W Ellington
his next friend & agent

Cornelius B. Lane mortgage to 4th day 1857
for $63 of loaned money

Witness - Ellington
By
Thomas S Eley
Forcible Entry and
Detainer

I do hereby certify
the within to be a true
Copy from the original
Declaration on Garnishee
Peter Enochs et al

Filed this 16th
day of March 1858
Jesse Holmes
Clerk

To Peter Crocket a justice of the peace of Preston Township in Platte County Mo—

Alpheus Ellington by his next friend Pleasant Ellington complains of Thomas S. Eley of a plea of forcible entry & detainer—

For that the said Alpheus Ellington heretofore to wit on the 2d day of June A.D. 1840, at the Township of Preston & County of Platte aforesaid, was in the lawful & peaceable possession of a certain tract of land situate in the Township & County aforesaid, and known as the South East quarter of Section Thirty of Township fifty four and of Range thirty three and afterwards to wit on the day & year aforesaid at the Township & County aforesaid, the said Thomas S. Eley with force and arms and with a strong hand entered upon the said tract of land so known as aforesaid, and evicted and expelled your complainant Alpheus Ellington from the possession of the same — and hath forcibly detained and still forcibly detains the same from the possession of your said Complainant from thence hitherto—

Your Complainant therefore by his said next friend, prays you to issue the States writ to the said defendant to appear before you to answer Your Complainant in the premises according to the Statute in such case made & provided — Alpheus Ellington

Feb 25 1841.

By P. W. Ellington
his next friend & agent—

The State of Missouri

To the Constable of Preston Township in Platte County Greeting You are hereby Commanded to Summon Thomas J Eley of the County of Platte to appear before the undersigned Justice of the Peace within and for said County at my dwelling house in said County on the 13th day of March next at the hour of Ten oclock in the forenoon of said day then and there to Answer the and Defend against the Complaint of Alphius Elington by his Next Friend & Guardian W. Elington of Forcible Entry and Detainer Made by the said Thomas J Eley upon the Land of the said Alphius Elington as by the Complaint of the said Alphius Hereto annexed will more fully appear and have you then and there this Precept with the Return of your proceedings thereon

Given under the hand of the said Justice this 4th day of March in the year of our Lord 1841.

Peter Crockett Justice of the Peace

The State of Missouri

To George W. Grayson - Lewis B. Ca[illegible]
Robertson Parker Pleasant Ellington
Peyton Newman Henry D. Colen
You are hereby Commanded that all
Excuses and delays set aside you
be and appear before the undersigned
a Justice of the peace within and for
Preston Township in the County of
Platte on the 13th day of march 1854.
at my office in the same township
at the hour of ten o'clock in the fore-
noon of said day to testify the truth
of your knowledge touching a
matter in controversy between
A Gentry Ellington Plaintiff and
Thomas C. Ellington Defendant and
part of the Plaintiff fail not
at your peril - March the 4th 1854.

Peter Crockett J.P.

Constables fee &c
$ 1.50
Received Pay

Ellington
Vs Thomas S
Ela

Subpoena

To George W. Gre
rson Lewis B. Chin
Robinson Parker
Pleasant Ellington
Henry D. Allen
Peyton Freeman
Summons George W
Greiman Lewis B Chin
D. Robinson Parker +
Henry D Allen
this 7th March 1841
by reading the within in
their hearing & Pleasant
Ellington & Peyton
Freeman. Fee 13 Cts
March 1841

Isa N. Sherlock
C. C. D

The State of Mississippi

To the Constables of Preston Township in the County aforesaid - Whereas Complaint is made to the undersigned one of the Justices of the peace within and for said County that Lewis Hays in the County of Platt of a certain Forcible Entry and detainer made by Thomas B. Ely in the occupancy of the lands of Mathews Ellington in the County aforesaid these are therefore to Command you that you cause to come before said Justice at his office in the County aforesaid on the 13th day of march 1854 at ten o'clock in the fore noon of said day twelve good and lawful men of the body of said County to make a jury to inquire into the forcible entry and detainer before described Given under my hand this 8th March 1854

Peter Crockett J.P.

Ellington
vs Venire

J-S-Ele

Constables fee .75
Justices fee .25

I do certify that the
foregoing is a list
of the jurors that
served in the suit
of Alpheus Ellington against them
as S Ele upon
peter Crockett upon
stain of the peace of
preston township

Langdon C-Searcy
William-Dunlap
Thomas B Cunningham
Richard-Winn
John D Henderson
Charles Spencer
Jefferson-Wheeler
Rucker-Morgan
Johnathan-Owens
Christopher Searcy
Joseph-Ferguson
George W-Purdue
Sid H Sperlock Ex J

The State of Wisconsin

To Charles R Powell you are hereby commanded to appear before the undersigned a justice of the peace for Preston township in Platt County at my office in the said township at ten o'clock of said day to testify the truth of your knowledge touching a matter of controversy between Abijeus Elting Plaintiff and Thomas G Ely defendent on the part of the Plaintiff hear of fail not at your peril march the 15th 1841

Peter Crocker J.P.

Summoned the
within named
Charles Powell
by reading the
within Subpoena
on his person
the 13th Mar
Ch 1841

Jas W Yerbey
C-p S

Court Fee 25
Justices Fees 1874

The State of Illinois

To [illegible] greeting: We command you that all excuse and delays set a side you be and appear before the undersigned a Justice of the peace for Preston County in Said County on the 13th march 1841 at ten o'clock in the forenoon of Said day at my office in said township to testify the truth of your knowledge touching a matter of Controversy Pending & depending between Stephen Ellington plaintiff and Thomas G Ely defendant on the part of the defendant Case of Said matter Given under my hand this 13th 1841

Peter Crockett J.P.

A. C. Ellington
U.S. Subpoena
U.S. Clk
Constable Expenses
Summons The
within named Isom
Owens & Jeremiah
Farmer by reading
the within subpoena
in their hearing
the 13th
Oct 1841

Jas H. Shuler
C.P.J.

Justices Fees
1874

The State of Missouri

To John Mcormic You are hereby commanded to summons to appear before the undersigned a justice of the peace in and for Preston township in the County of Platte on the 13th day of march 1841 at ten o'clock of said day at my office in said township to testify the truth of your knowledge touching a matter of Controversy between Oliver P. Lillard and Henry Selby defendant on the part of the defendant fear of failure not you [illegible] in march the 13th 1841

Peter Curtis J.P.

Alpheus Ellington
85 Subpoenas
Thomas S. Ellington
Justices fee — 18¾
Constables Do 25

Summoned the within
named John McCo
rmack by reading
the within Subpoena
in his hearing the
13th March 1841

Test Thos Sherlock D.C.

March the 13th 1841

Alphees Ellington by his next friend
Pleasent W- Ellington

vs

Thomas -I- Eley

This was an action of forcible Entry and detainer - on the 4th day of march 1841 a Summons issued to James -H- Spurlock Constable of made returnable march the 13th 1841 - now this 13th day of march 1841 the parties appeared in person and declared themselves ready for trial the following named men ware then called and duly sworn as jurors to try the forcible Entry and detainer

To wit

Langdon -C- Searcy - William Dunlap Thomas Blankenship - Richard Elkin - John Henderson - Charles Spurlock - Jefferson Wilkerson Ruddy Morgan - Johnathan owen Christopher Searcy - Joseph Cannon and Geoge W. Gourden who having heared the allegations and proofs of the parties returned the following verdict verbally we agree to disagree There upon Court ~~adjourned~~ charged the Jury the case till the 19 March 1841 adjourned this was all the proceedings before me had in the above suit of forcible Entry and detainer

Peter Crockett J.P.

Justices fees $0.5 - 62½
Constables fees $0.3 - 50
witnes fees as follows Peyton Newman 50 cents
Lewis -B- Elkin 50 Cents
John Mccormac 50 Cents

I sum owen 50 cents
Charley Powell one day and 18 miles traveling allowance $1.
test
Peter Crockett J.P.

Affidavit Clayton for the next term
Pleas &c. Clayton
P.P.
Attorney for Plff
in debt Debt Ending and declare—

To the honorable Judge of Platt Circuit Court - Mo
Now comes Peter Crockett J.P. and certify the within to be a true copy taken from my Docket
Peter Crockett J.P.

Filed this 6th day of Nov 1839
Ellis Clerk

Alpheus Ellington
By Pleasant W Ellington
his next friend
vs
Thomas S Ely

This was an action of Forcible Entry & detainer

On the 4th day of March 1841 Complaint was filed and a Summons Issued to Laiey E Spurlock Constable of Preston Township in Platte County. Made Returnable March 13th 1841. Now this 13th day of March the parties met at my dwelling house in Preston Township in Platte County and declared themselves ready for trial Whereupon came the following Jury to wit Langdon C Searcy William Dunlap Thomas Blankenship Richard Chew John Henderson Charles Spurlock Jefferson Wilkerson Rudy Morgan John Chan Owen Christopher Searcy Joseph Cannon and George W Jourdan Who to my duly Sworn ~~to try the Forcible Entry~~ well and truly to try the Forcible Entry and detainer as to the Complaint of Alpheus Ellington Alledged and a true Verdict give according to the evidence Who after hearing the evidence in the cause Retired and after a short time Returned in to Court & stated they could not agree Whereupon the Court discharged them And adjourned the case till the 19th day of the same Month And afterwards to wit on the [illegible] day of March 1841 Before the day appointed as aforesaid for the Trial again the Justice was served with a writ of Certiorari

from the Clerk of the Circuit Court of Platte County in the case above mentioned to turn up all further proceedings were stopped and in the cause in Land Court of Certain Case I have transcripted a transcript of my docket in said case together with all the original Papers.

Peter Crockett J.P.

I Peter Crockett a Justice of the Peace within for Gaston Township in Platte County and State of Missouri do certify that the above and foregoing is a true Copy of my docket in the above case. The Costs in the above cause are taxed as follows towit

Justices fee	$	62½
Constables Fee	$3	00
Witness Fee as follows towit		
Peter Newman		00
Jesse B Chin		50
John McCormac		00
Isaac Owens		00
Charles Dowel		50

I Peter Crockett Justice of the Peace within and for Gaston Township in Platte County and State of Missouri do certify that the above and foregoing is a true Copy of my docket in the above cause witness my hand this 22nd day of March 1841.

Peter Crockett J.P.

Know all men by these presents that We Pleasant W Ellington and William Ellington are held and firmly bound unto Thomas S Eley in the just and full sum of Two hundred dollars for the payment of which we bind ourselves our heirs Executors and administrators jointly by these presents The Condition of the above bond is such that Whereas the above bound Pleasant W Ellington (as the next friend of Alpheus Ellington) has brought suit of forcible entry and detainer against the said Thos S Eley in the Court of Peter Crockett Justice of the Peace and has this day filed in the office of the Clerk of the Circuit Court of Platte County a copy of the Compl and has obtained or is about to obtain a writ of Certiorari to remove said cause to the Circuit Court Now if the said Pleasant W Ellington shall prosecute his suit with effect and without delay pay all costs that may be adjudged against him and otherwise abide the Judgment of the Circuit Court then this obligation to be void otherwise to remain in full force

Given under our hands and seals this 16th day of March 1841

P. W Ellington (Seal)

William Ellington (Seal)

I Jesse Morin Clerk of the Circuit Court Court within and for Platte County do approve the within Bond March 16th 1841

Jesse Morin Clerk

Ellington
& Ford
Esqrs

Alpheus Ellington By
his next friend
Pleasant W Ellington
vs Forcible entry and detainer
Thomas S Coley

This affiant after being duly sworn
Says that he verily believes that the Plaintiff is justly
entitled to Recover the possession of the premises
in the Complaint mentioned. P W Ellington

Sworn and Subscribed to before me this
16th day of March 1841

Jesse Morris C C P

Ellington
B/ affidavit
Eley

State of Missouri }
County of Platte } ss

The State of Missouri To Peter
Crockett Esqr a Justice of the Peace Within
and for Platte County aforesaid Greeting
Whereas a certain plaint is now depending before
You in the name of Stephens Ellington (by his next
friend, Pleasant W Ellington against Thomas
B Coley for Forcible entry and detainer as in
said Plaint mentioned You are hereby Comm
anded and required that the Plaint aforesa
id together with a Complete Copy of Your
docket Containing a copy of all the proce
dings had before You together with the Orig
inal papers You cause to be certified to the Jud
ge of our Platte Circuit Court on the first
day of the next March term of said Court
to be holden at Platte City on the 22nd day of
March 1841 in the County of Platte and State
of Missouri together with this writ so that the
said Court may be able to proceed therein
according to what is legal and right
Witness Jesse Morin Clerk of
said Circuit Court with the
Seal thereof affixed at Platte
City the 16th day of March
AD 1841

Jesse Morin Clerk

1411

On the 11th day of March 1841 the within writ was handed to me and I received the service of the same and in obedience thereto I have herewith left up a true Transcript of my docket in said Cause mentioned in the writ together with all the original papers with the cause given under my hand this 22nd day of March 1841.

Peter Crockett P.

Allen Tow
vs Certiorari
Eley

Alpheus Ellington by his next friend
Pleasant R. Ellington

against

Thomas L. Ely

Forcible entry & detainer

The said Defendant moves the Court to dismiss this suit, because,

1 The certiorari was not served on the justice before the day fixed for the trial by him

2 The said Plaintiff failed to file with the Clerk as required by law before the issuing of the writ of certiorari, a copy of the Petition or Complaint, an affidavit and bond or either said, complaint affidavit or bond

3. As no sufficient, affidavit or bond was made or given by the Plaintiff before the issuing of the writ of certiorari as required by law.

Wood for Defts

Ellington
vs
Ely
Motion
to dismiss.

Filed the 20th of
March 1841

J. Mason Clk

The State of Missouri

To Jeremiah Harmer Samuel Cole
Isam Owen and James Hamlin
You are hereby commanded that all Excuses
and delays set a side you be and appear
before the Circuit Court next to be holden
in Platt City in Platt County on the 4th
day of said Court at ten of the Clock in
said day to testify the truth of your knowledge
touching a matter of Controversy then and there
depending where in Aylmer Ellington is
plaintiff and Hiram G. Eley is defendant
on the part of the defendant fail not at your peril. March the 24th
1841

Peter Crockett Jr

J. Ellington
vs
J. G Eley
Justices Fee 12½ ¢
Cons 8 Dis $1.00
Summons Jeremiah
Hammer by reading
the within Subpoena
in his hearing the
24th March 1841
and Samuel Ross
James Hamblin
& Isom Owens
by leaving a copy
of the Subpoena
at their dwelling
House the 24th
March 1841
Jas N. Yancey
C. P. D

The State of Missouri

To Thomas Latimer William Barta + Reuben Davis Clain + Ball you are hearby Commanded That all Excuses and delays set a side you be and appear before the Circuit Court next to be holden at ~~Platte~~ Platt City in Platt County ~~on~~ at the march term of 1841 on the 4th day of said Court to testify the truth of your knowledge Touching a matter of Controversy then and there depending between Aylmer Ellington plaintiff and Thomas J Clay defendant on the part of the defendant hear of fail not at your Peril march the 24th 1841

Peter Crockett J.P.

A - E Clington

vs } Subpoena

D - L Eley

Fees Tices Fee 18¾

Constables Do - 75

Summoned Adams

Ball & Richard

Clim by reading

the within subpoena

in their hearing the

24th March 1874 and

Thomas Farmer

by. Leaving a copy

of the Subpoena

at his usual place

of abode the same

day and date —

Jas H Sprlock

C J P

The State of Missouri

To William Banta

You are hereby Commanded to be and appear before the Judge of our Platte Circuit Court forthwith to give evidence between Alpheus Ellington Plaintiff and Moses Exley defendant on the part of the defendant fail not at your peril Witness Jesse Morin Clerk of said Circuit Court with the seal thereof affixed at Platte City this 30th of March 1841

Jesse Morin Clerk

Ellington
& Yeo
Eley
N Bauta

Alpheas Ellington by his next friend }
Pleasant W Ellington } }
vs - In the Platte Circuit
Thomas S Ely's Court March Term 1841

Be it remembered that upon the trial of this cause the following testimony was given.

Grayson a witness produced on the part of Plaintiff proved that in the year 1838 he purchased the quarter of land in the Complaint mentioned from one Butler who was then residing on the same for the sum of 101.50/100 Dollars that he sold this same to Pleasant Ellington in the Spring of 1839 for the same sum with ten per Cent interest on it from the time of the purchase made of Butler. that Pleasant Ellington was then living in Clay County. that in the Spring & Summer of 1839 he went on to make some additional improvement on said land & raised a crop on the same but never moved on it & in the month of August or September 1839 let his son Alpheas Ellington the Plaintiff have the place - that immediately after the Plaintiff took possession of the place & cultivated and lived on the same up to the present time and that no other person ever entered on said land until the last of January 1841 when Defendant went on to said land & built a cabin on the same quarter about 200 yds from Plaintiffs that Plaintiff is a young man about 18 years of age that he had a negro woman living with him & cooking for him the property of his father - that he had at times negro men of his fathers assisting him in making rails, fence & putting in his crops - that all the others of Pleasant Ellington's sons are married & have left him & that Plaintiff has been a part of his time at fathers since he took possession of the land in question particularly when his father was

twice in the state of Kentucky on business during the year 1840 - that there is a log cabin on said tract of land & about 7 or 8 acres cleared and was in 1839 & 1840 in cultivation - that the land lies in Platte County & is land of the United States and that defendant built his house outside of Plaintiff's field & enclosure in the woods - that Plaintiff had employed witness to do some work for him on said place & that he had lent Plaintiff his ploughs & oxen to cultivate same

Chism witness on said side stated that in the winter of 1839 & 40. he moved to Missouri that old man Ellington & his family were old Kentucky acquaintances of his - that he had some difficulty in getting a house to move in that old man Ellington told him he could move into Alphens house until he could find some place to move in & that Alphens told him he could go into it - which he did & lived in the house several weeks - that while there Alphens was at work frequently on the place - that while there he made some rails for the old man out of timber in the field - that Alphens told the old man he might have some of the dead timber in the field to make rails for his farm in the prairie if he would cut it down & carry it off as he had no use for it - that no one ever paid witness for what rails he made that he used fodder & some vegetables while there with the consent of the old man & Alphens and that he never had any settlement supposing they were about even -

Pleasant Ellington a witness for Plaintiff stated that he is father of Plaintiff that in the Spring of 1839 he purchased of Grayson the land mentioned in Complaint for the sum of 101 50/100 Dollars & the interest on the same for several months at ten per cent - that he put the cleared land in cultivation & raised a crop on it in 1839 that in August he told Plaintiff who was his youngest son & the only unmarried one that as he had promised his sons & sons in law 200 Dollars each to enter land if they would come to Missouri that he would now give him his time & if he would go on the place & live and improve it he would give him 200 dollars to pay Government for it - but that he would deduct the amount paid Grayson with interest out of his share of the estate as he would make all his children equal - that Alpheus accepted the terms & immediately moved on the place & put in turnips that ~~Pleasant~~ - that witness let him have a negro woman to cook & wash for him & live with him & frequently let him have a servant to assist him at hard labor - that he cultivated said land in 1840 - and that his home has always been on that place since August 1839 to this time although Alpheus has been a considerable portion of that time necessarily at his house - that in February 1840 he went to Kentucky about six weeks on business & employed Plaintiff to superintend his place together with his own during his absence for which he gave him the use of two negroes a man & woman while putting in his own crop - that in the summer of 1840 he went again to Kentucky

& got Plaintiff to oversee his place when not employed at his own - that he returned in the latter part of the summer sick & Plaintiff staid with him until he got well - that in the fall he gathered his crops & was living on his place in January 1841 when defendant entered on it & had with him a negro woman keeping house for him - that on the 28 of last January he was passing from his cornfield & heard some one chopping he went to where they were & found defendant & one Ross - he was told by defendant he was going to Jump that quarter witness remonstrated & asked him if he did not know it was his corn - defendant said he knew that the old man had bought it & paid for it & gave it to his son but he was advised that a boy under age could not hold a pre-emption & he was therefore determined to get on it & hold it if he could - that defendant was living in the vicinity for one year before & well knew all about the claim - that in a few days he said that Ely had built a house on the same quarter & was living in it & still is - that the gift to his son was fair & bona fide on the terms narrated & that no one had any part of the possession of said land except Plaintiff until defendant entered on same - witness lives about two & a half miles from place in controversy and that the disputed lines are public lines

Alpheus Ellington by his next friend Pleasant W. Ellington
vs
Thomas L. Ely.

In the Platte Circuit Court, March Term 1841.

Be it remembered that upon the trial of this cause the following proceedings were had

Grayson, a witness on the part of the plaintiff produced sworn and examined deposeth and saith that he is well acquainted with the land in the complaint mentioned, that witness said said premises to Ellington father of plaintiff in the early part of the year 1839 and that the said Ellington last mentioned gave said premises to his son the plaintiff in the fall of that year, that there is a log cabin on said quarter section and seven eight acres inclosed in a field; that plaintiffs father lives about 2 1/4 miles from this ~~place~~ field, and that the plaintiff was most of his time since his father gave him the claim, at his fathers house; but witness has frequently seen plaintiff at work in the field with his father's grass axes and hoes. That the field was cultivated by plaintiff and his father hands in 1840. That defendant entered on the quarter section of in the complaint mentioned about the 28th January last and built him, defendant, a house some two or three hundred yards outside the field in the open woods, where the land was unenclosed, and that defendant did not enter into any of the improvements of the plaintiff.

Parette a witness on behalf of the plaintiff produced sworn and examined deposeth and saith that in the latter part of the year 1839 and during the year 1840 he frequently saw plaintiff on the place at work sometimes by himself and sometimes with his father sometimes, that a negro woman of the plaintiffs father's lived in the log cabin and cooked for plaintiff.

Elvin a witness on behalf of the plaintiff produced sworn and examined deposed and said that in the year 1840 witness got permission of the plaintiff and plaintiff's father to move into the log house on the land in controversy; that plaintiff was frequently at work in the field sometimes with his father and sometimes without; that plaintiff's father told witness to use the provisions at the house, and that also told witness plaintiff had given him Ellington leave to make some rails out of timber in the field, that witness made for plaintiff's father a quantity of rails out of timber in the field and that witness used some fodder on the place in controversy to about the amount of the work in making the rails, and that he witness had never been paid for the fodder and had never been paid for the rails.

Newman a witness on the part of the plaintiff produced sworn and examined deposeth and said, that in the year 1840, and before defendants entry on the premises in controversy, he frequently heard both the plaintiff and his father say, that the place in controversy was the plaintiffs.

Ellington a witness on behalf of the plaintiff produced sworn and examined deposeth and saith that he is the father of plaintiff that he purchased of Keagan in the spring of 1839 the place in complaint mentioned for $10.50 ac. improvements, that in the fall of that year he gave the place to his son, the plff. and told him he must cultivate it for himself; that since he gave the same to his son he witness has had no control over the place; that he witness in the spring and summer of 1840 went twice to the state of Kentucky, and while gone witness employed his son the plaintiff to superintend witnesses farm and business, and it was understood between witness and plaintiff that witnesses negroes should work enough for plaintiff to make up for the attention of plaintiff to witnesses business and that plaintiff had permission to use witnesses lands when ever the plaintiff needed them, that plaintiff

spent part of his time at the field and house, on the place in
Caytoosey, and a part at witnesses house, but what proportion witness could
not tell, that witness thinks his son the plaintiff is not
over 18 years of age at this time; that by permission
of plaintiff witness sowed 1 Bushel flax seed and one
Bushel hemp seed in plaintiff's said field because witness
had no grain fit for such purpose; that witness in
the fall of 1840 purchased of pltff his corn raised
in said field for which witness gave pltff a horse;
that in the year 1840 plaintiff used witnesses house and
axes in cultivating said field, that about the 2d "
January 1841 witness heard some person chopping
near said field and went to see who it was and saw
defendant and Mr Ross at work in the open
woods about 2 or 300 yards from the field, but
near the quarter section mentioned in said complaint
that witness remonstrated with defendant and urged him
to quit but defendant refused and that defendant
in a day or two thereafter put up the house on said
quarter at the place where witness saw him and Ross
at work, and still lives in the same house; that the
quarter section mentioned in the complaint is situated
and is Public land belonging to the United States.

Alpheus Ellington by his next
friend Pleasant M. Ellington
against
Thomas S. Sly.

Certiorari

Be it remembered that in the progress of this Cause, and on the next morning after the finding of the verdict by the jury and within the same term of the Court, the Defendant by his Counsel made his motion to the Court in writing to set aside the verdict and grant a new trial, as follows to wit (Here copy the motion) Which motion of the Defendant the Court overruled and refused to set aside the verdict of the jury and grant a new trial, to which opinion of the Court in refusing to set aside the verdict and grant a new trial the Defendant by his Counsel excepted and prays this his bill of exceptions may be signed, sealed and allowed and made a part of the record which is done accordingly

David R. Atkinson (Seal)

Elkington

vs. Bill of Exceptions

Ely

Filed the 1st of April 1841

Illo. Circuit Ct.

D.

Thomas Ellington by his
next friend Pleasant M. Ellington
against Certiorari
Thomas S. Ely

The said Defendant Thomas S.
Ely. makes affidavit and Says
that he does not make his appeal to
the Supreme Court of vexation or delay
but because he the affiant believes
that he the appellant is aggrieved by
the decision and judgment of the Court.

Thos S Ely

Subscribed & Sworn to in open
Court.

Jesse Morris
Clerk

Ellington
vs Affidavit
Elgin Appeal
filed the 1st of
April 1841
Jesse Morris
Clerk

Alpheus Ellington by his next
friend Pleasant W. Ellington

against

Certiorari

Thomas S. Ely

The said Defendant by his Counsel moves the Court to set aside the verdict of the jury rendered in this cause, and for a new trial, and shews for cause,

1st That the verdict of the jury is against the law and the evidence.

2nd That the Court misdirected the jury as to the law

Bennett & Wood
attorneys for Def.

Ellington
vs
Ely
Motion
for new trial

filed this 1st day
August 1841

J. Morin Clk

Ellington
vs Forcible Entry & Detainer
Ely

The Plaintiff moves the Court to instruct the Jury that if they believe from the testimony peaceable & exclusive actual First That the Plaintiff was in the possession of the land ~~which the Defendant entered~~, and the defendant entered on the land without the Consent and against the will of the Plaintiff they must find the defendant guilty.

2nd If they believe from the testimony that Plaintiff had the exclusive peaceable possession of the land mentioned in the Complaint in the year 1859 and Continued in the possession of the land up to the time the defendant entered and that he entered against the will of the plaintiff he was guilty of a forcible entry & detainer although the Plaintiff might have been occasionally absent at his fathers during that time.

3d That the temporary absence of the plaintiff from his improvement is not an abandonment of his possession unless he leaves with the intention of not returning in a reasonable time.

4th That a person may have an actual lawful & exclusive possession of land without fencing the same enclosed by

Ellington
N. Celestino
Eley

Ellington
vs
Ely

Deft asks the Court to instruct the jury that if they believe from the testimony

1st That at the time of the entry by the deft. on the premises mentioned in the complaint the plaintiff had not the exclusive and actual possession of the same, then they must find for the defendant.

2nd " That if they find from the evidence that the plaintiff at the time of the entry by defendant on the premises in controversy was not over the age of nineteen years, and not the head of a family, and that the defendant did not enter into the house or the field and said ~~possession~~ land, but made his defendants entry into said land ~~or inclosure~~ a public land, ~~the property of the United States~~ that then they must find for the defendant.

3 That the mere cultivation of some of an 8 acres an the quarter section in controversy by the plff would not give him possession of the inclosed part of the said quarter.

4 That the occasional temporary presence of the plaintiff on the premises for the purpose of cultivating the field does not amount to give him possession of the whole quarter.

Burnett & Wood
attys for deft.

1.

Ellington
v.
Eley

We the Jury find the defendant guilty of the forcible entry and detainer in manner and form as the complainant hath in his complaint alledged

David O Magee

foreman

Ellington

&

Eley