

Jefferson County Circuit Court
Case Files - Civil
May 1860

Box 12 Folder 15

Bell, William H.

v.

Dailey, Thomas

Certiorari

Certified from Justice of the Peace on
unlawful detainer on unknown acres
in T42R6E U.S. Survey No. 2005;
\$ 50.00 damages. JP H.M. Parker;
bill of exceptions

State of Missouri }
County of Jefferson } ss Before Justice H. M. Parker

William H. Bell complains of Thomas
Daig in an action of unlawful detainer -

For that the said Thomas Daig, at the county
aforesaid, wrongfully and without force, by design
did obtain, and continues in the possession of the
following described property, viz: all that certain
~~tract~~ tract and premises connected herewith now occu-
pied by the defendant and situate upon and near
the south eastern corner of Survey No- 2005, in
Township No- 42 North of Range 6 east of the
5th principal Meridian, in the county & state
aforesaid, being the premises lying immediately
northerly of and adjoining the lands and premises
of Mr. Keim, near Eminence, and between
the Iron Mountain Rail Road and the Missoury
River, and between the northerly line of said
Keim of the lands of the said Keim and the
northerly end of the deep rock cut upon said
Survey, and known as the "Landring" together
with the tunnel thereon, the said premises being
the same recently partly enclosed by a kind of fence
fence by one H. P. Conner and the tunnel thereon
situated: and after demand made in writing
for the deliverance of the possession thereof by the plaintiff,
he having the legal right to such possession, by his
agent, from the defendant, and upon such
demand the defendant refused and neglected to give
such possession, and the possession of said premises
the said defendant still unlawfully detains from
the plaintiff to his damage in the sum of fifty dollars.
Thompson Plaintiff demands judgement against the

defendant for the possession of said premises, for
general relief:

Lo & Gorman
Plffs atty

Jefferson County ss

Lewis B. Waters being
duly sworn says he is the agent of the
plaintiff for the purpose of verifying this
complaint, and that the foregoing complaint
and the matters therein as stated he believes
to be true, & the same is and are true according to his
best knowledge & belief.

Subscribed and sworn to before me
this 20th day of April A.D. 1860
Robert Hunt Justice

L. B. Waters.

To Thomas Dailey

You are hereby notified
and required to deliver to me the possession
of a certain Tenement and premises connected
therewith now occupied by you situate upon
and near the South-Eastern corner of Survey No.
2005, in Township number 42 North of Range number
6 East in ^{5th} of the Principal Meridian, in the County
of Jefferson and State of Missouri, being the premises
lying immediately Northerly of and adjoining the
Lands and premises of Mr. Kim, near Kimswick,
and between the Leon Mountain Rail Road and
the Mississippi River, and between the Northerly
line of said Kim's Lands, and the Northerly end
of the deep Rock cut upon said Survey, and
known as the Landing, together with the tenement
thereon, so occupied by you as aforesaid, the said
premises being the same recently partly enclosed
by a kind of pole fence by one J. Eber Cowan,
and the Tenement being the Tenement thereon situate,
which you have occupied recently without any
right or authority; and you will forthwith make
such deliverance to Mr Lewis K. Waters who
is my agent to receive such possession -

Wm. H. Ball



W. H. Bell
The Daily

Admiral

State of Missouri }
County of Jefferson } ss: Before Justice W. M. Parker -

William H. Bell complains of Thomas Dailey
in an action of unlawful detained -

For that the said Thomas Dailey, at the County
aforesaid, wrongfully and without force, by dissuasion
did obtain, and continues in the possession of the
following described property, viz: All that certain tenement
and premises connected therewith, now occupied by
the Defendant and situate upon and near the North-east-
erly corner of Survey number 2005, in Township
number 42 North of Range 6 East of the 5th prin-
cipal Meridian, in the County & State aforesaid, being the
premises lying immediately northerly of and adjoining the Lands
and premises of Mr Kim, near Kimswick, and between the Iron
Mountain Rail Road and the Mississippi River, and between
the northerly line of the Lands of said Kim, and the northerly
end of the deep Rock cut upon said Survey, and known
as the "Landing" together with the Trunk and trestle, the
said premises being the same recently partly enclosed by
a kind of pole fence by one J. E. Cowan and the Trunk
and trestle situate; and after demand made in
writing for the deliverance of the possession thereof
by the Plaintiff, he having the legal right to such
possession, by his agent, from the Defendant, and
upon such demand, the Defendant refused and
neglected to quit such possession, and the possession
of said premises, the said Defendant still unlawfully

detains from the Plaintiff to his damage into
sum of fifty dollars - Therefore Plaintiffs demands
Judgment against the Defendant for the perforation of
said premises, & for general relief &c.

L. S. Coleman

Plffs Atty.

Jefferson County, Mo:

Lewis K. Waters being duly sworn, says he is
the agent of the Plaintiff for the purpose of verifying this
complaint, and that the foregoing Complaint & the matters
therein as stated he believes to be true, & the same is and was
true according to his best knowledge & belief -

Subscribed & sworn to before me

this 30th day of April A.D. 1860 -

Robert Hunt Justice

L. K. Waters

To Thomas Daily -

You are hereby notified and required to deliver to me the possession of a certain Trunkment, and premises connected therewith now occupied by you ^{upon and} ~~situate~~ ^{near} the South-Eastly corner of Survey No 2005, ~~in~~ Township number 42 North of Range number 6 East of the ^{5th} principal Meridian, in the County of Jefferson and State of Illinois, being the premises lying immediately Northwesterly of and adjoining the Lands and premises of Mr Kim, ^{near Kimmswick} and between the Leon Mountain Rail Road and the Mississippi River, and between the Northwesterly line of said Kim's Lands, and the Northwesterly end of the deep Rock Cut upon said Survey, and known as the Landing, together with the Trunkment thereon, so occupied by you as aforesaid, the said premises being the same recently partly enclosed by a sort of pole fence by one J. Eper Cowan, and the Trunkment being the Trunkment thereon situate, which you have occupied recently without any right or authority; and you will forthwith make such deliverance to Mr Lewis F. Waters who is my agent to receive such possession -

Wm. H. Bell

3

summons for defendant to appear.

State of Missouri }
County of Jefferson } ^{ss} To the Sheriff or
any Constable of the
County of Jefferson.

Greeting: — You are
hereby commanded to summon Thomas
Dull, of the County of Jefferson to appear
before the undersigned Justice of the Peace,
within and for said County, at Sulphur
Springs, in Lewis County, on the 30th day of
April 1860, at the hour of 10 o'clock ~~in the~~
forenoon, of said day, then and there to an-
swer and defend against the complaint
of William H. Bell, of unlawful detainer
made by the said Thomas Dull upon the
land of the said William H. Bell, of un-
lawful detainer 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 20th day of April in the year of our
Lord 1860.

(Copy of original) H. M. Tarter
Justice of the Peace

Summons for Defendant to appear.

State of Missouri
County of Jefferson

ss. To the Sheriff or any
Constable of the County

of Jefferson,

Greeting. You are hereby com-
manded to summon Thomas Scily of the County
of Jefferson, to appear before the undersigned
Justice of the Peace, within and for said Coun-
ty, at Sulphur Springs, in said County, on
the 30th ¹⁸⁶⁰ day of April at the hour of 10 o'clock, in
the forenoon of said day, then and there to an-
swer and defend against the complaint of
William H. Bell of unlawful detainer
made by the said Thomas Scily upon the
lands of the said William H. Bell or by
the complaint of the said William H. Bell
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 20th day of April in the year of our Lord 1860.

H. M. Parker
Justice of the Peace

At the request and risk of the Plaintiffs I
authorize James L. Warner, to execute and
return this writ:-

Justice Fees .75 cts-

H. M. Parker
Justice of the Peace

Executed this writ in the County of DeKalb
on the 20th day of April 1866 by reading
a copy of the complaint and summons
in the presence of Thomas Smith

Costs Fee \$1.00

J. L. Warner
Deputy Const.

State of Missouri }
County of Jefferson }

Venue for Jury.

To the Sheriff or any Co-
-notable of Jefferson County.

Greeting.

Whereas, complaint in writing is made to the undersigned, a Justice of the Peace in and for said County, of a certain unlawful detainer, made by Henry Dail, in the message, or on the Land of William H Bell in the County aforesaid, these are, therefore to command you, that you cause to come before the said Justice of the Peace at Spring in the County aforesaid on the 30th day of April, at the hour of 10 o'clock, in the forenoon of said day Twelve good and Lawful Men, of the body of the County to make a Jury to inquire into the unlawful detainer before described.

Given under my hand, this 20th day of April A.D. 1860.

H. W. Parker
Justice of the Peace

At the request and writ of the Plaintiff I
 authorize James L. Warner to execute and
 return this writ: H. M. Parker
 Justice of the Peace

Writ for Jury.

William H. Bell

vs.

Thomas Daily

2 J. J.	.50
Count & Fee	2.00
	<u>\$ 2.50</u>
12 Jurors	6.00
	<u>\$ 8.50</u>

Executed this writ in the County of
 Jefferson by summoning Hiram J. May
 Edw. John Ogil. A. M. Johnston,
 Thomas Cooper Jacob Miller, James
 Burges, Davis, Williams, Gustaf
 Royenbach, Michael Green, J. D. Whitman

Gen. W. Johnston, Wm. H. Hone Twelve
 good and lawful men of the body of the
 county to appear before the Justice at his
 office on ~~this~~ ^{the} 30th day of April 1860
 at 10 o'clock a.m. to act as a Jury to make
 inquiry as required by said writ.
 Count & Fee \$2.00
 J. Warner
 Depy. com.

William H Bell complainant } Before Wm Parker
against } a Justice of the Peace
Thomas Dailey Defendant.

The Thomas Dailey, as principal and
 John E Cowan
 as Securities Stand indebted to William H Bell, in
 the sum of One hundred and twenty five dollars upon
 condition that if said Thomas Dailey the Defendant
 in the above entitled cause, shall not commit or suffer
 any waste or damage to be committed on the premises
 sued for, and shall pay all rents and profits
 damages and costs that may be adjudged against
 him, and otherwise abide the judgment of the
 Circuit Court, this bond shall be void; otherwise
 it shall remain in full force. Given under our hands and
 Seals April 27th A D. 1860
 Thomas Dailey
 John E Cowan
 J. Pres, Cowan

This Bond is approved by me this 27th day of April 1860

State of Missouri }
County of Jefferson }

William H. Bell, Complainant }
against } Before: Wm Parker
Thomas Dailey, Defendant. } Justice of the Peace

This affiant, states that he verily believes
that the complainant is not justly entitled to the re-
cover the possession of the premises described in the
complaint in the above entitled cause.

Subscribed and sworn to }
before me this 27th day of } Thomas ^{his} Dailey
April A D 1860. } ~~mark~~

Elias F. Honey Clerk

1621

William H. Bell

po

Thomas Bailey

Filed April 27th 1860
C. D. Honey Clerk

June 1860

The State of Missouri, Jo. H. Mc Parker Esquire
one of our Justices of the peace, within and for the
County of Jefferson Greeting;

Whereas it has been
represented to our Circuit Court, within and for the
County of Jefferson aforesaid, that there is now pend-
ing before you a suit for unlawful detainer,
wherein, William H. Bell is complainant and
Thomas Dailey defendant, and the said Thomas
Dailey the defendant having filed affidavit and
bond with the Clerk of our said Circuit Court, which
the law requires: You are therefore, commanded
to stop all further proceedings in said Cause, Certify
to our said Circuit Court, a complete transcript of
your docket, and all proceedings had before you,
together with the original papers filed in the
Cause, aforesaid and file them in the office of
the Clerk of our said Circuit Court, within ten
days after the service of this writ, and certify hereon
how you have obeyed our commands

In Witness whereof J. Elias J.
Honey Clerk of the Circuit Court
aforesaid have hereunto signed
my name and affix the seal of
said Court, at office this 27th
day of April A D 1860

Elias J. Honey Clerk

In obedience to the within writ, I do hereby certify up to
the Circuit Court, a complete Transcript of My docket,
and of all proceedings before me, together with all
the original papers filed before me in the cause wherein
William H. Bell, is complainant and Thomas Bailey
defendant, as required by the Command of said writ. —
Witness My hand, this 28th day of April A.D. 1860.

H. M. Parker
Justice of the Peace

Returns to (Call) Law Day on the 30th day of April 1860.

No. 130.

Transcript

Page 70.

William H Bell }
vs. }
Thomas Dailey }
= Complaint of Unlawful Detainer.

against Thomas Dailey before me, H. M. Parker
Justice of the Peace for the County of Jefferson
in the State of Missouri; in words and figures
following to wit:—

State of Missouri }
County of Jefferson } Before Justice
H. M. Parker

William H Bell, Complainant of Thomas Dailey
in an Action of Unlawful Detainer, for
that the said Thomas Dailey, at the County of Jefferson, wrongfu-
lly and without force by disservice in due obtain, and cant-
= inue in the possession of the following described property,
Viz: all that certain Tenement and premises connected
therewith, now occupied by the defendant, and situate upon
and near the south easterly corner of Survey Number
2005 in Township Number 42 North of Range 6 East of the
3rd principal Meridian in the County of Jefferson and
State of Missouri, being the premises lying immediately
northerly of an adjoining the Land and Premises of Mr. Kim-
berlin and between the Iron Mountain Rail Road
and the Mississippi River, and between the northerly line of
said King's Land, and the northerly end of the deep cut

2 Rock Cut upon said survey, and known as the
"Landing" together with the Tenement thereon the said Premises
being the same recently partly enclosed by a kind of pole
fence by one J. Eper Cowan and the Tenement thereon
situate; and after demand made in writing for the deli-
-verance of the possession thereof by the Plaintiff, he having the
legal right to such possession, by his Agent, from the
Defendant, and upon such demand, the Defendant
refused and neglected to quit such possession, and the
possession of said premises, the said Defendant still
unlawfully detaining from the Plaintiff to his damage
in the sum of fifty Dollars, - Therefore Plaintiff
demands judgement against the defendant for the
possession of said Premises, & for general relief &c.

(Signed) C. D. Colman
Plffs. atty.
Jefferson County, Ky.

Lewis H. Waters, being duly sworn,
says he is the Agent of the Plaintiff for the purpose of
verifying this complaint, and that the foregoing compl-
-aint & the matters therein as stated, he believes to
be true, and the same is and are true, according to his
best knowledge & belief. -

Subscribed & sworn to before (Signed)

me, this 20th day of April A.D. 1860.

(Signed) Robert Hunt

Justice

L. H. Waters

And thereupon, on the same day, the 20th day of April A. D. 1860 I issued a Venue for a Jury and a Summons for the Defendant, agreeably to the Statute in such case made and provided. ^(returned on 30th April 1860) And on said 20th day of April 1860. Said Deputy Constable James L. Warner, returned said Summons served on Defendant.

And on the 28th day of April A. D. 1860. the said Deputy Constable James L. Warner returned said Precept "Executed" summoning G. W. Masfield, John Ogil, A. M. Johnston, Thomas Cooper, Jacob Miller, James Burgess, Davis William, Gustave Rauschenbuck, Michael Green, J. J. Whitaker & W. Johnston, and William Fine. Twelve good and lawful men of the body of the County of Jefferson.

And on this 28th day of April A. D. 1860. J. H. M. Parker, a Justice of the Peace within and for the County of Jefferson, do certify that the foregoing to be a complete Entry of all Proceedings had before me in the cause between William H. Bell vs. Thomas Guilez, for an Unlawful Detainer, which proceedings are this day stayed before me, the said Justice by a writ of Certiorari issued by the Circuit Court of Jefferson County, dated April 27th 1860 and served upon me, this 28th day of April 1860. ordering me to send to the Circuit Court, a transcript together with all the original papers in said cause, thereto attached which I herewith send to Circuit Court, in accordance with

4 Said writ of Certiorari and ordering said
Proceedings before me to cease. —
Witness my hand, this 28th day of April A.D. 1860.

H. M. Parker
Justice of the Peace

Transcript

William H. Bell

v3.

Thomas Dailley

Justices Fees	\$3.25
Costs	3.00
Jury	6.00
	<u>\$12.25</u>

Filed May 8th 1860
Elias S. Hoovey Clerk

April 28th 1860.

Wm

COUNTY OF JEFFERSON.

THE STATE OF MISSOURI,

TO

Levensworth v. John Richardson Jr
John B Barthe *Robt Henry* GREETING:

You are hereby commanded, that setting aside all manner of excuse and delay, you
appear before our *Barth* Court for the County aforesaid, on the

at Hillsboro, then and there

to testify, and the truth to say in a certain matter of controversy, now pending in our said
Court, wherein *William H Best*
Plaintiff and *Thomas Daily* is Defendant on the
part of *Plaintiff* and herein you are in no wise to fail.

WITNESS, ELIAS F. HONEY, Clerk of our said Court
with the Seal thereof hereto affixed, at office this

14th day of *May* A. D. 18*86*

Elias Honey
Clerk.

20 Bureau Court
June Term 1860

Wm H. Bell
vs
Thomas Bailey

for Debt
Verso W. H. Bell
pro Richardson Jr 23
John B. Pratt 23
Peter H. Hunt
Shewell J. 23 200

I Executed the within writ by Reading
the same in the Presence and hearing
of Cicero Mcmillan and Robt Hunt
on the 19th day of May 1860 also on
John B. Pratt and John Richardson
on the 22nd day of May 1860

J C Palmer Deft
Sheriff

Bell

¹⁷
Bailey

Given If the ~~jury find~~ court find from the evidence that the defendant has been in quiet possession of the house in which he now lives for the space of three whole years before the commencement of this suit the plaintiff cannot sustain this action and the verdict will be for the defendant.

See Forcible entry law, sec 27.

No 2

Refused The Court will find for the defendants unless the Court finds that Bell was in the actual possession of the premises at the date of the commencement of this suit and further find that defendant is guilty of a dis-servin within three years before the commencement of this suit.

Pell
m
Shawley

Prothmearis

Pilled June 19th 1860
Du as O'Brien
Clerk

William H Bell }
vs } In the Jefferson
Thomas Daily } Cir. unlawful Detainer

Thomas Daily makes oath
I say that the appeal is not made in
the above Cause for vexation or
a delay but because the affiant
believes that the appellant is aggrieved
by the judgment or decision of the
Court-

his
Thomas X Daily
mark

Sworn to before me
June 19th 1860

Chas F Honey Clerk.

Post
as
Daily

Affidavit

Decd June 24th 1860
E. H. Hony
Att.

W H Bell

^{vs}
Thomas Daily

The defendant moves the Court to set aside the finding of the Court sitting as a jury & grant him a new trial for the following reasons

1st Because the Court found a verdict contrary to the law and evidence

2 Because the finding of the Court is not supported by the evidence

3 Because the Court ruled out the evidence of J E Cowan

4 The Court refused the instructions No 2 & 3 prayed by defendant

5 Because the defendant was surprised by the evidence of Lewis K Waters & that ~~he was mistaken~~ ^{first} about the time of Daily's possession

6 Because the defendant can prove by witnesses that Buckley left the shanty in 1856 & not 1857, as testified to by Waters

7 Because the instruction given by the Court is inconsistent & not compatible with those refused. that taken together they contradict one another

~~Thomas Daily~~

8 Because the verbal opinion of the Court on the construction of the 2^d Section of article 1st of Forcible Entry & Detainer Act is erroneous

Thomas Daily

Mr & Mrs

by

Thomas Daily

Prothon for a new
trial

Filed June 20th 1866

Geo & Henry
Clark

W H Bell

vs
Thomas Daily

Be it remembered that in the trial of the above Cause the plaintiff read in evidence first the demand for the possession of the premises as follows (here copy)

Then Lewis R Waters testified that he knew the Bell land that he considered Bell in possession that when the contractors first commenced building the Rail Road, different Rail Road men built shanties on the Bell land that Buckley & his three brothers ^{moved into a vacant cabin} ~~built one~~ on East side of the road between the Road & river that Buckley remained in the shanty until after the Cars commenced running on 4 of July 1857 they left there after the 4 of July & went away in the Cars Daily went in the shanties after Buckley's left & has remained in the shanty ever since

Daily refused to deliver the possession of the shanty when he made a demand for Bell, The shanty is on Labarge tract. There was no actual occupant of the Survey 2005 for some years except Rail Road men that Bell claimed to own the land & had a farm on the adjoining tract of land for many years previous & claimed Survey 2005. There has always been tenants of Bell at the Palmer Place on an adjoining survey, they have cut timber on whole tract including the survey 2005. ^{plff.} Next read in evidence tax receipts for 1856. 7 & 8 for Survey 2005, objected & overruled & defendant excepts

that he moved the Bell farm in 1855, raised nothing that year the next year (1856) he raised the first vegetables that he sold he sold fall potatoes to Daily who then. Peter A. Miller then testified that in the fall of 1856, ^{Daily} ~~Daily~~ was living in a shanty on the same tract called Labarge tract on the west side of the Rail Road, he don't know when Daily moved on the East side of the Road, that he occupied the ~~place~~ of Bell on an adjoining tract. That there was no actual inclosure

or other possessions on survey 2005 except the
Cabin of Rail Road men from the year 1855
to the present that in 1857 he had a verbal per-
mission from Bells agent to use the fruit of an
old orchard partly on survey 2005. That he only
rented & had possession of the house & cleared
lands of Bell all of which were off of
~~the~~ survey 2005. The Rail Road hands used put-
up shanties on this tract cut large quantities
of timber at different times. The orchard was main-
closed no fences or inclosures on survey 2005
from time he knew it except what Daily had
so other Rail Road men had - he had no control over
any of Bells land other than the fields & house
with permission to use timber for the place
off of any of Bells lands which included as he
understood some 1200 acres of land including
the Labarge tract.

Defendant then introduced Cicero Williams
who testified that he knew the Buckleys, they had
some difficulty with the Contractor & left the
road before ^{of road} ~~the~~ completion. ^{It was completed}
^{They left in 1856 or 1857 cant say probably they rented with him 1856}
in July 1857. ^{He} thinks they left the road in 1856 or
1857. Cant say how long before completion of the
road, ^{but left some time before the completion of the road} he was not acquainted with Daily, the first
time he became acquainted with Daily it was in
1857, he was then living on the East side
of the Road, has no knowledge how long he
had lived there before he first became acquainted
with Daily. Knows the survey no 2005, in 1853 or 4. the
Rail Road men commenced work on the road & built
shanties on this land, there has been no person in the
actual possession & occupation of survey 2005 from

The Court further held ^{in a verbal opinion} ~~that~~ ~~and~~ ~~declared~~ the law to be in delivering ~~the~~ decision that a trespasser on land without claim of title is not contemplated in the 27 section of ~~the forcible entry & detainer act & consequ-~~ ^{of section 4 -} ~~ently~~ ^{in this Court} ~~protected~~ by three years uninterrupted occupation of lands or tenements

Whereupon the Court found for the plaintiff the following (here copy)

after which the defendant moved the Court to stand aside its finding & grant him a new trial as follows (here copy motion for a new trial) in support of which defendant read the following affidavit (here copy affidavit of surprise) which motion being seen was overruled by the Court, to which decision the defendant excepts, to all which decisions of the Court the defendant excepts & prays the Court to sign this his bill of exceptions & make the same a part of the Record which is accordingly done

John Stone

Seal

Bill
Dawley

Bill Exceptions

Filed June 20th 1860
Elihu J. Hovey
Clerk

If the Jury shall believe from the evidence in the case, that prior to the alleged entry of the Defendant into the premises described in the complaint, the Plaintiff was entitled to the possession thereof, and that the Defendant entered into and upon such premises without the consent and against the will of the Plaintiff and cut and carried away the timber and wood of the Plaintiff; that at the time he so cut & carried away such timber & wood he claimed the possession of such premises, and declared his intention to continue in such possession, that the premises in question were unenclosed lands, and that the Defendant, at the time of the commencement of this action was carrying out his declared intention in relation to the possession of such premises, and detaining such possession from the Plaintiff, ~~then~~ the Defendant is guilty and the Plaintiff entitled to recover in the action.

11-50

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The

After the peaceable possession
of the premises for the space of
three whole years the no matter
whether the original taking of possession
was forcible or peaceful whether with
the consent or without the consent of
owner the action of forcible entry
or detainer or of unlawful detainer
will not lie, but the owner will
be driven to his expense to get
possession.

Replevin