

1st

State of Tennessee

Be it remembered that at a Circuit Court opened & held for Blount County at the Court House in Maryville on the 4th Monday viz the 28 day of September in the Year of our Lord one Thousand Eight Hundred & fifty five & holden by Hon^{ble} C. Alexander Judge of the 2^d Judicial Circuit of the State of Tennessee,

The following proceedings were had in the case of Levi Summ vs Elijah Hatcher —

A Warrant returned as follows State of Tennessee / To the Sheriff Blount County for any Constable of said County executing — Whereas Complaint is made to me one of the Justices of the peace for said County by Levi Summ of a certain ^{unlawful} forcible entry and detainer made by Elijah Hatcher Sr into a certain tract of land situated in the State of Tennessee Blount County and Civil District No 15 in Millers Cove adjoining the land of said Summ & said Hatcher (which land it is alleged the said Levi Summ is entitled to the possession of and Elijah Hatcher unlawfully detains the same from him, I therefore command you that you summon the said Elijah Hatcher to appear before three Justices of the peace in and for said County to answer the

above Complaint of the said Levi
Mum. Given under my hand
and seal this 5th day of September 1853

J. M. Reynolds, Secy

Justice of the peace

Endorsed as follows - Warrant Levi
Mum vs Elijah Hatcher Executed
and returned for trial at Maryville
before Esqr Gorant B. F. Muncie &
Esqr Anderson on Tuesday the 27th of
September 1853

William Myers
Clerk

This cause is continued until Tuesday
of the circuit court term 1854

B. F. Muncie J. P.

This cause continued for trial 11th Feb
1854

B. F. Muncie J. P.

In this case we give judgment in
favor of the defendant against the
plaintiff for costs - from which
judgment the plaintiff prayed an
appeal to the circuit court which
was granted - This 11th Feb 1854

B. F. Muncie
W. H. Anderson
Sam. L. Gorant

Bond

We bind ourselves to Elijah Hatcher
in the sum of two hundred and fifty
dollars to be paid if Levi Mum
who has this day appeared to the next
of the circuit court of Blount County

from a Judgment of William
Anderson Esq. Sheriff & J. A.
Mumman Justice of Blount County
in favor of Elijah Hatcher against
him for debts of Suit. I shall prosecute
said appeal cheerfully or in case
of failure I shall comply with and
perform the Judgment of said Court
This 11 day of Feb 1854

Levi Mumman
Sant Henry Seal

May 22 1854

Levi Mumman appal
vs
Elijah Hatcher } This Cause is continued
by consent until next
Court,

22 Jan 1855

Levi Mumman appal
vs
Elijah Hatcher } On motion of defendant
by attorney leave is
granted the Justice who
rendered the Judgment in this case to
amend the same so as to show that
judgment was rendered against the
plaintiff & in favor of the defen-
dant the same having been omitted
by said Justice,

31 Jan 1855

Levi Mumman appal
vs
Elijah Hatcher } By consent this
Cause is set for trial on
Monday next,

6 Feb 1855

Levi Mum (Appel)

vs
Elijah Hatcher) (same the parties by their
attorneys & thereupon

Came the following Jury
of good & lawful men of Palau County
viz. C. H. James J. R. Frow Jno Bagleton
Jno Deater Jno Brown J. P. Chapman
W. B. Jones David Henley Jesse Wetzel
James Hitch Jno Deater jr & M. C.
Brown who being duly elected upon
-newed sworn affirmed & charged
well and truly to try the matters in
controversy in this case upon their
oaths do say they have not agreed
& thereupon they are respited untill
to morrow,

7 Feb 1855

Levi Mum (Appel)

vs
Elijah Hatcher) (same the parties by
their attorneys and thereupon

Came the same jury viz. C. H.
James J. R. Frow Jno Bagleton Jno Deater
Jno Brown J. P. Chapman W. B. Jones
David Henley Jesse Wetzel J. P. Hitch
Jno Deater jr & M. C. Brown who on
yesterday were duly elected & sworn
(sworn affirmed & charged well and
truly to try the matters in controversy
between the parties in this case upon
rendering their verdict were respited
untill to day and the jurors of aforesaid

On their oaths & affirmation of said do say they cannot agree thereupon by Consent a mistrial is entered & the Cause continued until next Court

28 May 1855

Levi Sumner vs Elijah Hatcher } deane the parties by their attorneys and this Cause is continued as on affidavit of plaintiff on payment of the costs of this Term of the Court. It is considered by the Court that defendant recover of the plaintiff the Cost of said for which Execution may issue

27 Sept 1855

Levi Sumner vs Elijah Hatcher } deane the parties by their attorneys & thereupon came the following jury of good and lawful men of Talbot County viz G. T. Jones, J. B. Gaffee, Henry Esterling, W. Norwood, J. D. Wright, S. H. Allen, Jas. Griggitt, J. P. Hook, James Delack, Wm. H. Harny, Joseph Taylor & Jno. McKeain who were duly elected, empanelled and sworn here and truly to try the matters in controversy between the parties in this case & testimony not being concluded they are respited until tomorrow.

28 Sept 1855-

Levi Sumner (Appel)

vs
Elijah Hatcher

deanna the parties by
their attorney, thereupon
Came the following jury

of good and lawful men of Plaintiff's
County viz R. T. Jones, Wm McKamy, Henry
Stearns, J. W. Norwood, S. D. Wright,
J. A. Allen, James Griggitts, R. P. Cook,
James Clark, S. M. Saffell, Jo^{seph} Taylor
& Jno McElain also being duly Oathed

impaneled & sworn on yesterday
well and truly to try the matters in
controversy between the parties in this
case & from rendering their verdict
were respited until to day & the
jurors aforesaid upon their Oaths
aforesaid do say they find for the
Defendant & that he is not guilty of
the forcible & unlawful entry & detainer
in the Warrant mentioned.

It is ordered by the Court
that the Defendant go hence & recover
of the Plaintiff & Garn^{er} Henry his sum
all costs in this behalf expended for
which Execution may issue. And
thereupon the Plaintiff by attorney
enters a Motion for a new trial
which on argument is ordered to
be overruled.

29 Sept 1855-

Levi Sumner (Appel)

vs
Elijah Hatcher

deanna the Plaintiff by

attorney & prayed an appeal in the nature of a Writ of Error from the Judgment in this Case to the next Term of the Supreme Court to be held at the Court House in Knoxville on the 2^d Monday of September next & having tendered his Bill of Exceptions which are signed Sealed & Ordered to be made a part of the record in this Cause & having given Bond & Security to him Said appeal is granted,

Bond for Appeal

Alle Levi Deem & J. McReynolds are held & firmly bound unto Elijah Hatcher in the Sum of Two Hundred & fifty Dollars. But to be paid on Condition that the said L. Deem shall successfully prosecute an appeal this day prayed and obtained from a Judgment of the Circuit Court of Plaintiff rendered against him in favor of E. Hatcher. Or in Case of failure pay and satisfy all Costs which may be awarded against him for failure. Then this obligation to be paid otherwise to remain in full force & effect. Said Appeal taken to the Supreme Court to be held at Knoxville on the 2^d Monday of Sept next - Witness our hands & Seal this 29th day of Sept 1855

Witness
McReynolds

Levi Deem Seal
J. S. McReynolds Seal

Bill of Exceptions 8

Green Munn (Forcible Entry & Detainer)

v^s
Elijah Hatcher) Be it remembered that
On the trial of this Cause
before the Hon^{ble} ~~court~~ Ebenezer Alexander
and a Jury of Peasants & Country.

Aylmer Law was introduced and testified that he in Company with others went along the line near the Land in Controversy in the year 1837 or 8. that Elijah Hatcher was along & showed him where the line was that the land now owned by plaintiff then belonged to one Roape & dependents land then belonged to Defendant that Defendant showed him Law where said line was & that it run so as to include two Springs on Defendants side of said line. the upper Spring 1 rod & lower one 3 or 4 feet from line that the fence where it now stands makes an Elbow around the lower Spring and is about 12 feet on Munn's side of the line. saw a box over the lower Spring for a Spring House one Spring & the next Spring Hatcher enclosed it that said box was put over the Spring 3 or 4 years ago Green Munn lived as the tenant of the plaintiff took possession & lived in a house near said Spring the winter before said box was put there and used water out of Spring in dispute Witness further proved that the land described in the Warrant lies in Plaintiff

do & that it covers the land in dispute —
between the parties.

Rachel Mumm testified that her &
her husband Green Mumm moved to said
house in April 1853 as the tenants of
the plaintiff and dived on his land, that
said box was put over said Spring by
them for a Spring house that her father in law
Levi Mumm put them in possession of said
house and that they moved away about the
first of Oct 1853 that she asked Hatcher
if she could use one of his Springs
when they moved there & Hatcher said Old
Mumm had a Spring of his own over there
when they moved on Mumm's land adjoining
the defendants they used water out of the
Spring in dispute. +

Samuel D. Bachman testified that he
moved to the Green Mumm house about 3
years ago as soon as Amanda Mumm went
out that he got water out of the lower
Spring and that there was a box over it
a small portable box that there is a
third Spring on the Mumm side.

William Felton testified that she
bought the Mumm land in 1839 from
Elyvester Law, Hatcher & Co. Law plaintiff.
Witness both told him where the line
was that the said line left both Springs
on Hatcher's side. That the fence then stood
on or near the line along opposite the
Spring and that said fence at that point
was the line that he bought & said to

to That Wateher had reset said fence & had moved it in towards his own side ~~except~~ at the lower Spring That the fence at the lower Spring was when the suit was brought about on the same ground that the old fence was on,

(Celia McKinn testified) that he helped Wateher move his fence from where the old fence stood in towards his own side so as to make a straight fence which they set about straight except at the lower Spring & there they made a hook or elbow so as to leave the said Spring on the sum side for the use of a school house which was near on that side. And that sometime afterwards they changed said fence again so as to include said Spring again & they set the fence at that point about on the old line where the old fence stood that while ^{they} were moving said fence Amanda Sum a daughter in law of plaintiff came down after she had been notified by defendant to move her box & asked them to help her move her box away which they did that said box was a small portable box easily removed and was set down over the Spring as a temporary Spring or Milk house.

(Joseph Edin testified) that the gore or Curve of the fence around the lower Spring is on about the same ground where the old original fence

stood, The above is the substance
of all the testimony in this case,

The jury found a verdict
for the defendant. a new trial was
moved for and refused from which
an appeal was prayed and granted
to the Supreme Court

C. Alexander
Judge

Charge of the Court

Luis Linnick

v. Elijah Hatcher (plaintiff explained) To
the jury fully the nature and
grounds of the action and matter of
controversy and the character of evidence
necessary to sustain it to all which
there was no exception. But in
explaining to the jury the difference
between actual and constructive
possession the Court said to the
jury that where one man permitted
allowed or merely acquiesced in his
neighbor using his spring that such
permissive possession or mere
use and enjoyment of a spring
without any assertion of claim
or right of claim to the possession
would not be such an actual poss-
ession as would support an action
of forcible entry & detainer against

the owner or Claimant of the Spring
if he should choose permissibly. To
exclude such person from the further
use of it. Such permissive posses-
sion or use was not sufficient

J. W. Walker Clerk of the Circuit
Court of Belmont County do certify
that the foregoing is a true full &
perfect transcript of the record
& proceedings had in the case specified
therein with the Bill of exceptions &c
as appears from the record and
original papers now on file in
my office —

(Seal)

Witness my hand & private
Seal (having no seal of office)
at office in Marysville
29 Aug 1856
J. W. Walker

13
Bill of least
Tax

200

Chas Walker filing + Marketing Case	75	
19 Subpoenas 12-21 Probates 1/4	3.68 ²	
2 Motions 25 5 Orders 25	1.75	
1 Order for Appeal Bond	75	
2 Surveys 12-1 Judgments 475	1.90	
Copy of least 25 Transcript	.25	
to 2 Court 2106 words 10 ^c	2.10	
1 discontinued	1.37 ⁰	
1 d page stop on transcript	.06	10.72
Chff. Kelly 2 Surveys 12 Calls	.33	
" " 9 Subpoenas 25	2.25	2.58
" Henry 1 Subpoena		.25
" Tipton 1 do		.25
" Hatcher 6 do		1.50
" F.A. Burns 1 do		.25
Const Myers Warrant ex	100	
Fluittney	200	3.00
Sp Anderson 3 days		3.00
" Munan 3 "		3.00
" Georant 3 "		3.00
" Munan Warrant	10	
8 Subpoenas	50	
Appeal Bond	50	1.10
Witnesses Mr R. Felton 3.50 + 9.60 + 4.60 (75c)		21.50
Ed D. Daughorn 3.150 + 2.24 + 12.24 + 5.24		18.63
W. Law 3.1.50 + 1.30 + 1.30 + 12.24 + 5.24 (75c)		20.07
Gas Brewer 3.1.50 + 5 (75c)		5.25
R.D. Weon 3.1.50 + 1.36 + 14.36 + 5.36 (75c)		20.82
Sam Walker 3.1.50 + 1.12 + 2.22 + 12.22 + 5.22 (75c)		20.02
Jo. Felton 3.1.50 + 1.28 + 2.28 + 11.28 + 5.28 (75c)		20.23
Wm Briskey 1.40 75c		2.55
R. Keeble 1.23 + 12.23 + 5.23 (75c)		16.26
		\$ 175.78

	Over		175.78
Jas Walker	224 + 12.24 + 5.24	(75¢)	171.3
Jas Murphy	12.26 + 5.26	(75¢)	14.83
V. Walker	9 day	(75¢)	6.75
H. Bayhorn	8 day	75¢	6.00
W. Katcher	14 "	75¢	10.50
W. Katcher jr	1.22 + 12.22 + 5.22	(75¢)	16.18
S. McKelvie	5.24	(75¢)	4.71
			<u>\$252.87</u>

C. Stone copy of the Bill of
 Cost
 (McAuliffe)

275

270
<u>1890</u>
1900
150
<u>100</u>
440

Nov 13

Law Account

As

Wm. H. Hutton

Barrett Co.

Filed 30th Aug 1856

2^d Circuit

W.H.

Recorded at page 275

Recorded at page 275
Law Causes for 1856

W.H.