

CASES IN THE SUPREME COURT

Nov. Term,
1846.THE STATE
V.
BEACKMO.

prima facie, as being unlawfully detained; and that, therefore, no demand before suit was necessary. It is not often that a demand is required to sustain an action for an unlawful detainer of goods. Where the defendant has the goods by the leave and license of the plaintiff, a demand may be necessary in order to render the possession wrongful. But wherever, without such demand, there is a wrongful possession of goods, as where they were obtained by force, fraud, or otherwise without the owner's consent, no demand need be made. We think the instruction was much more favourable to the defendant than he had a right to ask. The Court says, that if the possession was lawfully taken, and the detention only was unlawful, a demand was necessary. But that is not the law. In the case supposed, no demand would be necessary, the detainer being unlawful without it.

There is an error, however, in the judgment as to the costs. A bill of exceptions shows, that, before the judgment was rendered, the defendant applied for a judgment for costs, but the application was refused. This refusal was erroneous. The judgment before the justice was for the plaintiff for ten dollars damages; but in the Circuit Court it was for only one cent. This reduction of the amount of the judgment entitled the defendant to the costs. R. S. 1843, p. 892.

Per Curiam.—The judgment as to the costs is reversed, and affirmed as to the residue. Cause remanded, &c.

H. Cooper, for the plaintiff.

D. H. Colerick and *J. G. Walpole*, for the defendant.

THE STATE v. BEACKMO.

The Circuit Court, on appeal from an award of damages made under the improvement act of 1836, permitted the claim to be amended. *Held*, that the leave to amend, the record not showing what the amendment was, must be presumed to be correct.

Aliens who have declared their intention, according to law, to become citizens of the *U. States*, may hold land in fee-simple in this state.

The refusal of an instruction to the jury, if the evidence do not appear, will be presumed to be correct.

According to the improvement act of 1836, the assessment and payment of damages for injuries done to real estate in constructing the *Wabash* and *Erie* canal, must be in gold and silver.

State v. Beackmo, 8 Blackf. 246
(Ind. 1846)