

Case No. 9,158a.
[Hempst 259.]¹

MARTIN V. CLARK.

Circuit Court, D. Arkansas.

July, 1834.

PLEADING AT LAW—TRESPASS—WARRANT—NEW TRIAL.

1. In trespass, any matter done by virtue of a warrant, must be specially pleaded.
2. A new trial will not be granted, because witnesses did not state facts which the party expected they would state.

Appeal from the Crawford circuit court.

[Action by William Martin against Josiah Clark.]

Before CROSS and LACY, JJ.

CROSS, J. The record in this case presents two questions for consideration: First, whether the court erred in excluding an execution offered in evidence by the defendant; and second, in refusing to grant a new trial.

1. Clark brought an action of trespass against Martin, and the cause was tried on the plea of not guilty. In trespass the rule is, that any matter done by virtue of a warrant or authority, must in general be specially pleaded. Co. Litt. 282b, 283a; 6 Com. Dig. "Pleader," E 17; 1 Salk. 107, 108; Doug. 611; 1 Saund. 298, note 1; 1 Chit. Pl. 538; 13 Johns. 443. The evidence was not admissible under the general issue.

2. The ground stated in the application for a new trial is, that two witnesses summoned by Clark did know, and were fully informed, that the property in* controversy had been taken out of the possession of Clark and sold to Martin, and probably delivered to him; and that he, Martin, believed those witnesses would swear the truth in relation thereto; but that on the trial they either forgot the facts, or corruptly and wilfully refused to state them, and therefore that he did not have the benefit of a fair trial. This did not entitle Martin to a new trial, and his motion was rightfully overruled. Sayer, 27; 2 Caines, 129; 3 Johns. 256; 4 Johns. 425; 5 Johns. 259. Judgment affirmed.

¹ [Reported by Samuel Hempstead, Esq.]