

State of Kentucky Set -

Court of Appeals Decr 9th 1856
Geo T Colton Applt vs Appeal from a Judgment of the Breach-
Nathan Noble & Co Apples vs Circuit Court.

The Court being sufficiently advised,
delivered the following opinion -

The Petition contains a substantial
cause of action, & so far as the record shows
is not controverted by an answer.

Under the Civil Code (Sec 153) all its
material allegations should have been taken
taken as true & the jury only required
to ascertain the damages occasioned by
the detention of the premises. For this
reasons the instruction to find for the
deft was erroneous. But it is likewise
deemed erroneous for another reason.

The pffs though exhibiting no
regular derivation of title to the land
in dispute certainly introduced proof
tending in some degree to show a proper
right to maintain their action.

Instructions to find for the pff
deft in such cases should not be
given. Whether the evidence was
sufficient or not was a question of
fact to be submitted under proper
instructions to the jury. It was their
province to weigh the testimony and
determine its sufficiency. It is there-
fore considered that said Judgment
be reversed & cause remanded for
a new trial & with directions
to grant leave to the depts to