

14191

No. 14191

Supreme Court of Illinois

Barnard

vs.

Doughty

71641  7

In the Supreme Court
November Term, A.D. 1854
James Barnard

Plaintiff in error

vs.

Sam. Saughty;

Defendant in error

Debt on a penal Statute

Shetland

This was an action of debt commenced and tried before Thomas Howell a justice of the peace for Alexander county Illinois, who rendered a judgment in favor of the plaintiff in error for the sum of fifty four dollars 60/100. From which judgment the defendant appealed to this Circuit Court of said county, where it was tried without

Upon the trial in the circuit court the plaintiff introduced the following testimony -

First Jennette H. Volley testified that himself and Saughty caught a barrel of oil a drift in the Mississippi river opposite Dubois Illinois, near the Missouri line. The barrel was not on the Missouri line, but out in the river some two hundred yards from the Missouri line a boat. That they did not land the barrel in Missouri, but landed the same on the bank of Dubois Illinois - that since barrel was marked a brander, Coster Oil and also with a clemynd; and he thinks the letter Co. The barrel was stowed away in Saughty's house. Witness did not see the Barrel after the day it was taken up, but Saughty, the defendant, told witness that he had taken the barrel to Hope Girardian in Missouri and sold it. Witness does not recollect the name of the person to whom the defendant said he sold the barrel. He thinks the Barrel was caught about the month of August or September 1852,

Upon his cross examination he stated that he did not know of his own knowledge what the barrel contained - that Defendant when speaking of it called it oil, a Coster oil - that it was taken up

within about two hundred yards of the Missouri shore was beyond the channel from the Illinois side of the river, and much nearer to the Missouri than the Illinois side of the river. That the barrel was not taken out of the water a lander & sent it was landed on the Bank at Sticks in the State of Illinois.

Hansom Johnson was next introduced as a witness who testified that he had heard defendant directly say that he had caught a barrel of oil. Witness has seen the barrel and recollects distinctly that it was marked a barrel "pure Castor oil". Thinks the barrel would hold about forty gallons. Witness and defendant directly ship the Barrel on board the Steamer or Boat Whitcomb and he afterwards stated to witness that he had taken the barrel of oil to Cape Girardeau Missouri, and sold it to a Mr. Albert of that place. Witness thinks the oil was shipped from Sticks, about the month of September 1852 - and was worth, he thinks, from sixty to seventy five cents per gallon.

On cross examination Witness stated that he did not see defendant directly take up the barrel, but saw it after it was caught & taken up. Stated that he did not know what Castor oil was worth from his own knowledge, but spoke from the prices as published in the St Louis prices. It might have been worth less - it might more.

Dr. Mr. Kelly was next introduced by the Plaintiff and testified that he was well acquainted with the value of Castor oil in the year 1852. Thinks it was worth about 90 cents per gallon.

Upon his cross examination he stated that he spoke of the value of Castor oil from his own knowledge having bought and sold it - that he gave that price for it in 1852 in St. Louis.

The Plaintiff next introduced the deposition of Mr. Albert taken in Cape Girardeau Mo. where said witness then resided - who testified in substance as follows - about the month of September 1852 he purchased of said Doughty a barrel represented by him to contain cotton oil and which did contain cotton oil, branded "pure Cotton oil" from some manufacturing in St. Louis - thinking it was marked with a Deveraux - Co. The barrel contained cotton oil.

I bought the barrel from Doughty, & received it in the Wharf Boat in Nipponi. Mr. Doughty said he caught it in the Mississippi River. It was bought from some point below.

The Plaintiff next introduced the deposition of Ralph B. Abel taken in Cape Girardeau Nipponi where he resided which is, in substance, as follows to wit: - I was doing business for Deveraux & Abel about the month of September 1852 - Mr. Albert bought a barrel of oil from Isaac Doughty, but did not see the marks or brands. It was bought and received in Cape Girardeau Nipponi.

This was all the testimony introduced in the case, whereupon the Court proceeded a verdict for the defendant.

The Plff entered a motion for a new trial which was overruled and judgment rendered - The Plaintiff then & there excepted.

The Plaintiff now assigns the following causes of error

1st That the verdict is against the law and the evidence

2nd That the Court erred in refusing to grant a new trial

3rd That the Court erred in rendering judgment for the said defendant.

Wherefore for all the causes aforesaid the Plaintiff in error prays that the judgment rendered in this case may be reversed.

Attest W. Leving
Att'y for Plaintiff

In the Supreme Court
November Term 1854

James Baswell
Plaintiff in error

vs.

Isaac Baughly
Defendant in error

= = = = =

Abstract

W. H. Linn
Plffs Attorney

James Barnard

Plaintiff in error

vs

Sam Knightly

Defendant in error

Action of debt on a penal Statute

This action is predicated upon a Statute of this State, passed and approved the thirty first day of January 1827 and in force from first 1833.

On the second of January 1849 (see laws of 1849 page 75) the Legislature of this State passed an act which was afterwards approved - providing "that Sections one, two, three, four and five of an act entitled - "An act concerning water crafts found adrift, lost goods and stray animals, approved January thirty first 1827 and in force from first 1833 be and the same are hereby revised and revised, as well as all other parts of said act which act while applies to lost goods"

The act of June 1st 1827 and in force January 30 1833, Sec. 1st provides "that if any person or persons shall hereafter stop or take up any keel or flat boat, ferry, flat, halibut, perogues, canoes, or other vessel or water craft found adrift on any water course within the limits or upon the limits, or upon the borders of this State, and the same shall be of the value of five dollars or upwards including her cargo, tackle, rigging, and other appurtenances, it shall be the duty of such person or persons within five days thereafter thereafter (provided the same shall not have been previously proven and restored to the owner) to go before some justice of the peace of the proper County and make affidavit in writing, setting forth the exact description of such vessel or craft, when and where the same was found". &c. &c.

Section Second of said act, provides that when property is taken up ~~and~~ ^{as} defendant, it shall be appraised and advertised, and if not claimed how to proceed

Section three is in relation to lost goods and

have to proceed.

Section 14. of the same act provides, "That if any per-
"son shall trade, or sell, or carry out of the limits of this
"State, any such property as may at any time be taken
"up or found as aforesaid, except such animals as are
"suitable for the harness or saddle or carriage in the north
"section of this act, before he shall be vested with
"the right to the same according to the provisions of this
"act, he shall be deemed to have forfeited and pay double
"the value thereof, to be recovered by any person who will
"sue for the same, in any court, or before any justice of the
"peace having cognizance thereof, by action of debt, or upon
"the case, one half whereof shall go to the person suing and
"the other half to the county."

This action was commenced just before by Barnard
for one half of the penalty, and the only point presented
to the Circuit Court was the question of jurisdiction
and upon this question alone the case was decided
by Judge Kenning.

The evidence shows that ~~that~~ the oil was first
seized on the Missouri side of the channel of the Missis-
sippi river, near the Missouri than the Illinois shore, there-
fore not taken from the river until it reached the latter
shore. For this reason it was held that the act com-
plained of was without the jurisdiction of this State, the
Plaintiff thinks this was error.

Respectfully,
Hops Attorney

In the Supreme Court
November Term A.D. 1854

James Boswell
Plaintiff in error
vs.

Sam. Knight
Defendant in error

=====

Statement of the facts

W. H. Sumner
Plffs & Atty.

James Bernard }
vs
Isaac Dougherty }

Error from Alexander

I do hereby enter myself
security for costs in this cause, and acknowl-
edge myself bound to pay or cause to be paid
all costs that may accrue in this cause
either to the officers of this Court or to the
opposite party, by virtue of the laws of the
State of Illinois - Mt Vernon, 22.nd Jan
1834.

R. E. Gosh
it

James Barnard

vs.

Isaac Loughry

Cost Bond

Filed Jan 23d

1837

J. H. P. in the
by D. Baugh

STATE OF ILLINOIS, }
SUPREME COURT. } ss.

THE PEOPLE OF THE STATE OF ILLINOIS,

To the Sheriff of *Alexander* County,

Because in the record and proceedings, and also in the rendition of the judgment, of a plea which was in the Circuit Court of *Alexander* County, before the judge thereof, between *James Barnard*

Plaintiff and *Isaac Doughty*

defendant, it is said that manifest error hath intervened to the injury of said *James*

Barnard as we are informed by *his* complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at Mt. Vernon, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said *Isaac Doughty*

that *he* be and appear before the Justices of our said Supreme Court, on the first day of the next term of said Court, to be holden at Mount Vernon, in said State, on the Second Monday in November next, to hear the records and proceedings aforesaid, and the errors assigned, if *he* shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said *defendant* notice, together with this writ.

Witness, the Hon. SAMUEL H. TREAT, Chief Justice of our said Court, and the seal thereof, at Mount Vernon, this *23rd* day *June* in the year of our Lord, one thousand eight hundred and fifty-*four*

T. D. Barton Clerk of Supreme Court.
by D. B. Coughlin

Served by reading to Isaac Doughty on the 30th
day of September 1854.

Wm. C. Mason Shop
& Co. Ill

Shops Fee

Serving & Reting	.60
Mileage & Postage	8
	1.68

Isaac Doughty

Isaac Doughty

Isaac Doughty

Isaac Doughty



Pleas. in the Alexander Circuit
Court, before Honorable William
A. Denning, Judge of said Court.

James Barnard

vs

Appeal.

Isaac Loughly

This cause was originally brought
before Thomas Harwell a Justice of the Peace within and
for the County of Alexander & State of Illinois. Upon the
following account.

Isaac Loughly Dr

1852. To James Barnard. (under the Statute for
for violations of Eschey laws)

To One Barrel of Oil, double the value, \$75.00

When the following cost bond was also filed,

James Barnard,

vs

Justices Court, Action of

Isaac Loughly,

Debtor, Under Eschey law

Demand \$75.00

I do hereby enter myself security for costs
in this cause, and acknowledge myself bound to pay
or cause to be paid all costs which may accrue in
this action, either to the opposite party or to any of
the officers of this Court in pursuance of the laws of
this State. Dated this 11th day of February AD 1853.

(Signed)

R. E. Vose

The above bond approved of this 12th day of February 1853.

(Signed)

Thomas Harwell J. P.

On the trial before the said justice a judgement was rendered against the defendant for the sum of fifty four ⁶⁰ dollars and costs of suit &c, from which the defendant brought, appealed to the said Circuit Court.

On the trial of this cause in the Alexander Circuit Court, at the September Term AD 1853, on Thursday the fourth day of said term, being the 29th day of September, the following order was made and judgement rendered, to wit,

James Barnard

vs

Appeal

Isaac Doughty

On this day came the parties James Barnard plaintiff by York his attorney, also Isaac Doughty the defendant by Rowlings & Southard his attorneys, and the issue in this cause is submitted to the Court, proofs and allegations heard on the part of the plaintiff or also on the part of the defendant, after due deliberation in this cause had the Court considered that the defendant has judgement in this cause against the plaintiff, and that the said defendant may have and recover of and from the said plaintiff his proper costs in this cause taxed, and may have execution therefor &c. Whereupon the said plaintiff by York his attorney enters a motion to the Court for new trial of this cause, which said motion is considered by the Court and overruled,

see the barrel after the day it was taken up but defendant broughty told witness that he had taken the barrel to Cape Girardeau in Missouri, and sold it. Witness does not recollect the name of the person to whom the defendant said he sold the barrel, Witness thinks the barrel was caught about the month of August or September 1852.

On cross examination Witness states that he does not know of his own knowledge what the barrel contained, that defendant broughty, when speaking about it called it oil or Caster oil. That the barrel was first caught or taken within, he thinks two hundred yards of the Missouri shore was beyond the channel from the Illinois side of the river, and much nearer to the Missouri shore than the Illinois side, but that the barrel was not taken out of the water, or landed until it was landed on the bank at Thebes in the State of Illinois.

Ransom Johnson was also introduced and sworn as a witness on the part of the plaintiff. And testified that he had heard defendant broughty say that he had caught a barrel of Oil. Witness had seen the barrel and recollected that it was marked or branded Free Caster Oil. Thinks the barrel would hold about forty gallons. Witness seen defendant broughty ship the barrel aboard of the Steam Boat Whirl Wind. and defendant afterwards told witness

That he had taken the barrel of Oil to Cape Girardeau
 near Missouri, and sold it to a Mr Albert, of
 that place. Witness thinks the barrel was shipped
 from the bar about the Month of September ¹⁸⁵² ~~1851~~
 Witness thinks that Castor oil at that time was
 worth from sixty to seventy five cents per gallon.

On cross Examination Witness states that he
 did not see left. thought took up the barrel
 but saw it after caught or taken up. Witness
 states that he cannot say what Castor oil was
 worth from his own knowledge, but spoke from
 the prices as published in the St Louis paper.

Dr M M Gully, was next introduced
 and sworn as a witness on the part of the plain-
 tiff, and testified that Castor oil, about the Month
 of September 1852, was worth about ninety
 cents per gallon. On cross Examination Witness
 states that he speaks of the value of Castor oil from
 his own knowledge having bought and paid
 that price for it at ~~the~~ the Drug Store of
 Charles & Blow in St Louis. Witness states that
 there is very little if any difference in the
 price or value of Castor oil at St Louis and
 at this place. Thinks it also worth ninety cents
 here.

The Plaintiff then read in evidence the
 following depositions, to wit:

Depositions of witnesses produced sworn and examined

on the 14th day of May in the year of our Lord Eighteen hundred and fiftly, Three at my office in the City of Cape Girardeau, County of Cape Girardeau in the State of Missouri before me William S. Watson a Justice of the Peace within and for the County of said in a certain Cause now pending in the Circuit Court of Alexander County, Illinois, between James Barnard plaintiff and Isaac Boughty defendant on the part of the plaintiff,

Nicholas Albert of lawful age being produced sworn and Examined on the part of the plaintiff deposite and saith,

Sub 1st To Nicholas Albert.

Do you know Isaac Boughty the defendant in the above styled Cause.

Ans. Yes.

Sub 2nd Did you about the Month of September 1852 purchase of said Boughty a barrel represented by him to contain Oil, or Castor Oil, if so, was said barrel marked or branded, to the best of your remembrance and belief,

Ans. In the Month of September 1852, said Boughty sold me a barrel of Castor Oil branded pure Castor oil, from some Manufactures of St Louis, I believe marked with a diamond C,

Sub 3rd Did you examine the contents of said barrel, and what was it, or did said barrel contain oil or not,

Ans. It contained Castor oil,
But 4th Did you purchase and receive said
barrel of oil from said defendant in the State
of Missouri and did said defendant take the
oil from Illinois to Missouri to the best of your
knowledge and belief,

Ans. I received it on the Wharf Boat in the State
of Missouri. Mr Doughty said he caught it floating
in the river it was bought ~~some~~ from some
point below, N. Albert.

Sworn to & subscribed before me

this 14th day of May 1853.

William S. Watson Justice of the Peace.

Ralph B. Abel of lawful age being produced sworn
and examined on the part of the plaintiff deposes and
saith,

But 1st Were you doing business for Nicholas
Albert about the month of September 1852.

Ans. Yes.

But 2nd Did Mr Nicholas Albert about said
month of September purchase from Isaac Doughty
of Illinois a barrel of oil, if so state whether
or not there were any marks and brands on said
barrel, and what said marks and brands were
to the best of your remembrance and belief,

Ans. I know that Nicholas Albert bought a
barrel of oil of Isaac Doughty, but did not see

The marks or brands,

Sub 3^d When did the transaction with regard
to the oil of which you speak take place.

Ans. At Cape Girardeau Missouri.

(Signed) R. B. Abel.

Sworn to & subscribed before me

This 14th day of May 1853.

William S. Watson Justice of the Peace.

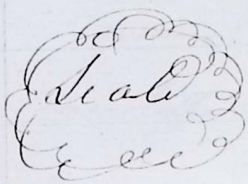
I William S. Watson a Justice of the Peace within
and for the County of Cape Girardeau and State of
Missouri do hereby certify that Nicholas Albert
and Ralph B. Abel the deponents were by me
severally sworn to testify the whole truth of their
knowledge touching the matter in controversy aforesaid
that they were examined and their examination
reduced to writing and by them respectively subscribed
in my presence on the 14th day of May 1853. at
my office in the County and State aforesaid.

William S. Watson

State of Missouri }
County of Cape Girardeau }

I John H. Clark Clerk of the
Cape Girardeau Court of Common Pleas do hereby
certify that William S. Watson was on the 14th day
of May AD 1853. an acting Justice of the Peace in
and for the County of Cape Girardeau State of Missouri
that his official acts are so recognized and the

Signature there was and is genuine.



Given under my hand and seal of said
Court of Common Pleas at Office in
The City of Cape Girardeau County and
State of said this 16th day of May
AD 1853.

John A. Clark Clerk

This was all the evidence given on the Trial, a
jury having been sworn by both parties, the same
was submitted to the Court, and the Court having heard
and considered the evidence found a verdict for
Defendants, and rendered judgment thereon for
the Defendant. Whereupon the Plaintiffs Counsel
Entered this Motion for a new Trial, which
Motion was by the Court overruled, to the overru-
ling of which said Motion for a new Trial the
Plaintiff by his Counsel then and there excepted
and prayed the Court to sign & seal this bill of
Exceptions. Whereupon it was ordered by the
Court that the same might be done in vacation
non pro tunc, which is accordingly done.

W. A. Benning *Clk*

State of Illinois
Alexander County

I, Alexander W. Hudson Clerk
of the Alexander Circuit Court, do hereby certify

that the foregoing record is truly and correctly
taken from the records and files in my
office, all which appear from the said files
and records in the said cause, of James Burns
against Isaac Boughtz, in my office as such Clerk.



In Witness Whereof I Alexander M
Anderson Clerk of said Circuit
Court have hereunto set my hand
and affixed the seal of said Court
at Office in Thebes this day
of June A.D. 1854.

Alexander M Anderson Clerk

In the Supreme Court

November Term A.D. 1854

James Barnard

Plaintiff in error

vs.

Esac Knight

Defendant in error

Action of debt on Penal Statute

And the said Plaintiff in error,
C. H. Simons his Attorney comes and assigns the
following causes of error in the proceedings in this
cause to wit:

1st That the verdict is against the law and the
evidence.

2nd That the Court erred in refusing to grant
a new trial.

3rd That the Court erred in rendering judgment for
the said defendant.

Wherefore for the causes aforesaid the
Plaintiff in error prays that the judgment rendered in
this cause may be reversed.

Respectfully Submitted

Atty. for Pltff in error

N^o Dee 11

Record -

James Barnard

vs

Isaac Doughty

Invt to Alexander

Filed June 23rd 1854
F D Bristol Clk
by D R Doughty

To be paid out of by
R Post.

A W. Hudson Clerk of
Circuit Court, Alexander
County, fees for this
record - \$2.00

No 11

James Barnard

11

Leaves 100

16171

Leaves 100

Mr. Hill made and

Entered in Book

1854

Reference for

Wm. J. Hill in 1854

Copy of 1854

1854 1854
1854

No 11

James Barnard

vs

Isaac Doughty,

Ernest Alexander

1854