

No. 12752

# Supreme Court of Illinois

Dobbins et al

vs.

Lyford et al

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Thomas S Dobbins  
Etal vs  
Joseph Syford

18

1859

12752



PAGE OF  
THE  
RECORD.

THOMAS DOBBINS, JAMES SPIER,  
*Appellants.*  
vs.  
JOSEPH LYFORD, HORACE HAN-  
COCK & WM. READER,  
*Appellees.*

IN THE SUPREME COURT  
AT OTTAWA,  
APRIL TERM, A. D. 1859.  
APPEAL FROM TAZEWELL Co.  
*Actione Trover, Damages \$500.00.*

1 Præcipe filed January 15th, 1858.

2 Summons issued January 18th, 1858.

3 Returned February 16th, 1858, served on James Spier.

4 Alias summons issued May 24th, 1858.

5 Served on Thomas Dobbins Sept. 28th, 1858. No service on Reader.

6-6 March 19th, 1858, declaration filed alleging trover and conversion by defend-  
ants of forty hogs, property of the plaintiffs, of the value of \$500.00.

6-7 Second count alleging trover and conversion of 30 hogs, 10 shoats and 10 pigs,  
of the value of \$500.00.

Fifth day of April, 1858, defendant Spier filed plea of the general issue.

10-11 October 22d, 1858, defendant Dobbins filed plea of general issue. Tried Feb-  
ruary term, 1859, before Harriott, judge, and a jury.

12 Verdict for plaintiffs for \$120.00. Motion for a new trial by defendants. Mo-  
tion overruled. Defendants pray an appeal. Allowed upon filing bond within  
thirty days, with George Spureck security, in the sum of \$500.00.

2-24 Appeal bond filed March 5th, 1859, with security as above required.

12 Bill of exceptions filed February 18th, 1859, abstracted as follows:

13 Plaintiffs, to maintain the issue on their part, produced one Cleaveland, who,  
being sworn, said: Defendant Dobbins lives at Peoria; owns distillery. Defend-  
ant Spier is employed about said distillery; don't know in what capacity; do not  
know whether he is a partner or not. In spring of 1857, I sold plaintiffs about  
15 hogs; delivered them in plaintiffs' yard at Wesley City. There were other hogs  
in the yard—about as many as I put in. Wesley city is in Tazewell county, about



14 a mile below Dobbins's distillery. Some time in October, 1857, I went with Lyford and Hancock to said Dobbins's distillery, to inquire for plaintiffs' hogs. Spier was there; Dobbins was not. Lyford asked Spier if they had got any hogs from the other side of the river. Spier replied: One of our men brought in 7 or 8 hogs, which he said he bought of Lyford & Hancock, and that Lyford & Hancock were to come over and settle with us for them. Lyford told Spier that he had never sold any hogs to any one. Spier asked them to go to the pen and point out their hogs, and said he could point out 3 or 4 of them. They went to one of the pens, and Spier said there were two white shoats and one black one which he could identify as having been brought over the river by our man as Lyford & Hancock's hogs, as before stated; weighed about 150 lbs. each.

15 Plaintiffs and Spier then went into the office to look at books of record of hogs, for the purpose of identifying hogs. I could identify no hogs in Dobbins's pens as plaintiffs', and plaintiffs did not identify any to my knowledge. About a week afterwards, I went with plaintiffs to Peoria, and saw Dobbins in the street. Dobbins said, a man by the name of Reader put some hogs into my pen, which he said belonged to plaintiffs—about 30 or 40 of them; that he, Dobbins, learned there was likely to be some trouble or controversy about the hogs, and he turned them out of his pen; that he had authorized Reader to purchase hogs for him at four cents per pound. Hogs would weigh about 150 lbs. each. This was all the evidence on the part of plaintiffs.

16 Plaintiffs rested.

Defendants then moved the court to instruct the jury to find a verdict of Not Guilty, as to defendant Spier, with a view of using him as a witness for defendant, Dobbins.

The Court overruled said motion. Defendants objected and excepted. Defendants then introduced Charles Patsman, who, being sworn, said: In the Fall of 1857, the Illinois river was very low. Hogs often swam across from Wesley City to the other side, and Dobbins run the slop from his distillery into the river. Hogs often followed the slop up to the distillery. Witness found 7 or 8 of his hogs in Dobbins' pens, and Dobbins paid him for them. In the fall of 1857, plaintiffs moved three or four wagon loads of hogs from Wesley city to Grov-

17 land. Do not know how many were moved. Wagon would hold about 20. This was all the evidence in the case,

On part of the plaintiffs, the court then gave the jury instruction No. 1. Court also, on behalf of the plaintiffs, instructed the jury as follows:

No. 2. Jury are further instructed that the disposition of the plaintiffs' property by the defendants, is a conversion of it, for which the defendants are liable in an action of Trover, though the defendants acted under unavoidable ignorance, and not for their own benefit. And if the defendants, in the opinion of the jury, from the evidence, were so guilty of such conversion, they will find for the plaintiffs, the value of the property so converted as proved.



18 No. 3. The court instructs the jury, that a demand and refusal are not necessary when the defendants receive the property in question from a third person, after notice of the plaintiffs' title, or when the defendants dispose of the property in any way. And if the jury believe from the evidence that the defendants are guilty of so receiving the property, or disposing of it, they will find for the plaintiffs.

No. 4. If the jury believe from the evidence that the plaintiffs demanded payment for the hogs that the defendants had in their possession, and the defendants refused it, that then the demand of payment is a good demand to support this action. And if they also believe said defendants had plaintiffs' hogs, they will find for the plaintiffs the value of the hogs, as proved to have been in the defendants' possession. To the giving of which said instructions defendant objected and excepted.

19-20-21 On part of the defendants, court gave the jury instructions No. 1, 2, 3, 4, 5, 6 & 7.

21 Jury rendered a verdict of guilty, and assessed damages at \$120. Defendants moved the court to set aside the said verdict and for a new trial, for the following reasons :

1. The court gave improper instructions on part of the plaintiffs.
- 22 2. The court erred in refusing to instruct the jury to find a verdict of not guilty as to defendant Spier.
3. Verdict was contrary to law and evidence.
4. The damage found by the jury is excessive.

Which motion the court overruled, to which defendants objected and excepted

#### ASSIGNMENT OF ERRORS.

1. The court erred in refusing to instruct the jury to find a verdict of not guilty as to defendant Spier.
2. Court gave the jury improper instructions on part of the plaintiffs below.
3. The verdict is not at all justified by the evidence.
4. The verdict is contrary to law and evidence.
5. The court erred in refusing to set aside said verdict.
6. The court erred in overruling defendants motion for a new trial.
7. The damages assessed by the jury are unjust and excessive.
8. The verdict and judgment should have been for defendants instead of plaintiff.
9. Court erred in rendering judgment upon said verdict.

H. B. HOPKINS,  
*Attorney for Appellants.*



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Thos. S. Dobbins edol

27

Joseph Lyford

Abstract

Filed April 20, 1859

R. Leland

clerk



SUPREME COURT OF ILLINOIS,

*Third Division—April Term, 1859.*

THOMAS S. DOBBINS,  
JAMES SPIER, Appellants,  
*vs.*  
JOSEPH LYFORD, et. al.  
Appellees.

ABSTRACT OF ARGUMENT OF APPELLANTS, AND AUTHORITIES CITED.

Action, Trover, for certain hogs claimed by the plaintiff below. Trial, February Term, 1859, Tazewell Circuit Court. Verdict for plaintiff, for \$120, and judgment thereon.

Motion for new trial overruled and appeal perfected.

- I. The Court below erred in refusing to instruct the Jury to find a verdict of not guilty, as to defendant, Spier, in order that he might be used as a witness for defendant, Dobbins.

The plaintiffs' evidence does not tend to show a liability on part of Spier; therefore said instruction should have been given.

*1 Greenleaf's Evidence § 338 & cases cited*

- II. The Court below gave the Jury improper instructions on part of Plaintiffs.

1st. Plaintiffs' second instruction is erroneous. The word "disposition" therein taken in connection with the testimony, means the turning of said hogs out of defendant Dobbin's pens, which is the only disposition mentioned in the testimony. This kind of disposition done in "unavoidable ignorance of plaintiffs' rights, and not for their own benefit," does not amount to a conversion.

2nd. Plaintiffs' third instruction is erroneous. In the absence of other evidence of a conversion, a demand and refusal before action brought, must be proved. In order that taking the property from a third person constitute a conversion, the taking must be wrongful. In order that a disposition of the property constitute a conversion, it must be done in some way for defendant's use and benefit.

*2 Greenleaf on § 644 page 604 Parson's on Pleading Vol 2 pt 2 1138 1153 1155 1159*

3d. Plaintiffs' fourth instruction is erroneous. A demand and refusal of property is evidence of conversion, but a demand and refusal of pay for property is no evidence of conversion.

- III. The said verdict should have been set aside as contrary to law and evidence.



1st. All the testimony relative to the hogs in question, is that of Cleveland, about certain admissions of Spier, at one time, and Dobbins at another. There was no wrongful taking of the property, no conversion, no demand and refusal. The hogs were put into Dobbins' possession by a third person, under representation that he had purchased them. Dobbins found there was some controversy about said third person's right to put the hogs there, and refused to have them in his possession, and turned them out. This is all the evidence amounts to.

2nd. There is no evidence whatever against the defendant, Spier; the verdict and judgment are entirely erroneous as to him.

IV. The verdict is for excessive damages.

V. The Court below should have granted a new trial for all the reasons aforesaid

H. B. HOPKINS,  
Attorney for Appellants.

*Dobbins turning hogs out of his pens is  
not a conversion  
Humphrey vs Douglass 11 Vermont 22  
3<sup>d</sup> Val Saunders on Pleading & Ev 113-6  
Foulkes vs Willoughby 8 Mo W 540*



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Dobbins vs. Lyford  
Appellate Brief

12752

Filed April 23, 1869

L. Leland

Clerk

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Thomas Dobbin &  
James Spear appts

vs  
Joseph Lyford &  
Horace Hancock Appelles

Sup Court  
3<sup>d</sup> Division

April Term 1889

Argument for appellees

The printed abstract in this case has the name of Wm Rieder also as appellee this is an error Lyford & Hancock were the only plaintiffs in the action below and Rieder was with Dobbin & Spear made a defendant but was never served with process and the action proceeded against Dobbin & Spear only

The action was truly brought by the plffs. below Lyford & Hancock to recover the value of a quantity of hogs alleged to have been converted by the defendants in the Circuit Court of Tazewell County in which the appellees recovered a verdict of \$120 damages

The facts are that the appellees did business on the East side of the river and the appts on the west side the appellees lost 30 to 40 hogs and the appellants found them some time ago, did not pursue the requisition of the stray laws but on the contrary by the conduct of the appellees one of their conclusions are evident



1 That app'ts stole the hogs or 2<sup>d</sup> Took them from app'rs vi et armis or that they having obtained possession of the hogs as bailies under the Common Law or as custodians under our Extra Cur'os have violated their trust by their conduct. If the act constitutes a larceny the Statute permits a party to prosecute a civil action against the filons. If the act was a trespass the Common Law gives the appellants a civil action. In each case the Law permits the waiver of the felony & trespass and authorizes them thus much as to the form of the action as touched upon in the instructions below. — Spin one of the appellants either stole, took or converted the hogs in question in his own right or as the partner or agent of his Co-appellants. On the trial below the Court denied the application of both the defendants to discharge Spin on the ground that he was innocent. The only question is whether when a codefendant in trover is proved to be either a thief trespasser or convertor of his neighbor's property he can be discharged of course, and thus be rendered a competent witness for his Co-thief trespasser or convertor so much for the 2<sup>d</sup> point — 3<sup>d</sup> The next question is whether a demand in trover against a thief or trespasser is necessary before bringing the action. This point was settled by this Court in Bedell v. Jerney, 14 Cal. 193 and if any demand should be deemed necessary in this case it is sufficiently proved by Chaveland



4 The next question is whether the verdict is manifestly & palpably as first thrust contrary to the evidence in the cause "which is the rule of this Court in motions for new trials" *Sawson v. Robbins* 5 Gell. 72 In reply to this argument of course it is sufficient to say that Mr. Chaudron the only witness for the appellants in the case made out a prima facie case of larceny, trespass on conversion as bailees by the appellants. The only rebutting evidence was that of Charles Patzmann who testified in substance 1<sup>st</sup> That hogs could swim 2<sup>nd</sup> That there then was an usage among the Tazewell hogs to swim across the river - 3<sup>rd</sup> That these hogs when thus migrating would go into the pens of Robbins That if they did then the usage of Robbins was to conceal the fact & if he was not detected keep the hogs - but if caught he usually paid for the hogs - upon this latter point of Mr. Patzmann's testimony we suggest that a demand need not be proven in this case because of the knack of the usage he was caught with the hogs & did not pay nor deliver -

No injury did nor could by possibility occur to the appellants from juries 2<sup>nd</sup> Instruction whether right or wrong for by their own admission they knew the interest of the plaintiffs in the hogs. The third instruction is clearly the law - The judge had the benefit of all the instructions they asked and the whole law so far as favorable to them was there given - Their instructions will be found in the Record & not in the abstract

R. S. Blackwell  
A. L. Dawson  
for appellants.



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Robbins & Spear  
appts

by

Lyford & Hancock

Att for Appelles

Filed May 4, 185-9  
A. Leland  
Clerk



# SUPREME COURT OF ILLINOIS,

*Third Division—April Term, 1859.*

THOMAS S. DOBBINS,  
JAMES SPIER, Appellants,  
vs.  
JOSEPH LYFORD, et. al.  
Appellees.

## ABSTRACT OF ARGUMENT OF APPELLANTS, AND AUTHORITIES CITED.

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Motion for new trial overruled and appeal perfected.

- I. The Court below erred in refusing to instruct the Jury to find a verdict of not guilty, as to defendant, Spier, in order that he might be used as a witness for defendant, Dobbins.

The plaintiffs' evidence does not tend to show a liability on part of Spier; therefore said instruction should have been given.

*1 Greenleaf Ev sec 358 & cases cited*

- II. The Court below gave the Jury improper instructions on part of Plaintiffs.

1st. Plaintiffs' second instruction is erroneous. The word "disposition" therein taken in connection with the testimony, means the turning of said hogs out of defendant Dobbins' pens, which is the only disposition mentioned in the testimony. This kind of disposition done in "unavoidable ignorance of plaintiffs' rights, and not for their own benefit," does not amount to a conversion.

2nd. Plaintiffs' third instruction is erroneous. In the absence of other evidence of a conversion, a demand and refusal before action brought, must be proved. In order that taking the property from a third person constitute a conversion, the taking must be wrongful. In order that a disposition of the property constitute a conversion, it must be done in some way for defendant's use and benefit. *or for use of another*

*2 Greenleaf Ev sec 644 page 604 Samuels on Pl & Ev Vol 2 part 2  
pages 1138, 1155, 1156, 1159*

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Dobbin & Lyford

Brief

RECORDS OF THE COURT OF COMMONS

1820-1821

AND THE HOUSE OF COMMONS

IN THE YEAR 1820

1820

PRINTED BY T. CROFT, STATIONER, AND VINTAGE, ST. MARTIN'S LANE.



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H. B. HOPKINS,

Attorney for Appellants.

*Dobbins turning the hogs out of his pen  
is no conversion  
Thompson vs Douglas 11 Vermont 22  
3 Vol. Saunders on Pl & Ev 1156  
Fouldes vs Wroughton 8 Q.B. 540*



SUPREME COURT OF ILLINOIS,

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*2 Greenleaf Ev. § 644 page 604 Samuelson on Pl. & Ev. Vol. 2 Part 2  
1138 1155 1156 1159*



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H. B. HOPKINS,  
Attorney for Appellants.

*Dobbins turning the hogs out of his pens  
was not a conversion  
Humphreys vs Douglass 11 Vermont 220  
3d Val Samuelson on Pl & Cr 1156  
Goulden vs Willoughby 8 M & W 540*



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Dobbin vs. Lyford  
Appell's Brief

Filed April 23, 1859  
L. Kellogg  
Clerk



1  
Hear to a Term of the Circuit  
Court begun and held at  
the Court House within and  
for the County of Tazewell and  
State of Illinois at Pekin on  
the first Monday of the Month  
of February, in the Year of our  
Lord one Thousand eight hundred  
and fifty nine, it being the  
7th day of said Month of  
February. Present the Honourable  
James Harriott Judge of the  
21st Judicial Circuit of the  
State of Illinois, composed  
of Woodford. Tazewell. &c.

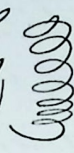

Be it remembered that on  
the 15th day of January A.D. 1858  
a Praecipe was filed in the words  
and figures following to wit:

Tazewell Circuit Court to. April Term 1858  
Joseph Lyford & }  
Horace Hancock } Trespas on the Case  
vs }  
Thomas Dobbins } Damages \$500.00  
James Spears & }  
William Reeder }



2<sup>d</sup>

The Clerk will issue Summons in  
this case to the Sheriffs of Peoria and  
Tazewell Counties dated 7th January 1858  
Yours &c

To Mr Young by  Davison & Parker  
Clerk  Plffs attys

And now afterwards, to wit, on the  
18th day of January A.D. 1858 a Summons  
issued in the words and figures following  
to wit

State of Illinois }  
Tazewell County } of The People of the  
State of Illinois

to the Sheriff of Tazewell County  
Greeting

The command you to  
Summon Thomas Dobbins,  
James Speers and William Reeder  
if found in your County personally  
to appear before the Circuit Court  
of said County on the first day of  
the next Term therefore to be holden  
at the Court House in the City  
of Pekin on the first Monday in  
the Month of April next, to answer  
unto Joseph Lyford and Horace  
Hancock in a Plea of Trespass



on the Case to the Damage of the said Plaintiff on they say in the Sum of Five Hundred Dollars, And have you then and there this writ, and make return thereon in what manner you execute the same -

Witness Merrill C. Young clerk of the said Circuit Court and the seal thereof hereunto affixed at Pekin this 18th day of January A.D. 1858

Seal

Merrill C. Young clerk

By W. Don Maus d.C.

Which said summons was afterward, on the 17th March 1858 Returned with the following endorsement.

"Served on James Speers by Reading this writ to him Feby 16th 1858 -

Rest of the within named Defendants are not found in my County

C. Williamson S. J. C.

By J. B. Baker Deputy

And Also on the said 18th day of January <sup>alias</sup> summons issued in the words and figures following to wit.

State of Illinois }  
Tazewell County } P. The People of the



State of Illinois to the Sheriff of Peoria  
County, Greeting.

We Command you to  
Summon Thomas Dobbin, James  
Lyford & William Reeder if found  
in your County personally to appear  
before the Circuit Court of Tazewell  
County on the first day of the next  
term thereof to be holden at the  
Court House in the City of Pekin,  
on the first Monday in the Month  
April next, to answer unto  
Joseph Lyford & Horace Hancock  
in a Plea of Trespass on the Case  
to the Damage of the Said Plaintiff  
as they say in the sum of Five  
hundred Dollars, And have  
you then and there this writ, and  
make return thereon in what manner  
you execute the same

Witness Myself Merrill C Young clerk of  
the <sup>Said</sup> Circuit Court and the Seal  
thereof hereto affixed at Pekin  
this 18th day of January A.D. 1858

Seal

Merrill C. Young clerk  
W. Don Maus D.C.

Which said Summons was afterwards  
returned on the 29th day of March



to 1858 with the following endorsement,  
~~"Served by xxxxx"~~ "The within named  
 parties not found in my County."  
 F. N. Smith Sheriff

And now afterwards to wit: on the  
 19th day of March A.D. 1858 A.  
 Declaration was filed in the  
 words and figures following to wit:

State of Illinois } Hazenwell Circuit  
 Hazenwell County } Court to April  
 Term 1858.

Joseph Lyford & Horace Hancock  
 Plaintiffs in this Suit complain of  
 Thomas Dobbins, James Spear and  
 William Reeder, Defendants, of a  
 Plea of Trespass on the Case, for  
 that whereas heretofore to wit:  
 on the first day of December 1857  
 in said County the said Plaintiffs  
 were possessed of forty Hogs as  
 of their own proper goods & chattels,  
 of great value, to wit, of the value  
 of five hundred dollars, and  
 being so thereof possessed, they  
 the said Plaintiffs, casually there  
 and then lost the same, and



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the said Hogs Goods & Chattels came to the possession of the said Defendants by finding on the same day & Year & at the place last aforesaid, Yet the said Defendants well knowing the said Hogs, Goods & Chattels to be the proper Goods & Chattels of the said Plaintiffs, but continuing & intending to injure & aggrieve the Plaintiffs in this behalf, did not, nor would deliver the said Hogs, Goods & Chattels to the Plaintiffs, although requested so to do, but on the contrary, ~~there~~ afterwards to wit, on the day & Year, & at the County aforesaid, converted the same to their own use. —

And also for that whereas, the said Plaintiffs afterwards to wit: on the day and Year aforesaid, at the County aforesaid, were possessed of certain other Goods & Chattels to wit, thirty Hogs, Ten Shoats & ten Pigs, of great value, to wit, of the value of Five hundred Dollars & being thereof, the said Plaintiffs afterwards on the same



And now afterwards to wit. on the 5th day of April AD 1858 a Plea was filed in the words and figures following to wit:

Syford & Hancock	}	Circuit Court
<sup>vs</sup>		Saxwell County
Thomas S. Dobbins		April Term
James G. Speer	}	AD 1858

And now comes the said James G. Speer by H. B. Hopkins, his attorney, and defends the wrong and injury when &c and says that he is not guilty in manner and form as the said Plaintiffs have thereof above alleged, against him, and of this he puts himself upon the Country &c

H. B. Hopkins  
atty.



7

day & at the County aforesaid  
 Casually lost the same and the  
 said Goods & Chattels afterwards  
 to wit, on the same day & Year  
 last aforesaid, at the County  
 aforesaid, came to the hands  
 of the said Defendants, by finding,  
 Yet the said Defendants, well know-  
 ing the said last mentioned Goods  
 & Chattels to be the Property of the  
 said Plaintiffs, but continuing &  
 intending to injure the said plain-  
 tiffs in this behalf, have not, nor  
 would deliver the same to the  
 said Plaintiffs, although thereto  
 requested, but on the contrary  
 thereof, on the day & Year last  
 aforesaid, at the County aforesaid  
 sold, disposed & converted the  
 said last mentioned Goods and  
 Chattels to their own use, to the  
 damage of the Plaintiffs of Five  
 Hundred Dollars & therefore he  
 brings suit &c

By Davison & Parker  
 Attys

And now afterwards to wit, at a Term  
 of the Circuit Court begun and held



at the Court House in the City of Pekin  
within and for the County of Tazewell  
and State of Illinois on the second  
Monday of the Month of October  
in the year of Our Lord one thousand  
eight hundred and fifty eight  
Present the Honorable James Harriott  
Judge, Hugh Fullerton Prosecuting Attorney  
Chapman Williamson Sheriff  
and Merrill C. Young clerk.

Be it remembered that on the  
24th day of May A.D. 1858 an  
Alias Summons issued in the  
words and figures following to wit:

State of Illinois }  
Tazewell County } p The People of the  
State of Illinois, to  
the Sheriff of said County Greeting:  
We command you, as  
we have before commanded you,  
that you summon Thomas  
Dobbin, and ~~William Speers~~,  
William Reeder, impleaded with  
James Speers, if found in your  
County to be and appear before the  
Circuit Court of said County on



22<sup>d</sup> day of October A.D. 1858 a Plea was filed in the words and figures following to wit:

Syford et al	}	Circuit Court
vs		Fazewell County
Thomas Dobbins		October Term
James Speer	}	A.D. 1858

And now comes the said Thomas S. Dobbins, one of the said Defendants by Hopkins, his atty, and denies the force and <sup>injury</sup> when &c and says that he is not guilty, in manner and form as the said Plaintiffs have thereof above charged against him, and of this he puts himself upon the Country.

H. B. Hopkins  
Atty

And now  
Afterwards to wit: at a Term of the Circuit Court begun and held at the Court House in the City of Pekin within and for the County of Fazewell and State of Illinois on the first Monday of the Month of February in the Year of our



the first day of the next Term thereof  
to be held at the Court House in  
Pekin in said County on the second  
Monday of October next to answer  
Joseph Lyford and Horace Hancock  
in a Plea of Trespass on the Case  
to the Damage of the said Plaintiffs  
as they say in the Sum of five  
hundred dollars. And have you  
then and there this writ with  
an endorsement thereon in  
what manner you shall execute  
the same - Witness my hand and the Seal  
thereof at Pekin in said County  
this 24th day of May A.D. 1858

Seal

Merrill C. Young Clerk  
Per W. Don Maus D.C.

Which said Summons  
was afterwards returned on the  
13th day of October A.D. 1858 with  
the following endorsement "I have  
served the within writ on Thomas  
Dobbins by reading to him the same  
Sept. 28th 1858. William Reeder  
is not in my County.

J. W. Smith Sheriff

And <sup>now</sup> afterwards to wit: on the



22<sup>d</sup> day of October A.D. 1858 a Plea  
was filed in the words and  
figures following to wit:

Syford et al	}	Circuit Court	
Thomas Dobbins		Jazewell County	
James Speer		October Term	
			A.D. 1858

And now comes the said Thomas  
S. Dobbins, one of the said Defendants  
by Hopkins, his atty, and denies  
the force and <sup>injury</sup> when &c and says  
that he is not guilty in manner  
and form as the said Plaintiffs  
have thereof above charged  
against him, and of this he  
puts himself upon the Country.  
H. B. Hopkins  
Atty

And now  
afterwards to wit: at  
a Term of the Circuit Court begun  
and held at the Court House in  
the City of Pekin within and for the  
County of Jazewell and State of  
Illinois on the first Monday of the  
Month of February in the Year of our



11

Lord one thousand eight hundred  
and fifty nine. Present the Honorable  
James Hanniott, Judge; Hugh Fullerton,  
Prosecuting Attorney; Thomas C. Reeves,  
Sheriff; and Merrill C. Young, Clerk;  
the following proceedings were had  
in said cause to wit:

Friday February 11th 1859  
Joseph Syford et al

vs  
Thomas S. Dobbin et al

3 Trespass on  
3 the Case

This day came  
the Parties by their attorneys,  
Whereupon came a jury of twelve  
good and lawful men to wit:

Lucius H. Case - George W. Bennett

C. W. Graves - Wm Holmes

J. C. Drake - Isaac Jones

Theron Syman - Aurelius Sperry

Samuel Puterbaugh - Jesse Fisher

Oalet Hoarding - C. N. Goulding

duly elected tried and sworn,  
who having heard the Allegations  
and proofs of the Parties of the Parties  
and agreement of Counsel thereon  
retired to Consider of their Verdict

Saturday February 12th 1859  
Joseph Syford et al  
vs  
Thomas S. Dobbin et al



This day came the jury in this Cause and for Verdict say.  
 "We the Jury find the Defendants guilty and assess Plaintiffs damages at one hundred and twenty dollars. (120.00.) Whereupon the Defendants by their attorney, filed a motion for a new trial, which motion for a new trial was by the Court overruled. ~~~~~

The Defendants thereupon prayed an appeal which is allowed upon the Defendants filing their Appeal Bond within thirty days, with George Spurck as Security in the sum of Five Hundred Dollars. (\$500.<sup>00</sup>/<sub>100</sub>.) ~~~~~

And now afterwards to Wit: on the 18<sup>th</sup> day of February A.D. 1859. A Bill of exceptions was Filed in the words and figures following to Wit:

State of Illinois } Circuit Court  
 Tazewell County } P. Tazewell County  
 February Term A.D. 1859



Joseph Lyford  
 Horace Hancock

<sup>vs</sup>  
 Thomas S. Dobbins  
 James G. Speer et al

Be it remembered  
 that on the trial of this cause the  
 Plaintiffs to maintain the issues on  
 their part, produced as a witness one  
 Cleveland, who being sworn,  
 said. that Defendant Dobbins lives  
 at Peoria and owns a distillery, that  
 defendant Speer also resides at Peoria  
 and is employed about the same distillery,  
 but in what capacity witness does not  
 know; ~~Witness further said, sometimes~~  
~~in~~ whether he is a partner, or not, witness  
 does not know. Witness further said,  
 some time in the Spring of 1854 I sold  
 the Plaintiffs about 15 hogs; I delivered  
 them at Wesley City, and put them  
 in a yard of the Plaintiffs. There were  
 other hogs in the yard, about as many  
 as I put in, as nearly as I can remem-  
 ber - Wesley City is in said Tazewell  
 County and about a mile below said  
 Dobbins distillery. Sometime in  
 October 1854. I went with Lyford



and Hancock to said Dobbins distillery to inquire about the Hogs of plaintiffs. Speer was there, but Dobbins was not. Lyford asked Speer if they had got any hogs from the other side of the river. Speer replied, one of our men brought in seven or eight hogs which he said he bought of Lyford and Hancock and brought them over, and that Lyford and Hancock were to come over & settle with us for them. Lyford remarked to Speer that he had never sold any hogs to any one. Speer asked ~~Lyford~~ them to go to the pen and point out their Hogs, and said that he could himself point out 3 or 4 of them. They went to one of the pens, and Speer said there were two white Shoats in the pen, which he pointed out as 2 got from across the river as Lyford & Hancock's, by our man as aforesaid. That they weighed about 150 pounds each, and said that there was one black one there, that he could identify anywhere, as bought by our man aforesaid. Plaintiffs and Speer then went out into the office, to look



at the Books of record of Hogs, for the purpose of identifying Hogs. I could not identify any of the Hogs which I saw as being the Plaintiffs hogs. The Plaintiffs did not identify any of the Hogs as theirs, to my knowledge. Could not find Dobbins that day. Sometime about a week afterwards, I went with Plaintiffs to Peoria and saw Defendant Dobbins in his Buggy in the street and had some conversation about the hogs. Dobbins said that a man by the name of Reeder put some hogs into his Pen which he said belonged to Plaintiffs, about 30 or 40 of them, that he Dobbins, learned that there was likely to be some trouble or controversy about the hogs, and he thereupon turned the Hogs out of his pens, that he Dobbins, had authorized said Reeder to purchase hogs for him, if he could get them, so that they would not cost over four cents per pound. That said Reeder had put the hogs in the pen, that the Hogs would weigh about 150<sup>lbs</sup> each. This was all the evidence on the part of the Plaintiffs; and the



Plaintiffs here rested their case.

The Defendants then moved the Court to instruct the Jury, to find a Verdict of "not Guilty" as to the defendant <sup>James G.</sup> Speer, with ~~the~~ a view of using him as a witness for Defendant Dobbins. The Court overruled the said motion, to which ruling, the Defendants then and there ~~excepted~~ objected and excepted.

Defendants then introduced Charles Pateman, who being sworn said, that in the Fall of 1854 the Illinois River was very low and hogs frequently swam across the river from Wesley City to the other side. That Dobbins run the Slop from his distillery into the river and hogs often followed the Slop up to the said Distillery which is a mile above Wesley City on the opposite side of the river. Witness found some of his hogs at Dobbins Distillery in his pens, seven or eight of them and Dobbins paid for them. In the Fall of 1854 Plaintiffs moved three or four loads of Hogs from Wesley City



to Groveland. hauled them in Waggon<sup>s</sup> covered with Boards, the Waggon<sup>s</sup> would hold 20 Shoats, don't know how many were put in, nor their size. This was all the evidence in the case. The Court then gave the Jury the following instructions on part of Plaintiffs.

"1<sup>st</sup>. If the Jury believe from the evidence that the Defendants wrongfully took the Plaintiffs Hogs, it is an actual conversion of them by the Defendants and no request to redeliver them need be proved."

No 2<sup>d</sup>.

The Jury are further instructed that the disposition of the Plaintiffs property by the Defendants, is a Conversion of it, for which the Defendants are liable, in an action of Trover, though the Defendants acted under unavoidable ignorance and not for their own benefit, and if the Defendants in the opinion of the Jury from the evidence, were so guilty of such conversion, they will find for the Plaintiffs, the value of the Property so converted as proven.



N<sup>o</sup> 3. The Court instructs the Jury that a demand and refusal, are not necessary, when the Defendants receives the Property ~~in~~ in question, from a third person after notice of the Plaintiffs, till, or when the Defendants dispose of the Property in any way. and if the Jury believe from the evidence that the Defendants are guilty of so receiving the Property or disposing of it, they will find for the Plaintiffs. -

N<sup>o</sup> 4.

If the Jury believe from the evidence that the Plaintiffs demanded payment for the Hogs that the Defendants had in their possession and the Defendants refused it, that then the demand of Payment is a good demand to support this action, and if they so further believe. Said Defendants, had Plaintiffs Hogs, they will find for the Plaintiffs the value of the Hogs, as proved to have been in the Defendants possession."

To the giving of which, Defendants then and there excepted &c.



19.

The Court then gave the Jury the following instructions on part of defendants. ~~~~~

"No. 1." If admissions of the Defendants are given in evidence by the Plaintiff, the admissions must be taken altogether. The Jury have no right to receive the admissions of the Defendants, which make against them, and not those which are in their favour, if they are all made at the same time and in relation to the same matter."

No 2

If Defendants came in possession of the Hogs in Controversy under a contract with Plaintiffs, such possession, was lawful, and the Defendants are not liable in this action, unless the contract was mutually abandoned, and Defendants refused to give up the Hogs, on demand, or converted the same to their own use. —

No 3

If Robbins ascertained that the Hogs were wrongfully put in his possession, and was no



party to the wrong, his turning ~~the~~ the Hogs out of his possession is not a conversion to his own use, unless there was a demand and refusal, before the turning of them out.

No 4 If the Jury believe from the evidence, that the hogs in question, strayed into the premises of defendants, they will find for the defendants, unless there was a demand and refusal to deliver. If the Jury believe ~~that the hogs~~ from the evidence, that the Hogs ~~were~~ were brought to defendants premises without the consent or authority of the defendants, they will find for the defendants, unless there was a demand and refusal.

No 5  
The Jury are instructed that if Reeder was sent out as the agent of Dobbins to buy Hogs and he without the consent ~~or~~ or authority of Dobbins or Speers took Hogs without buying them and put them into defendants



21 premises. ~~they~~, unless there was a demand and refusal, they will find for the Defendants.

No 6

Unless the Jury believe from the evidence that the Plaintiffs were the joint owners of the Hogs they will find for Defendants.

No 7

That no admissions made by one of the defendants is to have any weight against the other defendants."

The Jury then returned a verdict for the Plaintiffs, as follows:

"We the Jury find the Defendants Guilty, and assess Plaintiffs damages at One hundred and Twenty dollars." (\$120.<sup>00</sup>/<sub>100</sub>.)

To all of which rulings of the Court, aforesaid, and the said finding of the Jury, the Defendants then and there objected and excepted.

Defendants then moved to set aside said verdict and for a new trial for the following reasons. 1st The Court gave improper



instructions on part of Plaintiffs.

2<sup>c</sup>

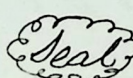
The Court erred in not instructing the Jury to find a Verdict of "not Guilty" as to Defendant Speer upon Defendants Motion.

3<sup>d</sup>

The Verdict was contrary to law and evidence

4<sup>th</sup> The Damages found by the Jury are excessive;

Which Motion the Court overruled and the defendants then and there ~~prayed~~ objected and excepted. The defendants then prayed an Appeal, which is allowed, and pray that this their bill of exceptions may be signed and sealed, which is done -

James Harriott 

And now afterwards to wit: on the 5<sup>th</sup> day of March A.D. 1859 an Appeal Bond was filed in words and figures following to wit: "Know all men by these presents that we Thomas S Dobbins and James G. Speer as principals and:



George Spruck as security, are held and firmly bound unto Joseph Syford and Horace Hancock in the penal sum of Five Hundred dollars to the payment of which we jointly and severally and firmly bind ourselves our heirs executors and administrators by these presents given under our hands and seals the 25th day of February A.D. 1859

The Condition of the above obligation is such that whereas the said Syford & Hancock did at the February Term of the Circuit Court in and for the County of Tazewell and State of Illinois recover a judgment against said Dobbins & Speer in a suit therein pending wherein said Syford & Hancock were Plaintiffs and said Dobbins & Speer & William Reeder were Defendants for the sum of One hundred and twenty dollars and costs of suit, from which said judgment, said Dobbins & Speers-



prayed an Appeal which was  
 allowed. Now if the said  
 Dobbins & Speers shall duly pros-  
 -ecute their said Appeal according  
 to Law and pay the Judgment,  
 all costs interest & damages in  
 case the said Judgment shall be  
 affirmed, then these presents to  
 be void, but otherwise in force.

J. S. Dobbins

Jas. G. Speer

George Spurek

Seal

Seal

Seal



State of Illinois }  
 Tazewell County } ss.

I Merrill C. Young  
 Clerk of the Circuit Court  
 within and for said County  
 do certify that the foregoing  
 twenty four pages contain a  
 true perfect and complete  
 Record of the proceedings had  
 in the Cause therein named  
 as the same appears of Record  
 in my Office.

Witness Merrill C. Young  
 Clerk of our said Circuit  
 Court at Pekin this 11th  
 day of April AD 1859 The  
 Seal of said Court being  
 hereto attached

Merrill C. Young Clerk

Feest 6



State of Illinois  
Supreme Court April Term at Ottawa

A D 185-9

And now come the said ~~Plaintiffs~~ <sup>Appellants</sup>  
~~error~~ by H B Hopkins their Attorney  
and say that there is manifest error  
in the proceedings rulings & determina-  
tions of the Court below to their great  
damage & injury And for error they  
assign the following

1<sup>st</sup> The Court below erred in refusing  
to instruct the Jury to find a ver-  
dict of not guilty as to defendant  
Spier

2<sup>nd</sup> The Court gave the jury im-  
proper instructions on part of Plaintiff

3<sup>rd</sup> The verdict is not at all just  
fied by the evidence

4<sup>th</sup> The verdict is contrary to law  
and evidence

5<sup>th</sup> The Court erred in refusing  
to set aside said verdict

6<sup>th</sup> The Court erred in overruling  
Defendants motion for new trial

7<sup>th</sup> The damages assessed by the jury are  
unjust & excessive

8<sup>th</sup> The verdict & judgment should  
have been for the Defendants instead  
of the Plaintiffs



9th The errors in reversing  
judgments upon said verdicts  
~~and Plaintiffs in error~~

And appellants aver that the said  
errors are manifest from the foregoing  
record & pray the Supreme Court here  
to inspect the same and reverse all  
the said errors of the court below

J B Hopkins  
Atty for Apprs

And the said appellants say  
that neither in the record & proceedings  
aforesaid nor in the giving of  
Judgment aforesaid is there any error  
Wherefore they pray that the Judgment  
above given may in all things  
be affirmed &c

A. L. Davison  
for Appellants



182-70

Thomas S. Dobbin  
et al vs

Joseph Syford

---

Recd & assgt of Enos

Filed April 18, 1859  
L. Leland  
Clerk



PAGE OF  
THE  
RECORD.

THOMAS DOBBINS, JAMES SPIER,  
*Appellants.*  
vs.  
JOSEPH LYFORD, HORACE HAN-  
COCK & WM. READER,  
*Appellees.*

IN THE SUPREME COURT  
AT OTTAWA,  
APRIL TERM, A. D. 1859.  
APPEAL FROM TAZEWELL Co.  
*Actione Trover, Damages \$500.00.*

1 Praeipie filed January 15th, 1858.

2 Summons issued January 18th, 1858.

3 Returned February 16th, 1858, served on James Spier.

4 Alias summons issued May 24th, 1858.

5 Served on Thomas Dobbins Sept. 28th, 1858. No service on Reader.

6-6 March 19th, 1858, declaration filed alleging trover and conversion by defend-  
ants of forty hogs, property of the plaintiffs, of the value of \$500.00.

6-7 Second count alleging trover and conversion of 30 hogs, 10 shoats and 10 pigs,  
of the value of \$500.00.

Fifth day of April, 1858, defendant Spier filed plea of the general issue.

10-11 October 22d, 1858, defendant Dobbins filed plea of general issue. Tried Feb-  
ruary term, 1859, before Harriott, judge, and a jury.

12 Verdict for plaintiffs for \$120.00. Motion for a new trial by defendants. Mo-  
tion overruled. Defendants pray an appeal. Allowed upon filing bond within  
thirty days, with George Spurek security, in the sum of \$500.00.

22-24 Appeal bond filed March 5th, 1859, with security as above required.

13 Bill of exceptions filed February 18th, 1859, abstracted as follows:

13 Plaintiffs, to maintain the issue on their part, produced one Cleaveland, who,  
being sworn, said: Defendant Dobbins lives at Peoria; owns distillery. Defend-  
ant Spier is employed about said distillery; don't know in what capacity; do not  
know whether he is a partner or not. In spring of 1857, I sold plaintiffs about  
15 hogs; delivered them in plaintiffs' yard at Wesley City. There were other hogs  
in the yard—about as many as I put in. Wesley city is in Tazewell county, about



14 a mile below Dobbins's distillery. Some time in October, 1857, I went with Lyford and Hancock to said Dobbins's distillery, to inquire for plaintiffs' hogs. Spier was there; Dobbins was not. Lyford asked Spier if they had got any hogs from the other side of the river. Spier replied: One of our men brought in 7 or 8 hogs, which he said he bought of Lyford & Hancock, and that Lyford & Hancock were to come over and settle with us for them. Lyford told Spier that he had never sold any hogs to any one. Spier asked them to go to the pen and point out their hogs, and said he could point out 3 or 4 of them. They went to one of the pens, and Spier said there were two white shoats and one black one which he could identify as having been brought over the river by our man as Lyford & Hancock's hogs, as before stated; weighed about 150 lbs. each.

15 Plaintiffs and Spier then went into the office to look at books of record of hogs, for the purpose of identifying hogs. I could identify no hogs in Dobbins's pens as plaintiffs', and plaintiffs did not identify any to my knowledge. About a week afterwards, I went with plaintiffs to Peoria, and saw Dobbins in the street. Dobbins said, a man by the name of Reader put some hogs into my pen, which he said belonged to plaintiffs—about 30 or 40 of them; that he, Dobbins, learned there was likely to be some trouble or controversy about the hogs, and he turned them out of his pen; that he had authorized Reader to purchase hogs for him at four cents per pound. Hogs would weigh about 150 lbs. each. This was all the evidence on the part of plaintiffs.

16 Plaintiffs rested.

Defendants then moved the court to instruct the jury to find a verdict of Not Guilty, as to defendant Spier, with a view of using him as a witness for defendant, Dobbins.

The Court overruled said motion. Defendants objected and excepted. Defendants then introduced Charles Patsman, who, being sworn, said: In the Fall of 1857, the Illinois river was very low. Hogs often swam across from Wesley City to the other side, and Dobbins run the slop from his distillery into the river. Hogs often followed the slop up to the distillery. Witness found 7 or 8 of his hogs in Dobbins' pens, and Dobbins paid him for them. In the fall of 1857, plaintiffs moved three or four wagon loads of hogs from Wesley city to Grov-

17 land. Do not know how many were moved. Wagon would hold about 20. This was all the evidence in the case.

On part of the plaintiffs, the court then gave the jury instruction No. 1. Court also, on behalf of the plaintiffs, instructed the jury as follows:

No. 2. Jury are further instructed that the disposition of the plaintiffs' property by the defendants, is a conversion of it, for which the defendants are liable in an action of Trover, though the defendants acted under unavoidable ignorance, and not for their own benefit. And if the defendants, in the opinion of the jury, from the evidence, were so guilty of such conversion, they will find for the plaintiffs, the value of the property so converted as proved.



18 No. 3. The court instructs the jury, that a demand and refusal are not necessary when the defendants receive the property in question from a third person, after notice of the plaintiffs' title, or when the defendants dispose of the property in any way. And if the jury believe from the evidence that the defendants are guilty of so receiving the property, or disposing of it, they will find for the plaintiffs.

No. 4. If the jury believe from the evidence that the plaintiffs demanded payment for the hogs that the defendants had in their possession, and the defendants refused it, that then the demand of payment is a good demand to support this action. And if they also believe said defendants had plaintiffs' hogs, they will find for the plaintiffs the value of the hogs, as proved to have been in the defendants' possession. To the giving of which said instructions defendant objected and excepted.

19-20-21 On part of the defendants, court gave the jury instructions No. 1, 2, 3, 4, 5, 6 & 7.

22 Jury rendered a verdict of guilty, and assessed damages at \$120. Defendants moved the court to set aside the said verdict and for a new trial, for the following reasons :

1. The court gave improper instructions on part of the plaintiffs.
2. The court erred in refusing to instruct the jury to find a verdict of not guilty as to defendant Spier.
3. Verdict was contrary to law and evidence.
4. The damage found by the jury is excessive.

Which motion the court overruled, to which defendants objected and excepted

#### ASSIGNMENT OF ERRORS.

1. The court erred in refusing to instruct the jury to find a verdict of not guilty as to defendant Spier.
2. Court gave the jury improper instructions on part of the plaintiffs below.
3. The verdict is not at all justified by the evidence.
4. The verdict is contrary to law and evidence.
5. The court erred in refusing to set aside said verdict.
6. The court erred in overruling defendants motion for a new trial.
7. The damages assessed by the jury are unjust and excessive.
8. The verdict and judgment should have been for defendants instead of plaintiff.
9. Court erred in rendering judgment upon said verdict.

H. B. HOPKINS,  
*Attorney for Appellants.*



182 70

Thomas S. Dobbins  
et al

by  
Joseph Lyford et al

Abstract

Filed April 20, 1839  
L. Leland  
clerk



THOMAS DOBBINS, JAMES SPIER,  
*Appellants.*  
vs.  
JOSEPH LYFORD, HORACE HAN-  
COCK & WM. READER,  
*Appellees.*

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AT OTTAWA,  
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- 5-6 March 19th, 1858, declaration filed alleging trover and conversion by defend-  
ants of forty hogs, property of the plaintiffs, of the value of \$500.00.
- 6-7 Second count alleging trover and conversion of 30 hogs, 10 shoats and 10 pigs,  
of the value of \$500.00.
- Fifth day of April, 1858, defendant Spier filed plea of the general issue.
- 10-11 October 22d, 1858, defendant Dobbins filed plea of general issue. Tried Feb-  
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- 12 Verdict for plaintiffs for \$120.00. Motion for a new trial by defendants. Mo-  
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15 hogs; delivered them in plaintiffs' yard at Wesley City. There were other hogs  
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16 Plaintiffs rested.

Defendants then moved the court to instruct the jury to find a verdict of Not Guilty, as to defendant Spier, with a view of using him as a witness for defendant, Dobbins.

The Court overruled said motion. Defendants objected and excepted. Defendants then introduced Charles Patsman, who, being sworn, said: In the Fall of 1857, the Illinois river was very low. Hogs often swam across from Wesley City to the other side, and Dobbins run the slop from his distillery into the river. Hogs often followed the slop up to the distillery. Witness found 7 or 8 of his hogs in Dobbins' pens, and Dobbins paid him for them. In the fall of 1857, plaintiffs moved three or four wagon loads of hogs from Wesley city to Grov-

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18 No. 3. The court instructs the jury, that a demand and refusal are not necessary when the defendants receive the property in question from a third person, after notice of the plaintiffs' title, or when the defendants dispose of the property in any way. And if the jury believe from the evidence that the defendants are guilty of so receiving the property, or disposing of it, they will find for the plaintiffs.

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1. The court gave improper instructions on part of the plaintiffs.
- 22 2. The court erred in refusing to instruct the jury to find a verdict of not guilty as to defendant Spier.
3. Verdict was contrary to law and evidence.
4. The damage found by the jury is excessive.

Which motion the court overruled, to which defendants objected and excepted

#### ASSIGNMENT OF ERRORS.

1. The court erred in refusing to instruct the jury to find a verdict of not guilty as to defendant Spier.
2. Court gave the jury improper instructions on part of the plaintiffs below.
3. The verdict is not at all justified by the evidence.
4. The verdict is contrary to law and evidence.
5. The court erred in refusing to set aside said verdict.
6. The court erred in overruling defendants motion for a new trial.
7. The damages assessed by the jury are unjust and excessive.
8. The verdict and judgment should have been for defendants instead of plaintiff.
9. Court erred in rendering judgment upon said verdict.

H. B. HOPKINS,  
*Attorney for Appellants.*



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Dobbins vs. Lyford

Abstract

Filed April 20, 1859

L. Leland  
Clerk



# SUPREME COURT OF ILLINOIS,

*Third Division—April Term, 1859.*

THOMAS S. DOBBINS,  
JAMES SPIER, Appellants,  
*vs.*  
JOSEPH LYFORD, et. al.  
Appellees.

## ABSTRACT OF ARGUMENT OF APPELLANTS, AND AUTHORITIES CITED.

Action, Trover, for certain hogs claimed by the plaintiff below. Trial, February Term, 1859, Tazewell Circuit Court. Verdict for plaintiff, for \$120, and judgment thereon.

Motion for new trial overruled and appeal perfected.

- I. The Court below erred in refusing to instruct the Jury to find a verdict of not guilty, as to defendant, Spier, in order that he might be used as a witness for defendant, Dobbins.

The plaintiffs' evidence does not tend to show a liability on part of Spier; therefore said instruction should have been given.

*1 Greenleafs Ev. sec. 358 & cases cited*

- II. The Court below gave the Jury improper instructions on part of Plaintiffs.

1st. Plaintiffs' second instruction is erroneous. The word "disposition" therein taken in connection with the testimony, means the turning of said hogs out of defendant Dobbins' pens, which is the only disposition mentioned in the testimony. This kind of disposition done in "unavoidable ignorance of plaintiffs' rights, and not for their own benefit," does not amount to a conversion.

2nd. Plaintiffs' third instruction is erroneous. In the absence of other evidence of a conversion, a demand and refusal before action brought, must be proved. In order that taking the property from a third person constitute a conversion, the taking must be wrongful. In order that a disposition of the property constitute a conversion, it must be done in some way for defendant's use and benefit. *or to the use of another*

3d. Plaintiffs' fourth instruction is erroneous. A demand and refusal of property is evidence of conversion, but a demand and refusal of pay for property is no evidence of conversion.

- III. The said verdict should have been set aside as contrary to law and evidence.

*2 Greenleafs Ev. § 644 page 604 Sanderson Pl. & Ev. Vol 2 part 2  
1138. 1138. 1156 & 1159*



1st. All the testimony relative to the hogs in question, is that of Cleveland, about certain admissions of Spier, at one time, and Dobbins at another. There was no wrongful taking of the property, no conversion, no demand and refusal. The hogs were put into Dobbins' possession by a third person, under representation that he had purchased them. Dobbins found there was some controversy about said third person's right to put the hogs there, and refused to have them in his possession, and turned them out. This is all the evidence amounts to.

2nd. There is no evidence whatever against the defendant, Spier; the verdict and judgment are entirely erroneous as to him.

IV. The verdict is for excessive damages.

V. The Court below should have granted a new trial for all the reasons aforesaid

H. B. HOPKINS,  
Attorney for Appellants.

*Dobbins turning the hogs out of his pens  
is not a conversion  
Humphrey vs Douglass 11 Vermont 22  
3 Sanderson Pl & Ev 1156  
Foulens vs Willoughby 8 Ill & W 540*



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Dobbins vs Lyford  
Brief

Filed April 23, 1859  
A. Leland  
Clerk



Thomas J. Dobbin  
James J. Spier  
vs  
Joseph Lyford  
et. al.

Supreme Court  
April Term 82/1859  
at Maroa

Argument of Appellant

I

The Court below should have instructed the jury to find a verdict of "not guilty" as to Defendant Spier in order that he might be used as a witness for Defendant Dobbin

1<sup>st</sup> Grounds Evidence. sec. 358 & cases there cited

The stage of the trial at which the jury shall be instructed to find a verdict of "not guilty" as to a co. defendant in actions of tort lies in the discretion of the Court. But, a motion being once made for that purpose, if after the testimony is all in, there is no testimony against either co. defendant, it is the duty of the Court to instruct the  ~~Court~~ jury as aforesaid. Otherwise the Plaintiff may join in the action all the witnesses of the Defendant, and the Court by refusing to instruct as aforesaid suppresses all the testimony of Defendant and virtually deprives the Defendant of all benefit of a trial. He may as well put himself at once at the mercy of the Plaintiffs & pay whatever they demand as to go into Court & be deprived of all his proof either by act of Plaintiff or of the Court.



That there was no testimony in the case against Defendant Spier is shown under a subsequent head

II

The Plaintiffs <sup>Second</sup> ~~first~~ instruction is erroneous for the reason given in the printed brief hereto attached

The Court will observe that the word "disposition" used in said instruction has no definite legal signification. An infinite variety of dispositions of property may be made to each of which different legal consequences may attach. The meaning of the word as used in the instruction will be seen by referring to the testimony to wit, turning the said logs over of Dobbin's <sup>property</sup> when he became aware of doubt as to their right there being put there by a third person. Such a "disposition" is not a conversion.

Plaintiffs 2nd Instruction ~~and~~ is erroneous for reasons above stated & those stated in brief hereto attached. See authorities cited under 2<sup>d</sup> head of brief also 3. Vol. Fairbanks Pl. & Cr. page 115-6. *Donaldson vs Willoughby* 8 M & W 3-4 & *Humphrey vs Douglass* 11 Vermont 22

Plaintiffs 4th Instruction is erroneous. Demand & refusal of payment for property ~~and~~ is not of itself proof of conversion. Demand of payment may be



made in numerous cases where there is no liability to pay & there are numerous cases of liability to pay where trover cannot be sustained. There is no case where demand & refusal of payment have been held sufficient to maintain trover unless there was a wrongful taking or the refusal was based upon a claim of ownership of the property.

### III

Upon the testimony the Plaintiffs could not legally have judgment. The testimony is almost wholly set out in the printed abstract.

1st. As to Defendant Spier

The testimony does not show that Spier had the least possible connection with the dogs in controversy, either in taking, receiving, keeping, converting, turning out, or disposing of the same or otherwise. He was simply an employe on the premises of said Dobbins & joined in the action for the purpose of depriving Dobbins of his means of defence. The only attempt to show a liability of said Spier is, witness Cleveland is asked if Spier is not partner with Dobbins & witness said he did not know whether he was or not.

The judgment is against Spier as well as Dobbins & must be reversed.



As to Defendant Dobbin the testimony tends to show that Dobbin a distiller had a man named Reader employed buying hogs at a certain price. That Reader put some hogs in Dobbin's pen & told Dobbin that he had purchased them of Plaintiffs below & that they would settle with Dobbin therefor. Dobbin learned that there was controversy or doubt about Reader's right to put the hogs in his pen & turned them out refusing to have anything to do with the difficulty.

If a third person wrongfully take the property of another & put it in my possession without my knowledge or under representations that he has a right to do so & afterwards learn that I have been imposed upon that property wrongfully taken has been put in my possession I have a right to rid myself of the possession at once doing no injury to the property.

The mere turning out of animals from the premises of Defendant below is not a conversion. nor does it constitute any liability. 3 Vol. Sarr. Pl. & Cr. page 115-6

Fouldes vs Willoughby 8 M & W 540

Humphrey vs Douglass 11 Vermont 22

We submit that the facts do not justify a recovery.  
The annexed brief is made part hereof.

~~ATTEST~~



The flaunting untruth or unreasonable  
joke filed in this case as an "argument"  
by the Appellee & which has just come  
to our notice induces us to ask the  
court to look particularly at the testimo-  
ny detailed in the Record & abstract

The testimony shows affirmatively  
that there was no wrongful taking by  
either of said Defendants that there never  
was any coercion, nor any demand  
& refusal, nor even a demand of pay-  
ment & refusal

That Appellees never had any cause of  
action against anybody but said Brewer  
who was not served nor tried, and  
that said Dobbins & Spier were only joined  
in the suit to exclude their testimo-  
ny of which Brewer if sued alone  
might avail himself

H. B. Hopkins  
Atty of Appellants



182-70  
Thomas S. Dohkins et. al.

vs  
Joseph Lyford et. al.  
Plaintiffs Argument

Filed May 4<sup>th</sup> 1858  
L. Leland  
Clerk