

12646

No. _____

Supreme Court of Illinois

Reed.

vs.

Eames.

71641  7

Henry H. Eames

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1858

Reed
vs
Eames

1858

12646

X

Prepared

Saball County Court. March Term 1857

State of Illinois }
Saball County } p.

Plas, Proceedings and Judg-
ments held and taken in and before the
Saball County Court in the State of Illinois
at the Court Room in Ottawa in the County
of Saball of March Term thereof to wit, of the
Second day of March A.D. 1857. and of the
Independence of the United States of America
the Eighty first

Present Hon. Geo. C. Champlin Judge
Saml W. Raymond clerk
Geo S. Waterman Saff.

Be it remembered that heretofore to wit
on the Second day of February 1856 there
was a plea and affidavit filed with
the clerk of said court in the following words
and figures to wit.

State of Illinois }
Saball County } p. Henry B. Evans plaintiff
of the County of Saball com-
plains of Lewis P. Reed defendant of the
County of Saball of a plea of unjustly detaining
the goods, chattels, and personal property to wit.
One top chair or gig of the value of one hundred
and twenty five dollars - which was mortgaged

to the said Carnes by Oliver Cornell on or
about the second day of November A.D. 1856

Command the Sheriff to seize and deliver
said goods, chattels and personal property to
said plaintiff and summon the said de-
fendant to appear in the LaSalle County
Court and answer according to the course
and practice of said court dated the second
day of February 1857

W. W. L. Wallace Atty.

To the Clerk of LaSalle }
County Court Illinois } for plff. Carnes.

State of Illinois }
LaSalle County } p.

William W. L. Wallace

being duly sworn, deposes and says that
he is the attorney & agent of Henry P. Carnes
the plaintiff in the above ^{pending} ~~now~~ ^{named} that said
Carnes is as affiant is informed & believes
now lawfully entitled to the possession of the
property therein described, and that the said
property has not been taken for any tax, as-
essment, or fine, levied by virtue of any law
of this state nor seized under any execution
or attachment against the goods and chattels
of the said plaintiff liable to execution or attach-
ment as affiant is informed & verily believes

Subscribed and sworn to before } W. W. L. Wallace
on the 2^d day of February 1857 }
A. W. Raymond clerk

Afterwards to wit on the same day, a writ of Replevin was issued out of the office of the clerk of said Court. in the words and figures following to wit,

The People of the State of Illinois,
To the Sheriff of our county of LaSalle
Greeting

Whereas, William W. L. Wallace
agent and attorney for Henry P.
Carnes the plaintiff in this suit complains
that Amos P. Reed, the defendant in this
suit does unjustly detain the goods, chattles
and personal property of the said plaintiff
that is to say, one top chair or gig of the
value of one hundred and twenty five dollars
which was mortgaged to the said Carnes by
Oliver Cornell on or about the ~~same~~ second
day of November A.D. 1856. Now if the said
plaintiff shall give you a bond with good &
sufficient security, as required by law, to
pursuant his complaints to effect, and
without delay, and make return of the
said property, if return thereof shall be adjudged
and to save and keep you, the said sheriff
harmless in replevying such property -
Then we command you, that you cause
the said goods, chattles, and personal property
to be replevied, and delivered to the said
plaintiff without delay. And no further

command you to summon the said
 defendant personally to be and appear
 in our Sabell County Court, before our
 judges thereof, at the Court House in Attamora
 on the first Monday in March next at
 ten o'clock in the forenoon, to answer
 the said plaintiff of a plea of unjustly
 detaining the goods, chattels, and personal
 property aforesaid. and have you then then
 the said Bench, together with this writ, and
 the manner you shall have executed the
 same

In witness whereof, we have caused the
 seal of our said court to be hereunto affixed
 and attested Samuel M. Raymond our
 clerk of thereof at Attamora 25. day of February
 1857 S. M. Raymond clrk.

Endorsed, "Served the within writ by reading the
 "same to James P. Reed and delivering
 "the within described property to W. H.
 "L. Wallum Plaintiffs Attorney.
 " Feb 2^a 1857

"Fusocket .60

"mile .05

Bond .50

Beil .25

Replevy 50

\$ 1.90

"En' L. Waterman Sheriff

"By A. B. Grov Deft

"Filed Feb 5 1857

S. M. Raymond clrk

Rec'd

Afterwards to wit on the 5th day of February 1857
a Bond was filed in this case which bond is in
the words and figures following, to wit,

State of Illinois }
LaSalle County } p.

Know all men by these
presents, That we Henry F. Eames and O. H.
Bullen of the County of LaSalle and State
of Illinois, are firmly ~~bound~~ held and bound
unto Eric L. Waterman Sheriff of said County,
in the perual sum of Two Hundred and fifty
dollars, good and lawful money of the United
States, which sum to be well and truly ~~paid~~
made, we bind ourselves, Executors and
administrators firmly by these presents

Witness our hands and seals, this second day of
February A.D. 1857

The Condition of the above oblig-
ation is such, that whereas, the above named, Henry
F. Eames on the second day of February A.D.
1857 sued out of the County Court of LaSalle
County a writ of Replevin against one Amos
P. Reed for the following goods and Chattels, viz,
one top Chair or gig of the value of one
hundred and twenty five dollars. And
said writ is returnable at Ottawa, in said
County, on the first Monday of March next,
now, if the said Henry F. Eames shall appear at

the next term of said court, and prosecute
said suit of replevin to effect, and without delay,
and make return of said property, if return
thereof be awarded, and secure and keep same
-Up the said Sheriff in replevying said property,
then the above obligation to be ~~void~~ null and
void, Otherwise, to be and remain in full
force and Effect,

Henry F. Eames *Clk*
by C. H. Mullen

C. H. Mullen *Clk*

Filed " Feb'y 5th 1857

J. W. Regan *Clk*

Afterwards to wit, on the 19th day of February
A.D. 1857 a declaration was filed in this cause
which is in the words and figures following, to
wit,

State of Illinois
Sasale County - & County Court of said County
To the March Term A.D. 1857 -

Amos P. Reed defendant was summoned to
answer Henry F. Earnes plaintiff, of a plea
wherefore he took the goods and chattels of the
said Henry F. Earnes, and unjustly detained
the same until &c - and thereupon the said
plaintiff Henry F. Earnes by W.H. Wallace
his attorney, complains -

For that whereas heretofore, said defen-
dant, to wit on the first day of January
in the year of our Lord Eighteen hundred
and fifty seven in the County aforesaid, ~~then~~
there took the goods and chattels, to wit one
Top Chaise or Gig - of the said plaintiff, of
great value, to wit of the value of one hundred
and twenty five dollars - which was mortgaged
to the said plaintiff by Oliver Cornell, on or
about the second day of November A.D. 1856,
and unjustly detained the same &c -

Wherefore the said plaintiff prays, that
he is injured and hath sustained damage

to the amount of fifty dollars and therefore
he sues &c

W.H.L. Wallace

Plffs attorney

Enclosed, Filed Feby 19th 1857

J. W. Raymond clk

Afterwards to wit on the 5th day of March
1857 the same being one of the days of
said Term of said County Court & pleas
were filed in this court, which pleas are
in the words and figures following, to wit;

State of Illinois } County Court thereof
LaSalle County } ss of the March Term A.D. 1857

Henry F. Carnes }

vs

Amos P. Reed }

in Replevin

And now comes the said

Amos P. Reed and defends the wrong and
injury where and says that he does not
wrongfully detain the goods and chattels
in the declaration mentioned, or any part
thereof, in manner and form as therein
alleged, and of this he puts himself upon
the country &c
& Plaintiff likewise

By Michael Gray his
Attorneys

by Wallace for plff

And the said defendant, by leave of the
Court first had and obtained in this behalf
for a further plea says actio non because
he says that the goods and chattels in the
said declaration mentioned, at the said
time when it were the property of the defendant
and not of the plaintiff and this he is ready
to verify, wherefore he prays judgment
if the said Henry A. Eames ought to have and
maintain his aforesaid action thereof
against him or No.

Bushnell & Gray
his Atty

and on the same day a replication was
filed which replication is in the words
of figures following to wit;

And now Comes the plaintiff by Wallace
his Atty, for replication to said defendant's
second plea by him above pleaded says
precludi non se. because he says that the
said goods and Chattels in said declaration
mentioned at the said time when it were not
the property of said defendant & that the
said plaintiff prays may be enquired of
by the Country or
And the defendant doth
the like -

W. H. L. Wallace
for plff

Bushnell & Gray
attys pro def

Be it also remembered that on the 9th
day of March A.D. 1857 the same being one
of the days of said Term of said County
Court the following order was made and
Entered of record in said Court in this cause
to wit:

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112
Henry F. Eames }
vs } Replevin
Amos P. Reed }

This day comes the plaintiff
by William H. L. Wallace his Attorney and
defendant by Pembroke Gray his attorneys
and by agreement of parties a jury is sworn
and this cause submitted to the Court for trial
upon an agreed Statement of facts -

Whereupon after examining the said Statement
and hearing the arguments of Counsel -
the Court finds the issues for herein for
the plaintiff and assess his damages at one
cent

Afterwards to wit on the 11th day of March
1857 the same being also one of the days of said
March Term of said County Court the
following ~~the following~~ order was made and
Entered of record in said Court, to wit;

Henry F. Earnes

vs

Replevin

Amos P. Reed

This day again come the parties herein by their said attorneys - whereupon the defendant by his said attorneys enters his motion for a new trial herein - which motion after hearing the arguments of of Counsel is overruled by the Court, to which ruling of the Court the defendant by his said attorneys then and there excepted -

It is therefore considered that said plaintiff have and recover of said defendant the said sum of one cent for his damages and also his costs and charges by him herein expended and that he have execution therefor -

and on the same day a bill of Exceptions was filed in this cause, and also the agreed statement of facts - which bill of Exceptions & statement are in the words and figures following to wit -

Bill of exceptions

State of Illinois

LaSalle County

In the County Court thereof

2^d March Term A.D. 1857

Henry F. Earnes

vs

In Replevin

Amos P. Reed

Be it remembered that on the ninth day of March A.D. 1857, being one of the days of March Term A.D. 1857 of said Court, this cause was submitted to the Court for trial upon the facts set forth in the stipulation of the respective parties hereto annexed, and the said Court thereupon found the issues joined to be for the plaintiff, and thereupon the defendant by his attorneys moves for a new trial in this cause. The Court overruled the said motion for a new trial, and to this decision of the Court in overruling said motion for a new trial the defendant by his attorneys then and there excepted, and prayed the said Court to sign and seal this Bill of Exceptions which is accordingly done in open court

J. C. Champlin *Clk*

Statement LaSalle County Court March Term 1857

Henry F. Eames	}	Replevin
vs		
Amos P. Reed		

It is agreed by and between the parties to this suit, that the following state of facts exist

- 1st That the property replevied was on the 1st day of July A.D. 1856 the property of Oliver Cornice & he remained in possession until Jan.

10. 1857,

- 2^d That on the 4th day of November A.D. 1856 Cornell was indebted to Eames the plaintiff in the sum of \$400, and to secure such indebtedness Cornell on the day last aforesaid executed to Eames a note for \$400. & a Chattel mortgage on the property in controversy which mortgage was duly acknowledged and recorded according to law, on that day the note was due in one month after date & the mortgage provided that the possession of the property should remain with Cornell -
- 3^d That in July 1856 Cornell & Stevens were indebted to Dennis Welch that in October A.D. 1856 Welch procured judgment on said indebtedness against Cornell & Stevens before A. A. Fisher Esq. a justice of the peace of said County - an appeal was taken from said judgment to the Circuit Court of said County, and said appeal was dismissed on the 20th day of November A.D. 1856 and on the 29th day of December A.D. 1856 an execution was issued by said justice on said judgment, no execution having been issued on said judgment before ~~that~~ that time, that said Execution was delivered to D. R. Gregg a Constable & was by him levied on the property mentioned in the declaration on the 10th day of January A.D. 1857. The

property advertised and sold by the said
Constable and bought at said sale
by the defendant -

That said plaintiff was absent
from the State from the 15th day of Dec-
ember 1856 until about the first of March
A.D. 1857, & that said mortgaged debt
remains unsatisfied

Bushnell & Gray

Attys pro Deft -

W. H. S. Waller

atty for Plff -

State of Illinois
LaSalle County } p

J. Samuel W. Raymond

Clerk of the County Court of said County do
hereby certify that the above and foregoing
is a true, correct, full and complete transcript
of Record in the Case of Henry F. Barnes vs
Amos P. Reed from the records and
files of said Court remaining in my
Office

In witness whereof I have
hereunto set my hand and
affixed the Seal of said Court
at Ottawa this 28 day of
April A.D. 1857

J. W. Raymond Clerk

¹⁶⁷
Amos P. Reed

Co. vs

Henry F. Barnes

Filed April 28 1857
L. Leland
Clerk

Leland for fee Transcript \$4.50

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION,

APRIL TERM, A. D. 1858.

Amos P. Reed, plff. in error
vs.
Henry P. Barnes, defdt in error

BRIEF OF POINTS AND AUTHORITIES.

1st. A sale of a chattel ~~mortgage~~, where the possession does not accompany and follow the deed, is void as to creditors and *bona fide* purchasers.

Thornton vs. Davenport, 1 Scam. 296.

2d. So with chattel mortgages.

Murray vs. Burtis, 15 Wend. 212.

Look vs. Comstock, 15 Wend. 244.

1 Penn. R. 57.

3d. The provision, that the mortgagor may retain possession, is a mere limitation of the right of a mortgagee, and when the time limited expires, either the mortgagee must take possession of the property, or the law must sanction the rule, that the real ownership may be in one person and the ostensible ownership in another.

Hull vs. Carnley, 2 Hill 109.

4th. After default made, the mortgagee becomes the absolute owner of the property, and the possession must accompany such ownership, if the doctrine of *Thornton vs. Davenport* is to be sustained.

Burdick vs. Mc Vanner, 2 Denio 170.

Patchin vs. Pierce, 12 Wend. 61.

Fuller vs. Aiker, 1 Hill 475.

5th. But the statute itself is decisive in our favor on the question. It declares all mortgages of personal property void, unless possession is given to the mortgagee, except such as are acknowledged and recorded as the statute directs, and those are declared to be valid, if *bona fide*, for a space of time not exceeding two years, provided that the mortgage itself shall provide for the possession of the property so to remain with the mortgagor. In this case, the mortgage instead of providing that the

possession of the property *should* remain with the mortgagor at the time it was sold to the appellant, expressly provided that it should not.

Letcher vs. Norton, 4 Scam. 575.

Fox vs. Burns, 12 Barb. 677.

Carter vs. Buckner, 3 Blackford 314.

6th. If the lien is for two years, irrespective of the time limited in the chattel mortgage for the property to remain with the mortgagor, a very wide door for fraud is opened in two ways, viz.: 1st. Every credit for 30 or 60 days, secured by chattel mortgage, the property mortgaged would be protected from execution for two years, or the judgment creditor must prove that the debt is paid—a fact not at all within his knowledge.

2d. The possession of the mortgagor so long after the time, when by the terms of the mortgage he should have surrendered it, gives him an opportunity to dispose of it to innocent purchasers.

O. C. Gray,

Atty. pro. pte. in error

Supreme Court,

Amos P. Reed

67.
Henry F. Cames.

Brief of plff. in
error.

O. C. Gray,
Atty pro pelf.
in error.

STATE OF ILLINOIS, SUPREME COURT,

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Henry F. Eames, defd. in error

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O. B. Gray,
Atty. pro pelf. in error.

O. C. Gray,
Atty. pro p[ar]ty.
in error.

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THIRD GRAND DIVISION,

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Henry F. Evans, Deft. in error.

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O. L. Gray.

Atty. Geo. J. H. in error

Supreme Court.

Amos P. Reed

Henry F. James

Brief of pett.
in error.

Filed May 8. 1858
L. Selang
Clark

O. C. Gray.
Atty. pro plff.
in error.