No. 13865

Supreme Court of Illinois

McCoy, for use,

---

vs.

Chinn et al

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JAMES McCOY, For the use of THOMAS ALLINGHAM, vs. TALBOTT CHINN AND HARVEY B. HART.	SUPREME COURT OF ILLINOIS, THIRD GRAND DIVISION. APRIL TERM, A. D. 1858.

APPEAL FROM WARREN.

Plaintiff filed his declaration at November term, A. D. 1856, and on December 1, 1856, by leave of Court filed amended declaration. This was an action of debt on a replevin bond given by defendants in a case determined April 25, 1856, in said Court, wherein Talbott Chinn was plaintiff and Thomas Allingham defendant. The declaration sets out the proceedings in the replevin suit, to-wit: the making of the affidavit, the issuing of the writ of replevin, the making and delivery of the bond with the bond in hæc verba, the service of writ, replevying and delivering property to Chinn, the appearance, pleading, joining issue and trial, and the judgment, which is stated as follows: * * "Such proceedings were had that the said Thomas Allingham recovered of and from the said Talbott Chinn, one of said defendants, his costs in that behalf expended, and also had judgment of said amount for a return of said sorrel mare, as by the record * * * will more fully appear." The plaintiff then avers that a writ of retorno habendo on said judgment was issued, served on Chinn, and returned, as to the mare not found; that Chinn has not paid the costs in the said replevin suit; that he has not returned the mare; that he has not saved and kept harmless the plaintiff in executing said writ of replevin.

At November term, A. D. 1857, the defendants filed three pleas, of which the second was "non est factum," and the third "nil debet," and the first was a special plea. The plaintiff took issue on the second and third pleas, but demurred generally to the first plea.

Good. This plea is under law of 1845

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By the special plea defendants say "that the plaintiff ought not to recover more than nominal damages," "because they say the sorrel mare replevied," &c., "was at the time of the trial" of said replevin suit "the property of the plaintiff in said case, the said Talbott Chinn," "that the merits of the case have not been and were not determined in said case," and "to show why said merits were not determined," defendants set out that the said suit was an action of replevin to recover a certain sorrel mare which the plaintiff in said case declared was his property and was wrongfully detained by the defendant; that the defendant filed four pleas: 1st, "Non Detinet," 2d, "Property in defendant," 3d, "Denying plaintiff's right of possession at the time when, &c.," 4th, "Non cepit;" that the plaintiff took issue by adding the similiter to the first and fourth pleas, and by specially denying the facts set up in the second and third pleas; that the plaintiff on trial "proved conclusively that the property sued for was the property of the plaintiff in said case as alleged in said declaration in said case," "which was not rebutted by any evidence on the part of the said defendant in that case." The plea then sets out that the jury found for the defendant solely in consequence of the plain-

tiff's failure to prove a demand for the mare before the suit was brought, as the Court instructed them, " and the right of property to the said mare was not determined in said suit."

The Court sustained the demurrer to the first plea.

The bill of exceptions shows that the plaintiff offered in evidence:

1st. The affidavit in replevin suit.

2. The writ of replevin.

3d. The Bond.

4th. The record of the judgment.

5th. The writ of retorno habendo.

That defendants objected and excepted to the receipt of each of them at the time.

That plaintiff then proved that the mare was worth $125, and that the use of her was worth $25, and that the costs were paid by defendant. That Court then found issues for the plaintiff, and defendants excepted at the time.

That defendants then moved for a new trial, but the Court overruled the same, and defendants excepted at the time. That all the evidence in the case is contained in the bill of exceptions.

The defendant Talbott Chinn prayed an appeal and the same was granted.

JAMES McCOY,
FOR THE USE OF THOS. ALLINGHAM,
vs.
TALBOTT CHINN & HARVEY B. HART.

STATE OF ILLINOIS,
SUPREME COURT OF ILLINOIS,
THIRD GRAND DIVISION,
APRIL TERM, A. D. 1858.

And now comes the said Talbott Chinn, by his Attorney, and says that in the record and proceedings of the Circuit Court of Warren County in said case there is manifest and manifold error, and assigns for error the following causes:

1. Said Court erred in sustaining the demurrer to defendant's first plea.

2. Said Court erred in permitting said affidavit, writ, bond, judgment, record and writ of retorno habendo and each and either of them to be read in evidence in said case.

3. The Court erred in rendering judgment against defendants.

4. The Court erred in overruling motion for new trial.

5. The Court erred in not rendering judgment for defendants.

6. The Court erred in admitting evidence of the use of the mare.

Wherefore, for the errors aforesaid, the said Talbott Chinn prays that said judgment may be reversed, &c.

GEORGE F. HARDING,
Attorney for Appellant.

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Jas. McCoy for use

vs

Talbott Chinn

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Filed Apr 21. 1858

L. Leland

Clerk

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