

No. 12449

Supreme Court of Illinois

Collins

vs.

Bartlett

Philip Collins

vs

Elias S. Bartlett

214

1858

12449

United States of North America and State of Illinois
Circuit Court of Grundy County December Term ^{special} thereof AD 1856
Pleas before the Hon S. W. Randall Circuit Judge presiding
Present the Hon S. W. Randall Judge

A. D. Wallace Sheriff

John Hallaway Clerk

J. A. Bantleson State Attorney

Philip Collins

vs

Incarper on the case

Elias L. Bantlet

Be it remembered that heretofore
to wit on the 19th day of November AD 1856 the said
Plaintiff sued out of the office of the Clerk of said
Circuit Court a summons directed to the said Sheriff of
Grundy County which summons was in the words and
Figures following to wit.

The People of the State of Illinois. To the Sheriff
of Grundy County Greeting

We command you that
you summon Elias L. Bantlet if he shall be found
in your county personally, to be and appear in
the Circuit Court before the Judge thereof, on the
first day of the next term of said court, to be
held at the Court House in Alton on the first
Monday in December next there and there to
answer unto Philip Collins in a plea of Incarper
on the case. And have you there this writ
and the manner in which you shall have executed
the same

In witness whereof, we have caused the seal of said
Court to be hereunto affixed and attested by Geo W
Kinsted clerk thereof at Morris 19 day of
November 1856

Seal

Geo W Kinsted Clerk

Which said summons was on the 22^d day of
November AD 1856 returned into the office of the
Clerk of said Circuit Court by said Sheriff with
his return thereon endorsed which return is in
the words and figures following

Served the within Defendant by reading

Service 50

Mileage 25

Returns 10
85

Morris Nov 21st 1856

Ald Wallace Sheriff

And be it further remembered that on the 21st
day of November AD 1856 the said Plaintiff
filed in the office of ^{the Clerk of} said Circuit Court his Declaration
which Declaration is in the words and figures follow-
ing To wit

Grundy County Circuit Court - Special Term December 2nd 1856

State of Illinois

Grundy County

Philip Morris the plaintiff in this
suit by Reading & Stephens his attorneys complain of
Elias J Gantlett defendant in this suit who has
been summoned & of a plea of trespass on the case

For that whereas the said plaintiff before and at the time of the committing the grievances hereinafter next mentioned was and from thence hitherto hath been and still is the owner and lawfully possessed as of his own property of certain lands and premises whereon was then and there a large amount of personal property so in the lawful possession of the said plaintiff and owned by him as last aforesaid tant at and within the County of Grundy and State of Illinois aforesaid & by reason thereof before and at the time of the committing of the said grievances hereinafter next mentioned of right ought to have had and enjoyed and still of right ought to have and enjoy the full ownership and possession of thereof without molestation let or hindrance, and without loss or danger of loss by fire of any part of the said personal property or any part thereof being destroyed by fire or in any other manner whatever to wit at the County of Grundy aforesaid But the said Defendant well knowing the injuries last above mentioned but contriving and intending to injure and prejudice the said plaintiff in this behalf and to destroy his said last mentioned property to wit the personal property aforesaid and to cause the same to be burned consumed and destroyed and to impair & wholly ruin him and to put him to great charge trouble inconvenience expense & loss of property and to deprive him the said plaintiff of the value of the said personal

property by burning consuming and destroying the same and causing the same to be burned consumed and destroyed whilst the said plaintiff was the owner & in lawful possession thereof as aforesaid with the right to use and enjoy the same without loss or danger of loss thereof or any part thereof by fire or by any other means whatsoever or of the same or any part thereof being destroyed by fire or in any other manner whatever then on the said first day of November in the year of Our Lord Eighteen Hundred & Fifty Six and on divers other days and times between that day and the day of the commencement of this suit unlawfully wrongfully & injuriously set kindled and made & caused to be set kindled and made certain other fires in & upon the lands & premises adjoining & contiguous to the lands and premises of him the said plaintiff wherein the said personal property at that time was situated & being then at the county of Quincy aforesaid whereby & by reason the said last mentioned fire so as aforesaid set kindled and made and caused to be set kindled and made by the said defendant communicated to & burned consumed & destroyed the said last mentioned property of him the said plaintiff so as aforesaid situated and being upon the said last mentioned land and premises of him the said plaintiff then the personal property aforesaid consisting of Five Hundred Dons of Hay Five Hundred Bushels of Corn, and also his farming utensils, the property

of him the said Plaintiff trust at the county of
Grunnedy aforesaid to the damage of the said Plaintiff
of the sum of Two Hundred dollars and therefore
he brings his suit &c

Reading & Captains
P. J. Atty

And be it further remembered that on the 3^d day
of December A.D. 1856. the said defendant filed in
the office of the Clerk of said circuit court his ~~and~~ Plea
which Plea is in the words and figures following To wit

Elias J. Bartlett

vs

Philip Collins

Circuit Court of Grunnedy County &

State of Illinois

Dec Spec Term A.D. 1856

And the said defendant by
Seely & Baughner his attorneys comes and defends
the wrong and injury when &c and says that he
is not guilty of the supposed grievances above
laid to his charge or any or either of them
or any part thereof in manner and form as the
said Plaintiff hath above thereof complained
against him and of this he the said defendant
puts himself upon the country &c

Seely & Baughner

Atty for Deft

And the said Plaintiff doth the like

J. C. Cook

Atty for Plaintiff

Grundy County Circuit Court October Term AD 1857.
Pleas before the Hon Charles R Starr Circuit
Judge Presiding

Prunt	Hon Charles R Starr	Judge
	W. D. Wallace	Sheriff
	J. A. Bartleson.	State Attorney
	James A. Reading	Clerk.

October 7 1857

Philip Collins }
Elias S. Bartlett } Inspan on the case

Philip Collins
Chair of the Court

Revised Report of Henry County, October the 7th 1857

disposal on the case

And now at this day come the parties hereto by their respective attorneys Messrs Hopkins and ^{Cook} Peabody for the Plaintiff and S Wells Harris and Fellows for the Defendant and the said cause being at issue and ready for trial and the Jurors of the Jury being thereupon called came to wit James Ward James Freeman Martin Clinch Daniel W Rogers George Galtman Charles Snyder James S. Austin R. O. Hicks John Soughard Nichols Cutler Jr and Charles A. Robinson who being duly chosen tried and sworn the issue herein well and truly to try and a true verdict give according to the evidence, after hearing the evidence adduced and the arguments of counsel and charge of the court retired under the charge of a sworn officer to consider of their verdict

and afterwards to wit on Oct 9th 1857 being one of the days of the session of said court, ^{at said term} the following further proceedings were had before ^{and} entered of record in said court

And again at this day come the said parties by their said respective attorneys and the jury empannelled therein also come and deliver to the court the following verdict- We the jury find the defendant Not guilty and so they say all which verdict is entered of record Whereupon the said defendant moves said court for Judgment and it is thereupon ordered by

Said Court that said Defendant do have and recover of said Plaintiff his costs and charges by him in and about his defence in this behalf expended and that he have execution therefor

Whereupon the said Plaintiff moves by his said attorneys the court to grant him a new trial in said cause, which said motion is overruled by said court and a new trial refused

Whereupon the said Plaintiff upon the 13th day of October AD 1857 being one of the days of the session of said court at said term, the following further proceedings were had before & entered of record in said court in said cause to wit

Whereupon the said Plaintiff upon the 13th day of October AD 1857 comes and prays an appeal to the Supreme Court which said appeal was granted and Bail fixed by this court in the sum of Two Hundred dollars and the appeal Bond directed to be filed with the clerk of this court within forty days from this date and Jeremiah Collins accepted by this court as security on said appeal Bond

Whereupon the said Plaintiff by his said attorneys Hopkins and Cook come and present the Bill of exceptions in the words and figures following to wit

Philip Collins }
Elias S. Bantlett } Jurors in the Case

Be it remembered that on the trial of this cause the Plaintiff to sustain the issue on his part called Peter Bethel as a witness who testified as follows I October 1856 I lived in LaSalle County but for some weeks I was at work for Mr Smith in Grundy County. I am a carpenter I was clap boarding Smith's house it is situated on the road running north from Morris Smith's house was on the west side of that North & South road the defendant lived about a half a mile North on the same side of the road, defendant had a piece of Wheat on the East side of the ~~road~~ road the South line of the wheat was directly east from Smiths. Severnicks Collins farm Plaintiff's farm & Snyder's farm lay North & North east of the wheat field. One day in October 1856 as I was about setting down to dinner I observed a lot of colts on defendant's wheat. I had observed colts frequently on the wheat before had seen the defendant drive them off several times a day. While I was at dinner I saw defendant go down to drive the colts off from the field. I got up and went out in front of the house where I was at work and stopped & saw defendant drive the colts off from the field. I supposed he was trying to drive

there up the North road, but one got by him
he then went round the rest and drove them
down ~~the~~ towards the South East corner of the wheat
I watched him until he got down just to the
corner where I stopped looking & went to work
There was nothing to intercept my view on
the prairie for two or 2 miles the prairie was
very level, if there had been any fire in that
direction, in the place where I saw the fire I believe
I must have seen it, I saw no fire or sign of
fire at that time, I saw no person but the defendant
on the prairie at that time, think I must have
seen any one if they had been near the South East
corner of that field. After I had worked
a few minutes I cant say how many, it might
not have been over five minutes or it might possi-
bly have been 15, but I think it was about ten
minutes. I looked again and saw defendant
coming back he was coming along on the South
side of the wheat field he had passed from
one third to one half of the length of the field
on his way back at that time. I saw that the
prairie was on fire near the South east corner of
the field I should say from 4 to 6 rods east
from the corner the fire was small it may
have burned three rods in length the fire ran
North East in a very short time, it got over
into the prairie occupied by plaintiff & burned the

stacks, I saw no one on the prairie, at the time I saw the fire but the defendant's crop examined. I was standing at Smith's house where I first saw the fire, the fire was some 160 or 170 rods east from me, I could not tell exactly how far the fire was from the corner at that distance I thought it was from 4 to 6 rods might have been 20 rods, I don't think I could tell at that distance tell how far east from the corner it was I think it was on a line with the south line of the wheat field - don't think it could have been south of that line because from where I stood I could have told, being on a line with it whether it was north or south I stood at the west end of the south line of the wheat field The fire burned down south of that line about 10 rods I should think there was no fence around the wheat field There was a line of posts on the east end of the wheat field The fire burned up to that line of posts but when I first saw the fire there was a line of grass between the fire and that line of posts, think the plat presented is a correct representation of the premises (this plat is the plat of defendant & is hereto attached marked "A") There is a road running along on the south side of the wheat field toward the east,

The fire burned south of that road. The road was not much traveled - there was grass in the road, defendant came up where I was. I said there was a fire, he said yes somebody had set the prairie on fire he asked me if I saw any one before him on the prairie I told him no

The plaintiff there called ~~James~~ ^{James} Jones as a witness who testified as follows

I know the time spoken of by the last witness I have a farm lying south of defendant's wheat-field spoken of about 160 rods I should think The west line of my farm comes on a line with the east line of that wheat-field I was on my farm at the time spoken of by the last witness had been over seeing a man who was at work for me there he had been burning some buckwheat straw we burnt the straw off from 3 or 4 acres in two piles the straw was in two piles very dry & burnt quick After that straw was burned I walked down towards the north line of my farm. at the time I was down there the straw was all consumed - don't think there was anything left to burn - Saw the defendant driving colts off the wheat-field - stood and watched him drive them off the wheat field - he drove them about 20 rods East from the South East Corner - when he turned round & left the colts - he checked

his horse & rode back on a walk. I watched ^{him} till
he got to within 4 or 6 rods of the South East
corner of the wheat field - I was unable that
day & then sat down in a box and sat there
for 15 or 20 minutes, can't tell exactly how long
When I got up the prairie was on fire, the
~~prairie~~ ^{fire} was set about 4 rods from the South
East corner of that wheat field, near the spot
where I last saw the defendant, The fire had
then run about 30 rods in a north Easterly direc-
-tion - had burned a strip about 3 rods wide
It was running off towards the plaintiffs farm
was running rapidly, The wind breezed up
about the time the fire was set it blew from
the South East In a little while it changed
and blew from the South West When I saw
defendant driving his colts off the field there
was no fire on the prairie - there was nothing to
interrupt my view from where I stood & am
confident that up to the time I sat down in
the box there was no ^{fire or} smoke on the prairie
Saw no other person on the prairie anywhere
except the defendant - think I should if any
else had been there

Cross Ex

I stood about 90 rods from the place where
the fire was set - after I got up out of the
box I got up on my north fence & sat on it &

watched the fire, If that map is right I was more than 90 rods off, but am not satisfied that the map is correct, Jones stated the $\frac{1}{4}$ section marked as his upon the map was the place where he was when he saw the fire and that the location of the wheat field was correct. The straw had burnt out before I saw defendant driving the colts. That fire did not run in the field at all. To have got out of the field it would have to cross a field of green wheat of about 50 rods. I do not think there is any road running East from the south East corner of that field. There is a track on the south side of the defendants wheat field, that I have been along there two or three times that season, but I was ^{never} ~~unable~~ able to follow out the road from the south east corner of the wheat field.

The Plaintiff then called Peter Smith who testified as follows, I was at the house of Mr. Smith at the time of the fire. Some time at which the witness was I saw defendant drive his colts off from the wheat field, there was no fire in the grain at that time. I was busy plowing Septembers. I saw defendant after he had got half or two thirds of the way back from the south east corner of the wheat field. There there was a

Fire burning it was a small fire when I first saw it it was from 4 to six rods east of the South east corner of the wheat field and was just starting Saw no other person than the defendant on the prairie at that time nothing to hinder my seeing any person who was there.

Crop Examined Defendant came right up to our house he borrowed a rake I think he went up to fight the fire as I supposed from our house

The Plaintiff then introduced Benemuel Collins as a witness who testified as follows I was in my field at work when I first saw this fire spoken of by the other witnesses I drove my horses on a fast trot until I came on to firm ground & then run them to the stacks the fire had about $\frac{3}{4}$ of a mile to go, I did not get to the stacks time enough to save them the fire was there - about as soon as we were the stacks were burned the Plaintiff had a stack of Hay burned I think there was 25 or 26 tons, hay was worth \$5 a ton there while we were fighting the fire defendant came up he was asked where the fire originated he said in Jones field he staid a few minutes and went away after the stacks were burned several of us went down to the South east corner of the field to see where the fire was set I have been in the country 23 years

and acquainted with Prairie fires I can tell
where prairie is burned over by a back fire &
where by a fire before ^{the} wind I think this
fire was set from 4 to 6 rods east from the
south east corner of the deep wheat field it
burned up to the line of posts on the east side
of the wheat field it burned by a back fire
about ten rods south it went across a road
track that is there by a back fire. The road
was filled with grass, the place where the wheels
run was not worn so that the grass was off
it after examining the ground we went up
to defendants house we charged him with
setting the fire he denied it the charge
was made several times & several times denied
there was considerable excitement and several
talking at once defendant talked very fast
at one time he said "when I set that fire,"
then I interrupted him & said I believe that is
the first truth you have spoken today he
replied you are very quick to take a man up
Crop Examined Defendant did come up and help fight
the fire from the stacks I did not see him
set any back fires dont think he did but
will not swear he did not he might
possibly & I not have seen him, I think he
was whipping out fire when we went down
when the fire started there were 5 of us along

two of my brothers Solomon W. Reardon & myself
The track was close to the south line of the wheat
field it was not matted nor the grass worn off
where the horses travelled When we went to defend
= dents house I repeatedly charged defendant with
having set the fire he always denied it, when
he made the remark, when I set that fire, I
interrupted him he said I was very quick to
interrupt him, ^{take} a man up & then went on to talk
I dont remember what he said there was a good
deal of talk I dont remember that he explained
that he meant when he set the back fire around
the stacks to save them that he would have
told me how the fire originated I dont ^{know} remember
but he might have said something to that
effect because I dont remember what he did
say he said something about being up at the
stacks helping to put out the fire during the con-
= versation There was a man come up to Bartlett
while we were talking with a load of ^{coal} ~~cars~~, he said
we should not charge a man with setting the
grain on fire unless we know he did it, he was
half drunk, I pushed him away from my waggon
told him to mind his ^{own} business, if he did not go
off about his business I would kick him or
words to that effect I did not follow him to
his waggon, did not get into his waggon
The Plaintiff here stated his case

The defendant called _____ as a witness who testified as follows on the day spoken of by the other witness I came along from the west about noon or little after I had travelled about two miles after dinner. had a threshing machine I passed along the road running North past Smith's house up to the North line of Smith's wheat field then turned east and passed along the South line of Collins field the fire was burning there the stacks were burning there where I passed as I passed I looked down towards where the fire started the fire had burned up to the North East corner of defendant's field on the line of the posts and the line of the fire ran east it looked as if it came from the South West I have been along the road at the south side of the field frequently the road was and as a wood road it went over to a saw mill there was grass in the middle of the road but on the sides there were ruts grass worn off

Crop examined When I passed by the fire I did not stop to examine it, it was a more casual look I gave to see the direction of the fire I saw the stacks burning at the same time when Jones was testifying the defendant came back where I stood in the Court room & said to me & another witness, damn him give him hell

The defendant then called witness who testified as follows I know the defendants wheat field, there was a good many geese in it last fall defendant & myself killed two geese in that field 2 or three days before I know the road on the ~~on the~~ south side of the field it was a wood road the grass was worn off when the horses travelled, the ~~road~~ the road had been used two or three years

Cross examined I know of no other hunters having been there that fall than the time I have spoken of I am not positive that the track ^{along} on the south side of the ~~road~~ defendants field was not changed by the breaking done in clefs wheat field but I think not

The defendant then recalled witness who testified as follows I was on the ground last night with defendant by moon light there is a slough between defendants wheat field & Jones field, where the grass was breast high the place was about fifteen rods wide, at the time ^{of the fire} the grass was burned on the south side of the road for an or fifteen rods west of the south East corner of clefs wheat field on the north side of the road between that and the field the grass was not burned it was ¹² ~~12~~ paces from the road to the field I paced it last night

The defendant then called Napoleon Bartlett who testified as follows I am a son of plaintiff about noon on the day of the fire I saw colts on the wheat I told father he went down to drive them off after he went I went out and got on top of the stable I was playing with my brother: they were throwing ^{colts} ~~colts~~ at me while I was up there I saw father drive the colts off from the wheat he drove them off from the South east corner while they ^{were} there I saw a smoke on the prairie beyond father he was right in line between me and the fire he drove the colts off they run up a path running North east he drove them to the corner of Cyders field in a North ^{East} direction & there left them I saw the smoke before father got off from the wheat, it was about 50 or 60 rods South East from the South east corner of the wheat field when Collins & the other men come up to our house I was about thirty rods off making hay while they were there a man came along with a load of ~~crack~~ he stopped his team & come up where they were Mr Collins got off from his waggon & pushed him away the man went back to his waggon Collins followed him up & got into his waggons

Cross examined I did not tell any one that there was a fire on the grain until after it got into the stacks it got into the stacks in fifteen minutes from the time I first saw it I ~~was~~ saw father right in line with the fire before he got off from the wheat I am eleven years old I was over ten when this fire was I saw father drive the colts up to cryder's field

The defendant here rested his case

The plaintiff called Thomas Reardon who testified as follows Mr Collins did not get ^{on} ~~into~~ the waggon of the man who stopped at Bartlett's while Collins & the other men ^{were} talking with Bartlett on the day of the fire

The plaintiff then called Johnson who testified as follows I was at Bartlett's house at the ^{time} testified by Napoleon Bartlett neither of the Collins got onto the waggon of the man that stopped there at that time I was down at the North east corner of depts wheat field after the fire on the day it occurred - the plaintiff asked the witness whether the grain was burned or unburned ten rods south east from depts wheat field at that time the defendant objected to the questions upon the ground that the testimony was not rebutting but cumulative The plaintiff's counsel stated

that he proposed to contradict Napoleon Bartlett by showing that the place where he said he saw a fire was not burned at all the court sustained the objection & excluded the testimony to which decision of the court the plaintiff then & there excepted. The plaintiff then called John Jones and asked him this question did you see the defendant when he turned back from following the colts, the defendant objected to the question upon the ground that it was not rebutting but cumulative the defendants counsel stated that by this witness he expected to prove that defendant did not drive the colts to Cynders field nor in the direction of that field as testified by the boy the court sustained the objection and excluded the evidence to which decision of the court the plaintiff then & there excepted.

The plaintiff then called Peter Smith who testified as follows the road on the south side of defendants wheat field was changed when the field was ploughed in June 1856. The plaintiff then recalled Thomas Reardon who testified as follows I was up and examined the ground this morning the ground between the defendants field & Jones field, the highest grass is only about two feet high. This was all the evidence.

At the request of the Plaintiff the court
instructed the jury as follows (here inserted
Plaintiff's instructions) at the request of defendant
the court gave the following instructions (here insert
the defendant's instructions) to the giving of each of which
instructions the Plaintiff then & there excepted the
Jury found the defendant not guilty the Plaintiff
moved the court for a new trial which motion
was overruled by the court to which decision of
the court the Plaintiff then & there excepted & prays
this bill of exceptions be signed read & made
part of the record which is done

W H Starr Esq
Acting Judge of the County Court
Circuit Court.

And be it further remembered that on the 17th
day of November AD 1857 the said Plaintiff filed in
the office of said ^{Chief} Clerk of the said Circuit Court this
Bond which Bond is in the words and figures following

Know all men by these presents that we Philip Collins
& Jeremiah Collins both of the County of Grundy and
State of Illinois are held and firmly bound unto
Elias S Bennett of the same place in the special
sum of Five hundred dollars current money of the
United States for which payment well and truly

to be made we bind ourselves our heirs exco-
=utors and administrators jointly and severally
jointly by these presents sealed with our seals
and dated this Seventeenth day of November AD 1857

The condition of the above obligation is such that
whereas the said Elias L Bantlett did on the Ninth
day of October AD 1857 in the circuit court in and
for the County and State aforesaid recover a judy=
ment against the above bounden Philip Collins
for his costs of suit in a case wherein he
the said Philip Collins was the plaintiff and
the said Elias L Bantlett was the defendant-
from which ^{said} judgment of the circuit court
the said Philip Collins has prayed for and
obtained an appeal to the Supreme Court
of this state Now if the said Philip Collins
shall duly prosecute his said appeal with
effect and shall moreover pay the amount
of the judgment costs interest and damages
rendered and to be rendered against him
in case the said judgment shall be affirmed
in the said Supreme Court then the above obli-
-gation to be void otherwise to remain in full force & virtue

Philip Collins *Edw*
Darius Collins *Edw*

Taken & entered into before me at my
office in Morris this 17th day of November AD 1857

21244923

J. A. Reading
Clerk

State of Illinois
Grundy County

I William A. Kierstedt clerk of
the circuit court in and for the County of Grundy do
hereby certify that the above exemplification of Record is truly
copied from ~~your~~ the records & file in my office in the
matters pertaining to said suit

In testimony whereof I have hereunto set my hand & affixed
the seal of said Court this 30th day of April AD 1858.

Wm. A. Kierstedt

clk

And now comes the appellant
Phillip Collins by Gloom & Cook his
attys and says that in the record
& proceedings aforesaid and in the
rendition of the Jury aforesaid
there is manifest error in this to wit

- 1st The court erred in admitting
improper evidence offered by appellee
- 2 The court erred in rejecting proper
& competent evidence of defendant in
the Court below

The Court erred in overruling the
motion for a new trial

The Court erred in giving each of
the instructions asked of the plaintiff
below

The Court erred in rendering the
judgment of course in manner of course
of course

Glenn & Co
attys for appellee



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Assign of Errors

Filed April 22, 1888
L. Ireland
clerk

Philip Collins
9/14
Edgar S. Bartlett

appeal from

Grimes

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Filed April 21, 1888

L. Ireland
clerk

5/14/88