

No. 12908

Supreme Court of Illinois

Smith, for use

vs.

Pries et al

71641  7

STATE OF ILLINOIS, SS. . . . IN THE SUPREME COURT AT OTTAWA.

OF THE APRIL TERM, A. D. 1859.

FRANCIS W. SMITH, FOR THE USE OF ALEXANDER ALLISON,

VS.

HENRY PRIES AND JOHN SMITH,

ERROR TO PEORIA CIRCUIT COURT,

BRIEF OF DEFENDANT.

1. The court below did not err in holding that the plaintiff below could not show a breach of the condition to return the property, nor recover damages therefor, without a writ of *retorno habendo*, and a return of *elongata* thereon. By the common law only pledges to prosecute were taken. The statute of Westminster 2, 3, Edward 1, c. 2, s. 3, authorized the taking of pledges for the return of the property, &c.; and since that time the conditions of the bond under the English Statutes have been substantially the same as those required by our own. And it may be remarked in this connection, upon the reference of the plaintiffs to the Statute of New York, that it requires substantially the same kind of bond. The issuing and return of a writ of *retorno habendo* was not expressly required by the English Statutes, but as under them the courts held this essential, so the court below held, and so also this court ought to decide.

Blackett v. Crisop, 1 Ld. Ray R. 278.

Momson v. Redshaw, 1 Saund. R. 195, 195g.

Statute of Replevin, Sec. 5, 6, 7.

McFarland v. McMitt, 10 Wend. 332.

2. Of course an action will lie for a breach of any condition of the bond, but in such action only such damages can be recovered "as may have been sustained in consequence of the breach of such condition."

Statute of Replevin, Sec. 7.

3. The writ of *retorno habendo* and return of *elongata* thereon, have always been required, as well by the reason of the law as by the rulings of the courts.

Bauvier Law Dictionary—*Retorno Habendo*, &c.

Even the case of Perrean v. Bevan, 5 Barn. and Cress, 294, 295, 305, (A. D. 1826,) cited by the plaintiffs, is authority on this point against them, and for the defendants. And the case of Hucker v. Gordon, 1 Crompt. & Mee., 65, (A. D. 1832,) expressly decides that the case of Perrean v. Bevan does not apply to a *retorno habendo*: and the court there say that the pledges to return the property would not be liable for a failure to make such return, without a writ of *retorno habendo*, and *elongata* returned thereon.

See, also, Gibbs v. Bull, 18 Johns R. 439, citing 1 Saund. 195 and notes, 18 Vin. Abg. 399, 5 Faust. 227.

4. The act of March 1, 1847, amending our Statute of Replevin, and providing that where the merits are not tried in the action of replevin, they may be in the action on the bond, in legal effect, though not in express terms, requires a writ of *retorno habendo* and return thereof to sustain an action for a failure to return the property. For until the defendant in replevin takes that step, the plaintiff may presume that the defendant relinquishes his claim.

Purple's Statutes, 830.

5. It is plain from the evidence that the services of Pries were to be taken by Allison in *payment* of the rent: that the indebtedness of each to the other was nearly equal; that the distraint of the property of Pries, and all the trouble and expense to which he has been put, were without any reasonable foundation, and that even with the verdict and judgment of which Allison complains, Pries has been grievously wronged. The jury were compelled to find a verdict against him, but have done substantial justice as far as was in their power, and the judgment below should be approved.

11 Greenleaf Evidence, Sec. 526.

Leigh v. Hodges, 3 Scam. 18.

Smith v. Shultz, 1 Scam. 491.

Gillett v. Sweet and al., 1 Gil. 490.

Higgins v. Leg, 16 Ill., 500

CHARLES C. BONNEY, Att'y for def't.

See minutes of argument post;

In the Supreme Court

Smith use Allison

vs.
Henry Pres Val.

Error to Peoria Circuit Court

Brief of Defendants

State of Illinois

In the Supreme Court at Ottawa
Of the April Term A.D. 1859-

Francis W. Smith
for the use of Alexander Allison

Henry Price & John Smith

Error to Peoria Circuit Court.

Minutes of Argument for Defendants.

Upon the points made
in his printed Brief and
against the points made
by the plaintiff in error,
the defendants make the
following suggestions.

- 1 The substance of the plaintiffs Brief is that the Court below erred in holding a writ of Retorno Habendo and return of elongata essential to the recovery of damages for a failure to return the property replevied. The various points stated, all depend on this objection and are merely incidental to it.

2 The printed Brief of the defendants and the authorities therein cited, show conclusively that the ruling of the court below is right: that the writ of Retorno Habendo and return of elongata have always been held the only legitimate and sufficient proof of a failure to make return of property replevied, when return has been awarded by the court.

The statutes, books and practice have been uniform in England and in America.

3 The plaintiff in replevin receives the property from the sheriff. He has nothing to do with the defendant. If required to make return, it is to the officer from whose hands he received it. It is not his duty to seek out the defendant and tender the property to him. The officer has no right to receive it till the defendant has sued out and delivered the writ of Retorno Habendo for that purpose. But suppose the writ should be issued and delivered to the sheriff, and meantime the defendant should personally take the property from

the plaintiff would not the
sheriff still have to return longata.
The defendant delivers the
property to the Sheriff and
is to look to him alone for the
return thereof; if return shall
be awarded by the court.

- 4 Although the action on the Bond
may be maintained without
an averment of the issuing
and return of the Retorno Ha-
=berdo, nevertheless, if the
declaration do not contain
such averment, the issuing
and return must be proved
upon the trial, though there
be no plea ~~raising~~ an inquiry
~~as to~~ into the nature and merits
of the original transaction be-
=tween the parties, — though
the plea of non est factum
alone be pleaded.

Cardin v. Stanton 12 Wend. 120.
The Court say "It does not
necessarily follow that the
goods and chattels would not
have been surrendered up to
the officer, upon a writ of
Retorno Habendo."

Yet the decisions and statutes
of New York, simply affirm
what has always been held indis-

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=pensable, by the courts.

5 It follows of course that the remark made by the court below, that if the plaintiff wished to recover damages for a failure to return the property replevied, he had better discontinue his suit and have a writ of Retorno Habendo and return of longata before commencing ~~again~~, could not possibly prejudice his case. The remark was true and there is scarcely an upright judge in the land, who under the same circumstances, would not have made a similar one.

6 The proceedings before the justice fell to the ground when the property was replevied. Distress for rent is a proceeding in rem. The justice renders no judgment, — he issues no execution. He simply makes an assessment of the amount due, and issues a certificate to the bailiff. His jurisdiction depends upon the presence of the property, and continues no longer than ~~the~~ property remains in custody — today.

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Statute of Landlord & Tenant Sec. 6.
Sketoe v. Ellis 14 Ill. R. 75.

7 Substantial Justice has been done. The issues joined, distinctly presented to the jury, the following among other questions: whether any rent was due at the time of the distress: if so, how much rent was then due: whether there had been a payment of the rent: whether there had been an accord and satisfaction whereby the claim of Allison against Prie for rent, was extinguished by the demand of Prie against Allison, for services, medicines, &c.

On these questions evidence was freely given before the jury, and the origin and merits of the whole matter in controversy fully investigated.

8 And the Court will readily see by looking into the testimony preserved in the bill of exceptions, that if the court below had ruled otherwise, or if the plaintiff had shown the due issuing and return of a writ of Retorno

Habendo, he would not have
been entitled to any larger verdict
than he received.

Making a reasonable allowance
for differences of opinion among
jurors, it may be affirmed
that the jury were well warranted
in believing from the evidence
that the distress made was wrong-
=ful and oppressive;
that the property was rightfully
replevied;
that the action on the bond, though
technically maintainable, was
nevertheless without any merit;
that the rent was discharged by
the services and medicines;
that the case shows an attempt
of a vindictive landlord to oppress
an honest tenant;
and that substantial justice
required a verdict as favorable
as possible to Price and his
surety.

The jury allowed the plain-
=tiff one cent damages for
the failure to prosecute the suit
with effect. He is entitled nei-
=ther by law nor of right to a
farthing more. Price is ordered
with the costs of the trial below,
with the defence of that action,
and of this writ of error.

Instead of relief from the judgment

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of the court below the plaintiff
deserves a strong rebuke for the
vindictive spirit he has shown.
His counsel, discouraged
by the hopeless character of the
case, submits it to the court
without the citation of a solitary
case to break the course of a
practice which has prevailed
for centuries whenever the com-
mon law has been adminis-
tered.

In conclusion, the defendants
pray the pardon of the court for
having occupied so much of
their attention, in defence
of a course of procedure so
long pursued, and so well
established.

Charles C. Bonney
attorney for
defendants in error.
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Smith vs Allison

v.
Pries & Schmidt

Minutes of
Argument for
defendants

Filed May 6. 1859
L. Helms
Clerk

Bonney

SMITH, USE OF
ALEXANDER ALLISON,
VS.
HENRY PRIES, et. als.

In the Supreme Court.
Plaintiff's Brief and Points.

Allison distrained the goods of Pries for rent. Pries replevied the goods. The Replevin suit was dismissed and no writ of Retorno Habendo was issued. Smith, use of Allison, sued Pries and his sureties on the bond. On the trial the Court below held that the plaintiff could not recover on the breach for failing to return the property until he first proved the issuing and return of the writ of Retorno Habendo. In this the Court below erred.

The Statute does not require it. The Bond imposed no such condition, and it is claimed that the Court cannot impose any such condition on the trial. The undertaking of the defendants was to return the property to Allison, if a return should be awarded by the Court. It was so awarded by the Court. No return was made, and the liability of the defendants was fixed.

1. It is claimed that the Statute is full and explicit, and that the rights of the parties are governed and controlled by it. If the property was not returned, why not permit the proof to be made as well by witnesses as by writ and return? *Saunders on Pleas in Law and Evidence vol 2, 850 Page 800.*
5 Baines & Cresswell 471, 11 English Common Law reports 470.

2. In New York the issuing of the writ of Retorno Habendo is required by Statute before the liability of the party is fixed.

It is believed to be the same in Alabama. There is no reason in imposing any such obligation upon the party entitled to the return of the property. It would require time. It would be attended with additional cost, and no possible advantage to any one.

3. The Court erred in excluding the evidence as to the failure of the defendants to return the property, and in stating that the plaintiff had better dismiss his suit. And also in instructing the jury that no damages could be recovered by reason of the failure to return the property.

4. The instructions of the defendants limit the plaintiff to the recovery of such damages only as he sustained by reason of the failure of Pries to prosecute his suit with effect.— Those damages could only be nominal. In fact, the failure of Pries to prosecute his suit with effect, was beneficial to Allison.

5. The verdict was against the law as given by the Court on the part of the plaintiff; and against the weight of evidence.

The record shows that the Bailiff made return of the inventory to Justice McCoy; that summons issued to Pries; that the parties appeared, trial had, and judgment rendered in favor of Allison for \$132.

This evidence was proper under the plea that Allison abandoned his distress, and that there was no rent due.

The verdict should have been for damages for amount of judgement before Justice, and interest. *As to Jurisdiction of Justice see Laws of 1855. Purples Statute 334 & 335*

*Yours for
Pry & Co*

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Smith for use

vs

Henry Pries
Brief & Points

Filed April 17, 1859
L. L. Leland
Clerk

Smith and of } In Supreme Court
 Allison }
 vs }
 Pries et al } Off argument.

1. In this case the Plaintiff claims the verdict should have been in damages for the amount of the judgment upon the Justice. if the Justice had no jurisdiction then the judgment should have been for the amount of the rent which was 168.

See testimony of John A McCoy.

2. This Court has decided that in ~~the~~ a proceeding on a distress for rent the only question is as to the amount of rent due.

The evidence shows that there was no dispute between the parties as to the amount of rent.

3. The record shows no agreement on the part of Allison to offset the the services of Pries against the rent. Now the Plaintiff claims the Court here should enter a judgment for the amount of the rent due
 from for Pries

To the brief of defendant has been furnished to Pries.

Smith and
Harrison

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Smith

Preis & Schmelz

Pyp argument

Fid. Apt. 20, 1859
Leland
Clk.

Whereupon come the said Henry Pries and Johannes Schmidt by Charles C. Bonney their attorney and say that there is no error, either in the record and proceedings aforesaid, or in the rendition of the judgment aforesaid, and pray that the said Supreme Court, now here, may proceed to examine as well the record and proceedings aforesaid, as the matters aforesaid above assigned for error and that the judgment aforesaid in form aforesaid given, may be in all things affirmed &c.

Charles C. Bonney
attorney for
Dpts in Error
"

Pleas before the circuit court, with-
in and for the county of Peoria and
State of Illinois, on the Sixteenth
day of December in the Year of
our Lord one thousand eight hun-
dred and fifty eight:-

Be it Remembered that heretofore to-
wit, on the fourteenth day of September
A.D. 1858, there was filed in the clerks of-
fice of said court, a narration and
precipe, in words and figures fol-
lowing, to-wit:-

State of Illinois }
Peoria County ss. }

In the Circuit Court of Peoria
County

To November Term A.D. 1858

By Francis W. Smith Sheriff of Peoria County for the
use of Alexander Allison, Plaintiff in this Suit complains of Heinrich
Pries and Johannes Schmidt Defendants in this Suit of a
Plea that they render unto the Plaintiff the sum of five hundred
dollars which they owe to and unjustly detain from him &c.
For that whereas the said Alexander Allison heretofore to-wit on
the 20th day of March A.D. 1854 at the City and County
of Peoria and State of Illinois distrained the goods and chattels
of one Heinrich Pries for a certain sum of money then due to

said Alexander Allison for rent, and the said goods and chattels being so distrained the said Henry Pries afterwards on the 28th day of March A.D. 1858 at the County of Peoria aforesaid caused a certain writ of Replevin to issue out of and under the seal of the Circuit Court of Peoria County in the State of Illinois and ~~was~~ signed by the Clerk of said Court directed to the Sheriff of Peoria County commanding the said Sheriff to replevy said goods and chattels, and the said writ having on the day and year last aforesaid come into the hands of the said Sheriff to execute and the said Francis W. Smith then & still being the Sheriff of Peoria County and then being about to execute said writ of Replevin according to the form of the Statute in such case made and provided did take from the said Pries and Johannes Schmidt a bond in double the value of the goods and chattels so distrained as aforesaid and the said Sheriff thereupon under and by virtue ^{said writ of} of Replevin took the said goods and chattels from the said Allison and delivered the same to the said Pries, and the said Pries and Johannes Schmidt on the said 28th day of March A.D. 1857 at the County of Peoria aforesaid by their certain writing obligatory sealed with their seals and now to the Court here shown, the date whereof is to wit: the day and year last aforesaid did acknowledge themselves to be held and firmly bound unto the said Francis W. Smith Sheriff of Peoria County aforesaid in the said sum of Five hundred dollars above demanded to be paid to the said Francis W. Smith his heirs executors or administrators with a condition thereunder written which after reciting "That whereas the above named Henry Pries did on the 28th day of March A.D. 1857 cause a writ of Replevin to be issued from the office of the Clerk of the Circuit Court of

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Peoria County under the seal thereof against Alexander Allison
to recover the possession of the following described property - to wit
one bay Horse of about the age of six years, one sorrel Horse of
about the age of ten years marked with a white stripe on the fore-
head, one greyish spotted Cow, one saddle, one Bridle of the value
of \$250 dollars and no cents, which said writ is directed to and
placed in the hands of said Sheriff to execute and he being about
to execute the same. Now if the said Henry Pries (meaning the
said Heinrich Pries) shall prosecute his suit against the said Alex-
ander Allison to effect and without delay and make return of
said property so about to be replevied, if return thereof shall be
awarded and shall save and keep harmless said Sheriff in Re-
plevying ^{the} said property aforesaid then the above obligation to be void
otherwise to remain in full force and virtue

Signed and Sealed in presence
of Charles C. Bonney

Heinrich Pries 
Johannes Schmidt 
L.S.

And for assignment of breaches on said Bond and
of the condition thereof according to the form of the Statute in such
case made and provided the Plaintiff avers that said Henry Pries
did and has broken the condition of said writing obligatory and did
not prosecute his suit to effect and without delay but so to do
wholly failed, and the said ~~Suit~~ afterwards at the November Term
A.D. 1857 of the said Circuit Court of Peoria County was dismissed
and the said Court then and there ordered directed and awarded
that said Pries should make return of said property to the said
Alexander Allison

And for further assignment of breaches the
Plaintiff avers that the said Pries did not nor would make return
of said goods and chattels to the said Allison nor to any other per

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for him but so to do has wholly failed neglected and refused
 and still does wholly fail neglect and refuse And for that where
 as heretofore - to wit. on the 28th day of March A.D. 1854 at the
 County of Peoria aforesaid the Defendant Heinrich Pries sued and
 caused to be issued out of the Circuit Court of Peoria County and
 State of Illinois a certain writ of Replevin and placed the said writ
 so issued out of and under the seal of the said Circuit Court in
 the hands of the Sheriff of Peoria County to execute and the said
 Sheriff then being about to execute said writ and take the goods and
 chattels hereinafter mentioned from the possession of the said Alexan-
 der Allison the said Heinrich Pries with the said Johannes Schmidt
 made ~~constituted~~ executed and delivered to the said Francis W. Smith
 who was then and still is in fact Sheriff of Peoria County their certain
 writing obligatory of that date sealed with the seals of the said De-
 fendants and now to the Court here shown which writing obligatory
 is in words and figures substantially as follows. Know all men by
 these Presents that we Henry Pries as principal and Johannes Schmidt
 as surety of Peoria County and State of Illinois are held and firmly
 bound unto Francis W. Smith Sheriff of the County of Peoria afo-
 said on the sum of Five hundred Dollars lawful money of the United
 States to be paid to the said Francis W. Smith his heirs executors or
 administrators to which payment well and truly to be made we bind
 ourselves our heirs executors or administrators jointly and severally firmly
 by these presents sealed with our seals and dated this 28th day of
 March 1854. The condition of the above obligation is such that
 whereas the above named Henry Pries did on the 28th day of
 March A.D. 1854 cause a writ of Replevin to be issued from the
 office of the Clerk of the Circuit Court of Peoria County under the
 seal thereof against Alexander Allison to recover the possession of

5- The following described property - to wit - one Bay Horse of about the age of six years, one small Horse of about the age of ten years marked with a white stripe in the forehead, one greyish spotted Cow, one Saddle, one Bridle of the value of \$250 Dollars and no cents which said writ is directed to and placed in the hands of said Sheriff to execute and he being about to execute the same, Nor if the said Henry Pries shall prosecute his suit against the said Alexander ^{Allison} to effect and without delay and make return of said property or about to be replevied if return thereof shall be awarded and shall save and keep harmless said Sheriff in Replevying the said property aforesaid then the above obligation to be void otherwise to remain in full force and virtue

Signed and sealed in presence of

Charles C. Bonney

Heinrich Pries (Lis)

Johannes Schmidt (Lis)

And the Plaintiff avers that afterwards on the day and year last aforesaid the said Francis W. Smith as being and acting as Sheriff of Peoria County did take the said goods and that the in said writing obligatory mentioned from the said Alexander Allison and delivered the same to the said Pries. And the said Plaintiff avers that the said Defendants in and by the said writing obligatory acknowledged themselves to be held and firmly bound unto the said Francis W. Smith Sheriff as aforesaid in the sum of five hundred dollars to the payment of which to the said Francis W. Smith his heirs executors or administrators the Defendants jointly and severally firmly bound themselves their heirs executors or administrators And the Plaintiff avers that said writing obligatory was and is subject to a condition thereunder written whereby after reciting that whereas the above named Henry Pries did on the 28th day

of March A.D. 1857 cause a writ of Replevin to be issued from the office of the Clerk of the Circuit Court of Peoria County under the seal thereof against Alexander Allison to recover the possession of the following described property, to wit, one bay Horse of about the age of six years, one sorrell Horse of about the age of ten years marked with a white stripe in the forehead, one greyish spotted Cow, one Saddle, one Bridle of the value of \$250 dollars and no cents which said writ is directed to and placed in the hands of said Sheriff to execute and he being about to execute the same It is provided that if the said Henry Pries shall prosecute his suit against the said Alexander Allison to effect and without delay and make return of said property & about to be Replevied if return thereof shall be awarded and shall save and keep harmless said Sheriff in Replevying the said property aforesaid then the above obligation to be void otherwise to remain in full force and virtue.

And for assignment of Breach in said Bond and of the condition thereof according to the form of the Statute in such case made and provided the plaintiff avers that said Henry Pries did and has broken the condition of said writing obligatory and did not prosecute his suit to effect and without delay but so to do wholly failed and the said suit afterwards at the November Term A.D. 1857 of the said Circuit Court of Peoria County was dismissed and the said Court then & there ordered directed and awarded that said Pries should make return of said property to the said Allison. And for the further assignment of Breaches the plaintiff avers that said Pries did not nor would ~~not~~ make return of said Goods and Chattels to the said Allison nor to any other person for him but so to do has wholly failed neglected and refused and

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still does wholly fail neglect and refuse by means whereof
and by force of the Statute in such case made and provided
an action hath accrued to the said Plaintiff as aforesaid to de-
mand and have of the said Defendants the said sum of five
hundred dollars above demanded yet the said Defendants although
often requested so to do hath not as yet paid the sum of five
hundred dollars above demanded nor any part thereof to the said
Plaintiff but have hitherto wholly neglected and refused so to do and
still do neglect and refuse to pay the same or any part thereof to the
Plaintiff as aforesaid to the damage of the said Plaintiff five hun-
dred dollars and therefore he brings suit &c.

by H. Grove his Atty.

Francis W. Smith for the
use of Alexander Allison
vs.

Heinrich Pries
Johannes Schmidt

In the Circuit Court of Florida
County to November Term 1858
In debt

debt	500 ⁰⁰ / ₁₀₀ \$
Damages	500 ⁰⁰ / ₁₀₀ \$

Issue a Summons in above Cause returnable according to law
To E. P. Sloan
Clerk -

Grove for Plff.

The Bond sued on is set out in the second Count in the Declara-
-tion

And on the day and date of the filing
of the said narration and precept, there
was issued from the clerk's office aforesaid,
a summons, in words & figures
following to-wit:

5- The following described property - to wit - one Bay Horse of about the age of six years, one small Horse of about the age of ten years marked with a white stripe in the forehead, one greyish spotted Cow, one Saddle, one Bridle of the value of \$250 Dollars and no cents which said writ is directed to and placed in the hands of said Sheriff to execute and he being about to execute the same, Now if the said Henry Pries shall prosecute his suit against the said Alex and ^{allison} to effect and without delay and make return of said property or about to be replevied if return thereof shall be awarded and shall save and keep harmless said Sheriff in Replevying the said property aforesaid then the above obligation to be void otherwise to remain in full force and virtue

Signed and sealed in presence of

Charles P. Bonney

Heinrich Pries (Lis)

Johannes Schmitt (Lis)

And the Plaintiff avers that afterwards on the day and year last aforesaid the said Francis W. Smith as being and acting as Sheriff of Peoria County did take the said goods and chattels in said writing obligatory mentioned from the said Alexander Allison and delivered the same to the said Pries. And the said Plaintiff avers that the said Defendants in and by the said writing obligatory acknowledged themselves to be held and firmly bound unto the said Francis W. Smith Sheriff as aforesaid in the sum of five hundred dollars to the payment of which to the said Francis W. Smith his heirs executors or administrators the Defendants jointly and severally firmly bound themselves their heirs executors or administrators. And the Plaintiff avers that said writing obligatory was and is subject to a condition thereunder written whereby after reciting that whereas the above named Henry Pries did on the 28th day

Pleas

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State of Illinois } s.s.

County of Peoria }

In the Circuit Court November Term
A.D. 1858.

Henry Pries &
Johannes Schmidt

vs

Francis W. Smith

for the use of Alexander Allison

Pleas.

And the said Defendants by Charles C. Bonney their Attorney comes and defends the wrong and injury when &c and say that the said supposed writing obligatory is not their deed and of this they put themselves upon the Country &c

And the Plff
doth the like

Charles C. Bonney

Attorney for Defs.

by Groves his Atty.

2.

And for further Plea in this behalf the said Defendants say Actio non, because they, that the merits of the case were not determined in the said Action of Replevin in the said Declaration mentioned, but that the same was dismissed without any trial thereof and because they say that there was no rent due and unpaid to the said Alexander Allison from the said Henry Pries, at the time of the making of said distress as in the said Declaration is above alleged and this the said Defendants are ready to verify wherefore they pray Judgment &c.

Charles C. Bonney

Attorney for Defendants

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And for further Plea in this behalf the said Defendants say Actio non because they say that the merits of the case were not

determined in the said action of Replevin ~~in the said action~~
~~of Replevin~~ in the said Declaration mentioned but that the same
 was dismissed without any trial thereof and the said Defendants
 aver that before the levying of the said distress in the said Decla-
 ration mentioned the said Henry Pries had had account with
 the said Alexander Allison for and concerning all rents theretofore
 due and owing from said Pries to said Allison and had ful-
 ly paid satisfied and discharged all such rent and every part
 thereof and this the said Defendants are ready to verify where-
 fore they pray Judgment &c.

Charles C. Bonney

Atty. for Deft

4 And for further plea in this behalf the said De-
 fendants say Actio non because they say that before and at
 the time of the levying of ~~the~~ said distress said Alexander
 Allison was indebted to the said Henry Pries for services ren-
 dered by said Pries in the Capacity of Horse-Farrier in and
 about the curing and healing of certain Horses belonging to said
 Allison of divers ailing injuries and diseases and for drugs and
 medicines provided by said Pries for the curing and healing
 of said Horses, and for work care and attendance by said Pries
 and his servants in and about the curing of said horses for
 said Allison all of which services were at the special instance
 and request of said Allison in a sum exceeding the amount
 of rent then or theretofore due and owing from said Pries to
 said Allison to wit - the sum of five hundred dollars and that by
 an express agreement theretofore made and then existing between
 said Allison and said Pries, said Henry Pries applied and
 the said Alexander Allison accepted and received the sum of

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Three Hundred dollars or thereabouts of said indebtedness from
said Allison to said Pries in full satisfaction extinguishment
payment and discharge of said rent and every part thereof, so
that there was no rent due from said Pries to said Allison at
the time of making of said distress, and this they the said De-
fendants are ready to verify wherefore they pray judgment
&c.

Charles C. Bonney,
Atty. for Defs.

- 5 And for further plea in this behalf the said Defendants say
Actio Non because they say that no such distress was ever made
as is mentioned in said Declaration, and this ^{they} the said Defend-
ants are ready to verify wherefore they pray judgment &c

Charles C. Bonney
Atty for Defendants

- 6 And for further plea in this behalf the said Defendants
say Actio Non because they say that after the levying of the
distress in said Declaration mentioned said Alexander Allison
abandoned and wholly failed to prosecute said distress as there-
to by law required &c and this they the said Defendants are
ready to verify &c.

Charles C. Bonney
Atty for Defendants

And afterwards to wit; on the twenty-
ninth day of November AD 1858, a
return was filed with said clerk,
in this cause, in words and figures
following to wit:--

13
 Proceedings at a Term of the Circuit Court began and held at the Court House in the City and County of Peoria State of Illinois on the third Monday in the month of November in the year of our Lord one thousand eight hundred and fifty eight it being the fifteenth day of said month. Present E. W. Powell Judge of the sixteenth Judicial Circuit in said State, Francis W. Smith Sheriff and Enoch V. Hoan Clerk. To wit.

Monday November 29th A. D. 1858.

Francis W. Smith for use of

Alexander Allison

vs.

Debt on Bond

Heinrich Pries

Johannas Schmidt

This day this cause came on to be heard on Plaintiffs Demurrer to 2^d 3^d 4th and 6th pleas of Defendant to Plaintiffs Declaration and the Court having heard the argument of Counsel and not being satisfied in the premises takes time to consider

And afterwards to-wit there were further proceedings had in this cause, in words following to-wit:

Francis W. Smith
 for use of Alexander Allison
 vs.
 Heinrich Pries
 Johannas Schmidt

Debt on Bond

Tuesday November 30th A. D. 1858.

This day this cause again came on to be heard on Plaintiffs Demurrer and the Court ^{not} being ~~not~~ fully satisfied in the premises is of opinion that defendants 2^d and 3^d Pleas are sufficient in law to bar this action, and therefore it is ordered that said demurrer as to said 2^d. and 3^d. Pleas

be overruled, and the Court is of opinion that Defendants 4th. 5th. and 6th. Pleas are not good in law and therefore it is further ordered that said Demurrer of Plaintiff as to said 4th. 5th. and 6th. Pleas be sustained, whereupon Defendant asks and obtains leave to amend his said 4th. 5th. and 6th. Pleas

And afterwards to-wit, but on the day and date last aforesaid there was filed with said clerk, in this cause, amended pleas, in words and figures following to-wit:-

Amended
4th, 5th, & 6th
pleas

State of Illinois }
County of Peoria } ss.

In the Circuit Court November
Term A.D. 1858.

Henry Pries &
Johannes Schmidt

vs

Francis W. Smith for the
use of Alexander Allison

Amended 4th, 5th & 6th. Pleas

Fourth Plea }
as amended }

And for further Plea in this behalf the said Defendants say Actio Non because they say that the merits of the case were not determined in the said action of Replevin in the said Declaration mentioned, but that the same was dismissed without any trial thereof, and the Defendants aver that before and at the time of the levying of the said distress said Alexander Allison was indebted to

15-

The said Henry Pries for services rendered by said Pries in the Capacity of Horse Farrier in and about the curing & healing of certain horses belonging to said Allison of divers ailments, injuries and diseases and for drugs and medicines provided by said Pries for the curing and healing of said horses and for work care and attendance by said Pries and his servants in and about the curing of said horses for said Allison, all of which ^{services} were at the special instance and request of said Allison in a sum exceeding the amount of rent then or theretofore due and owing from said Pries to said Allison to wit the sum of five hundred dollars and that by an express agreement theretofore made and then existing between said Allison and said Pries said Pries applied and the said Allison accepted and received the sum of three hundred dollars or thereabouts of said indebtedness from said Allison to said Pries in full satisfaction extinguishment payment and discharge of said rent and every part thereof so that there was no rent due from said Pries to said Allison at the time of making said distress and thus they the said Defendants are ready to verify wherefore they pray judgment &c.

Charles C. Bonney

Attorney for Defendants

Fifth Plea }
as amended

And for further plea in this behalf the said defendants say Action Non because they say that the merits of the case were not determined in the said action of replevin in the said Declaration mentioned but that the same was dismissed without any trial thereof and because they say that no such distress was ever made as is mentioned in said Declaration and this they the said Defendants are ready to verify, wherefore they pray judgment &c

Charles C. Bonney

Attorney for Defendants

Sixth Plea }
as amended

~~Sixth Plea as amended~~ And for further Plea in this behalf the said Defendants say Actio non, because they say that the merits of the case were not determined in the said action of Replevin in the said Declaration mentioned. But that the same was dismissed without any trial thereof and because they say that the levying of the distress in the said Declaration mentioned said Alexander Allison abandoned and wholly failed to prosecute said distress as thereto by Law required &c and this they the said Defendants are ready to verify ^{therefore} they pray Judgment &c.

Charles C. Bonney

Attorney for Defendants

And afterwards to-wit- on the eighth day of December 1858, there was filed with the clerk of this court, replications in words and figures following to-wit:-

Francis W. Smith
for the use of Alexander Allison

v. v.

Henry Vries
Johannes Schmidt

In the Circuit Court of Peoria
County. Nov. Term A.D. 1858

In Replevin

1st Replication
to 2nd Plea

And for Replication to said second Plea of the said Defendants the said Plaintiff says precludi non because he says the merits of the case were determined in the said action of Replevin in said declaration mentioned and this he prays may be determined by the court on inspection of the record of the judgment remaining of Record in said Circuit Court of Peoria County

by leave

Atty for Plff.

17

And the Defendants demur to this plea for that the same is insufficient in law &c. Bonney Atty. for Defs.

2

2nd Replication to 2nd Plea

And further replication to said second Plea the Plaintiffs says precludi non because he says there was due to the said Alexander Allison and unpaid the sum of one hundred and sixty eight dollars for rent from the said Henry Pries at the time of the making said distress and which sum remains and is wholly unpaid and this the plaintiff prays may be enquired of by the said County

By H. Grow his atty.

And the Deft likewise Bonney for Deft.

3rd. Replication to 2nd. Plea

And for further replication to said second plea the Plaintiff says precludi non because he says that at the time of suing out and making said distress in said Plaintiffs declaration mentioned there was then due from the said Henry Pries to the said Alexander Allison the sum of the hundred and thirty two dollars for rent. And the said Alexander Allison issued his distress warrant to me Samuel Crouse Bailiff of the said Allison and after the levying of said distress warrant upon the said property in Plaintiffs Declaration mentioned the said Bailiff filed said Warrant and an inventory of said property before and with John A. McCoy a Justice of the Peace in and for said County of Peoria and State of Illinois and said Justice on the second day of April A.D. 1850 at his office in said County rendered judgment in favor of said Allison ^{and} against said Henry Pries for the sum of one hundred and thirty two dollars debt and five 90/100 Dollars Costs of said suit which judgment so rendered by the said

Justice
of the Peace still remains in full force and effect and wholly un-
-paid unreverted and not in any wise appealed or set aside, and
the Plaintiff avers that said Justice at the time said Judgment was
rendered had full and complete Jurisdiction of the subject matter in
controversy and of the parties to said suit and said Judgment
was rendered for the amount due from said Pries to said Allison
for rent after deducting all payments & offsets proved by said Pries
and which still remains of record in the Docket of said Justice
and this the Plaintiff is ready to verify whereupon he prays
Judgment &c.

by Grove
his Atty

The Defendants demur to this Plea for
that the same is insufficient in law &c.

Bonney for Dfts

1

1st Replication
to 3rd Plea

And for further replication to said Third Plea of the said
Defendants, Plaintiff says precludi non, because he says the
merits of the case were fully determined in said action of Replem
as appears of record in said suit in said Third Plea mentioned
and this the plaintiff prays may be enquired of by the Court

And the Defendants demur
to this plea for that the same is in-
sufficient in law

Bonney for
for Defendants

by Grove, his Atty.

2

2nd Replication
to 3rd Plea

And for further Replication to said Third Plea
Plaintiff says precludi non because he says the said Pries has
not paid the said Allison for said rent nor any part thereof and
this he prays may be enquired of by the Court

by Grove

And the Defendants likewise
Bonney Atty. for Dfts.

his attorney

3

3rd Replication
to 3rd Plea

19

And for further replication to said third plea the Plaintiff says precludi non because he says there was due to the said Allison and unpaid the sum of one hundred and sixty eight dollars for Rent from the said Price at the time of making the said distress and which sum remains and is wholly unpaid and this the Plaintiff prays may be enquired of by the Country

And the Defendants likewise

by Grove

Bonney, Attorney for Dfts

his Atty.

1st Replication
to 4th Plea
as amended

And for replication to said fourth amended plea Plaintiff says precludi non because he says the merits of the case were determined in said action of Replevin and the same was determined in favor of said Allison as appears by the judgment and consideration of the Circuit Court of Meria County remaining of record which he prays may be seen and inspected by the Court

The Defendants demurs to this

by Grove

Plea for that the same is insuffi-

his Atty.

-cient in law &c.

Bonney^{atty} for Defendants

2^d Replication
to 4th Plea, as
amended

And for further Replication to said fourth amended Plea Plaintiff says precludi non because he says that the said Allison was not indebted to said Price at the time said distress was levied in any sum whatever and this the Plaintiff prays may be enquired of by the Country

by Grove

And the Defendants likewise

his Atty.

Bonney, Atty.

for Dfts.

3rd Replication
to 4th Plea, as
amended

And for further replication to said fourth amended Plea Plaintiff says precludi non because he says that at the time of the levying of the distress in said fourth amended Plea mentioned, the

The said Pries was and still is indebted to the said Allison
 in a large sum of money for rent - to wit. the sum of one hun-
 dred and sixty eight hundred dollars and the said Allison caused
 said distress warrant to issue to one Samuel Crouse his Bailiff and
 said Bailiff levied the same upon the property in Plaintiffs De-
 claration mentioned and made return thereof to John A. Mc Coy
 one of the Justices of the Peace in and for the County of Peoria, and
 said Justice thereupon issued his Summons in said Cause to
 said Pries, and, afterwards - to wit. on the 2nd. day of April A.
 D. 1858. said Cause came on for trial before said Justice, said
 Allison and said Pries ^{both} being ~~both~~ there present with their Counsel
 and Witnesses and by agreement of the parties said Pries was
 then and there allowed to make proof of all his claims for servi-
 ces, medicine and all other claims in said Plea mentioned, said
 Justice after hearing all the evidence of both parties and the argu-
 ments of Counsel rendered a Judgment in favor of said Allison
 and against said Pries for the sum of one hundred and thirty
 two dollars debt and five $\frac{2}{100}$ dollars Costs which Judgment
 remains in full force and not ~~and not~~ in anywise paid ap-
 pealed or reversed as by said Judgment upon the Docket of said
 Justice still appears and this the Plaintiff is ready to verify
 wherefore he prays Judgment &c. &c. By Grove

The Defendants demur to this

Plea for that ~~same~~ the same is
 insufficient in law &c.

his Atty.

Bonney Attorney for Defendants

4th. Replication
 1st. Plea, as
 amended

And for further replication to said Fourth Amended Plea, Plaintiff says
 preclude now because he says there was no agreement between

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said Pries and said Allison ~~to~~ ~~said Allison~~ to apply the indebtedness of said Allison to said Pries on said Rent as in said fourth Plea mentioned, and this he prays may be enquired of by the Country

by Grove
his atty

The Defendants ~~also~~ demur to this plea for that the same is insufficient in law &c.

Bonney atty for Dfts.

1st Replication to 5th Plea as amended

And for replication to said fifth amended plea Plaintiff says precludi now, because he says that such a distress was made as in said Declaration mentioned, and this he prays may be enquired of by the Country

by Grove
his atty.

And the Defendants likewise &c.
Bonney atty for Dfts.

1st Replication to 6th Plea as amended

And for replication to said sixth amended plea Plaintiff says precludi now because he says that said Allison did not abandon nor fail to prosecute said distress as required by law and this he prays may be enquired of by the Country

The Defendants demur to this Plea for that the same is insufficient in law &c.
Bonney atty for Dfts.

by Grove his atty.

2nd Replication to 6th Plea as amended

And for further replication to said sixth amended plea Plaintiff says precludi now, because he says that the failure of said Allison to prosecute said distress was because the said Pries wrongfully & unjustly expleined said property so distrained from the Bailiff of the Plaintiff so that said Bailiff could not sell the same and this he is ready to verify wherefore he prays Judgment &c.

The Defendants demur to this Plea for that the same is insufficient in law &c. Bonney atty for Dfts. by Grove his atty

And afterwards to wit, at the said term of this court, aforesaid, further proceedings were had in this cause, in words & figures following - to wit:-

Thursday, December 9th. A.D. 1858.

Francis W. Smith for use of
Alexander Allison

vs.

Debt on Bond

Heinrich Pries

Johannes Schmidt

This day came the Plaintiff by Green his Attorney, and the Defendants by Bonney their Attorney and this cause came on to be heard on the demurrer of defendant as to Plaintiffs 1st. Replication to Defendants 2nd Plea to Plaintiffs Declaration, and the Court being satisfied in the premises, do consider that the replication aforesaid and the matters therein contained, sufficient in law to maintain this action, and therefore overrules said demurrer. The Defendant then demurred to Plaintiffs 3rd Replication to Deft. 2nd plea to said Declaration, and the Court on consideration of the premises are of opinion that the replication last aforesaid and the matters therein contained are sufficient in law to maintain this action, and therefore overrules the demurrer thereto. The Defendant then demurred to Plaintiffs 1st replication to Defendants 3rd. Plea to said Declaration and the Court on consideration of the premises are of the opinion that this replication is sufficient in law to maintain this action and therefore overrules the demurrer. The defendant then demurred

to Plaintiffs 1st Replication to Defendants 4th amended Plea and on consideration the Court held said replication to be good in law to maintain this action and overruled said demurrer. The ~~Plaintiff~~^{Defendant} then demurred to Plaintiffs 3rd. Replication to Defendants 4th amended Plea, and the Court being fully advised in the premises is of opinion that said replication is not sufficient to support this action and therefore sustains said demurrer. The Defendant then Demurred to Plaintiffs 4th. Replication to Defendants 4th amended Plea and the Court on consideration of the premises is of opinion that said replication and the matters therein contained are not sufficient to support this action, and therefore said demurrer is sustained. The Defendant then demurred to Plaintiffs 1st Replication to Defendants 6th. amended Plea and the Court being satisfied in the premises are of opinion that said replication is sufficient in law to maintain this action and therefore overrules said demurrer. The Defendant then demurred to Plaintiffs 2nd. replication to Defendants 6th amended Plea, and the Court being satisfied in the premises are of opinion that said replication is sufficient to support this action, and therefore overrules said demurrer. On motion of Plaintiff by his Attorney leave is given him to amend his 3^d and 4th replication to Defendants 4th. amended Pleas, and the Defendants on motion have leave to file rejoinders to the same

And afterwards to-wit- but on the ^{day &c} date last aforesaid, there was filed with said clerk of this Court, amended replications in words and figures following to-wit:-

24.
3 & 4 Repl. }
5 & 4 Plea }

Smith use of Allison
vs.
Pries et al

In the Circuit Court
Nov. Term 1858.

And the said Plaintiff for amended replica-
tion to said fourth amended plea says precludi non because he
says that the said Alexander Allison was not indebted to said
Pries in any sum whatever at the time said distress was levied
nor at any other time in manner and form as said Defendant
hath in said ^{fourth} plea alleged & this he prays may be enquired of by
the Country
by Grove his atty

And the said Defendants do
shelike &c. Bonney Atty for Dft.

And for further replication to said fourth Plea the Plain-
tiff says precludi non because he says that said Alexander Alli-
son did not accept and receive said indebtedness in said fourth
plea mentioned or any part thereof in satisfaction & extinguishment
payment or in discharge of said Rent & this he prays may be
enquired of by the Country
by Grove

And Dft likewise his Atty.

Bonney Atty for Dft

And for further replication to said 4th Plea the Plain-
tiff says precludi non, because he says that there was rent
due from said Pries to said Allison amounting to the sum
of one hundred & sixty eight dollars at the time of the levy-
ing of the said distress & this he prays may be enquired of
by the Country
by Grove

And the Defendant likewise

Bonney Atty for Dft.

his Atty

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And afterwards to wit- but on the day and date last aforesaid, there was filed with the said clerk of said court, rejoinders in words & figures following to wit:-

State of Illinois
County of Peoria
Francis W. Smith

In the Circuit Court of
November Term A.D. 1858

for the use of Alexander Allison
vs.
Henry Vries & John Smith

In Debt

Rejoinders

Rejoinders
to 1st Rep. to
2nd. Plea

And the said Defendants as to the said first replication to said second plea, whereof said Plaintiff hath prayed an inquiry by the Court doth the like &c. Charles C. Bonney

Atty for Dfts

1st. Rejoinder
to 3rd Rep. to
2nd. Plea

And the said Defendants as to the said third replication to said second plea &c. say that there was not at the said time of levying said distress, any sum of money whatever due from said Vries to said Allison for rent in manner and form as the said Plaintiff hath therein above alleged and if this the defendants put themselves upon the Country for trial &c.

And the Pff doth the like
by Grove his Atty.

Charles C. Bonney

Attorney for Dfts.

2nd Rejoinder
to 3rd Rep. to
2nd. Plea

And the said Defendants for further rejoinder to said third Replication of said Plaintiff to said second plea, says that said John A. Mc. Coy had not any jurisdiction or authority of law

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to render any such judgment as is set out in said Repli-
cation and this the said Defendants pray may be inquired of
by the Court. &c.

Charles C. Bonney

And the Plff doth the like

Attorney for Defts.

by Grown his Atty.

3rd. Rejoinder
to 3d Rep. to
2d. Plea
And the said Defendants for further rejoinder to said third
replication to said second plea say that no such distress
warrant as is mentioned in said replication was issued by
said Allison and executed by said Samuel Crouse and filed
with and proceeded on by said John W. McCoy as set out
in said Replication, and this the said Defendants put themselves
upon the Country for trial &c.

Charles C. Bonney

Atty. for Defts.

And the Plff. doth the like

by Grown his Atty.

Rejoinder to 1st
Rep. to 3d Plea
And the said Defendants as to the first replication in said third
plea whereof the said Plaintiff hath prayed an inquiry by the
Court doth the like &c.

Charles C. Bonney

Atty for Defts.

Rejoinder to
1st. Rep. to 4
Amend. Plea
And the said Defendants as to the said first replication to said
fourth amended plea, whereof said Plaintiff hath prayed an in-
quiry of the Court, doth the like &c.

Charles C. Bonney

Atty for Defts

Rejoinder to
1st. Rep. to 6th
Amend. Plea
And the said Defendants as to the said first replication to
said sixth amended Plea, whereof said Plaintiff hath prayed
an inquiry by the Country, doth the like. &c.

Charles C. Bonney

Atty. for Defts

Rejoinder to
2nd. Rep. to 6th
Amend. Plea
And the said Defendants as to the said second replication to said
sixth amended plea say that said Pous did not wrongfully and

unjustly reply, said properly as in said replication alleged
and of this the said Defendants put themselves upon the Country
to try.

Charles C. Bonney

Atty. for Defs.

27 And the Plff. doth the like
by Grove his Atty.

And afterwards to-wit, on the fifteenth day
of December A.D. 1858, there was filed with
the said clerk of said court, in this cause,
Pleas, in words and figures following
to-wit:-

State of Illinois
County of Peoria

In the Circuit Court

November Term A.D. 1858

Francis W. Smith
for the use of Alexander Allison

Debt on Bond

Henry Pires & John Smith

7th Plea

And for further plea in their behalf the said De-
fendants say Actis Non because they say that before the com-
mencement of this they paid to the said Francis W. Smith
the debt mentioned in the said Declaration and every part there-
of and all damages for the detention of the same and this they
the said defendants are ready to verify &c.

Charles C. Bonney
Attorney for Defendants

8th Plea

And for further plea in their behalf the said Defendants say
Actis non because they say that before the commencement of this
suit they paid to the said Allison all rent and indebtedness in

the said declaration mentioned and every part thereof, and all sum and sums of money in the said declaration specified, and this they the said Defendants are ready to verify. &c.

Charles C. Bonney

Atty for Dfts.

And afterwards to-wit- but on the day and date last aforesaid, there was filed with the said clerk, in this cause, replications to said last named pleas, in words and figures set following to-wit:-

Francis W. Smith
for the use of Alexander Allison

v.s.

Henry Price & John Smith

In the Circuit Court
of Peoria County

Nov. Term 1858

And the said Plaintiff for replication to said seventh plea of the said Defendants says ~~that~~ precludi non because he says that the said Defendants did not and have not paid the said Debt in Plffs Declaration mentioned as in said seventh plea alledged nor any part thereof, and this he prays may be suggested by the Court.

And the Defendants likewise

Bonney, Atty for Dfts.

his atty.

And for replication to said eighth Plea Plff says precludi non because he says that that the Defendants did not and have not paid the rent and indebtedness and said sums of money in Plaintiffs Declaration to the said Allison nor any part thereof

and this he prays may be enquired of by the Country
And the Defendants likewise by Grove

Charles C. Bonney, Atty for Dfts.

his Atty

29 And after wards, to-wit - on the day and date
and also on the 16th day of said month,
last aforesaid, at said term of said court,
further proceedings were had in this
cause, in words and figures following
to-wit:-

Wednesday, December 15th. A.D. 1858.

Francis W. Smith for use of
Alexander Allison

vs.

Debt on Bond

Heinrich Pries, Johanne Schmidt

This day came the Plaintiff by Grove his
Attorney, and the Defendants by Bonney their Attorney, and it is
ordered that a jury be unpannelled to try the issues in this
Cause, whereupon came a Jury of twelve good and lawful men
to-wit - John Doyle, John White, Edwin Matthews, Wm Thompson,
James Hazard, J. M. Shaw, John H. Floyd, Wm C. Henry, William
Schroder, Hugh C. Moffitt, Matthew Laggart, and Martin Wolf
who being duly chosen, tried and sworn to well and truly try
the issues joined in this cause and a true verdict give according
to the evidence, were adjourned to meet the Court at 9 O'clock

Tomorrow morning

Francis W. Smith for
use of Alexander Allison
Heinrich Pries, Johanne Schmidt

Debt
on Bond

Thursday, December 16th. A.D. 1858

This day again came the parties to this suit by their res.

fective Attorneys, and also came the Jury empannelled and sworn on yesterday to well and truly try the issues joined in this cause and a true verdict give according to the evidence; and the said Jury having heard the evidence in the case, the argument of Counsel, and the instructions of the Court upon their oaths aforesaid, do say "We the Jury do find that the said Defendant does owe to the said Plaintiff the sum of five hundred dollars and do assess said Plaintiffs damages at the sum of one cent. Therefore it is considered by the Court that the said Debt and Damages may be discharged by the payment of the Damages alone, and the Court do further consider and adjudge that the said Francis W. Smith for the use of Alexander Allison have and recover of the said Heinrich Vries and Johannes Schmidt the said sum of one cent his damages aforesaid and also his costs and charges by him about his suit in this behalf expended, and that he have execution therefor

And afterwards to-wit- on the day and date last aforesaid, on the 16th day of December A.D. 1858, there was filed in the clerks office of this court a motion for a new trial in words and figures following, to-wit:-

Francis W. Smith
use of Alexander Allison
v. s.
Heinrich Vries

In the Circuit Court
of Victoria County

The Plaintiff enters a motion for a new trial

in this Cause for the following reasons

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- 1 - The Court excluded proper evidence offered on the part of the Plaintiffs
- 2 - The Court admitted improper evidence on the part of the Defendants
- 3 - The Court refused proper instructions asked by the Plaintiff and modified Pliffs instructions
- 4 - The Court gave improper instructions on the part of the Defendants
- 5 - The verdict is against the Law as given by the Court
- 6 - The verdict is against the weight of evidence
- 7 - The verdict should have been for a greater sum in damages
- 8 - The Court erred in stating in the presence of the Jury that the Plaintiff could only recover nominal damages
- 9 - The Court erred in stating in the presence ^{and hearing} of the Jury that the Plaintiff could not recover upon the breach for the parties failure to return the property unless a writ of Return Habendo first issued
- 10 - The Court erred in preventing the Plaintiffs from proving that the property was not returned
- 11 - Other reasons

H. Groves

Atty for Plff.

And afterwards to wit on the 17th day of December AD 1858, at the said term of said court, further proceedings were had in this cause, in words and figures following to-wit:-

Friday December 17th. A.D. 1858
 Francis W. Smith for use of
 Alexander Allison

vs.

Heinrich Vries
 Johannes Schmidt.

Debt on Bond

This day this cause came on to be heard on the motion of Plaintiff for a new trial of this cause, and the Court being fully advised in the premises overruled said motion

And afterwards to-wit on the 18th day of December A.D. 1858, there was filed in the office of the clerk of this court, a bill of exceptions in this case, in word and figures following to-wit:-

Francis W. Smith
 use of Alexander Allison
 vs.

Henry Vries et al

In the Circuit Court
 of Perry County

Be it remembered that on the trial of this Cause to the Jury the Plaintiff to maintain the issues upon his part offered in evidence to the Jury the writ of Replevin and return of the Sheriff thereon in the Case of Henry Vries vs. Alexander Allison dated ^{28th day of March A.D. 1857} in words & figures

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following - " The People of the State of Illinois to the Sheriff
of Peoria County, Greeting: We command you that without de-
lay you cause to be replevied and delivered to Henry, Pries
of Peoria the following described good and chattels, to wit; one
Horse, commonly called a bay horse, of about the age of six years
one horse commonly called a sorrell horse of about the age of ten
years, marked by a white stripe in the forehead; one greyish
spotted Cow, one Saddle, one Bridle, and one harness - all of
the goods chattels and property of the said Henry Pries as he
says of the value of two hundred and fifty dollars as it is
said. Which Alexander Allison wrongfully detains from the said
Henry Pries as is said, and to summon the said Alexander
Allison to be and appear before our Circuit Court, on the first
day of the next term thereof to be held at the Court House in
Peoria, in and for the County of Peoria on the second Monday of
May next to answer unto the said Henry Pries for the unlawful
detention of the goods and chattels aforesaid - Provided However that
the said Henry Pries shall give you bond with good and suf-
ficient security to prosecute his suit to effect without delay, and
make return of the said goods and chattels, if return thereof
shall be awarded, and further to keep you harmless in re-
plevying said property and have you then and there the said
Bond together with this Writ and an endorsement thereon of the
manner in which you have executed the same. Witnesses Enoch



E. Shaw Clerk of our said Court and the seal there-
of this 28th day of March in the year of our Lord
one thousand eight hundred and fifty-seven
Enoch P. Shaw
Clerk

By virtue of this writ of Replevy to me directed from the Clerk of the Circuit Court of Poria County, I did this 28th. day of March ~~1854~~ 1857 take the within named property into my possession & delivered the same over to Henry Pries and took from him a Bond of security for the same as the within writ demands, also served the within writ on Alexander Allison by reading to him the same this 28th. day of March 1857

F. W. Smith Sheriff
by C. Smith Jr. D.S.

The defendants objected, the Court overruled the objection and the defendants excepted. The Plaintiff then offered in evidence the Declaration and Pleas in said case of Pries vs Allison in Replevin in words & figures following

State of Illinois }
County of Poria } ss.
Henry Pries }
vs }
Alexander Allison }

In the Circuit Court of the May Term
A.D. 1857
In Replevin

Alexander Allison the Defendant in this suit was summoned to answer Henry Pries the Plaintiff in this suit of a Plea wherefore he took the goods and chattels of the said Henry Pries and unjustly detained the same against oaths and pledges until &c. and thereupon the said Henry Pries by Charles C. Bonney his attorney complains. For that the said Defendant in the twenty sixth day of March A.D. 1857 in the City of Poria in the County of Poria, in a certain Stable there took the goods and chattels, to wit, one horse commonly called a bay horse, of about the age of six years of the value of one hundred and twenty five dollars, one horse commonly

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called a *Surrell Horse* of about the age of ten years, marked by a white stripe in the forehead, of the value of forty dollars; one grayish spotted *Cow* of the value of thirty six ^{on saddle of the value of eight dollars} dollars; one *Griddle* of the value of two dollars, one set of *Harness* of the value of thirty six dollars, of the said Plaintiff of great value. to wit. of the value of two hundred and fifty dollars and unjustly detained the same against sureties and pledges until *ad*. And also ^{for} that the said defendant in the County of *Polk* in the City of *Florida* on the twenty sixth day of March A.D. 1854 in the City of *Florida* in a certain *Stable* there took one certain other greyish spotted *Cow* of the said plaintiff of great value. to wit. of the value of thirty six dollars and unjustly detained the same against sureties and pledges until *ad*. Wherefore the said Plaintiff saith that he is injured and hath sustained damage to the amount of two hundred dollars and therefore he brings his suit *ad*.

Charles C. Brumby

Attorney for Plaintiff

Henry Price

vs.

Alexander Allison

In the Circuit Court of Polk County 1st May Term A.D. 1854. In Replevin

1st. Plea

And the said Defendant by Grove & Mc Coy his Attorneys comes and defends the wrong and injury when *ad*. and says that he did not take the said goods chattels and property in the said declaration mentioned 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 the said defendant puts himself upon the country

by Grove & Mc Coy

his Attorneys.

2d Plea

And for a further Plea in his behalf the said defendant says that he did not detain at the time when *ad*. nor does he now detain the said goods and chattels in the said count mentioned, 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 the said defendant puts himself upon the Country } by James Mc. Gray
his attorney &

Answer

And the said Defendant by his Attorneys aforesaid comes and defends the wrong and injury when &c. and well avers the taking of the goods & chattels in the said declaration mentioned in the said tale in which &c. and justly &c. because he says that the said plaintiff for a long time to wit for the space of seven months next before and ending on a certain day to wit on the fifteenth day of March A.D. 1854. and from thence until and at the said time when &c. held and enjoyed certain lands tenements and possessions of the said defendant situate lying and being in the City of Peoria - County of Peoria and State of Illinois known and described as follows to wit Part of lot One (1) in Block Two (2) commencing on Washington Street thirty two (32) feet from the corner of Washington & Hamilton Streets, thence running eighty two (82) feet parallel with Hamilton Street thence ⁽⁴⁰⁾ forty feet towards Main Street parallel with Washington Street thence forty two (42) feet towards Washington Street parallel with Main Street thence twenty two feet (22) towards Hamilton Street parallel with Washington Street - thence forty (40) feet towards Washington Street parallel with Main Street thence eighteen (18) feet along Washington Street towards Hamilton Street to the place of beginning with the appurtenances, as tenant thereof ^{the said defendant} by virtue of a written demise thereof to the said plaintiff heretofore made dated on the fifteenth day of August A.D. 1856 at and under a certain monthly rent to wit the monthly rent of twenty eight dollars payable on the fifteenth day of each and every month and because the sum of one hundred

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and ninety six dollars of the rent aforesaid for the space of seven months ending as aforesaid on the said fifteenth day of March A.D. 1857 and from thence until and at the said time when *sc.* was due and in arrear from the said plaintiff to the said defendant - well avers the taking of the said goods and chattels in the said Still in which *sc.* and justly *sc.* as for and in the name of a distress for the said rent so due and in arrear to the said defendant as aforesaid and which Still remains due and unpaid which distress was made by Samuel Crouse his Bailiff under distress warrant issued by defendant to said Bailiff dated March 25th A.D. 1857 And this he the said defendant is ready to verify wherefore he prays judgment and a return of the said goods and chattels together with his damages according to the form of the Statute in such case made and provided, to be adjudged to him *sc.* by Gore & McCoy his attys.

3rd. Plea And for a further plea in this behalf the said defendant says avers and because he says that the said goods and chattels at the said time when *sc.* were the property of ~~one~~ Samuel Crouse and not of the said Plaintiff as by the said declaration is above supposed and this he the said defendant is ready to verify, wherefore he prays judgment *sc.*

By Gore & McCoy
his attys.

The Plaintiff then offered in evidence the record & judgment in the case of Henry Poir vs. Alexander Allison in words and figures following

Proceedings in the Circuit Court at a term thereof begun and held in the Court House in the City and County of Peoria, in and for said County and State of Illinois on the third Monday of November in the year of our

Lord one thousand eight hundred and fifty seven it being the sixteenth day of said month. Present the Honorable Edwin W. Powell Judge of the 10th. Judicial Circuit in the State of Illinois Francis W. Smith Sheriff and Enoch P. Housh Clarke - to wit -

Wednesday December 30th A. D. 1857

Henry Preis

vs.

Alexander Allison

Replevin

This day came the plaintiff by Bonney his Attorney and his motion the order to set aside judgment herein is rescinded and this cause is dismissed at plaintiffs costs. Therefore it is considered that the said Alexander Allison have and recover of the said Henry Preis his costs and charges by him about his suit in this behalf expended and that he have execution therefor, and it is further ordered that the said Henry Preis return to the said Alexander Allison the property replevied.

The Defendants here objected to the introduction of any evidence touching the value of the property replevied or touching any damages for the non return thereof because no writ of Returno Habendo had been shown. The Court held that a writ of returno habendo must be shown but allowed proof of the value of the property, and the defendants excepted.

The Plaintiff then offered in evidence the Replevin Bond on which this suit is brought in words & figures following

To wit all men by these presents, that we Henry Preis as Principal and Johannes Schmidt as surety of Peoria County and State of Illinois are held and firmly bound unto Francis W. Smith Sheriff of the County of Peoria aforesaid in the sum of five hundred dollars lawful money of the United States to be paid to the said Henry

Cis W. Smith his heirs executors or administrators, to which payment well and truly to be made we bind ourselves our heirs executors or administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this 28th day of March ~~the~~ 1857. The condition of the above obligation is such that whereas the above named Henry Vries did on the 28th day of March A.D. 1857 cause a writ of Replevin to be issued from the office of the clerk of the Circuit Court of Peoria County under the seal thereof against Alexander Allison to recover the possession of the following described property, to wit - one bay Horse of about the age of six years, one sorrell horse of about the age of ten years marked with a white stripe on the forehead, one greyish spotted cow, one saddle, one bridle, of the value of \$250 dollars and no cents, which said writ is directed to and placed in the hands of said Sheriff to execute and he being about to execute the same. Now if the said Henry Vries shall prosecute his suit against the said Alexander Allison to effect and without delay, and make return of said property or about to be replevied, if return thereof shall be awarded and shall save and keep harmless said Sheriff in replevying the said property aforesaid then the obligation to be void otherwise to remain in full force and virtue

Signed and sealed in presence of

Charles C. Brumby

Heinrich Vries

Johannes Schmidt

The defendants objected, the Court overruled the objection and the defendants excepted. The Plaintiff then offered in evidence the Dis-
-vices Warrant signed by Allison and the return of Samuel Brown there-
-on in words & figures following

State of Illinois } ss
Peoria County }

To Samuel Brown - my Bailiff. You will

distrain sufficient of the goods and chattels belonging to Henry Pries my tenant that you may find in said County to make the sum of one hundred and sixty eight (\$168) dollars being the amount of rent due me from said Pries up to March fifteenth A.D. 1857 according to a written Lease given to him dated August 15th 1856 denoting a part of lot one in Block two in the Town (now City) of Peoria to said Pries being the same premises now occupied by said Pries. The above sum of one hundred and sixty eight dollars is for the use and rent of said premises according to said written lease and for making said Distress this shall be your sufficient warrant and authority

A. Allison

March 25th 1857

By virtue of the within Warrant I did on the 26th day of March 1857 levy upon the following Goods and Chattels & did distrain the same to wit one Bay horse - blind in one eye one sorrel Horse, one Cow ~~half~~, one set of Harness, one saddle & Bridle - being the property of the within named Pries

Saml. Corwin - Const.

^{sup}The defendants objected, the Court overruled the objection, and the defendants excepted. The Plaintiff then offered in evidence a summons issued by John A. McCoy a Justice of the Peace in the case of Alexander Allison vs. Henry Pries and the return of the Constable thereon in words and figures following

State of Illinois Peoria County Lt. The People of the State of Illinois to my constable of said County greeting - You are hereby commanded to summon Henry Pries to appear before me at my office in Peoria on the 31st day of March inst. at 1 O'clock P.M. to answer the Complaint of Alexander Allison for a failure to pay

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him a certain demand not exceeding \$300; and heretof make due return as the law directs. Given under my hand and seal this 26 day of March 1857.

J. A. McLaughlin

Served on Henry Pries by reading to him this writ March 26th. 1857. Saml. Cornell. Const. —

The defendants objected, the Court overruled the objection, and the defendants excepted. The Plaintiff then offered in evidence the account filed by Pries before the Justice in words and figures following.

1858

Alexander Allison

D^r

Jan. 15. To Henry Pries

- | | | |
|----|---|-------|
| 15 | To doctoring one Gray horse commencing in Aug. 1858 for lung & Kidney complaint 3 months in Allison's Stable & ten days in mine own | 55.00 |
| | To doctoring one cream-colored horse for lameness 3 weeks commencing Jan. 1857 | 15.00 |
| | To doctoring one roan Mare for lung complaint 3 weeks commencing Jan. 1857 | 15.00 |
| | To doctoring one sorrel Mare for horse distemper in Feb. 1857 | 2.50 |
| | To doctoring horse "Tiger" same time same complaint | 2.50 |
| | To doctoring Horse "Tom Benton" same time same complaint | 2.50 |
| | To doctoring one roan Horse for lung complaint 3 weeks commencing Feb. 1857. | 10.00 |
| | To doctoring Horse "Ike" for lung complaint in Feb. 1857 | 2.50 |

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To doctoring me grey horse for Colic 5.00

To doctoring one small Horse for lung complaint &
fistula for 7 weeks commencing in Feb. 1854 - \$5. 00

To doctoring horse "Black John" for lung fever 2 weeks
in Feb. 1854. 10.00

To doctoring Horse "Sam" for lung Complaint for 2.
weeks in March 1857 10.00

To doctoring black mare for sore eye March 1854 1.00

In doctoring one black Horse for horse-distemper in March
1854 2.50

To doctoring one grey horse for lung fever March 1854 5. 00

To doctoring Horse "Mike" for lung disease in January 1857. 16.00
199.50

199.50

Also the account then and there filed by Attorney against Pries
on the words and figures following - to wit -

Henry Price Dr. to A. Allison

1956 Oct. 15. In one month's rent to date 28.00

Nov. 15. to me " " " " 28

Dec. 15 To me do do do 28

Jan 15 to me do do do 28

Feb. 15 " " " " " 28

March 15 " " " " " 28

As per written lease dated August 15th A.D. 1856 signed by
said Price & Allison

The Plaintiff then offered in evidence a Transcript from the Docket of John A. Meloy in the Case of Alexander Allison vs. Henry Pries in distress for rent in words and figures following

Alexander Allison
vs.
Henry Fried

Suit brought on distress Warrant for

rent \$168.00 on application of Plff Ammons issued to Crouse Constable on March 26. 1857 returnable March 31st 1857 at 10^o Clock P.M. returned duly served

Mar. 31. 1857. This cause continued by agreement of parties to April 2 at 1 O'Clock. P.M. April 2. 1857 Subp issued Crouse for witnesses April 2. 1857. The parties appeared with their Council and went to trial and after hearing and disposing of several motions the different witnesses were all heard, and after allowing an offset of thirty-six dollars a Judgment was rendered against the defendant for one hundred and thirty-two dollars, debt. and costs of suit

Debt \$132.00

Costs \$ 5.21

State of Illinois

Poria County } etc. J. A. McCoy Justice of the Peace within and for said County, do certify that the foregoing Transcript is truly copied from my docket. Given under my hand and seal this 27th day of November A.D. 1858.

J. A. McCoy J.P.

All of which instruments hereinbefore mentioned were objected to by the defendants Counsel but admitted by the Court and read in evidence to the jury. The Plaintiffs then called John A. McCoy who being sworn testified that he was the Justice of the Peace who heard and determined the case of Allison vs. Poria, ^{Poria vs. Allison} that the account exhibited to witness by ^{he}, believed to be the one filed before him by Poria vs. Allison. That Poria on the trial of the cause of Allison against Poria appeared with Counsel & introduced witnesses to prove his services for doctoring horses and insisted that the amount should be deducted from the amount of rent. That Allison consented and he did allow some thirty-six dollars on the rent and rendered Judgment for the balance, That there was no dispute between Allison and Poria as to the amount of the rent. It

admitted that the rent was for 6 months at 28 ¢ per month and amounted to 168 ¢. The defendants objected to the introduction of the above evidence of said Mr. Coz but the Court overruled the objections and the Defendants excepted -

The Plaintiff then called O. B. Warner who being sworn testified that he was well acquainted with the parties and with the property distrained by Allison & described in the return made by Coz as Bailiff in his return

That the Bay Horse was worth	\$ 85.00
Small Horse was worth	50.00
The Car was worth	20.00
Saddle & Bridle	5.00
	100.00

at the time it was distrained - The witness stated that he was in the employment of Allison from the first of January A.D. 1856 until this time. That if the property replevied by Pries from Allison had ever been returned to him by Pries or any one for him he, witness, would have known it. The Plaintiff then enquired of the witness whether said property distrained had ever been returned to Allison -

To which question the defendants objected, and the Court sustained the objection and refused to allow the Plaintiffs to prove that the property never had been returned on the ground that it did not appear that a writ of returno habendo had had been issued and returned in the case of Pries vs. Allison

To which decision of the Court in refusing to permit the Plaintiff to propound said inquiry to the witness, and in deciding to prevent the Plaintiff from proving by said witness that the property distrained and replevied had never been returned to Allison. The Plaintiff at the time then and there objected and excepted

45- The Plaintiff then offered and proposed to prove by said witness and by Samuel Brown the Bailiff who had distrained the property, that the property described in the Replevin Bond was never delivered by the Defendants or either of them to Allison or to any one for him, to which the defendants objected And the Court sustained the objection And excluded the evidence and refused to permit the Plaintiff to prove that the property had not been returned to Allison, on the ground that no writ of returno habendo had been issued on the judgment & returned not found. To which decision of the Court in refusing to permit the plaintiff to prove that the property had never been delivered or returned to Allison or to any one for him the plaintiff then and there at the time objected and excepted

The plaintiff here rested his cause

The Defendants here moved to exclude all the evidence of the Plaintiff from the Jury because the same was improperly admitted and did not legally tend to prove the issues in the case, but the Court overruled the motion and the defendants excepted

In overruling said motion the Court said in the presence of the Jury and in their hearing that the plaintiff had better dismiss his suit in order to have a writ of returno habendo. That it was ~~their~~ neglect in the Attorney in not having a writ of returno habendo issued and returned not found. To which statement of the Court in the presence and hearing of the Jury the Plaintiff at the time then and there objected and excepted

The defendants then called one Nicholas Lentinger who being sworn stated to the Jury, That he was present in February 1877 at the Stable of Pries. That Allison came to Pries Stable & said he wanted money for rent. That Pries said he wanted some money for

Allison told Pries to bring his account and they would settle the rent, and Allison & Pries then agreed to settle one account with the other. Two days afterwards Allison came again & said "For make out your account and come and settle up the rent". Pries said he would, do so. Pries claimed that there would be a balance coming to him after settling the rent with his account for doctoring Allison's horses. The defendants then called Conrad Moggy, who, being sworn testified that between the first of January A.D. 1854 & the issuing of the distress warrant Pries doctor-
ed a gray Horse. part of the time the horse was at Allison's Sta-
ble, and part at Pries, he doctor'd him some two months, he
had lung complaint and had stiffness. He also doctor'd cream
colored horse about two weeks for lame shoulder. He doctor'd
Sorrel Mike one week for rotten lung. He doctor'd Roum Mare
five days, she had lung complaint. He doctor'd 3 or 4 horses
with distemper and cured them. He also doctor'd big roan Horse
4 to 6 days for lung complaint. He doctor'd big gray Horse; he
had Colic. Sorrel John he also doctor'd he was sick a long time
2 or 3 months; also Black John two or 3 days. Sorrell Sam
a few days, steamed his throat. Black horse died while Warner
doctor'd him. Pries found medicine. Horses all but Grey
were kept and attended by Allison at Allison's Stable. Allison
once told Pries to come and bring his boy to attend to a
horse that was sick, both rent; sometimes Pries boys assisted
him at Allison's Stable.

Henry Miller, knows Pries, he doctor'd grey Horse month or
month and a half. Pries doctor'd 1 cream Horse lame shoul-
der; he doctor'd Mike a week or two in Allison's Stable. ~~He~~

He doctored Roan Mare 2 weeks in Allison's Stable
He doctored 3 or 4 horses for distemper good while 2 months in
all, cant tell how long. He doctored big roan horse, doctored
Prince for the Colic, dont know how long
Doctored Amell John 3 weeks
" " Saw 2 weeks; he got well
" Nigger horse distemper
" Grey Horse cant tell how long. That witness worked
for Allison. Prie often came to Allison's Stable. Allison did not
find much fault. Prie found medicine, he doctored the sev-
eral horses as Conrad Muggy has stated. I think his statements
are correct as to number of horses and time of attendance

On cross examination the witness stated that Mike was doctored
in 1856; and on re-examination by Defendants he stated that while
Mike was doctored by Prie in 1856 he was also doctored in 1857
as above stated

The defendant then called John G. Graeger who testified that about
10 years ago he was a Colonel in the army, in Europe, that he
doctored horses $4\frac{1}{2}$ years and $\frac{1}{2}$, and had recently doctored horses, two
years in Indiana, that he had heard the evidence & that he sup-
poses the services rendered were worth from \$133 to \$150
This witness stated what he thought a reasonable charge under
the circumstance for each item of service charged by Prie
which charges amounted to the sums above stated, \$133 being
the minimum and \$150 the maximum stated by him

On cross-examination the witness stated that if he done all the
business of a stable the services would be worth much less
& if Allison found stable & hands & feed a still further deduction

That he had no personal knowledge of the amount of services nor of the kind or value of the medicines and
that the jury could judge better of the value of the services rendered. That all he knew of the services was from
hearing the statements of the witnesses, that he could give no exact opinion on which he could rely with perfect confidence

should be made. The defendants then rested their case.

The Plaintiff then recalled B. O. Warner who testifies that on or about the 8th day of January 1857 Allison & Pries settled all the account for services up to that time. That there was then due to Allison \$10. for which Pries gave his note, which note the Plaintiff then offered in evidence to the jury (in words and figures following,

\$10.⁰⁰

For January 8th. 1857.

Ten day After date for value received, the subscriber of Poria, County of Poria and State of Illinois promise to pay to Alexander Allison or order ten dollars and — cents, negotiable and payable without defalcation with interest

Heinrich Pries

and read the same against the objection of the defendants. The defendants examined said Warner touching his competency to testify of the value of Pries services because he was not a Horse-doctor Warner said he was not but the Court permitted him to testify, and the defendants excepted. Warner then stated that at that settlement Pries brought in all his account against Allison prior to that date that the amount was allowed by Allison on a buggy Allison sold to Pries and that the rent was not included in that settlement. That the agreement between Pries and Allison was that Pries was to have ten dollars for doctoring the Grey Horse of he cured him, and the horse died. That 6 of the horses doctor'd by Pries he was to have 2⁵⁰/₁₀₀ each for The Cream colored Horse doctor'd by Pries was worth 10 \$ & the other three of them were worth 1 \$ a piece. That Pries services were worth in all 40 \$. That witness was in Allison's employment all the time and knew all the services performed by Pries & the value of the services, that on the trial between Allison & Pries the whole of account now presented by Pries was brought in and proof offered by Pries & considered by the Justice

This was all the evidence in the case

The Plaintiff asked the following instructions which were given

- 1 - The Court instructs the jury that the record offered in evidence shows that Pries did not prosecute ^{his suit} with effect and that there has been a breach of the condition of the Bond offered in evidence and the Plaintiff can therefore maintain this action
- 2 - Upon the Breach of the Condition of the Bond the debt therein mentioned became forfeited to the Plaintiff and the jury should find ~~the~~ the Plaintiff's debt at the sum of five hundred dollars and his damages at such sum as the jury believe from the evidence he is entitled to, not exceeding the amount of rent due from Pries to Allison at the time the property was taken by the distress warrant
- 3 - If the jury believe from the evidence that there was a trial between Allison and Pries before John W. McCoy a Justice of the Peace and if the jury further believe from the evidence that Pries on that trial brought in his account with the consent of Allison and made proof of the same and the same was considered by the Justice and allowed so far as proved then then the judgment of the Justice fixes the amount due to Allison for his rent
- 4 - This suit was brought on the Replevin bond which is in evidence before the jury and if the jury believe from the evidence that there has been a breach of the conditions of the bond the verdict shall be for the Plaintiff for the debt in the bond mentioned and for such damages as Allison sustained by reason of the property being replevied from Allison

The defendants then asked the following instructions which were given to which the Plaintiff objected

- 1 That as the Plaintiff has failed to show any writ of return

habendo or the issuing or return thereof he can recover nothing in this action for a failure to return the property replevied

- 2 - That the value of Allison's interest in the property replevied cannot be recovered except on proof of a failure to return such property when required thereto by a writ of return habendo duly issued on a judgment for such return
- 3 - That the Plaintiff is not entitled to recover in this action except for such damages as he may have shown that Allison has sustained in consequence of the failure of the defendant Pries to prosecute the action of Replevin to effect and without delay
- ④ - The only damages recoverable by the Plaintiff in this case are such as the Plaintiff may have shown have resulted to Allison's interest in the property replevied in consequence of the failure of Pries to prosecute the action of Replevin to effect and without delay

To the overruling of which objections and to the giving of which instructions the Plaintiff then and there at the time objected and excepted.

The jury returned the following verdict
We, the Jury, find the issues for the Plaintiff, Debt \$500 and assess the damages at one cent.

John H. Floyd Foreman

The Plaintiff entered a motion for a new trial in words and figures following

Francis W. South
vs.
of Alexander Allison

Henry Pries

In the Circuit Court of
Perry County

The Plaintiff enters a motion for a new trial in this cause for the following reasons

- 1 The Court excluded proper evidence offered on the part of the Plaintiff
- 2 The Court admitted improper evidence on the part of the defendant
- 3 The Court refused proper instructions asked by the Plff. and mot.

lipid Plffs. instructions

- 57
- 4 - The Court gave improper instructions on the part of the defendant's
 - 5 - The Verdict is against the Law as given by the Court
 - 6 - The Verdict is against the weight of Evidence
 - 7 - The verdict should have been for a greater sum in Damages
 - 8 - The Court erred in stating in the presence of the jury that the Plaintiff could only recover nominal Damages
 - 9 The Court erred in stating in the presence and hearing of the jury that the Plaintiff could not recover upon the breach for the failure to return the property unless a writ of *Victoris Habenda* first issued
 - 10 The Court erred in preventing the plaintiff from proving that the property was not returned
 - 11 Our reasons —

H. Grove. Atty. for Plff.

The Court refused to grant a new Trial and rendered judgment on the verdict. To which decision of the Court in over-ruling said motion and in refusing to grant a new Trial the Plaintiff then and there at the time objected and excepted & prayed that this his Bill of Exceptions might be signed and sealed by the Court. and made part of the record in this case which is done

E. N. Powell 

52 State of Illinois } as
Peoria County }

I, Emack Ffloan, clerk
of the circuit court in and for said
county and state do certify that the
foresgoing is a full, true and perfect
transcript of the record and pro-
ceedings of said court, appertaining
to the cause wherein Francis W. Smith
for the use of Alexander Allison, was
plaintiff and Heinrich Pries and Jo-
hannas Schmidt, were dependants,
as the same appears of record and
on file in my office.

Given under my hand
and the seal of said
court at Peoria, this
5th day of March, A.D.
1859.

Emack Ffloan, clerk

15 172
Francis W. Smith
for use &c

vs
Henry Pries et al

Transcript & assy't
of errors

Filed April 14 1858
L. Leland
clerk