

12109

No. _____

Supreme Court of Illinois

Woodward.

vs.

Woodward, Jr.

Alfred Woodward

vs.

Daniel Woodward.

And the said Alfred Woodward comes & says that in the record & proceedings aforesaid & in the rendition of the judgment aforesaid, there is manifest error, in this, to wit, that the said circuit court should have rendered a judgment in favour of the said Plaintiff in error & against the said Deft. in error =
and for further assignment of error, said Plaintiff now says, that the said Circuit Court, erred

1. In admitting the evidence of the deft. in error which was objected to by the Plff. in error =
- 2 = In refusing to give the instruction to the jury which was asked for by the Plff. in error. =
3. In overruling the motion of the Plff. in error for a new trial, & in rendering on the verdict for the Deft. below. =

And the said Plff. for the errors aforesaid, & for other errors in the record & proceedings aforesaid, pray that the said judgment may be reversed, annulled & for nothing esteemed, & he be restored to what he best lost, by reason thereof = By his Atty.

Peters & Shellenbarger =

• Daniel Woodward Jr
vs ~~Appellant~~ } Appra from Stuck
Alfred Woodward,
Appellant }

And now comes
the said Daniel Woodward Jr and
says there are no such errors or any
or either of them in the Records & proceed-
ings as by the said Alfred Woodward
is above alleged

Wherefore he prays that
said judgment may in all things be
affirmed & the recover his costs

Manning Douglas
Attys for Appellant

Pleas before the Hon William Kellogg
Judge of the Tenth Judicial Circuit
of the State of Illinois at a term of
the Circuit Court begun and holden
at the Court House in Toulon in the
County of Stark and State of Illinois
on Tuesday the twenty third day of
September A.D. 1891 Present the Hon.
William Kellogg Judge - J. V. Ryalls
State atty Wm F. Thomas Judge
and Chas. Whelton Clerk.

Be it remembered that Benjamin
Smith on the 1st day of Jan. 1891.
Daniel Woodman filed in the
Clerks office of the said Circuit Court
an affidavit in the words and figures
following to wit:

State of Illinois }
County of Stark } J

This day personally
appeared before the undersigned Clerk
of the Circuit Court - Daniel Woodman,
who being first duly sworn says that
he is the owner of and entitled to the
possession of the following described
goods and chattels to wit one bay
mare four years old and one brown
man colt about a month old with
a wheel stripe in the face, that
Alfred Woodman, Wm. J. and

unlawfully took and detained, the same
goods and chattels from, the said
the said Daniel Woodward & and
that the same has not been taken
for any tax, assessment, or fine, levied
by virtue of any Law of the State of
Illinois nor seized under, any execution
or attachment against the goods
and chattels of the said Daniel
Woodward & liable to execution or
attachment and further said not

Samuel Woodward

Subscribed & sworn to
before me this 1st day
of June 1833

O. Whitaker Clerk.

Upon the filing of this affidavit the said
Clerk issued a writ of Habeas Corpus in this
cause which was return by the Sheriff
of said County served by reading the same
to said defendant and by taking the same
property and delivering the same to the
said Daniel Woodward & -

And afterwards to wit on the 1st day of
June A.D. 1833. the said Plaintiff filed
his declaration which is in the words
and figures following: to wit

State of Illinois
County of Stark } Of the Stark County
Circuit Court September
Term A.D. 1833 -

non which was granted and non amended
And afterwards to wit on the day and year last
aforesaid at the term aforesaid - said de-
fendt filed his pleas. which are in the words and
terms following to wit:

Daniel Woodward }
" } Replevin
Alfred Woodward }

And the said defendt
by Peter and Shallenbarger his attys came and
defends the ~~plea~~ ^{plea} & says where and says
and ~~unlawfully~~ ^{unlawfully} ~~and~~ ^{and} ~~detained~~ ^{detained}
that he did ~~not~~ ^{not} take the said man and
colt in said declaration mentioned or either
of them in manner and form as is in said
declaration by said plaintiff alleged and
of this said defendt puts himself upon the
Country &c by Peter & Shallenbarger his attys

And for further plea in this behalf said defendt
says Actio non because he says the said man
and colt in said declaration mentioned at
the said time when &c even the property of
the said defendt and not of the said
plaintiff as by said declaration is above
supposed. And thus he is ready to verify
whereupon he prays judgment &c. and also a
return of the said man and colt together
with his costs in this behalf according to
the Statute in such cases made and
provided to be adjudged to him &c.
by Peter and Shallenbarger his attys -

and for further plea in this ~~belong~~ ^{belong} ~~deft~~ ^{deft}
says Actio non. because he says. that
the said Man and colt in said declaration
mentioned, at the said time when &c were
the property of Daniel Woodward Senior
and not the property of the said plaintiff - as
is by said declaration above alleged, and
this he is ready to verify - wherefore he
prays judgment &c. and also a return of the
said property together with his colt in this
belong to be assigned to him &c according
to the form of the Statute in such case
made & provided - By his attys
Peters & Shallenbeger - his attys -

And afterwards to wit on the day and
year aforesaid at the time aforesaid
said plaintiff filed his application to
the said Defendant pleas, which is in
the words and figures following to wit

Daniel Woodward }
vs } Replevin
Daniel Woodward }

And said plaintiff
as to said Defendant's plea first above
pleaded, when he puts himself upon the
country. doth the like - By Thawney & Drummond
for Plff -

And for application to said Defendant's
plea secondly above pleaded said plaintiff
says prcludi non because he says
that the said Man and colt at the said
time when &c were not the property of the
said Defendant but of the said ~~deft~~ ^{deft}

said Defendant as to ^{the property} death in said plea.
alleged, but of the said plaintiff and of this
he puts himself upon the Jury &c ~~and~~
~~and~~ doth the like By Document & Manning
by Peter & Shallenbeger his atty
his atty

And in replication to said Defendant plea they
also pleaded plaintiff says pro claudi non bene
he says that the said Man and wife at the said
time when &c. were not the property of said Daniel
according to as is in said plea alleged but
of the said plaintiff and of this he puts himself
upon the Jury &c. by Document & Manning his
attys and said doth the like by
Peter & Shallenbeger his attys =

Daniel Woodward vs

as
Sephur Woodward } Replein

This day came the
the said plaintiff by Manning and Document
his attys and the defendant by Peter
& Shallenbeger his attys and the
issues being now joined it is ordered
by the Court that a jury come to try
this cause, whereupon came twelve good
and lawful men, viz. S. St. Saunders
Stephen Ordway, William Rice Jacob
Hedden, Wm. M. Pratt, Philander Arnold
Henry T. Ines John Francis John
Lundie Wm. St. Shugart Stephen W.
Eastman and Melter & Therton who
were duly tried chosen and sworn
well and truly to try the issues

juror and a true verdict given according
to the evidence. Also after hearing the
evidence of the parties and the arguments
of Counsel retired to consider of their verdict
and by agreement of parties it is ordered
by the Court that when the jury shall
have agreed upon a verdict they may
seal the same and deliver it to the
clerk at meet the Court to morrow morning
at 8 o'clock.

Ordered that the Court adjourn until
to morrow morning at 8 o'clock.

Wednesday, Morning, September 28th 1857
~~Court met pursuant to adjournment~~
Present same as yesterday.

9 Samuel Woodworth }
" }
Alfred Woodward } Replevin.

This day, again came
the jury empaneled of yesterday and
having considered of their verdict upon their
oaths say - We of the jury find for the plaintiff
and assess his damages at one cent whereupon
said Defendant enters his motion for a new
trial which was argued by counsel and
the Court being fully advised in the premises
overruled said motion =

It is therefore Considered by the Court that the said plaintiff have and recover of the said Defendant the said sum of one cent. damages. as by the jury aforesaid assessed, together with his costs and charges about this suit in this behalf expended and that execution issue therefor, and when comes the defendant and pays an appeal, to the supreme Court of this State, which is allowed, by the Court which is allowed by the Court, on his entry into Bond, to the plaintiff Conditions according to Law, in the sum of two hundred dollars, with William Munn as security, and to be filed with the Clerk of this Court, within thirty days from the adjournment of this term of Court. The said defendant thereupon prayed that the following bill of receipts, be allowed and sealed by the said judge, and made part of the record in this cause, which is done, and which said Bill of receipts is in the words and to wit:

1. Daniel Woodman Jr { North Creek
 2. { Circuit Court
 Alfred Woodman, { Sept 5. 1851

Be it remembered that on the trial of this cause, the plaintiff to maintain the issue on his part, introduced Henry Sturges as a witness who testified

that in April last. he as constable, went
with a States warrant, to the Deft in West
County: and then saw the Deft. and also
saw the Man and Colt in controversy and
talked with him about them, that Deft
said they belonged to his father, who
then lived with him and that he had
charge of them for his father. They
were in the pasture near the house,
witness understood. Deft to say that he
would have the Man at the justices trial the
next day. ^{and} Next day Deft told witness
that he did not say ^{that} he would take
her ~~the Man~~ to the justices ~~trial~~ that he
witness had misunderstood him -

W^m Thomas. Called by Plff testified that
he was Sheriff of West County. and
served the writ in this case and took
the Man and Colt on the writ and
put them in possession of plff that
Deft said ^{that} he did not own the Man
but that his father owned her and
he had charge of her for his father -

Thomas Dunn

for plff testified that plff
had a man and colt then at his
farm. Last spring saw Man and
Colt in controversy, Man four years
old and Colt a few days old
at that time - That the said Man

was in the possession of Henry Seelye
for two or three months ~~two~~ years ago
that Daniel Woodward senior ~~the~~ father
of Jeff & Jeff had lived many years
with ~~the~~ Jeff and left them and went
to live at Seelye and the man was
then taken there and remained
there as above stated ~~where~~ the
father returned to the Jeff and the
man was ~~then~~ taken back there.

A year ago ~~the~~ ~~father~~ tried to buy
the man of Jeff when the father was
present, & Jeff said he did not wish
to sell her - Could not say whether
the father heard this, that he was
old, and hard of hearing and said
nothing.

John Harmon

for Jeff testified, that
he had known the man since a child
that she was ~~born~~ and raised at
Jeff - & he raised the mother of the
man in Antisnoisy had been in
possession of the Jeff a long time -
He had heard the father call the man
in Antisnoisy, Daniels (Jeff) man. but
not within a year past: but it was
somewhat more than a year ago that
he heard him say it - Saw the
child when it was two or three days
old; at Jeff - the old man had then
gone to ~~Jeff~~ to live - ~~he went there~~

He went there last fall, and the
man remained at Peff till last
spring. The latter had had his home
~~at Peff~~ for several years - at Peff
Mr. Harrow recalled; testified that
he had often heard the old man, say
the same name was Daniels - called
the man in Courtney's Peff - but
not within a year past -

Daniel Newton, ~~testified~~ for Peff -
testified, that he had seen the man in Courtney's
at Peff, in his possession - and in no
other persons possession, saw her in the
Peff yard. - before she was old enough to
work. Witness was called to sit as
arbitrator - Deft called on him to do so
such. A bond, or agreement, was entered
into between them which was read in
evidence, which is in the ends and
pages following, to wit: "Then all men
by these presents that ~~we~~ Daniel
Woodward Jr. and I Alfred Woodward
of Stark County and State of Illinois
are severally held and bound unto
each other in the sum of two hundred
dollars or their assigns and
assigns for which payment to be well
and faithfully made we bind
ourselves jointly by these presents
sealed with our seals the condition of
the obligation is such that the above

Brauden Daniel Woodward and
Alfred Woodward then administrators
and Assigns duly stand & abide by
and perform fulfil and keep the
award, and just determinations of John
Harmon David Newton Samuel Prescott
arbitrators Gentles and Names, & settle
all manner of difference between the
above names, parties in regard to the
property of Daniel Woodward Senior and
all difference growing out of that course
and all other disputes previous to this
date so as the said award be made
under the hands of the said above
named arbitrators and be ready to be
delivered to the said parties in difference
on or before the twenty eighth day of
March; then the obligation to be void
or else to remain in full force

A. Woodward

Daniel Woodward Jr

The arbitrators met at Plffs = Defts presence
an account for his father, and we made
decision in writing enclosed on the back
of the account - The accounts are correct
under the seal in evidence and are in
the words and figures following to wit
The account to wit

"List of property Claims of Daniel
Woodward Senr. of Daniel Woodward
Jr.

1 Bay man,
13 00 paid to Amos Newman -
10 00 paid to Charles Greenfield in Carpenter's
tools
7.00 price of Gun sold Abram Pheas
16.00 Paid to Samuel Donance for Cow -
10.00 Price of Cow sold to Smith Tuttle -
3. Plains 1 adg. 1 handsaw, 1 rule &
square, 1 auger, 1 Log chains, 1 pair Batts
nails & wedges. 40 00 sub against the Agree -

Account as follows -

Stark Co Ill March. 28. 1851

Decision of Arbitrators.

We the undersigned arbitrators do
consider and agree, that the property of
the said Daniel Woodward sen will
not pay said Daniel Woodward sen
for his trouble & labor, into \$38.00
This is our decision -

Daniel Beutin
Samuel Beutin
John Warner

To the reading of the above bond
or agreement, account and above
in evidence to the jury the
deft objected The Court overruled
the objection and the deft
accepted to the decision -

we allowed the property just as in the
account = A Bay man, the mother of
the man in Centerville. Jeff denied that
it was a Bay man, but that it was a
soul man or ^{we allowed the horse} ~~some~~ ^{some} ~~man~~, don't
know whether it was a bay or soul,
allowed as charged in the account.
The father was not present at this
proceeding =

John Hannon called again; testified
that he was one of the arbitrators, was
not positive what man it was, that was
allowed in the account, by the arbitrators.
understood that it was the mother of the
man in Centerville, the Jeff said it
was a soul man, that he had
had, which he had traded off to Seely
for the mother of the man in Centerville =
~~He~~ Jeff presented the account ~~and~~
said it was his father's claim, and wanted
we should settle it. Witness said he
knew the soul man, that he Jeff
had had the bay man, (the mother of
the man in Centerville) four years last
fall or Spring arbitration was 30th
March ~~1890~~ 1890. The man in Centerville
was then in Jeff's possession = The account
was for all the property which plaintiff
had of his father as was said by Jeff
and nothing was said about the man
in Centerville =

James Riley for Jeff = testifies
to Jeff that he lived with Jeff
and worked for him a year ago last
fall & winter. He said he lived there then
Heard the old man say the man belonged
to Jeff = did not know that the ~~old~~
father owned any of the property about
the place. ~~The~~ Jeff used the man as he
did the rest of the property. It was
a year ago last winter I heard the
father say as above stated I don't
remember much about what was said.

Defendant then called

Daniel Woodward senior

Who testifies
that he was the owner of the man in
question. That some years ago he
sold a piece of land and took a
serf man in part payment Jeff
afterwards by my consent and which
I owned her put her off to Henry Seely
and took a boy, now therefor - That
that boy man was the mother of the
man in question - I never sold or
gave the serf man or the boy man
to the Jeff I went to live with the
Jeff and had I been satisfied &
remaining there I should not have called

for the property but have let him have
it But I was not satisfied her about
me and I left them & I wanted part of
my property I wanted this man. She
was mine, I never told any one
that I had ^{given or} sold ~~a piece~~ her to any
one, I left Poff and went to Dept
to live, and lived there some time
before the property was replevied. I
claimed the property then as mine,
and it was mine. They had a
kind of arbitration, I had picked
some men to settle the difficulty and
wanted them to decide it. They picked
other men, and then I would have
nothing to do with the arbitration. I
did not know that any arbitration
was made; and never authorized the
dependent to act for me, in the arbitration
but repeatedly said I would have nothing
to do with it, before he went down there
to attend to the arbitration. And I did
not know that he went down ~~there~~
to the arbitration after I told him I would
have nothing to do with it, and it was
not until several weeks after the
arbitration was made that I knew
any thing about it. I did not
sign the arbitration bond, and knew
nothing about it. I did not authorize
the dependent to sign it for me, or
to act for me.

Henry Sulley, Jr. Deft testified that
he was son in Law of Samuel
Woodward Senr. That some years
since I purchased the Bay Man, the
mother of the one in Controversy - at
Peoria, I proposed to Peff to swap
with him, and get the said Samuel
Man, Peff said it was his father,
and he could not swap without his
consent. Afterwards saw Peff and his
father together, the father consented
to have the trade made, and it was
made, Peff doing the business, and
saying he traded for his father, and I det
him have the Bay Man which he now has
and which is the mother of the one in
Controversy. Old Mr Woodward afterwards
came to my house to live, and got me
to go down to Peffs to get his things
I did so, and brought the man in Controversy
home, as his. It remained there as long
as he did, and when he returned to
Peffs. the Man was also returned there.
So I told ~~Mr~~ Peff he might have the
old man or the young one, Peff objected
to taking the ^{young} ~~old~~ man, because she
could not do his work, I offered to
send him mine to do his Spring work
So then took the old man, and his
father took the one in Controversy -

Elijah McClenahan testified that two years ago. Last Spring Peff spoke of putting the man in Centerville to my horse. Peff said there had been a division of the property and the young man, (the one in Centerville) was the old man's

Zebulon Avery testified that he had heard the old man call the small man the peff—

Nicholas Stum testified that he had heard the old man call the man in Centerville ~~the~~ peff— and that ~~the old man~~ ^{he} had owned two horses for several years. Witness wanted to buy the man of the old man. This conversation was after the old man had returned from Seelys—

The above was all the material evidence given in the case—

The Court at the request of the plaintiff instructed the jury as follows: ^{1st} If the jury believe from the evidence that the defendant took the property in Centerville in this suit in manner charged in the declaration and that it is the property of the plaintiff, then they

will put in the plaintiff -
2 Of the jury believe from the evidence
that the plaintiff was the owner of the
said property and in the possession of it
and it was afterwards found in the
possession of the defendant having been
taken from the possession of the plaintiff
without his consent it is prima
facie evidence that the defendant
wrongfully took the said property -

3. Although the submersion and
award read in evidence do not
determine the right of property in
controversy in this suit
Yet if the jury believe from the evidence
that the account then presented to the
arbitrator was made out under
the direction of Daniel Woodman
senior, as an account of all the
property for which he then had
a right to charge the plaintiff and
that it was the intention to charge
for all the property which plaintiff
had had, or was liable to account
for, then this is a circumstance to be
taken into consideration by the jury
in determining whether this property was
the property of said Daniel Woodman
senior -

The Court at request of Deft
instructed the jury as follows
to wit

- 1 It is competent and proper, for the defendant to rely upon various grounds of defense and in this case, if either of the grounds of defense, set up by the pleas of the defendant is made out by the proof they will find a verdict for the defendant
- 2 Unless the plaintiff has proved to the satisfaction of the jury that the defendant Albert Woodward, wrongfully took or wrongfully detained the property in controversy they will find a verdict for the defendant
- 3 If the jury believe from the evidence that the defendant did not wrongfully take or detain the property, they will find a verdict for the defendant. Any of the property came lawfully and rightfully into the possession of the defendant he cannot be made liable for a wrongful detention of it unless a demand was made upon him, for it before the commencement of this suit
- 4 If the jury believe from the evidence that the property belonged to and was owned by Daniel Woodward senior at the time of the commencement of this suit they will find a verdict for the defendant
- 5 The Subscriper and answer^{read} to evidence in this case, does not determine the ownership of the property in controversy

in this suit to be the property of the plaintiff
but ~~that~~ the same may still remain
the property of the father notwithstanding
such submption and award—

6 On the question of property (if the
jury should find there was an unlawful
taking & detention) the jury will take
into consideration all the evidence
relating to the ownership and if they
believe from the evidence that the
man and colt was the property
of the father or if they shall believe
that the plaintiff has failed to prove
that he was the owner, they will
find a verdict for the defendant.

The Deft requested the Court to give
the following instruction to the jury
"The possession of the property in the
defendant is not sufficient to entitle
the plaintiff to recover but he must
also prove a demand of the property
and a refusal of the defendant
to deliver up on demand." The
Court refused to ~~deliver up~~ give
this instruction and deft accepted
thereof. The jury rendered a verdict
for the plaintiff. The defendant
moved the Court for a new trial
because the verdict was against law
& evidence, the Court overruled the
motion and the deft accepted of
the decision and prayed that they

his bill of receipts, may be allowed
and sealed by the judge and made
part of the record in this cause, which
is done,

W^m Kellogg

That afternoon being on the 1st day
of October A.D. 1851, the Defendant
filed in the office of the Clerk of the
County Court of said County his bond
with William Thorne as security and
acceding to said which said bond is
in the words and figures following that
is to say -

Know all men by these presents that
we Alfred Woodward, as principal
and William Thorne as security
are held and firmly bound unto
Daniel Woodward Jr. in the penal sum
of two hundred dollars. The payment
of which well and truly to be made
we hereby bind ourselves, our heirs, executors
and administrators, jointly severally
and firmly with our hands and
seals. This first day of October A.D.
1851. The Condition of the above obligation
is such that whereas at the September
Term A.D. 1851, of the Stark County Court
Court in an action of replevin at said
term of ^{said} Court then pending and tried
wherein Daniel Woodward Jr. was plaintiff
and Alfred Woodward was defendant
judgment was rendered against the

the said defendant for the cost of said
suit And where also said defendant
is about to present a writ of error
to the Supreme Court of the State of Illinois
from the judgment aforesaid.

Now therefore if the said Alfred Woodard
shall pay and satisfy the full amount
of judgment, interest, cost and damages
in case the judgment aforesaid shall
be affirmed ~~and~~ shall present
said writ of error, without delay
and with effect then this obligation
to be void otherwise to remain in
full force and effect in virtue

Alfred Woodard *Decd*
Wm. M. M. *Decd*

I Jefferson Winn. Clerk of the
Circuit Court of the said County
of Stark do hereby certify that
the foregoing is a full true and
perfect transcript of the record
and proceedings in the above entitled
cause, and that the pleading
Bonds, account and answer above
set forth are true copies of the originals
now on file in my office - as appears
of record in my office -

In testimony
whereof I have
hereunto set my
hand and seal
of office at Lumber
this 26th day of
June. A.D. 1853

Jefferson Winn Clerk to
John Bagfield Sept 26th

St.

Samuel Woodman

ats.

Alfred Woodman.

Receipt

Chas. fees -

Copy of deed 5-63

Cert & seal 35

Copying Bonds 50

\$6.48

Filed June 14. 1853.

Shelton Clk.

Daniel Woodward ~~jr.~~ } Daniel Woodward jr.
as, }
Daniel Woodward ~~jr.~~ } Alfred Woodward

~~Alfred Woodward.~~

~~Daniel Woodward~~

Ouslow Peters being sworn says that the two cases above entitled were tried in the circuit court of Clarke County Ark at the last fall, & the other at the last Spring term thereof - that verdicts ^{were} rendered for the Deft. in both cases, & judgments rendered on the verdicts - & appeals were taken by the Plffs. respectively in both cases to the Supreme Court, & as affiant is informed & believes the appeals were perfected by filing bonds in conformity to law & the orders of the said court, in both cases. = Affiant further says, that Mr. Shellenbarger Esq., of Clarke County was associate counsel with him in said cases, & as said Shellenbarger informed this affiant applied to Oliver Whitaker four weeks or more since, for the records or transcripts in said cases, so that they could be filed in this court, & have the appeals properly herein docketed - that the said Whitaker promised to make the said transcripts of records, but insisted that the law allowed him thirty days for making them - this affiant, immediately wrote to said clerk, now about two weeks since, urging him to make & forward said records immediately and on Friday or Saturday last receiving ^{in satisfaction} a letter from said Whitaker in reply, stating that he had been very busy, so that he could not conveniently make them but before, & hoped the appellants would not suffer inconvenience, especially as if he had them ready by the fourth Monday of June it would answer the purpose - but that he would have the records ready & send them to this affiant the present week. = Affiant says he has

not yet receive said transcripts, though he & his said
Associate counsel have done all that is usually required
to be done, & so far as he knows, all that would be done to
obtain the same, & but for the stubbornness, or wrongheaded-
ness, or misconception, or other fault or dereliction of said
clerk, would have had said transcripts ready to be filed in
this court at the present term = and further, that officer
believes that he will in a few days obtain the same -
& intends, so soon as they are obtained, to file the same
& duly enter the said appeals in this court -
Subsd. & sworn to before }
me June 10th 1852. }
L. Deland Clerk.

Onslow Peters

Stark
Woodward & Woodward.
Atty.
Daniel Woodward & Alfred Woodward
James Woodward

affd. to expense.

48

m

m

1852

Filed June 10th 1852.
L. Deland Clerk.

56.

Alfred Woodward
vs.
Daniel Woodward Jr.

56

Prepared

12/29

1853