

No. 12070

Supreme Court of Illinois

Woodward, Sr.

vs.

Woodward, Jr.

71641  7

Daniel Woodward Sen^r
vs.
Daniel Woodward jr.

Appeal from Storrie-

M. Shallenberge-

And the said Appellant by C. Peters
his Atty. comes & says that in the record & proceedings
aforesaid and in the rendition of the judgment aforesaid,
by the said circuit court, there is manifest
error, in this, to wit, the judgment of the circuit court
should have been for the said Appellant & against
the said Appellee.-

And the said Appellant assigns the following additional error, to wit,

- 1- The said circuit court erred in admitting the evidence of the appellee which was objected to by the appellant.-
- 2- Said Circuit Court erred in giving the instruction to the jury=-
- 3- Said circuit court erred in overruling the motion of the appellant for a new trial, & in rendering a judgment on the verdict for the deft.-

Wherefore for the errors aforesaid, & for other errors in the record & proceedings aforesaid, said appellant prays, that the said judgment of the circuit court, may be wholly reversed, annulled & for nothing esteemed & the said Appellant restored to all he hath lost by reason thereof.

By Cuslow Peters &
M. Shallenberge

Daniel Woodward Jr.
 Daniel^{sr} Woodward Jr.

And now comes the
 said Daniel Woodward Jr. by his attorney
 and says there are no such errors in
 the said record and proceedings as above
 alleged nor any nor either of them
 Wherefore he prays that the said
 judgment may be in all
 things affirmed

Manning
 for Defendant

Assignment of errors.

Filed July 1st 1852.
 L. A. Leland Clerk.
 By J. H. Leland Esq.

Circuit Court began and held at the Court House
in Toulon, in the County of Stark and State of Illinois,
on Monday the 26th day April A.D. 1832, - Present
the Honorable William Kellogg, Judge of the tenth
Judicial Circuit, Harmon G. Reynolds, State Attorney,
William H. Thomas, Sheriff, & Oliver Whitaker Clerk,

Was before the Circuit Court within and for
the County of Stark and State of Illinois, on Monday the twenty
Sixth day of April, being of the ~~September~~ ^{April} Term A.D. 1832,
the Honorable William Kellogg, presiding Judge of the
tenth Judicial Circuit

Be it remembered that heretofore to wit on the fifth
day of June 1831, Daniel Woodward, Senr. filed in the office
of the Clerk of the Circuit Court of Stark County, a process in
the words and figures following to wit,

Daniel Woodward Senior

as

Daniel Woodward Junior,

vs
Replevin,

Clerk will please issue a writ
as the law directs in the above Entitled Suit, returned to the
next term of the Stark County Circuit Court,

Toulon, Ill. June 5th 1831. W. Shallenberger atty
for Plff.

And afterwards to wit on the said 5th day of June in
the year ^{last} aforesaid, the said plaintiff filed in the office
of the Clerk aforesaid, an affidavit in the words & figures
following to wit,

State of Illinois, County of Stark, This day
personally appeared before me Oliver Whitaker, Clerk of the
Circuit Court in and for the County and State aforesaid, Daniel
Woodward Senior, who being first duly sworn upon oath he says
that he is the owner of and justly entitled to the possession of
the following described goods and Chattels to wit, One Bay Mare
four years old, also one brown mare Colt about one month
old, with a ^{white} stripe in the face. That Daniel Woodward Junior
wrongfully and unlawfully detains the said goods and Chattels
from the said Daniel Woodward Senior, and that the same
has not been taken for any tax, assessment or fine levied by
virtue of any law of the said State of Illinois Nor Seized under

any Execution or attachment against the goods and Chattels
of the said Daniel Woodward Senior, liable to Execution or
attachment and further saith not. his
Subscribed and sworn to before Daniel V Woodward,
me this 5th day of June A.D. 1831. Mark
Oliver Whitaker
Clerk.

And afterwards to wit. on the said 5th day of June 1831.
the Clerk of the Circuit Court of the said County of Stark, issued
a writ of Replevin, in the words & figures following to wit, -
The People of the State of Illinois, To the Sheriff of Stark
County, Greeting, If Daniel Woodward Senr. of said County,
shall give you Bond with good and sufficient Security to
procure his suit to Effect, and without delay, and to make
return of the following goods & Chattels, the property of the said
Daniel Woodward Senr. to wit, "One bay mare four years
old, also one brown mare Calt. about one month old, with
a white strip in the face, which Daniel Woodward Junr. also of
said County took and wrongfully and unjustly detains, against
oath and pledge as he saith, if return thereof shall be awarded;
and further to save and keep you harmless in replevying said
property: then you are to Cause the said goods and Chattels to
be replevied and delivered to the said Daniel Woodward Senr.
without delay, and to summon the said Daniel Woodward Jr.
personally to be and appear before the Circuit Court in &
for said County, on the first day of the next term thereof
to be holden at the Court house in Toulon, on the fourth
Monday in the month of September next. to answer to the claim
of the said Daniel Woodward Senr. for taking and unjustly
detaining the goods & Chattels aforesaid, and make return
of the bond to be taken from the said Plaintiff as aforesaid,
to the Clerk of our said Court, together with this writ, with
an Endorsement thereon, as to the manner in which you may
Execute the same, Witness, Oliver Whitaker, Clerk of

our said Court, and the Seal thereof, at Toulon, this fifth
day of June, A.D. 1834.

Olin Whitaker, Clerk.



And afterwards to wit: on the 31st day of August
in the year last aforesaid, the Sheriff made return of
said writ, Enclosed in the words & figures following to wit:

"Served the within writ by reading the same to the
within named Daniel Woodward Sr. & by taking the within
described property and delivering the same to the within named
Daniel Woodward Senr. and taking bond as within Commanded,
this 6th day of June, A.D. 1834. Wm F Thomas. Shff.

Which said Bond is in the words & figures following
to wit, —

"Know all men by these presents, that Mr Daniel
Woodward Senr. as principal, and Smith Tuttle & William
Moore, as Security are held and firmly bound unto William
F. Thomas, Sheriff of the County of Stark, and State of Illinois
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, & firmly,
In witness whereof, we hereunto set our hands and Seals this
5th day of June A.D. 1834. The Condition of the above obligation
is such that whereas, the said Daniel Woodward, did on the
day of the date hereof, Commence an action of Replevin against
Daniel Woodward Junior, Now therefore, if the said Daniel
Woodward Senior, shall prosecute his said suit, to Effect, and
without delay, and make return of the property described in
the writ in said suit issued, if return thereof shall be awarded,
and saw and keep ~~xxx~~ harmless the said Sheriff, in replevying
said property, then this obligation to be void, otherwise to remain
in full force and virtue,

Daniel Woodward ^{his} Seal
mark.
Smith Tuttle. —
Wm Moore. —

And afterwards to wit, on the 6th day of September
A.D. 1834. the said plaintiff files his declaration, which
is in the words & figures following to wit,
State of Illinois }
County of Stark }
County of Stark }
Court. September Term. A.D. 1834.

Daniel Woodward Junior of the County
of Stark and State of Illinois, the defendant in this suit,
was summoned to answer unto Daniel Woodward Senior, the
plaintiff in this suit of a plea of Whurfur he took this Mary
and Colt. of the said plaintiff and unjustly detains the
same against sureties and pledges until &c. and thereupon
the said plaintiff by W. Shallenbarger, his attorney, complains,
For that the said defendant on the first day of June A.D. Eighteen
hundred and fifty one, in the County of Stark and State of
Illinois, took the goods and Chattels to wit, one bay mare four
years old, also one brown mare colt. about one month old
with a white stripe in the face, of the said plaintiff of
great value to wit, of the value of one hundred dollars,
and unjustly detains the same against sureties & pledges
until &c. wherefore said plaintiff saith he is injured and
has sustained damages to the amount of one hundred dollars
and therefore he brings his suit &c.

By his Attorney,
W. Shallenbarger.

And afterwards to wit, on the 23rd day of September,
in the year last aforesaid, before the Circuit Court, within
and for the County of Stark aforesaid, ~~and~~ the Honorable
William Hellogg, Presiding, and the Court Judicially
sitting, an order was made in said Cause, in the words
& figures following to wit,

11 Daniel Woodward Senr.

vs

Defendant

Daniel Woodward Jr.

3 This day came the Plaintiff by W. Shallenbarger, his attorney, and asked leave of the Court to amend
said, which was granted & said amended,

Amendment x and wrongfully.

And afterwards to wit. on the day & year, and
at the term last aforesaid, the defendant filed his plea
which is in the words & figures following to wit,

State of Illinois. ~	State Circuit Court.
County of Stark. ~	September Term A.D. 1831.
Daniel Woodward Jr ~	
" ~	(Plaintiff)
Daniel Woodward Sr. ~	

And the said defendant
comes and defends the wrong and injury ather &c. and says
the said plaintiff. actio. non because he says that the said
Mar. and Colt in the said declaration mentioned at
the said time when &c. were the property of the said defendant
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 of the said
plaintiff ought to have or maintain his aforesaid action
thereof against him, and he also prays a return of the
said Mar. and Colt together with his Costs in this behalf
and damages for the detention of the said Mar. & Colt
according to the form of the Statute in such Case made
and provided to be adjudged to him &c.

Manning & Strammers and
for Sept.

And afterwards to wit. on the day & year, & at
the term last aforesaid, the Plaintiff filed his replication
which is in the words & figures following to wit,

Daniel Woodward Senr. ~	
" ~	Stark Co. Ci. Ct.
Daniel Woodward Junr. ~	Sept. T. 31 st

And the said plff. for replication
to said def. plea says. pro claudi now because he says that the Mar.
& Colt at the time when &c. were the property of the plff. & not

the property of the said Dft. as he the said Dft. hath in his
said plea alleged, and of this the Dft. puts himself upon
the Country &c. Petrus & Shallenberg, for Dft.
"And Dft. likians, Manning & Drummant for Dft."

And afterwards to wit. On the 24th day of September
in the year & at the term last aforesaid, an Order was made
in said Cause, in the words & figures following to wit,
Daniel Woodward Senr.

11 as Replevin,

Daniel Woodward Jr.

This day came the parties and
their attorneys to this suit, and by their agreement this Cause
is continued generally to next term.

And afterwards to wit. On the 26th day of April,
A.D. 1832, at the term first aforesaid, an Order was
made in said Cause, in the words & figures following to wit,
Daniel Woodward Senr.

19. as Replevin,

Daniel Woodward Jr.

This day came the said plaintiff and
Petrus & Shallenberg his attorneys, and the defendant by
Manning & Drummant his attorney. And the said defendant
enters his motion that the plaintiff give security for costs, which
said motion was overruled by the Court. And the issues being
now joined, it is ordered by the Court, that a jury be called
to try this suit: whereupon came twelve good & lawful men
viz, John Galt, James H. Newton, Calvin Davidson,
N.W. Rhodes, Samuel Leigh, George Perry, Benj.
S. Williard, Thomas Dugan, Archibald Ayres, James
H. Barnet, Theodore H. Hunt & David M. Canoe, who
were chosen, selected, tried & sworn well and truly to try the
issues joined, and a true verdict give according to evidence.

and now having heard the testimony of the respective parties, and the arguments of Counsel, retired to consider of their verdict, and by the agreement of the parties, it is ordered that when they shall have agreed, they may set up their verdict and deliver the same to the Clerk of this Court, and meet again in this box at the calling of the Court tomorrow morning at 8 o'clock.

Tuesday April 27th 1852.

Daniel Woodward Junr.

19.

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Janet Woodcut Apr.

Replenish.

This day came again the

parties by their respective attorneys, and the jury Empanelled of yesterday, and now having considered of their verdict upon their Oaths say, we of the jury find for the defendant. Whereupon the said Plaintiff enters his motion for a new trial, which said motion was overruled by the Court. And the said Plaintiff now prays for an appeal to the Supreme Court of this State, which is allowed him upon Condition that he enter into bonds to the defendant in the sum of One Hundred dollars, with William Moore of Hark County as his Security, Conditioned as the law directs, and to be filed in the office of the Clerk of this Court, within thirty days.

And afterwards to wit, on the 29th day of April
A.D. 1832, at the term last aforesaid, the plain affiled
in the Clerk's office of the Circuit Court of Stark County
aforesaid, his Bill of Exceptions, which is in the words
and figures following, to wit:

Daniel Woodward Senr.

25

Daniel Woodward Jr.

Best remembrance,

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that on the trial of this Cause, the plaintiff to maintain
the issue on his part, called Alfred Woodward as a witness
who testified that he was a son of Dft. - that a year ago
last fall his father wanted him, the witness, to go to his
brother, the dft. and get some of his, the plaintiffs property -
That witness went there & saw dft. - and told him what
he came for; & that he wanted to get one of the horses -
defendant said his father had horses in the Barn & witness
might go there & get one of them - that they belonged to his
father, but he defendant would rather he would take
but one of them - that one of the horses referred to, was the
Mare referred in this suit: that this Mare had a
small Colt at the time it was referred, about three or
four weeks old - Witness further testified, on Cross Examina-
tion, that his father, prior to the time of witness going
there for the property as above stated, for seven or eight
years had lived with Dft. in his family - sometimes he
was absent, but made it his home there; - that this property
was there, & that he had afterwards left & went to live
with witness, & had since continued to live with him;
having lived with witness since a year ago last fall -
that the Mare in controversy when referred was three
or four years old - that the Dft. & his father always called
the Mare his father's - that the Mare was brought to
witness's farm about a year ago - that she continued to
run there, but he then considered her his father's - that he
witness fed & took care of her, but not as his own, but as
his father's, that she was afterwards in the possession of
Dft. from whose possession she was referred, = Witness
further testified that there was some difference or misunder-
standing between plaintiff & defendant as to the property
& claims that they had against each other, & that there
was a talk about letting some of the neighbors settle it -
and his father authorized witness to go to dft. & have it done,

& to agree that Mr. Prace should be one of the men to
 act as arbitrators for that purpose, but did not authorize
 him to agree to any arbitration, unless Mr. Prace, was
 one of the arbitrators - that witness went to Dpts. & it was
 there agreed between witness & dft. to arbitrate the case, but
 dft. objected to Mr. Prace being one of the men: that two
 other men were then agreed upon by dft. & witness; and
 also that they then agreed to another man in the place of
 Mr. Prace - that these men then went on and made a
 decision of the matter - that this all took place in the
 absence of his father, & without his knowledge - that after
 the decision of the arbitrators, witness returned home & informed
 his father of the result, but that his father said he would not
 stand by it, because Mr. Prace had not been one of the
 arbitrators, & that he had given no authority to any one
 else to act in the place of Prace - Jlf. here rested his
 case, - The defendant then offered in evidence an
 agreement in writing, or bond, ~~agreement~~ & an award, together
 with an account enclosed upon the back of the agreement,
 which bond or agreement, ^{account &} award, were serially in the words &
 figures following to wit:

List of Property Claimed by
 Daniel Woodward Senior, of Daniel Woodward Junior,
 1/2 Bay Mare.

12.00	Paid to Amasa Newman	} In Carpenter's } tools.
10.00	Paid to Charles Greenfield,	
7.00	Pried of Gun sold Abram Phenix,	
16.00	Paid to Samuel Corraned for Corn,	
10.00	Pried of Corn sold to Smith Tuttle,	

3 Plans, 1 Adlg, 1 Handsaw, 1 Rule & Square,
 1 Augur, 1 Log Chain, 1 pr. beetle rings & wedg.

40.00 Note against Mr. Agers.

"Hark Co. Ill. March 25. 1851.

Decision of Arbitrators. We the undersigned Arbitrators
 do Consider & agree that the property of said Daniel

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Woodward Senior, will not pay the said Daniel Woodward Junior, for his trouble & board into \$25.00 this is our decision, Daniel Newton, Samuel Bessett, John Harmon,

The Plaintiff objected to this Evidence, but the objection was overruled, & the Evidence admitted, & the Steff Excepted to the decision. = Dft. then Called Nicholas Sturges, as a witness, who testified that about three years ago he was passing by Dfts. place, & saw the Plaintiff and asked him, Plaintiff, if he had a critter to sell; he said he had not, & had not had for three years = witness knew the Mare in Controversy, & she was then at Dfts.

18 John Harmon, Called by Dft. said, that two years ago last fall he was at Dfts. and Plaintiff who then lived there, said ^{that} Daniel's Mare had been kicked & wanted witness to see what to do for her; he looked at her; it was the same Mare that is in Controversy in this suit, - that he had heard the horse of Daniel when Plaintiff lived there, - never heard him speak of the Mare at any other time; - witness also said, I was one of the arbitrators - the Dft. Chose me for one of them, - when we got together, Alfred Woodward, [the witness above named] said, here is father's account, & I want you to settle it, referring to the items Endorsed on back of the agreement; the old man then lived with Alfred, but I do not know as he knew of the arbitration, I have never heard him speak of it = We made the award that designed by myself & others, - we did not examine any witnesses, but we took the amount & made up our award from what they stated, - The Evidence of the declarations of Alfred Woodward, before the arbitrators was objected to when offered; the objection was overruled & the Evidence admitted, & the Steff Excepted, =

Daniel Newton, Called by Dft. testified as follows,

I was one of the arbitrators. - Alfred came for me - the account on the back of the agreement was handed in by Alfred. - I do not know to whom the mare belonged. - Saw her in Daniels possession. - Dft. presented no account in writing at the arbitration, the arbitration was at Dfts. - I have now had any conversation with the plaintiff about the property. - I knew the mare & the mother of the mare in controversy. - I never saw the mother in any one's possession, but the Dft. - Dft. offered to prove by the depositions, that at the time of the arbitration, Alfred Woodward, said to the arbitrators, that he came down to settle the matters between Dft. & his father. - the plff. objected to this evidence, but the objection was overruled by the Court, & the evidence admitted, & the plff. Excepted to the decision. =

Samuel Prescott, Called by Dft. said, I was one of the arbitrators, & signed the award. - the mare in controversy was at Dfts. at the time of the arbitration - a list of the property claimed, & that which was adjudicated upon, is endorsed on the back of the bond. = Alfred said he would be satisfied with what we did: he acted for ^{the} plaintiff. - this evidence of what Alfred said & did, was objected to by plff. before it was admitted, but the objection was overruled by the Court, & the evidence admitted, & the plff. Excepted to the decision. =

Dft. then Called Elijah M. Clonahan, as a witness, who testified that he knew the mare in controversy, that Dft. put him to witness Hallion, & he understood the Call (before spoken of, was fired by his horse, on Cross Examination, witness said, that in the Spring before last, or the Spring before that, Dft. told him, (witness) that he (Dft.) & his father, had had some division of the property, & that the mare which is now in controversy, had fallen to the old man, - that last fall, Dft. said to witness, that the mare in controversy, was the same mare that belonged to the old gentleman the plff. = and that it was the same mare that was up at Seelys?

He also stated, that Dft. said that on the division of the property, the old man gave him (Dft) his choice to take the Mare in Controversy, or the old Mare, his mother's - and that he, dft. took the old Mare, but it should make his train, if he took the young Mare - & that the old man took the young Mare for his. - The Dft. at this time lived with Serley, his son in law, -

John T. Phenis, testified that two or three years ago, he was at work for dft. & saw the Mare in Controversy there; that the next day, he understood she was gone, & it was supposed some one had taken her away, but it was not known who. - The Dft. here rested his case,

Dft. then called Henry Serley, who testified that he was a son in law of the plaintiff. - that he formerly owned the mother of the Mare in Controversy, having bought her in France Co. - that he traded her off to Dft. but made the trade with dft. who traded for his father. - that Dft. had a sound horse, & witness proposed to dft. to trade the Mare for the sound horse, but dft. said the Mare belonged to his father, & he could not trade without his consent. - that afterwards dft. told witness that he had seen his father, & he had consented to have the exchange made. - & that therefore witness traded with Daniel acting for his father. -

Benjamin J. Moore, called by Dft. testified that he is Grandson of Dft. - that in July 1830, the Mares had come up to witness's father; that Dft. came for them, & in speaking of them, & of the Mare now in Controversy, Dft. said to Mr. that Colt of your Grand father (meaning the Mare in Controversy) is a very fine Colt - ~~the Dft.~~ during that summer, called her my grand father's Colt. -

He said this once when out in the Prairie. & I never heard him call his any one's property but my Grand father's —

All the Evidence offered as to the acts & deliberations of Alfred Woodward, in Connection with the Submission and award & objected to as aforesaid, were admitted only on the ground that Alfred's authority to act should be proved, & an assent thereto by the plff. proved, — It was proved that while the plaintiff lived with the defendant, the defendant had possession of the Mare in Controversy, & used her and treated her as his own property on the same farm, — This was all the Evidence given on the trial, — The Court instructed the Jury as follows to wit: The Court instructed the Jury that the award did not of itself pass any right in the property in Controversy, nor was the Submission or award of themselves Evidence against the plff. — But if Witness Alfred Woodward, was Authorized by plff. to make said Submission, and agree to said award, ~~then such award Submission~~ and that he did so, or that the plff. assented ~~thereto~~ to said award, then such Submission & award were Evidence for the Consideration of the Jury in determining the right to said property. — That all the Evidence in the Case, should receive from the Jury such weight & force as they in their discretion believed it entitled to under the Circumstances of the Case as proved on the trial. — To the giving of which instruction the Plff. Excepted, — The Jury returned a verdict for the Dft. — The plff. moved for a new trial, because the verdict was against law & Evidence — because improper Evidence which was objected to by plff. was admitted by the Court; & because the instruction given to the Jury by the Court, was against law. — The Court overruled the Motion for a new trial, & the plff. Excepted to the decision,

and prayeth that this his bill of Exceptions may be allowed
& signed & sealed by the Judge & made part of the record
in this Cause. Which is done, Wm Kellogg, C. J.

And afterwards to wit, On the 26th day of May
A.D. 1832, the said plaintiff filed in the Clerk's office
of the Court aforesaid, an appeal Bond, which is in
the words & figures following to wit,

"Know all Men by these
presents, that we Daniel Woodward Senior, as principal
and William Moore, as security, are held and firmly
bound unto Daniel Woodward Junior, 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 jointly, severally, and firmly. Witness
our hands and seals, this twenty fourth day of May
A.D. 1832, — The Condition of the above obligation
is such, that when as at the April term of the State Court
Circuit Court, A.D. 1832, judgment was rendered
against the above bounden Daniel Woodward Senior
and in favor of the said Daniel Woodward Junior, in
a certain action of Replevin in said Court, wherein
said Daniel Woodward Senior was plaintiff, and
the said Daniel Woodward Junior was defendant, for
the sum — Costs of said suit, and when as said
Daniel Woodward Senior has removed said suit or
action of Replevin to the Supreme Court of the State
of Illinois. Now therefore if the said Daniel Woodward
Senior, shall duly prosecute said writ of Error with
Effect, and in Case said judgment shall be affirmed
by said Supreme Court, shall well and truly pay and
satisfy said judgment with all Costs that may accrue
interest and all damages, then this obligation to be

void, otherwise, remain in full force and effect.
Daniel ^{his} Woodruff Sr. 
made

William Moon - 

State of Illinois 
Stark County, Ill.  I Oliver Whitaker, Clerk of
the Circuit Court, in and for the County and State
aforesaid, do hereby Certify, that the foregoing, is
a true and correct Copy of the Records, & proceedings
on file in my office, in said Cause,
Witness my hand, and the Seal
of said Court, at Toulon, the 14th
day of Janr. A.D. 1852,
Oliver Whitaker Clerk.

Daniel Woodward, Sr.
is
Daniel Woodward Jr.
— " —

Clicks fee.
Making Copy 928 fol. — \$4.92
Cert & Seal — .35
Taking Bond — .50
\$5.77

— 0018

Record

Filed July 1st 1852.
T. Leland Clk.
R. Leland

Stark, N. 19

Daniel Woodward Sr.

Daniel Woodward Jr.

1893

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12070

1854