

No. 12538

Supreme Court of Illinois

Wood.

vs.

Gilson.

71641  7

Laballe County Court, Term Second 1857

State of Illinois
Laballe County

Pleas, Proceedings and Judgments held and taken in and before the Laballe County Court in the State of Illinois at the Court House in Ottawa in the County of Laballe of Term Second thereof to wit, of the first day of Term A.D. 1857 and of the Independence of the United States of America the eighteenth

Now, John C. Champlin Presiding

Be it remembered that heretofore to wit, on the first day of Term 1857 a bond and transcript was filed in the office of said Court in the words and figures following to wit,

William Wood

Edward L. Wilson

Affidavit filed for a *Capias*
Hely. the 17th 57
1857 Hely. the 17th *capias* issued

on affidavit being filed to Wm. H. Hootch constable forthwith unless special bail be entered if such bail be entered you will then command him to appear before me at my office in Peoria on the 23rd instant at 10 o'clock A.M. to answer unto the said

Police Magistrate Fees
 Decker & Entry 12 1/2
 Filing Affidavit 25
 Copies 25
 Off. Sub. 18 1/4
 Deft. Sub. 18 1/4
 Long. & Sub. 37 1/2
 Sub. & Deft. 25
 u. bond & fees 1.00
 \$ 2.62 1/2
 Constables Fees
 Long. & Sub. Copies. 75

complaint in a plea of trespass on personal
 property sum due one hundred dollars
 \$100.00 = July, the 17th 57 sumd by reaching
 to the within named defendant and
 taken H. B. Brown special bail by Mr.
 W. H. Hoots constable. Res. 75 issuing one
 sub. for deft. also one sub for plaintiff
 July the 23rd 57 at 11 o'clock a.m. parties
 appeared and proceeded to the trial of the
 case, defendant made a motion
 to discharge the bail. motion overruled
 by the court James Dixon, Grand Juror
 Susan Davis, George Lessor and James
 Wright sworn for the plaintiff and
 Henry H. Brown sworn for the defen-
 dant after hearing the testimony
 the court ruled that the plaintiff
 pay the cost in this case.

It is therefore considered that the
 defendant have and recover of the
 plaintiff the sum of Two & ^{57 1/2} 100 dollars
 costs and that execution issue therefor
 March the 9th 57 bond filed for an appeal
 to the Circuit Court of Laballe County
 on motion made accordingly

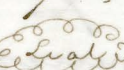
State of Illinois }
 Laballe County } p.
 City of Peoria } I the subscriber a Police
 Magistrate of said city in said

county do certify the above to be a full and perfect copy of the proceedings and judgment from my docket in the above entitled cause

John P. Thompson Police Magistrate

Know all men by these presents, that we William Wood and D. W. Mattocks and held and firmly bound unto Edward L. Gilson in the penal sum of twenty dollars, lawful money of the United States, for the payment of which well and truly to be made we bind ourselves, our heirs and administrators jointly, severally, and firmly by these presents witness our hands and seals this 7th day of March A.D. 1857

The condition of the above obligation is such, that, whereas, the said Edward L. Gilson died on the 23 day of February 1857 before John P. Thompson Police Magistrate of the City of Peru in the County of LaSalle upon a judgment against the above bounden William Wood for the sum of Two dollars & thirty seven and one half cents - from which judgment the said William Wood has taken and appeal to the County Court of the County of LaSalle and State of Illinois - Now if the said William Wood shall prosecute his appeal with effect, and shall pay what

ever judgment may be rendered by the
 Court, upon dismissal or trial of said
 appeal, then the above obligation to be void
 otherwise to remain in full force and effect
 Asworn by me at my office  William Wood 
 this 9th day of March 9th A.D. 1857  L. W. Matlocks 
 John P. Thompson 
 Police Magistrate

Afterwards to wit, on the 1st day of June 1857
 the same being ^{one} of the days of the term
 term of said court 1857, the following proceeding
 were had and entered for record to wit

William Wood 

n.  Appeal
 Edward L. Gilson 

This day comes
 the plaintiff J. B. Blanchard
 his attorney - and on his motion this
 cause is continued to the next term of
 this court.

Afterwards to wit, on the 3rd day of July
 1857 a summons was issued from out
 the office of the clerk of said court in the
 words and figures following to wit:

The people of the State of Illinois

 To our sheriff of our county of
 LaSalle Greeting

Whereas, in a certain cause, lately

6
pending in our court held before John
P. Thompson esquire one of the Police Magistrates
in and for the City of London wherein William Wood
plaintiff and Edward L. Gilson defendant
judgment has been rendered for said justice
against the said plaintiff from which the
said plaintiff has appealed to our said
County Court. We therefore command you
that you summon the said Edward L.
Gilson that he personally, be and appear
in our said County Court before
our judge there, on the first day of the
next term of said court, to be held at the
Court House in Ottawa, on the first Monday
in September next, at ten o'clock in the
forenoon, and abide by and perform the
judgment of our said court in the premises.

In witness whereof, we have caused
the seal of our said court to be hereunto affixed
and attested by Samuel W. Raymond our clerk
there at Ottawa 3^d day of July 1857

Samuel W. Raymond clk.
E. L. Hume

Which summons was filed with the said clerk on
the 1st day of Sept. 1857 with the following en-
dorsement thereunto

"Not found in my county, August 28-1857

Ret. 10

E. L. Waterman Shff.

6
Afterwards to wit. on the 9th day of September
1857 the same being one of the days of the
September Term of said Court the following
proceedings were had and entered for record
to wit.

William Wood

vs.
Edward L. Gilson

3
3 Appeal

This day comes
the plaintiff by Charles
Blanchard his attorney and the defendant
by Edmund & Eldridge his attorneys and
by consent of parties this cause is contin-
ued to the next Term of this court

And afterwards to wit on the 19th day of October
1857 an alias summons was issued from
out the office of the clerk of said Court in
the words and figures following to wit

The people of the State of Illinois

To our sheriff of our county of LaSalle

Ed

Executing

Whereas, in a certain cause, lately
pending in our court, held before
John P. Thompson Esquire the Police Magistrate
in and for the City of Peoria wherein William Wood
plaintiff and Edward L. Gilson defendant
judgment has been rendered by said Justice
against said plaintiff from which the
said plaintiff has appealed to our LaSalle

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County Court & We therefore command you
as we have heretofore commanded you
that you summon the said Edward L.
Gibson that he personally be and appear
in our said Sabath County Court, before
and judge thereof on the first day of the
next term of said court, to be held at the Court
House in Ottawa, on the first Monday in
December next, at ten o'clock in the fore-
noon, and abide by and ~~from~~ perform the
judgment of our said court in the premises.

In witness whereof, we have caused
the seal of our said court to be hereto affixed
and attested by Samuel W. Raymond, our clerk
thereof at Ottawa 19th day of October 1857

Samuel W. Raymond clerk
Attest: [Signature]

which summons was filed with said clerk
on the 2nd day of December 1857 - with the
following endorsements thereon to wit:

"Edward L. Gibson not found in ~~any~~
county December 7-1857

Dec. Ct. — — . 10

G. L. Waterman Shuff
for A. B. Brown Dep't.

Afterwards to wit on the 9th day of December
1857 the same being one of the days of the
December term of said Court - the following

proceedings were had and extent of record
to wit

William Wood

Edward L. Sloan

Official

This day came the
plaintiff J. C. Blanchard

his attorneys and the defendant of Edmund &
Eldridge his attorneys. Whereupon came
the following jurors of a jury to wit: A. W.
Stobbin, S. R. Miner, S. W. Aldrich, J. D. Black
William Ford, Rev. Morgan, W. W. Lincoln
Leah Kitch, Cyrus Shaver, Samuel Bell
David H. Shaver and Wm. W. Wood who
were duly elected tried and sworn to well
and truly try the issues herein according
to the evidence, and after hearing the evi-
dence and arguments of counsel and after
due deliberation thereon had return into
court the following verdict to wit: "We the jury
find the issues herein for the plaintiff and
assess his damages at Sixty Eight dollars
Whereupon the defendant by his said
attorneys enters his motion herein for a
new trial

Afterwards to wit on the 17th day of December
1857 the same being one of the days of the
December term of said court the
following proceedings were had and

9
entired of record to wit,

William Wood

v.

Capaul

Edward L. Gilson

This day again
comes the parties herein

by their said attorney and after hearing
the arguments of counsel upon the motion
entired herein for a new trial, said
motion is overruled by the court to which
naming of the court the defendant then
and then excepted

It is therefore considered by the
court that said plaintiff have and recover
said defendant said sum of sixty
eight dollars, for his damages and
also his cost and charges of him herein
as well as in the court below expended
and that he have execution therefor

Afterwards to wit, on the 19th day of December
1887 the same being one of the days of the
December term of said court, a bill of
exceptions was filed in the office of the
clerk of said court in the words & figures
following to wit,

William Wood

Laballe County Court

v.

December Term 1887

Edward L. Gilson

Be it remembered that

10
on the 9th day of December 1857 that being
one of the days of this court this cause
came on to be heard - The plaintiff to
sustain the issues on his part introduced
a witness Susan Davis who being sworn
testified that last February she was with
her brother in law the plaintiff at his
house that the defendant came to
the house & knocked at the door that
plaintiff was not at home - That Edward
Gilson and Lasher took a harness out of
stable occupied by James Dixon & plough
& removed them with waggon - My brother
in law claimed to own the plough, waggon
& harness. The waggon was driven away
by Lasher - Gilson appeared to be claiming
the taking away of the property.
on cross examination, the witness testified
that Lasher occupied the premises
together with plaintiff & one James Dixon
that they all lived in one house, occupying
different parts of it & used the barn &
barn yard together. That for the portion
of the premises occupied by plaintiff &
James Dixon they were to pay for the use
one third of the crop - That witness went
to her brother in law's house from about
6 to 10 Feby. 1857 a few days before Gilson
took away the property

11
11
James Dixon was then called who testified that he was present when defendant came and took away the property viz. 1 stone plow - 1 corn plow - 1 shovel plow - & 1 waggon. - 1 double harness - witness rented the farm with plaintiff who is his brother in law they rented from弟. & Geo. W. Wilson together supposed that Edward Wilson was agent for George W. Wilson - now & pay's of crop for ~~rent~~ use of premises & work on shares on cross examination - witness stated - when we went into possession George Lasher was living on the same farm & occupying part thereof and had possession thereof when we went into possession Lasher had the personal property in his possession and claimed to hold the same and the premises occupied by him under defendant. To the giving in evidence of which declaration of Lasher the plaintiff objected but the objection was overruled by the court and the said declarations of Lasher suffered to go in evidence to the jury - Lasher retained possession of the same until about a month before this suit was brought. when Mr Ransom came upon the premises and sold the property above named to the plaintiff. The plaintiff

attorneys have asked the witness the following question - Did Parsons state for whom he was selling the property at the time he sold the same to plaintiff - which question was objected to by the defendant and the objection was overruled by the Court. In which ruling of the the defendant then & there excepted - The witness answered that Parsons when he went to sell the property stated that he did so as the agent of Mrs. Gilson who was the widow of George W. Gilson deceased, the defendant objected to said testimony being received when it was given which objection was overruled and permitted to go to the jury. The plaintiff proved the value of the property. There was also evidence tending to prove that Lasher paid rent for the premises so occupied by him to Mrs. Gilson after the death of George W. Gilson. This was all the testimony given in the case.

The plaintiff asked the following instructions - which were given and to the giving of each which the defendant then & there excepted -

1st If the jury believe from the evidence that the defendant on or about the month of February 1857 entered into the premises

then in the possession of plaintiff and took and carried away the goods and chattels of the plaintiff then the jury will find for the plaintiff

2nd Possession of personal property is presumed from evidence of ownership and unless the defendant has proved that the goods and chattels so taken from the possession of the plaintiff and carried away by the defendant (if such were taken and carried away) was the property of the defendant or of some person other than the plaintiff they will find for the plaintiff

3rd If the jury believe from the evidence that other parties were assisting said Wilson the defendant in taking and carrying away said goods and chattels (if such were taken and carried away) then the law is that each party engaged in the commission of a joint trespass is liable for the acts of all so trespassing if

4th If the jury believe from the evidence that delivered L. Wilson was acting as the agent of Henry W. Wilson when he assumed any control over the premises occupied by defendant, that fact

would not give defendant a right to enter the premises of plaintiff and taken and carry away the goods and chattels found upon said premises unless such goods and chattels were the property of defendant or unless said defendant had the right to immediate possession or unless the defendant as the agent of some person who was the owner of the property

6th If the Jury believe from the evidence that the property in dispute was taken and carried away by defendant, and at the time it was taken and carried away was in the possession of the plaintiff, then the defendant can justify the taking and carrying away of said goods, only by proving property in himself or right of immediate possession in himself or such right in some party for whom he acted as agent

7. If the jury find for the plaintiff the measure of damages will be what the property is proven to have been worth at the time it was taken and carried away by defendant

The defendant asked the following instructions

4th If the jury find that the plaintiff occupied the farm under an agreement with George W. Gilson for which he was to receive one third of the crops for working the farm, that constitutes the relation of master & servant between Geo. W. Gilson ~~during his life time~~ & the plaintiff and the possession of plaintiff under the such circumstances is the possession of Geo. W. Gilson during his life time and ~~of~~ after his death the possession of his heirs at law devisees or legal representatives. And the fact of the plff. being in the occupancy of the premises under such circumstances is of itself no evidence of title to the personal property in the premises during such time

5th If the jury believe from the evidence that Rosewood sold the property in dispute to plaintiff as the agent of Mrs. Gilson who was the widow of George W. Gilson. They must find for defendant unless it be shown also that the property was the property of Geo. W. Gilson and that she had the right to make such sale as the executrix or administratrix of Geo. W. Gilson or that she was the owner of the property

Referred

The court before giving the fourth instruction - modified the same by adding

"But in the contrary it is no evidence that the personal property in question was not the property of the plaintiff"

and refused to give the seventh instruction to which modification of said 4th instruction: and the refusal of the Court to give the seventh instruction, the defendant then and there excepted - the jury rendered a verdict for the plaintiff - for

whereupon the defendant moved the Court for a new trial which motion was overruled to which annulling of said motion by the court the defendant then & there excepted and prays that this his bill of exceptions may be signed and sealed by the court which is done in open court

John C. Champlin Clerk

State of Illinois

LaSalle County

This Circuit Clerk of the County Court of said County do hereby certify that the above foregoing is a full true and complete copy of all the orders of Court & also of all papers on file in said Cause & purporting to have been copied herein as the same appear of Record on file

in my office
By Testimony whereof
I have hereunto set my hand
and the Seal of said Court
This 12th day of February
AD 1858
Sherman Clerk

Recd p3.55 paid J Sherman

State of Illinois
Supreme Court
Edward L Gilson,

Plaintiff in Error

vs

William Wood

Defendant in Error

} a judgment of error

And now comes the said Edward L
Gilson, Plaintiff in Error by Sherman
& Eldridge his attorneys to say that in the
record of proceedings aforesaid, & in
giving the Judgment aforesaid, in favor
aforesaid given, that there is mani-
fest error, and assigns the following
grounds of error, viz:-

1. The Court erred in giving the 2^d & 7th the
Instructions in the favor of the Plaintiff
See Record page 12,

2. The Court erred in allowing the following question to be put to the Witness James Dixon, viz: Did Ransom state for whom he was selling the property at the time he sold the same to Plaintiff. (See Record page 12)

3. The Court erred in refusing the Defts 4th instruction as asked for by Deft, & in giving the same as modified by the Court, see Record page (15)

4. The Court erred in refusing the Defts 7th instruction as asked for see Record page 16.

5. That the Court erred in overruling the Defts motion for a new trial

6. That the Judgment is against law & Evidence

7. That the verdict is wholly unsupported by Evidence

And the said Edward L. Gilson prays that the Judgment aforesaid for the errors aforesaid. and other errors in the said Record & proceedings aforesaid may be reversed &c

Chambers & Eldridge atty

And now comes the defendant in Error and
says there is no such error as aforesaid
and this he prays may be inquired of by the
Court.

Charles Blanchard
for Defendant in Error

1858

State of Illinois
Supreme Court

Edward L. Gilson

220 Plff in Error

vs 220

William Wood

Def in Error

Error to LaSalle
County Court

Record, & report,
of Errors

Filed April 21. 1858
L. Leland
clerk

Superior Court

Elsero Plff in Error

Wood Deft in Error

It is hereby
stipulated that this Cause may be
submitted for determination on
the written arguments on file

May 24. 1858

Chambers & Eldridge
for Plff in Error

Charles Blanchard for Defendant in Error

220-185

luluro

good

Stimulation

Filed May 25 1838

S. Leland
C. K.

Edwards L. Gilson Plff. in Error
vs.
William Woods Deft. in Error

Supreme Court

As to the first Error assigned.

The law of Evidence is that whenever the acts of a party are admissible in evidence the declaration of the party accompanying said acts which are explanatory thereof are also admissible as part of Res Gestae 4 Cy. 336 - Phelps vs Post - 1 Conn 387
Postum vs Postum, 8 Watts & Serg. 172
Sessions vs Little & N.H. 271 - 1 Conn. 177
2 Conn. 512 - 8 Summ. & Marshall 305 (Main)

As to the second Error assigned said instructions were properly given by the Court to the jury.

2nd Instruction see Greenleaf on Evidence Section 34 =

3rd Instruction see Chittys Pleadings vol. 1 Page 78-86

As to the Third Error assigned
 Suppose the facts to be as stated in
 said instruction - and the law arising
 upon said facts correctly stated in
 said instruction how does that help
 the defendants case

A bare permission is sufficient to
 enable the Plaintiff to recover in
 trespass against a wrong doer
 who takes the property out of his
 possession without ~~his~~ authority.

Chitty Pleadings	170	notes	Cooke vs Howard
13 Johns	561	}	Fisher vs Buck 2 Wm 466
	141		
	275		
" "	132	}	13 " 143
" "	520		Jones vs McNeal 2 Bailey 466
Hosmer vs Wiley	17 Wm 91	}	6 W- 662
Horton vs Husky	13 Wm 163		13 W- 558
			11 W- 587
Barker vs Chase	11 Shyly	(24 Maine)	230

As to the fourth Error assigned
 The same reasoning will apply as to the
 Third.

As to the fifth error assigned the

Court properly overruled the motion
for a new trial; there was evidence
sufficient to justify the verdict -
13 Ill 85-642-649. 5 G. 572 2 Kan
538-296

The Bill of Exceptions does not en-
tain all the evidence as appears upon
the face of the Bill 2 G. 389

Charles Blanchard

for Defendant in Error

270 - 1851

Ward
vs
Gunn

Brief

Chas Blanchard
vs Defendant - Euron
Filed May 25, 1858
L. Leland
clerk

Schwarzenberg

vs

William Wood

Opinion

1858

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12538

1858

Refused

X