

No. **12144**

Supreme Court of Illinois

Martin

vs.

Walker

William Martin

vs Replevin.

Abraham Walker

Copy of Affidavit

State of Illinois

Bureau County

ss. William Martin being duly sworn says that he is the Owner of a certain Gray Horse and Harness about to be Replevied, and that he is lawfully Entitled to the possession of the same, and that the same has not been taken for any tax, assessment or fine levied by virtue of any law of this State, nor seized under any lawful Execution or attachment against the goods and chattels of said plaintiff liable to Execution or attachment

William Martin

Subscribed and sworn to before me this 24th day of March A.D. 1853

Ed. M. Fisher Clk

Copy of Writ of Replevin

State of Illinois

Bureau County

ss. The People of the State of Illinois
To the Sheriff of said County, Greeting.

If William Martin of the County of Bureau shall give you bond with good and sufficient Security to prosecute his Suit to Effect and without delay, and to make return of the following

described goods and chattels the property of him
the said William Martin to wit. One Gray
Horse and Harness of the value of One Hundred
dollars which one Absalom Walker of said
County took and unjustly detains against gage
and pledges as he saith if Return thereof shall
be awarded and further to save and keep you
Harmless in Repleying said property then you
are to Cause the said goods and chattels to be
Repleved and delivered to the said William Martin
without delay. And to Summon the said Absalom
Walker personally to be and appear before our
Circuit Court in and for said County on the first
day of the next term thereof to be holden at the
Court House in Princeton in said County on the
fourth Monday in the Month of March A.D. 1853
to answer the plaint of the said William Martin
for the taking & unjustly detaining the goods and
chattels aforesaid to the damage of the said Plaintiff
as he saith of the sum of One Hundred dollars,
and make due 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 Edward M
Fisher Clerk of our said Court and the Seal thereof
This 24th day of March A.D. 1853 Edward M Fisher
 Clerk

Sheriffs Return on writ of Replevin
I have Executed the within writ on this 25th
day of March AD 1853 by Replevying the within
described goods and Chattels to wit One Grey Horse
and Harness and delivering the same in to the
possession of the within named William Martin
and I have further Executed the same by Reading
to and in the presence and hearing of the within
named Absalom Walker this 25th day of March
AD 1853 the Bond by me taken is herewith Returned
to the Court.

Copy of Replevin Bond

Know all men by these presents that we William
Martin and Jonathan Ramsdell of the County of
Bureau and State of Illinois are held and
firmly bound unto Asaugh Smith Sheriff of
Bureau County Illinois in the penal sum of
Two Hundred Dollars Current Money of the United
States for the payment of which well and truly
to be made we bind Our selves Our heirs Executors
and administrators jointly severally & firmly by these
presents witness our hands and seals this 24th
day of March AD 1853. — The Condition of the
above Obligation is such that whereas the above
bound William Martin has commenced
an action of Replevin against Absalom Walker
in the Circuit Court of said County for the taking
and unjustly detaining of the following goods

and Chatters To wit One Gray Horse and Harness
the property of him the said William Martin as he
saith.

Now of the said William Martin shall well
and truly be and appear before the said Circuit
Court on the first day of the next term thereof
to be holden at the Court house in Princeton
on the fourth Monday of March A.D. 1853 and
shall then and there prosecute his said suit
to effect and without delay and doth make
Return of the said property to the said Absalom
Walker. If Return thereof shall be awarded by
the said Circuit Court. and shall save and keep
Harmless the said Sheriff in Replevying said
property then the above obligation to be void
otherwise to Remain in full force and effect.

Filed March 26. 1853

William Martin (Seal)

Edw Foster Clerk

Jonathan Ramsdell (Seal)

Pleas before the Honorable Edwin S. Leland
Judge of the Ninth Judicial Circuit of the State of
Illinois at the March Term of the said Circuit
Court in and for the County of Bureau begun
and held at the Court House in Princeton in said
County on Monday the Twenty Eighth day of
March in the Year of our Lord one thousand
Eight Hundred and fifty three

Present Hon Edwin S. Leland Judge

Edward M Foster Clerk

Amey Smith Sheriff

William Martin

vs Replevin

Absalom Walker

Now Comes the Plaintiff by
Peters his Attorney and on his motion this Cause
is continued to the next term of this Court.

Copy of Nav.

State of Illinois } Circuit Court
Bureau County } Oct Term Ad 1853

William Martin }

vs

Replevin

Absalom Walker } Damages \$100.00

William Martin Complain of Absalom
Walker Defendant, in a plea of Replevin for
that the defendant on the 24th day of March
Ad 1853 & before the Commencement of this Suit
at the County of Bureau aforesaid, wrongfully
and unjustly took and detained in his possession
and from the Plaintiff the following goods and
chattels of the Plaintiff until they were Replevied
by the writ of Replevin issued herein to wit -
One Gray Horse and his Harness of the value of
One Hundred Dollars to the damage of the
Plaintiff One Hundred Dollars. Therefore he
Sues &c

Milton J. Peters

Atty for Plff

2^d Pleas Before the Hon^{ble} Edwin S. Leland
Judge of the ninth judicial Circuit of the Circuit Court
of the State of Illinois. at the October Term of the
Said Circuit Court in and for the County of Bureau
and State of Illinois begun and held at the Court
House in Princeton in Said County on Tuesday the
fourth day of October in the Year of Our Lord One
thousand Eight Hundred and fifty three

Present Hon^{ble} E. S. Leland Judge
Edward M. Fisher Clerk
Osmyr Smith Sheriff
Wm H. L. Wallace States atty

William Martin

vs

Peplewin

Abraham Walker

Now Comes the defendant by
Chunwasero his attorney and enters his motion herein
for the dismissal of this suit for want of a sufficient
affidavit. And the Plaintiff Comes by Peters his
attorney and Enters his motion for leave to amend
his affidavit herein which said Plaintiffs motion
is sustained and said Plaintiff has leave to amend his
said affidavit.

Copy of Amended affidavit

State of Illinois } Circuit Court
Bureau County } Oct Term 1853

William Martin

vs

Replevin

Abraham Walker

William Martin the plaintiff
in the above Entitled Cause being duly sworn, says
that he is the Owner of a certain Horse and his Harness
described in the writ of Replevin issued in the above
Cause and that the same has not been taken for
any tax assessment or fine levied by virtue of
any law of this State nor seized under any execution
or attachment against the goods and Chattels of such
plaintiff liable to Execution or attachment.

Subscribed & sworn to
before me this 5th day
of October 1853

William Martin

E. M. Fisher C. C.

Defendants Pleas

Replevin Bureau Circuit Court
to the October Term 1853

Martin

vs
Walker

and the said Defendant by Chinnars
& Taylor his attorneys comes and defends the wrong and
injury when &c. because he says that the said Horse
and Harness in said Declaration mentioned at the
said Time when &c. were the property of the said
Defendant and not of said plaintiff as by said
Declaration is above supposed and this he is ready

Filed Oct 6th 1853
E. M. Fisher clerk

to verify wherefore he prays judgment if the said Plaintiff ought to have or maintain his aforesaid action thereof against him and he also prays a Return of the said Horse & harness together with his costs in this behalf according to the form of the Statute &c to be adjudged to him &c.

Chumasco & Taylor
for deft.

And the said Plaintiff says preclusion because that the said property at the said time &c was the property of Plff and not of the defendant & of this he puts himself upon the Country &c.

M. J. Peters
for Plff

October 10th 1853

William Martin
vs Replevin
Abraham Walker

This day this Cause being called the said parties come by their attorneys aforesaid and by agreement of said parties a jury is waived and the issues herein ~~are~~ submitted to the Court for trial And the Court after hearing the Evidence and the argument of Counsel and being fully advised in the premises doth find the said issues for the defendant. It is therefore Considered by the Court that the said defendant have Return of the said property. It is also further Considered by the Court

the said Defendant have and Recover of the
said Plaintiff One Cent for his Damages in the
detention of said property. together with all his
Costs and Charges in and about his Suit in this
behalf Expended. and he have a Writ of Habeas
Corpus for the Return of said property and
Execution for said Damages and Costs. and on
motion of said Plaintiffs. Attorney an appeal is
allowed herein on Condition that said Plaintiff
file his bond herein for the sum of One
Hundred Dollars with Security to be approved
with Security to be approved by the Clerk of this
Court. within forty days after the last day of the
present term of this Court.

Copy of Bill of Exceptions

William Martin } Replevin in the Circuit Court
vs }
Absalom Walker } of Bureau County Ills
At its October Term 1858

Be it Remembered that the above Cause came
on for trial in said Circuit Court at the above
term. a jury was waived and by the agreement
of the parties the Case was Submitted to the Court
on the following agreed State of facts:

It is agreed to Submit this Case to the Court
upon the following Statement of facts Subject to
all legal objections to the Competency of the proof
It is admitted that at the time of the taking of the

property it was actually owned by plaintiff and after being levied upon was Repleined in this Case Out of the possession of the Defendant.

2d

That The defendant at the time of the Taking was an acting Constable and as such Constable Seized and took Said property by virtue of a pluries Execution Issued by James G Swan a justice of The Peace of said Bureau County upon a judgment Rendered by St Sapp Esqr then a justice of The Peace of Bureau County in favor in favor of Matthew A Farrell and against the said plaintiff. That after the Rendition of said judgment. Said Sapp resigned or Removed from the County thereby vacating his Office. and transferred his docket & papers to William J Thom then the nearest justice of the peace to said Sapp who afterwards Removed from the State of Illinois. and transferred his docket & papers including the docket & papers of said Sapp to the said James G Swan. who issued said Execution upon said judgment upon which said Execution the said Defendant levied upon and took the property aforesaid which is the taking mentioned in the declaration and all the knowledge said Defendant had of the said transfer of said Docket & papers of said Sapp is the Statement in said Execution.

Milton J. Peters

atly for Plff

Chumacero & Layler defts attorneys

Copy of Execution

State of Illinois } The People of the State of Illinois
Bureau County } To any Constable of the Said County Greeting.

We Command You as you have
been heretofore commanded that of the goods
and chattels of William Martin in your County
you make the Sum of fifty Dollars and twenty
two Cents debt and three Dollars and Six & one
fourth Cents Costs which Matthew C Farrell Remond
before Noah Sapp a Justice of the peace of Said
County on the Sixth day of March 1845 in a certain
plea against the said William Martin, and that
You make in addition to the above named Sum
the Sum of three Dollars & thirty nine & three fourth
Cents for increase of Costs since the rendition of said
Judgment the said Sapp having Remond from
Said County and the docket and papers of said
Sapp having been transferred to me in accordance
with the statute in such case made and provided
and hereof make return to me within Seventy days
from this date. Given under my hand and
Seal this 16th day of March 1853

(Signed) James G. Swan Justice of the Peace

(Copy of Constables return)

By virtue of a Execution directed to me in favor of
Matthew C Farrell, and against William Martin.
I have this day levied on one Gray horse and
Harness at the Residence of William Martin

between 4 and 5 O'clock P.M. On the 24th day of
March 1853 and on the 25th of the same hath been
taken by virtue of Replevy by the Sheriff of
Bureau County. (Signed) J. Walker Constable

The Court found for the Defendant and ordered
a return of the property to which said Decision
and Judgment of the Court the said Plaintiff
Then and There Excepted and prayed the Court
to sign and seal this his bill of Exceptions and
make it a part of the Record which is done
accordingly

E. J. Seland Seal
Judge & C.

State of Illinois Bureau County ss.

I Edward M. Fisher Clerk of the Circuit Court in
and for said County in the State aforesaid do
hereby certify the foregoing to be a full and
complete copy of the files & Records in the forego-
ing Cause as of Record & on file in my office
Given under my hand & the seal
of said Court at Princeton in said
County this 4th day of May A.D. 1854

Edward M. Fisher
Clerk



Clerk's fee

23 folio 2.36
offt & seal 35-
notarize 10
2.81

21-11-1854

21

William & Henry
Hudson Hudson

Confidential copy

Record

21

Filed May 6. 1854.
H. Hudson & Co.

2854

Refused

17144

STATE OF ILLINOIS,
Supreme Court,

} ss. The People of the State of Illinois,

To the Clerk of the Circuit Court for the county of Bureau - Greeting:

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the circuit court of *Bureau* county, before the Judge thereof, between

William Clartin

plaintiff, and

Abraham Walker

defendant it is said manifest error hath intervened, to the injury of the aforesaid *Clartin*

as we are informed by *his* complaint, and we being willing that error, should be corrected if any there be in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint, aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the *22 Monday in June* - next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law;

WITNESS, the Hon. **SAMUEL H. TREAT**, Chief Justice
 of our said Court, and the Seal thereof, at Ottawa, this *6th* day of *May*
 in the Year of Our Lord One Thousand Eight Hundred and Fifty-four.

Beland Clerk of the Supreme Court.

William Martin
 Absalom Walker
 Wit of ever

Filed May 6, 1854.
 L. Leland Clk.

BEFORE me in the County and Precinct of _____
 State of Illinois, }
 I, the Clerk of the Circuit Court for the County of _____
 do hereby certify that the foregoing is a true and correct copy of the original of the
 same as the same appears in the records of the Court.

WITNESSED my hand and the Seal of the Court at _____
 this 6th day of May 1854.

Received
 Clerk of the Court

To the Supreme Court
of the State of Illinois
June Term 1854

} William Martin
as Error to Bureau
Co Circuit Court
} Absalom Walker

The Clerk of the Supreme Court at Ottawa
will please issue writ of error, and
serio facias in the above named, in this
Cause the plaintiff in error was the plaintiff
in the Circuit Court

May 6th 1854

Milton T. Peters
atty for Plaintiff in Error

William Martin
as Prior to
Bureau
Abraham Walker

Receipt for Unit-20

Filed May 6. 1854.
St. Louis, Mo.

William Martin

²¹
Absalom Walker

1st The execution under which the defendant took plaintiff property was void upon its face. because

1st The Judgment on which the execution issued was rendered in 1845 by a Justice holding under the first Constitution of the State, and all such Justices term of office expired on the 1st Dec 1849. Laws of 1849 page 67 - and it is only in cases of death, removal and resignation that the law provides for Justices issuing executions upon the Judgment of their predecessors. Rev Stat page 331 - Sec 110-112 - even if the Justice issuing upon the Judgment had been in office himself on the 1st Dec 1849, he could not have issued upon his old Judgment because when the Justice continues in office ^{for two terms} he is his own successor and has a new term of office or a new office and his first office or term of office has expired, and consequently there is a case of expiration of office, which was provided for under the laws of 1839, but is not under the Rev laws, the law of 1839 is expressly repealed by the Rev laws Rev Stat Chapter Rev Stat - A Justices bond is for the discharge of the duties of his office, yet if he holds for two terms his securities are only liable on the first term. Rev Stat page 314. Sec 10 - See also 2 Gil 54 United States vs Kirkpatrick 5 Cond Rep 733

2^d That neither the new Constitution nor the Statute laws provide for the transfer of ~~the~~ ^{of such Justice's} dockets & Judgments to the Justices elected under the new Constitution nor are they authorized by them to issue upon such dockets & Judgments, The new Constitution under the title of Schedule

Sec 20 provides that all Suits and proceedings pending in the Circuit & Supreme Courts shall be vested in the Circuit & Supreme Courts under the new Constitution, but says nothing about transferring the Suits & proceedings before Justices of the Peace, it is true our laws provide that the Justices under the new Constitution shall exercise the same powers as the Justices under the old Constitution, but Justices under the old Constitution, could not have issued upon the Judgments rendered by the Justices under our territorial government, by the adoption of the new Constitution the offices under the old Constitution were abolished, and although we have offices under the new Constitution of the same name yet they are not the same offices, or a continuation ^{of them}, and have nothing to do with the proceedings of the old officers, but their Judgments have lost their vitality for want of any provision to continue them in force, and they would have to be sued over again to obtain execution.

3 That the execution notified the Defendant - that it was issued upon the Judgment of another Justice of the Peace, without showing any authority in the one issuing the execution, to issue upon such Judgment. The execution merely stating that Esq. ^{Seph} ~~James~~ "having removed from the ~~State~~ County & the docket & papers of A. Sapp having been ~~transferred~~ to me, in accordance with the Statute in such case made and provided", without showing that Sapp removed during the continuance of his office or that he transferred his docket, or when it was done or that he was the next nearest Justice of the Peace of the County, the general statement that it was transferred according to the Statute in such case made & provided don't amount to any thing. The Justice should have stated the facts to show Jurisdiction & not merely given his opinion 4 Kan 89 - 8 Conn 314.

2^d That even if the execution in question did not show upon its face that the Justice had not jurisdiction to issue the execution, it did not show that he had, and at most stated the opinion of the Justice that he had, and that therefore the debt would not be protected under such an execution, if the Justice had not authority to issue such process, and he had no such authority because,

1st because he issued not upon the docket and Judgment of his own predecessor but upon that of the predecessor of his predecessor. Rev Stat page 331- sec 110-112. provides that the Justice shall transfer his docket and the papers relating to the business transacted before him to the next nearest Justice of the County who shall issue upon such docket, and the law has to be construed strictly, the presumption not being in favor of but against the Jurisdiction of inferior Courts.

2 Because the agreed statement shows that the Judgment was rendered by Eze Lapha and that his docket and papers were transferred to Eze Hound the next nearest Justice, without showing that he lived in the same County, and that the docket & papers of Eze Hound were transferred to Eze Swaid, but don't show that he was the next nearest Justice of the County or that it was transferred by the Justice. Thus we have shown jurisdiction out of Eze Swaid & they have not shown that he had any such Jurisdiction -

3^d That it did not appear that 1st execution had been returned when the second issued & was therefore irregularly issued & because 417-4th - The suit being against the defendant himself he could not justify as an acting Constable, but would have to aver and prove that he was a legal

constable duly commissioned & general officer
process in question was no exception to him unless he was such
3 Scand 485- People v. Copson 1 Denis 579-

that the defendant could not set up any right or
title to the property by virtue of being merely an
acting officer - 7 Sergeant & Rules 387 =
23 Wendell 502. is a case where a minor acted
as a constable & had taken property under execution
& released it - because he was not a legal constable
& the Court held that he did right - & that he acted
and has been protected - 9 Mass 234 - 12 New Hamp 567-

5. The defendant - did not show of what
County he was constable for, but merely
that he was an acting constable.

6 Defendant - does not show where he made
his levy on pledge property & that he acted
within his jurisdiction.

7 The Proof introduced on the part of the
defendant - that he was an officer acting
under process was inadmissible under his
plea setting up property. the proof offered
not tending to show property in the defendant
but merely a right to take pledge property.

Milton J. Pleas

Martin

Waller

Brief of points -
authorities for Pleas

21
1854

~~1276~~
1276

Milton J. Pleas