No. 12591

Supreme Court of Illinois

McGavock

vs.

Chamberlain

71641 7

Page 1

State of Illinois
Winnebago County S. S. } Hugh McGavock Com
plains of Porter & Chamberlain that the said Cham-
berlain heretofore to wit on the 23d day of June AD
1852 in the County aforesaid unlawfully took & detained
and still does unlawfully detain: one white horse. one brown
horse: one set of harness of the value of Two hundred Dol-
lars of the goods & Chattels of the said Hugh McGavock
against gages & pledges &c

Hugh McGavock
Per Sheldon & Sheldon
his Attys:-

State of Illinois
Winnebago County S. S. } Hugh McGavock being duly
sworn doth depose & say that he is about to Commence an
Action in the Circuit Court of said County of Winnebago
against Porter & Chamberlain therein for the following
described goods & Chattels to wit: One white Horse one
brown horse & one double harness above mentioned and
described in the plaint above to be replevied & has the right
to redeem the same into his immediate possession: That the
same has been wrongfully taken and is now wrongfully de
tained by said Porter & Chamberlain from this deponent 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 or
Chattels of the said Hugh McGavock liable to execution
or attachment:-

Subscribed & sworn to before } Hugh McGavock
me this 26 day of June AD 1852 }
A Pennoyer Dep Clerk }

12591-11

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Hugh McGavock
vs
Porter & Chamberlain

In the Winnebago Co Cir Court
Sep. Term A.D. 1857.

I do hereby enter myself security for costs in this cause, and acknowledge myself bound to pay or cause to be paid all costs which may accrue in this action either to the opposite party or to any of the Officers of this Court: Dated June 26th '57.

H. S. Root

Endorsed "Filed June 27th 1857.

M. B. Derrick Clerk"

STATE OF ILLINOIS, } ss.
WINNEBAGO COUNTY,

The People of the State of Illinois to the Sheriff of said ..... *County*—GREETING:

If Hugh McCurock

of said County of Winnebago shall give you 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 the said Hugh McCurock

to wit:

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One white horse, One Bay horse & one double harness

which Porter E. Chamberlain

also of said County, forcibly and unlawfully took, and unjustly detains—and return the said property, if return thereof 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 said Plaintiff without delay. And summon the said Defendant personally to be and appear before our Circuit Court in and for said Winnebago County, on the first day of the next term thereof, to be holden at the Court House in the City of Rockford in said Winnebago County, on the Fourth Monday of September A. D. 1857 to answer to the said *plaint* of the said Plaintiff for Unlawfully taking & unjustly detaining the goods and chattels aforesaid. And make due return of the Bond to be taken of the said Plaintiff as aforesaid, together with this Writ, to the Clerk of our said Court, with an endorsement hereon as to your doings in the premises.

WITNESS, MORRIS B. DERRICK, Clerk of said Court, and the Seal thereof, at his Office in the City of Rockford, in said Winnebago County, this 6 day of June A. D. 1857

S. S.

Morris B. Derrick Clerk.

By O. A. Demmoyer Dep. Clerk

[12591-2]

Docket No..... Page.....

Winnebago Circuit Court.

Hugh McCovert

v.

Porter E Chamberlain

WRIT OF REPLEVIN.

June 27 1837

I within named Porter E Chamberlain
Refused to deliver up the within
described property & thereupon I
served the within by reading
the same to the aforesaid
Chamberlain as I am therein
Commanded

Samuel I Church
Sheriff

fence 50
Mileage 40
Bond 50
Return 10
1.50

Sheldon & Sheldon
Attorney.

REPLEVIN BOND. Register Power Press, Rockford.

Know all Men by these Presents, That we, Hugh McGavock & Harvey S. Rood

are held and firmly bound unto Sam'l S. Church Sheriff of the County of Winnebago, in the State of Illinois, and to his successors in office, executors, administrators and assigns, in the penal sum of Four hundred dollars Dollars, lawful money of the United States, for the payment of which sum we do hereby jointly and severally bind ourselves, our heirs, executors and administrators.

THE CONDITION OF THIS OBLIGATION IS SUCH, That whereas, on the 27th day of June in the year of our Lord one thousand eight hundred and fifty Seven the said Hugh McGavock

sued out of the Circuit Court of Winnebago County aforesaid, a Writ of Replevin against Porter E. Chamberlain

Defendant, for the recovery of the following described good and chattels, property, to wit: One white Horse

One bay horse and one double harness

Now, if the said Hugh McGavock Plaintiff, shall prosecute his his suit to effect, and without delay, and make return of the said property, if return thereof shall be awarded, and save and keep harmless the said Sheriff in replevying the said property, then this obligation to be void, otherwise to remain in full force and effect.

WITNESS our hands and seals this 27th day of June A. D. 1857

Signed, Sealed and Delivered in Presence of

C. W. Sheldon

Hugh McGavock SEAL

H. S. Rood SEAL

SEAL

[12591-3]

Docket No. ..... Page .....

Winnebago Circuit Court.

Hugh McTavock

v.

D. E. Chamberlain

REPLEVIN BOND

double the value of the property about to be replevied.

Filed in Clerk's Office,

June 27 ..... 185..

M. P. Derrick

Clerk.

Winnebago Circuit Court September Term 1837.

Hugh McGavock
vs
Porter E Chamberlain

Winnebago County S.S.

Porter E. Chamberlain was summoned by virtue of a writ of Replevin to answer Hugh McGavock in an action for the recovery of the value of the property described in said writ, having refused to deliver the said property &c and thereupon the said Hugh McGavock by Sheldon & Sheldon his Attorneys Complains for that whereas the said plaintiff to wit on the 23d day of June 1837 at the County of Winnebago, Illinois, was lawfully possessed as of his own property of one white horse, one bay horse & one double harness of great value to wit of the value of three hundred dollars, and being so possessed the said plaintiff afterwards to wit on the day and year first above mentioned at the County aforesaid casually lost the said horses & harness out of his possession, and the same afterwards to wit on the day and year first aforesaid at the County aforesaid came to the possession of the said defendant by finding, yet the said Defendant well knowing the said horses & harness to be the property of the said plaintiff but contriving and fraudulently intending to defraud the said plaintiff in this behalf hath not as yet delivered the said horses & harness or any or either of them or any part thereof to the said plaintiff although often requested so to do and hath hitherto wholly refused so to do: And afterwards to wit on the day & year last aforesaid at the County aforesaid converted and disposed of the said goods & chattels to his own use. To the damage of the said plaintiff of four hundred dollars & therefore he brings his suit &c

Sheldon & Sheldon

[12591-H]

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Endorsed "Filed Sep 14 1837.
O Stanmayer Dep Clerk"

Winn County Circuit Court
September Term 1837.

Porter E Chamberlain
vs
Hugh McGavock

And now comes the Defendant by O Miller Jr his Atty & says that is he is not guilty in manner & form as the said plaintiff hath above alleged & of this puts himself on the Country for trial:

O Miller Jr Attys for Defts:

And the said Plaintiff Hugh McGavock doth the like:
Sheldon & Sheldon
Attys for Pltff

Endorsed "Filed September 29 1837.
M S Derrick Clk"

State of Illinois
Winnebago County S.S.

Winnebago County Circuit Court

Hugh McGavock
vs
Porter E Chamberlain

It is hereby stipulated that the property in question in this action to wit two horses and one set of harness was on the 23d day of June 1837. at said County wrongfully taken by the said defendant from the possession of the plaintiff the same being the property of the said plaintiff and wrongfully converted to his the defendants own use & that the said property was on that day of the actual value

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of Two hundred dollars and that the use of said property was worth fifty Cents per day from the time of said Conversion to this day above expenses & depreciation: And it is agreed that this Stipulation shall be read as evidence of the above facts on the trial of this Cause

Sheldon & Sheldon Attys for Plff
O Muller Jr Atty for Defendant

Endorsed "Filed July 9. 1858.
M. B. Derrick Clk"

United States of America
State of Illinois Winnebago County S.S. } Pleas before the Hon Benj R Sheldon Judge of the fourteenth Judicial Circuit of the State of Illinois at a Term of the Winnebago County Circuit Court begun & held at the Court house in in said County of Winnebago on the 1st day of February 1858.

Present Hon Benj R Sheldon Judge
W D Meacham States Attorney
S. J Church Sheriff

Attest M B. Derrick Clerk:-

And afterwards to wit on the 11th day of February 1858. it being one of the days of the February Term of the Winnebago County Circuit Court the following entry was made as appears of record:

Hugh McGowock
v } Replevin:
Porter E Chamberlain

And now Comes the Plaintiff by Sheldon & Sheldon his Attorneys & the Defendant by O Muller Jr his Attorney & issue being joined this Cause is submitted to the Court without the intervention of a Jury

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Plaintiff

the evidence of the respective parties &
& the Court having heard, the argument of Counsel finds the issue for the Plaintiff & the Defendant guilty & assess the Plaintiffs damage at $210 & thereupon the ~~Defendant~~ moves the Court for a new trial herein:-

And afterwards to wit on the 4th day of March 1858. it being one of the days of the aforesaid term of Court the following entry was made as appears of record:

Hugh McGavock
vs
Porter & Chamberlain

Replevin: March 4. 1858.

Now again come the parties by their Attornies & the motion for a new trial in this cause coming on to be heard & the Court having heard the argument of Counsel on said motion overrules & denies the same: to which the Plaintiff excepts: It is therefore ordered & considered by the Court that the Plaintiff have & recover of the Defendant the sum of Two hundred & ten dollars damages found due by the Court as aforesaid as also his costs & charges herein expended & that he have execution therefor:-

State of Illinois
Winnebago County S.S. In Winnebago Circuit Court
February Term 1858.

Hugh McGavock
vs
Porter & Chamberlain

Be it remembered that on the tenth day of February of the February Term 1858 of said Court came on to be tried the above entitled cause which by agreement of parties having been submitted to the Court for trial the said plaintiff to

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maintain the issues therein on his part read in evidence a stipulation signed by the Attorneys of the respective parties and filed therein which said stipulation was in the words & figures following to wit:

State of Illinois Winnebago County S.S. Winnebago County Circuit Court Hugh McCavock 20 vs Porter E Chamberlain It is hereby stipulated that the property in question in this action to wit two horses and one set of harness was on the 23d day of June 1857. at said County wrongfully taken by the said defendant from the possession of the plaintiff the same being the property of the said Plaintiff and wrongfully converted to his the defendants own use and that the said property was on that day of the actual value of two hundred dollars and that the use of said property was worth fifty cents per day from the 21 time of said Conversion to this day above expenses and depreciation and it is agreed that this stipulation shall be read as evidence of the above facts on the trial of this Cause:

(signed) Sheldon & Sheldon Attys for Pltff
O Miller Jr Atty for Deft

And thereupon without other or further evidence rested his Case: And the Defendant without introducing any evidence rested his Case And the court having heard the arguments of Counsel as well on behalf of said plaintiff as of said defendant found the said defendant guilty and assessed the plaintiff damages at 22 two hundred and ten dollars: And the said plaintiff by his Counsel then & there moved the Court for a new trial therein for the following reasons:

1st The damages of the plaintiff were assessed at too small a sum by the Court: 2 The assessment of

42591-2

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damages by the Court was not in accordance with the law and the evidence: And that the Court after hearing the argument of Counsel for the respective parties and duly considering the same overrules the said motion and to the overruling of the said motion the plaintiff by his Counsel then & there duly excepted: And because the matters & things aforesaid do not sufficiently appear of record. I Benjamin R. Sheldon the judge before whom the said cause was tried, have upon the prayer of the said plaintiff signed and sealed this bill of exceptions this 4th day of March 1838. it being one of the days of the said February Term:-

Benj R. Sheldon (Seal)

Filed March 4. 1838.

M. B. Derrick Clerk

State of Illinois
Winnebago County Circuit Clerks Office } SS

I M. B. Derrick Clerk of the Circuit Court in & for said County do hereby Certify that the foregoing to be true copies of all the papers on file & the entries of the Court record in the foregoing entitled cause, now in my Office:-

Witness my hand & the seal of said Court at the City of Rockford this 23d day of March A. D. 1838.

M B Derrick Clerk
By A Wennyer Dep Clerk

111.

Hugh McCulloch
vs
Arter & Chamberlain
Transcript of Record

Filed March 27 1838
S. Leland
Clerk
P. R.

4240

Fee $1.50

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State of Illinois
Supreme Court
Hugh McGavock
pltff in error
vs
Porter E. Chamberlain
deft in error

Third Grand Division
April Term 1858 –
Error to Winnebago Circuit Ct

And now comes the plaintiff in Error by Sheldon his Attorney and says that in the doings and proceedings of the said Winnebago Circuit Court in the said Cause wherein Hugh McGavock was plaintiff and Porter E. Chamberlain was defendant at the February Term 1858 of said Court, there was manifest error in this to wit.

1st The Court erred in affixing the damages of the plaintiff at too small a sum.

2nd The Court erred in refusing to grant the plaintiff a new trial in said cause.

and therefore the Plaintiff prays that the judgment of the said Circuit Court therein be reversed and held for nought and that he be granted a new trial before the said Court and be in all things restored to what he has lost by reason of the intervention of the aforesaid Errors.

Porter Sheldon
Attorney for Pltff.

[12591-7]

3rd Grand Division

State of Illinois
ss
Supreme Court

Hugh McGavock
Plff in error

vs

Porter E. Chamberlain
Defendant in error

Assignment of Errors

Filed March 30. 1858
S. Leland
Clk

Porter Sheldon
atty for Plff in
Rockford
Ill

Please file

State of Illinois
Supreme Court

Hugh McGavock
Plff in Error
vs.
Porter E. Chamberlain
Deft. in Error

Error to Winnebago Circuit Court

The Clerk of Sup. Court will please issue writ of error in above case & attach to the Transcript of Record filed herewith and issue a Sci. fa. for said deft. in error to the Sheriff of Winnebago County Illinois

March 24. 1858

Porter Sheldon
Atty for Plff in error

[12541-B]

Supreme Court

Hugh McGavock
Plff in Error

vs

Porter E. Chamberlain
Deft in Error

Precipe

Porter Sheldon
Atty for Plff in Error
Rockford
Ill

In the Supreme Court.

HUGH McGAVOCK, Plaintiff in Error,
vs.
PORTER E. CHAMBERLAIN, Defendant in Error } ABSTRACT.

The action in the Court below was Replevin for a span of horses and a set of harness. The writ of replevin was issued to the Sheriff on the 27th day of June, 1857, and the following return made thereon by him :— "June 27, 1857. The within named Porter E. Chamberlain refused to deliver up the within described "property, and thereupon I served the within by reading the same to the aforesaid Chamberlain, as I am therein "commanded. (Signed) Samuel I. Church, Sheriff." On the 14th day of September, 1857, the plaintiff filed his declaration in said action in Trover and claimed damages to the amount of four hundred dollars. At the September Term of said Court the defendant pleaded not guilty, and issue being joined thereon, the cause was continued on the affidavit of the defendant. At the February Term the cause was submitted to the Court for trial, and the following Bill of Exceptions taken by the Plaintiff, to wit : State of Illinois, Winnebago County, ss: In Winnebago Circuit Court, February Term, 1858, Hugh McGavock, *vs.* Porter E. Chamberlain. Be it remembered that, on the tenth day of Februar y,of the February Term, 1858, of said Court, came on to be tried the above entitled cause, which by agreement of parties having been submitted to the Court for trial, the said plaintiff to maintain the issues therein on his part, read in evidence a stipulation signed by the Attorneys of the respective parties and filed therein, which said stipulation was in the words and figures following, to wit : State of Illinois, Winnebago County, ss. Winnebago County Circuit Court. Hugh McGavock, *vs.* Porter E. Chamberlain. It is hereby stipulated that the property in question in this action, to wit: Two horses and one set of harness, was on the 23d day of June, 1857, at said County, wrongfully taken by the said defendant from the possession of the plaintiff, the same being the property of the said plaintiff, and wrongfully converted to his the defendant's own use, and that the said property was on that day of the actual value of two hundred dollars, and that the use of said property was worth fifty cents per day from the time of said conversion to this day, above expenses and depreciation; and it is agreed that this stipulation shall be read as evidence of the above facts on the trial of this cause. (SIGNED) SHELDON & SHELDON, Attorneys for Plaintiff.
O. MILLER, Jr., Attorney for Defendant.

And thereupon without other or further evidence rested his case. And the defendant without introducing any evidence rested his case. And the Court having heard the argument of Counsel, as well on behalf of said plaintiff as of said defendant, found the said defendant guilty, and assessed the plaintiff's damages at Two Hundred and Ten Dollars. And the said Plaintiff by his Counsel then and there moved the Court for a new trial therein for the following reasons : 1st. The damages of the plaintiff were assessed at too small a sum by the Court. 2nd. The assessment of damages by the Court was not in accordance with the law and the evidence.

And the Court after hearing the arguments of Counsel for the respective parties, and duly considering the same overruled the said motion, and to the overruling of the said motion the plaintiff by his Counsel then and there duly excepted.

And because the matters and things aforesaid do not sufficiently appear of Record, I, Benjamin R. Sheldon, the Judge before whom the said Cause was tried, have upon the prayer of the said plaintiff signed and sealed this Bill of Exceptions this 14th day of March, 1858, it being one of the days of the said February Term.

BENJ. R. SHELDON. [SEAL.]

And judgment was thereupon rendered in favor of the plaintiff for Two Hundred and Ten Dollars and costs.

It is hereby stipulated by & between the parties in within cause that the same shall not be brought on for argument before the 3d week in May unless the Court shall adjourn before that time, in which case the same shall be deemed as submitted on the record

Dated April 15th 1858

Porter Sheldon atty for Plff in Error

Jason Marsh

Atty for Deft in Error

Hugh McGavock
vs
Porter E. Chamberlain
in

Stipulation

No 111

Filed April 20 1858
R. R. Lowe
Clerk

STATE OF ILLINOIS, } ss. **The People of the State of Illinois,**
SUPREME COURT,

To the Clerk of the Circuit Court for the County Winnebago 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 Winnebago County, before the Judge thereof, between Hugh McGavock

plaintiff, and Porter E. Chamberlain

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

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 first Tuesday after the third Monday in April 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. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 27th day of March in the Year of Our Lord one thousand eight hundred and fifty-Eight

S. Leland

Clerk of the Supreme Court.

by J. B. Rice Deputy

[12591-10]

111

Hugh McGavock

vs

Porter E. Chamberlain

Writ of Error

Filed March 27. 1858

S. Leland

Clk

Hugh McGavock
Pltff
vs
Porter E. Chamberlain
Deft

Argument for Pltff on 1st point

This case calls for a construction of the last section of the Replevin Act — The ruling of the Court below was that only interest (6 per cent) could be allowed by the way of Damages for the wrongful taking and detention under said Section — The plaintiff claims that he should have been allowed "such damage as he had sustained" — that is that he should not have been limited to interest by the way of Damage but should have had all the damage he proved he had sustained —

In the first place the wording of the Statute clearly contemplates that damages will vary in different cases — that they are not fixed but are uncertain — depending upon the circumstances surrounding each case — It seems to us that no other words in the English language could be so appropriately used as the ones in this Section to lay down a rule that the damages recovered should depend on the proof — The Statue says "and such damage as he shall have sustained by reason of the wrongful taking or detention thereof" — Now if the damage was a fixed rule of law something which facts or proof could not change — never more nor less, and the legislature had intended to adopt such rule it seems certain to us that they would

[1259-41]

instead of saying "and such damage &c" thus leaving it to sound at least as though the pltff must prove what damamage he had sustained, have said "with interest on the value of such property from the time of taking to the day of trial" — Suppose the Legislature had intended to have made such a rule of damage as is contended for by the plaintiff, what other general words could they have used which would have been more expressive of their intention than the ones contained in this section? —

It will be conceeded that under the rule of damage in the sixth section the plaintiff or defendant recovers his actual damage 15, Illinois 488. But the wording of this Sixth Section is not more explicit when carefully examined than the words of the section under consideration — It is true the first clause says "damage for the use" — but if the Court can say that the words "Such damage as he has sustained" mean that such damage was prescribed by the rule of damage heretofore existing in cases of trover, Why should they not have said in their construction of the sixth section — that the damage for the use in Replevin has heretofore been interest on the value of the property and the Legislature meant in saying "damages for the use", such damage as had heretofore been allowed by law in Replevin cases, The second clause of the sixth section is almost identical, (only more general) with the 12th section — it says "recover damages for detention" Now if under

these words a party is allowed to recover his actual damage why should he not recover the same damages under such words as these "and such damage as he has sustained by reason of the wrongful taking or detention"

Here is a suit brought for the same identical wrong — the taking & detaining of personal property wrongfuly — but the defendant prevents the pltff from getting his property back, and the law gives him the next best thing in its power — ~~the~~ a judgment for the value of the property, but the damages for taking or detention, can be no less to the plaintiff than they would have been could he have got his property instead of the judgment for the value — in fact the damages must be identical, they are in either case caused by wrong — the same wrong — and such a construction should be given to the Statute as will not give profit to a wrong doer at the expense of an innocent party.

If the judgment of the Court below be sustained the plaintiff must not only sustain a great loss — but the defendant who confesses himself a wrong doer will be allowed according to his own admission upon the record to be come a great gainer by his wrongful act. The pltff lost the use of his horses for over 160 days of the best season of the year and is allowed only ten dollars for the loss. and the defendant admits that the clear profit over expenses and depreciation was 50 cts per day or about Eighty Dollars

Porter Sheldon
for Pltff

[12591-12]

111

Supreme Court

Hugh McGuirk

vs

Porter E. Chamberlain

Argument for plff

Filed May 24, 1858
S Leland
Clk

STATE OF ILLINOIS, } ss. **The People of the State of Illinois,**
SUPREME COURT,

To the Sheriff of the County of Winnebago — Greeting:

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of Winnebago County, before the Judge thereof, between Hugh McGavock

plaintiff, and Porter E. Chamberlain

defendant, it is said that manifest error hath intervened, to the injury of the said plaintiff

as we are informed by his complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; **Therefore, We Command You,** That by good and lawful men of your County, you give notice to the said Porter E. Chamberlain

that he be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the records and proceedings aforesaid, and the errors assigned, if he shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Porter E. Chamberlain

notice, together with this writ.

Witness, The Hon. JOHN D. CATON, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 29th day of March in the Year of Our Lord One Thousand Eight Hundred and Fifty-eight.

L. Leland
Clerk of the Supreme Court.
by J. B. Rice Deputy

[12591-13]

Hugh McGavock
vs
Porter E. Chamberlain

Sci fa

State of Illinois
Wemblye County } ss
I duly served the within
writ by reading the same
to the within named
Porter E Chamberlain
this 30 day March 1858

Sam I Church
Sheriff

Service 60
Mileage 40
Return 10
$1.10

Filed April 9 1858
Porter [illegible]
Clk

In the Supreme Court.

Record

HUGH McGAVOCK, Plaintiff in Error,
vs.
PORTER E. CHAMBERLAIN, Defendant in Error } ABSTRACT.

Page 3

The action in the Court below was Replevin for a span of horses and a set of harness. The writ of replevin was issued to the Sheriff on the 27th day of June, 1857, and the following return made thereon by him :— "June 27, 1857. The within named Porter E. Chamberlain refused to deliver up the within described "property, and thereupon I served the within by reading the same to the aforesaid Chamberlain, as I am therein "commanded. (Signed) Samuel I. Church, Sheriff." On the 14th day of September, 1857, the plaintiff filed his declaration in said action in Trover and claimed damages to the amount of four hundred dollars. At the September Term of said Court the defendant pleaded not guilty, and issue being joined thereon, the cause was continued on the affidavit of the defendant. At the February Term the cause was submitted to the Court for trial, and the following Bill of Exceptions taken by the Plaintiff, to wit : State of Illinois, Winnebago County, ss: In Winnebago Circuit Court, February Term, 1858, Hugh McGavock, *vs.* Porter E. Chamberlain. Be it remembered that, on the tenth day of Februar y,of the February Term, 1858, of said Court, came on to be tried the above entitled cause, which by agreement of parties having been submitted to the Court for trial, the said plaintiff to maintain the issues therein on his part, read in evidence a stipulation signed by the Attorneys of the respective parties and filed therein, which said stipulation was in the words and figures following, to wit : State of Illinois, Winnebago County, ss. Winnebago County Circuit Court. Hugh McGavock, *vs.* Porter E. Chamberlain. It is hereby stipulated that the property in question in this action, to wit: Two horses and one set of harness, was on the 23d day of June, 1857, at said County, wrongfully taken by the said defendant from the possession of the plaintiff, the same being the property of the said plaintiff, and wrongfully converted to his the defendant's own use, and that the said property was on that day of the actual value of two hundred dollars, and that the use of said property was worth fifty cents per day from the time of said conversion to this day, above expenses and depreciation; and it is agreed that this stipulation shall be read as evidence of the above facts on the trial of this cause. (SIGNED) SHELDON & SHELDON, Attorneys for Plaintiff.
O. MILLER, Jr., Attorney for Defendant.

And thereupon without other or further evidence rested his case. And the defendant without introducing any evidence rested his case. And the Court having heard the argument of Counsel, as well on behalf of said plaintiff as of said defendant, found the said defendant guilty, and assessed the plaintiff's damages at Two Hundred and Ten Dollars. And the said Plaintiff by his Counsel then and there moved the Court for a new trial therein for the following reasons : 1st. The damages of the plaintiff were assessed at too small a sum by the Court. 2nd. The assessment of damages by the Court was not in accordance with the law and the evidence.

And the Court after hearing the arguments of Counsel for the respective parties, and duly considering the same overruled the said motion, and to the overruling of the said motion the plaintiff by his Counsel then and there duly excepted.

And because the matters and things aforesaid do not sufficiently appear of Record, I, Benjamin R. Sheldon, the Judge before whom the said Cause was tried, have upon the prayer of the said plaintiff signed and sealed this Bill of Exceptions this 14th day of March, 1858, it being one of the days of the said February Term.

BENJ. R. SHELDON. [SEAL.]

And judgment was thereupon rendered in favor of the plaintiff for Two Hundred and Ten Dollars and costs.

HUGH McGAVOCK, Plaintiff in Error,
vs.
PORTER E. CHAMBERLAIN, Defendant in Error. } *Points for Plaintiff in Error.*

Right

I

The Statute entitles the plaintiff to recover the value of the property and *such damage as he has sustained* by reason of the wrongful act of the defendant. 868 Purp. Stat. § 1 and 870, § 2. Now can any proposition be more evident than that the damage the plaintiff sustained was losing the use of the team and harness from the

2 Purpell 869-§1 & 2 & the 6th § of previous act

[D591-157]

time of conversion to the day of trial, and that the pertinent inquiry upon the trial was, what was the value of the use of the property? Is it not true that the defendant deprived the plaintiff of the use of this property? Then does it not follow, that as much benefit as the use of the property would have been to the plaintiff, so much damage he has sustained by being deprived of such use. The defendant stipulates that the value of such use was fifty cents per day over and above expenses and depreciation; yet the Court found that the plaintiff had sustained only *ten dollars* damage by losing the use of this property one hundred and sixty days.

II.

The Court allowed fifty cents per day, from the time of taking to the service of the writ, four days, and six per cent. interest for the balance of the time. If the Court was correct in holding that a distinction be made, we say that the plaintiff should have been allowed fifty cents per day to September 14, when his declaration was filed, as he certainly had not elected to file a declaration in trover until that day.

III.

But we insist if the plaintiff should have been confined to the common law measure of damages in trover, that even then the damages were assessed at too small a sum. The modern rule in trover is "The owner must be *fully indemnified*, and the wrong doer must not be permitted to derive any profit or advantage from his wrongful act." Interest is *prima facia* the measure of damages in trover—the owner recovering such additional damage as he can prove he has sustained.

Anthon's Nisi Prius Rep. 2 Ed. 215.—1 Bay S. C. Rep. 273 ib. 466.—3 Sanford's N. Y. Rep. 614.

PORTER SHELDON, of Counsel for Plaintiff.

15 Ill 488

[12591-12]

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Supreme Court

Hugh McGavock
Plff in error

vs.

Porter E. Chamberlain
Deft in Error

Abstract

Filed April 21, 1858
L. Leland
Clerk

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Hugh McGavock

Porter & Chamberlain

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12591

1858

Refined

State of Illinois
Supreme Court.

Hugh McGarrek
Plaintiff in Error
vs.
Porter E. Chamberlain
Defendant in Error

Error to Winnebago Circuit Court

I do hereby enter myself as security for costs in this Cause, and acknowledge my self bound to pay or cause to be paid all costs which may accrue in this action either to the opposite party or to any of the Officers of this Court.

Dated March 24. 1858. Porter Sheldon

[2251-44]

111

Supreme Court

Hugh McGavock
Pltff in error
vs
Porter E. Chamberlain
Deft. in error

Security for costs

Filed March 27. 1858
L. Leland
Cl K.