

---

Smith, use, etc., v. Pries et al.

---

the circumstances, the plaintiff has suffered damages by the breach of the contract, over and above the price of the work fixed by it, he must recover for such breach, but that cannot influence the price he shall recover for the work he has done.

The judgment is reversed, and the cause remanded.

*Judgment reversed.*

---

FRANCIS W. SMITH, use of Alexander Allison, Plaintiff in Error, v. HENRY PRIES *et al.*, Defendant in Error.

ERROR TO PEORIA.

It is error in an action upon a replevin bond, to refuse to let the plaintiff prove that the property has not been returned, as the condition of the bond required.

THIS was an action on a replevin bond. The declaration contains two counts; several breeches are assigned, and among them, one that Pries, defendant in error, did not, nor would, make return of the goods and chattels to Allison, nor to any other person for him. On the trial, plaintiff below asked a witness if the property replevied, had ever been returned to Allison. And the court, POWELL, Judge, presiding, refused to allow him to answer, because it did not appear that a writ of *retorno habendo* had been issued and returned, in the case of *Pries v. Allison*.

H. GROVE, for Plaintiff in Error.

C. C. BONNEY, for Defendant in Error.

CATON, C. J. This was an action on a replevin bond. Condition, that the plaintiff in the action of replevin should return the property, if he should be so ordered by the court. He was ordered to return the property as was contemplated by the condition of the bond. In this state of the case, the plaintiff offered to prove that the property had not been returned according to the exigency of the bond, and the court refused to allow it. In this the court erred.

The judgment must be reversed and the cause remanded.

*Judgment reversed.*