

12100

No. _____

Supreme Court of Illinois

Montgomery.

vs.

Wayne, et al.

71641  7

United States of America

State of Illinois }
McHenry County }
Shas before the Honorable
Isaac S. Wilson Judge
of the Circuit Court
of the thirteenth Judicial Circuit of the State of
Illinois and Presiding Judge of the McHenry
County Circuit Court in said Judicial Circuit
at a Circuit Court began and held at the Court House
in Woodstock in said County on Tuesday the
Sixteenth day of March in the Year of our
Lord One Thousand Eight Hundred and fifty
two and of the Independence of the said United
States the Seventy Fifth

Present the Hon Isaac S. Wilson
Judge

Amos B. Coon

Attest
Paul H. Johnson State Attorney
John Brink Clerk Sheriff

Be it remembered that heretofore to wit: on the
Ninth day of January in the Year of our Lord one
Thousand Eight hundred and fifty two William
Montgomery the plaintiff in this suit filed in the
office of the Clerk of the Circuit Court of said
County, a certain Transcript in the words and
figures following that is to say:

William Montgomery }
Harley Wayne }
and }
John Crane }

Somons issued by Christopher
Waltup on the 29th Dec
A.D. 1851 returnable
on the fifth of January

at one o'clock P.M. Suit called and defendant
took change of venue. Suit sent to George Gilbert

Suit called. Defendants appeared. Plaintiff absent.
Defendants counsel moves for non-suit. the suit
dismissed at Plaintiffs cost.

I certify that the above is a true copy of the case
and the file in my office. George Gilbert J.P.
Dated January 8th 1852.

Which has endorsed thereon

Dated Jan'y 9th 1852

J. H. Johnson Clerk

And heretofore to wit: on the 9th day of January
in the Year last aforesaid the said Plaintiff filed
in the office of the Clerk of the Circuit Court of
said County his certain Appeal Bond being
in the words and figures following, to wit:

Know all men by these presents that ~~the~~ William
Montgomery and Josiah Dwight are held and
firmly bound unto Harby Wayne and John
Crane in the penal sum of Eleven dollars and
Sixty two cents 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 9th day of
January 1852

The condition of the above obligation
is such that whereas the said Harby Wayne and
John Crane did on the fifth day of January AD
1852 before George Gilbert a Justice of the Peace
for the County of McHenry recover a judgement
against the above bounden William Montgomery
for the sum of Five dollars and Eighty cents
one cent from which judgement the said Wm
Montgomery has taken an appeal to the Circuit
Court of the County of McHenry aforesaid and

State of Illinois.

Now if the said Wm Montgomery shall prosecute his appeal with effect & shall pay whatever judgement may be rendered by the Court upon dismissal or trial of said appeal then the obligation to be void otherwise to remain in full force and effect.

Approved by me this 8th day of January 1852

Office the 8th day of January 1852

J. Wright
William Montgomery

George Gilbert J.P.

which has endorsed thereon

Filed Jan 9th 1852

J. H. Johnson Clerk

And heretofore to wit: on the ~~ninth~~ day of Jan'y in the year last aforesaid the following writ of Summons was issued out of the office of the Clerk of the Circuit Court of said County which said writ is in the words and figures following that is to say:

State of Illinois

McHenry County

vs. The People of the State of Illinois to the Sheriff of said County Greeting.

We command you that you summon Harley Wayne & John Crane if they shall be found in your County personally to be and appear before the Circuit Court of said County on the first day of the next term thereof to be holden at the Court House in Woodstock in said County on the third Monday of Jan'y inst. to answer unto William Montgomery in an appeal from a judgement rendered before George Gilbert J.P. of said County on the 5th of Jan 1852.

And have you then and there this writ with an endorsement thereon in what manner you executed the same

Witness Joel H. Johnson Clerk of our said Court and the Seal
Seal thus at Woodstock this 9th day of Jan'y 1852
J. H. Johnson Clerk

Which said writ has endorsed thereon
Executed the within, by reading to and in the hearing
of the within, named Harley Wayne & John Crane
Jan 9th 1852

John Brink Sheriff
By S. W. Brink Depy

Filed Jan'y 13th 1852

J. S. Johnson Clerk

And thereafter to wit on the 31st day of March
in the Year last aforesaid it being one of the days
of the March Term of the Circuit Court of said
County, and said Court being then in session at Wood-
stock in said County the following among other pro-
ceedings were had, that is to say:

William Montgomery }
Harley Wayne & John Crane } Appeal
And now
come the plaintiff
by McClure Smith and Murphy his attorneys and
the defendants by Church & Willard their Counsel
also come, and thereupon this cause is submitted to
the Court for trial without the intervention of a jury
by the agreement of the parties and the Court
having heard the evidence and arguments of
counsel finds the issue for the defendants. It is
therefore ordered and considered by the Court that
the said defendants have and recover of the plaintiff
their costs and charges as well in the Court below
as in this Court expended and that they have
Execution therefor.

And thereafter to wit on the 2^d day of April
in the Year last aforesaid the said plaintiff
filed in the office of the Clerk of the Circuit
Court of said County his certain bill of

of the execution, and demanded the wagon & oxen which was refused unless Montgomery would pay Wayne a debt which he had against one Baker of about Sixty Dollars - that on the refusal of debt Wayne to give up the wagon. Montgomery gave a delivery bond for the oxen and Crane the Constable told him to take the cattle. And Crane did not deliver the oxen to Montgomery but said he ~~plff~~ could take them them. they were at his house in the pasture about 1/2 mile off & Montgomery, said he must deliver them. Says plaintiff knew where they were. plff finally thought he would leave the oxen for that day as he then intended to replevy the wagon and could haul it home with the oxen.

James W Strode. Says that he was present and heard Crane one of the debtors say under oath that he would go to the house of plaintiff on the 12 June 1850 in company with Wayne. the debt at one o'clock to sell the wagon - that the wagon was not at home, that the plff had either gone to mill with it or had lent it to a neighbor to go to mill. The hour of the sale was one o'clock P.M. & that the plaintiff was not at home that he offered the wagon for sale and Wayne bid four dollars for wagon provided he would deliver wagon. that they left the plaintiffs and returned about four or five o'clock in the afternoon. found the wagon delivered to Wayne and levied on a Sock of cattle to satisfy the balance of Ex^{ts} and took the wagon home to Wayne.

J J Kuler recalled. Says the wagon levied on and sold was worth 40 or 45 dollars. that debtors said word to plaintiffs by him that the sale would be on the 12 June 1850. that he did not tell the plaintiff from the fact that he did not see him. proves that oxen were worth per day 3 or 4 shillings.

Paris Baker. Says that plaintiff got the cattle
back home about the 29th June 1852 that he went
to hunt them and found them on the prairie, and
brought them to plaintiff - that oxen worth per
day 2 or 1 shillings.

The above was all the evidence given in the
case, upon which the Court gave judgement for
defendants. To which finding of the Court the plaintiff
by his Council excepted & prays that this his bill
of exceptions may be signed sealed and made
part of the record which is done.

It was admitted by the parties that the execution
on which the cattle and wagon were taken was
regular and issued on a valid & subsisting
judgement rendered by a Justice of the Peace
in favor of Chas Wayne vs plaintiff for fourteen
dollars & a half beside costs. It was further
admitted that the plff previous to this trial had
sued Chas in Trover for the wagon and
recovered a judgement for \$40.

Wm G. Wilson Seal
Judge &c

Which has Endorsed thereon

Dated Sept 3rd 1852

J H Johnson Clerk

State of Illinois & ss I Joel H Johnson
McHenry County Clerk of the Circuit Court

in and for the said County
in the State aforesaid do hereby certify that the foregoing
is a true and perfect copy of the record and
proceedings on file in my office in the above
entitled cause. Witness my hand and the Seal
of said Court at Woodstock in said County this
25th day of June 1852

Joel H. Johnson
Clerk of Court

William Montgomery & L. Pass
vs
H. Wynn & John L. L. L.

And now comes the Plaintiff in
error. And for Cause of Error
shows the following

1st The Court erred in rendering Judgment
for the defendants when Judgment
should have been rendered for the
Plaintiff in error

2^d The Court erred in rendering Judgment
for defendants in the Court below. when
he ought to have rendered Judgment for
the Plaintiff

C. B. B. B.

for Plaintiff

And the said Defendants in error
by Church & Willard their attys come
and say that there are not any
errors in the record and promising
affidavit

Wherefore

Church & Willard

attys for Defs in error

William⁶⁹ Montgomery
208

Harley Wayne
& John Crann

Transcript

Cin. Ind.

Filed June 18-1853.
L. Leland Clk.

2.55 ALP 44

William Montgomery & Error to Whiting
vs
Harley Wayne & John Grand & Circum Cant

I do truly 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 in
pursuance of the laws of this State
Witness this 2nd day of June AD 1853

H. C. Murphy

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Montgomery

vs

Wagner & others

Band

Filed June 15-1858
S. Ireland Clerk

Mrs. Montgomery & brother to Mr. Hays
Wagon & Carriage } Lussan

perhaps to personal property

Wagon at Larned Lumbermont & Montgomery
pay for loan \$14.50. Bureaux
given. placed in hands of crane
as constable, lived on wagon
worth loan \$45 - a day appointed
by constable to sell. Montgomery did
not know time crane & Wagon
sent word to Montgomery, of the time
and place of sale - witness did
not deliver word - so that Montgomery
did not know time of sale of wagon

Cramond Wayne came to Montgomery on the day & at the time of sale. most long. was away from home. so was the wagon - Cramond offered Wayne for sale. Wayne bid four dollars on condition wagon was delivered to him by Cramond. This was about 1 o'clock. At 2 o'clock day about 4 or 5 o'clock. Cramond came to Montgomery. found the wagon was evidence that Montgomery was there. Cramond delivered wagon to Wayne, and went on to satisfy remainder of estate and to remove wagon to Wayne's Montgomery. next day demanded wagon & owner - offering to pay entire amount of execution. Wayne refused to give up wagon unless Montgomery would pay a debt of about sixty dollars that was

Baker and Wayne - the case was
reopened, soon after an action of trover
brought vs Wayne. and a judgment of \$43
was rendered - subsequently the present
suit commenced, to recover damages
as trespass to own

The Court is too well settled to refer to
authorities. That the long of an invention
on property sufficient to satisfy the same
operates for the time being as a safeguard
at least so far as keeping on other
property is concerned. until that is
disposed of according to law

That the weapon was legally sold
no one will controvert -

The question then is. Had the deft
a right thus to abuse the process
of the Court, to selfish purposes
which is more than indicated by the
fact that they refused to deliver
the weapon to ~~Wayne~~ ^{Montgomery} but he
would pay a debt owing by one
Baker to Wayne. ~~that~~ I don't
appear. That Montgomery was
in any way connected with the matter

If the case were properly taken
judgment - ought to be ~~for~~ ⁱⁿ favor
here for Plaintiff - and not
for deft -

The fact that Montgomery in trover paid
the price of weapon - will not bar
an action of trespass against
Wayne & Crane for taking same

Trove could not have been sustained
as Wayne & Crane for Wagon - & over

The Court below we think labored
under a misapprehension in supposing
that the fact of a recovery in ~~Wagon~~
as Wayne would have an action of
trover as Wayne & Crane for a
definite share of property

C. M. Allen
for Plaintiff

Montgomery

is

James W. Wynn

argued

William Chontgomery
~
Darby Wayne stal.

1853
69

1853

Prepared

12/00