

No. 14376

Supreme Court of Illinois

Searles

vs.

Crombie
~~Cembrie.~~

71641  7

STATE OF ILLINOIS,
SUPREME COURT,

Third Grand Division.

14265

No. 155

14376

Searched

75

Graded

1862

Replaced

411
United States of America
State of Illinois
Lee County } ss

Hear in the Lee
County Circuit Court in the Twenty Second
Judicial Circuit of the State of Illinois in the
matter of Dow B. Charles, Plaintiff against
James Cronkie appellant Defendant in an
action of Trespass brought into said Lee County
Circuit Court by appeal.

Be it remembered
that on the 14th day of November 1888
the following Transcript and other papers all
correctly used in the Justice Court where said
Cause was commenced, was duly filed in the
Office of the Clerk of the said Lee County Circuit
Court, which said Transcript and the papers
aforesaid are in the words and figures
following that is to say:-

Summons:-

State of Illinois }
Lee County } ss

The People of the State of
Illinois to my Constable of said County
Greeting:-

You are hereby commanded to Summon
James Cronkie-Nathanial P. Alma to appear
before me at my office in Embury on the 30th

day of March 1861 at 2.0 O'Clock P.M. to answer
 to the Complaint of Asa B. Swales in an action
 of Trespass on personal property for the failure
 to pay him a certain sum not exceeding One
 hundred dollars, and hereof make due return
 in the law courts. Given under my hand
 and seal, in my office in Amberg in said
 County, this 25th day of March A.D. 1861

Samuel Brown J. P.

Justice of the Peace

On the back of said summons is endorsed
 "Served the within by reading the same in hearing
 of James Crombie the within named Defendant
 March 25th 1861 - E. F. Baker Const. Travel to Service 25th 1861"

State of Illinois }
 Lee County }

Justices Court
 Samuel Brown J. P.

Asa B. Swales

James Crombie & Noah John P. Alma

In action of Trespass
 on personal property
 Demand \$100.00
 March 26th 1861

Summons and two subpoenas issued returnable
 March 30th 1861 at 2.0 O'Clock P.M. Summons
 returned served in due time as having been
 sent to defendant Alma by S. D. Frost and served
 by E. F. Baker by reading to Defendant James Crombie
 in due time - March 30th justice appears Defendant
 James Crombie by his Counsel & left N. P. Alma
 in prison - defendant Crombie's Counsel filed

8
affidavit of said Crombie asking for change
of venue - Defendant Alma refused to take a
change of venue, and motion quashed in
favor of Defendant Crombie - Defendant then
called for a jury venire issued to C. F. Baker
Court who summoned the following named
persons, as jurors Isaac Edwards, Alfred Morgan
Edelfield, M. J. Rider S. S. Welch & D. Harding
jury received and sworn to try the cause and
after hearing the evidence of William Saluburn,
Daniel Franklin, O. Reed's people Peoples on the
part of the Plaintiff the case was submitted to
the jury in charge of C. F. Baker Court and
brought in a verdict finding defendant James
Crombie Guilty and assessed the Damages at
fifty dollars, and finding the Defendant S. S.
Alma not guilty - whereupon the Court
adjudged the Debt James Crombie Guilty
and rendered judgment in favor of the
Plaintiff against James Crombie for the
sum of Fifty Dollars with costs of suit and
found Debt S. S. Alma not guilty. April 1st
1865 Execution sworn out by the Plaintiff
and put into the hands of S. D. Frost Court -
April 13th 1865 appealed by Debt James Crombie
Crombie Bonds man -

justice fees 43⁷/₈ docketing 14 - Venires 15 - swearing jury 37¹/₂
do 44 - witnesses 25 - judgments 25 - Executions out 31¹/₂ - appeal papers 1.50 - 3.50
paid by debt 1.40 - balance due p. 2.11. Court. Has Frost one

one service & travel 45 - Baker one service & travel 45 on
 Nov 15 - attendance 25 - on Sp 35 - 155. Jany, Feb 150 paid by diff
 Witness, Fees, W Salusbury 50 D. Franklin 50 O D Reed 50, Peoples 50
 Adams 50

State of Illinois } ss
 Sec County } I Samuel Brown a Justice
 of the Peace of said County and State aforesaid
 do hereby certify the foregoing to be a full and
 correct Transcript of my docket of the proceeding
 had before me in the foregoing case and herewith
 enclosed are all the papers belonging to the same
 as far as have been returned: given under my
 hand and seal this 24th day of April 1861

Samuel Brown J.P. S.S.

Appeal Bond

KNOW ALL MEN BY THESE PRESENTS, That we, James Crombie and
A. W. Crombie
 of the county of Sec and in the State of Illinois, are held and firmly bound unto
Asa B. Seawles
 in the penal sum of One Hundred and sixteen Dollars
 lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our
 heirs, executors and administrators, jointly, severally and firmly by these presents. Witness our hands and seals,
 this 13th day of April A. D. 1861

The condition of the above obligation is such, That whereas the said Asa B. Seawles
 did on the 30th day of March A. D. 1861 before
Samuel Brown Esq a Justice of the Peace for the said county of Sec
 recover a judgment against the above bounden

for the sum of Fifty Dollars and costs for suit
 from which judgment the said James Crombie

has taken appeal to the Circuit Court of the county of Sec aforesaid,
 and State of Illinois. Now, if the said James Crombie

shall prosecute his appeal with effect, and shall pay whatever judgment may be rendered by the Court upon dis-
 missal or trial of said appeal, then the above obligation to be void; otherwise to remain in full force and effect.

Approved by me at my office, this 13th
 day of April 1861
Samuel Brown J.P.
 Justice of the Peace
James Crombie
A. W. Crombie



And on the back of the said Transcript to
 be filed as aforesaid is endorsed "Filed for"

And on the back of the said Transcript as
is filed as aforesaid is endorsed "Filed Nov:
1st 1861 Benj F. Shaw Clerk for Joseph Ball D.C."

And upon the filing of the said Transcript
and other papers from the justice aforesaid
a summons was issued by the Clerk of
the said Circuit Court in the words following
that is to say:-

STATE OF ILLINOIS, }
LEE COUNTY, } ss.

The People of the State of Illinois to the Sheriff of said County, GREETING:

We command you that you summon *Asa B. Senolett*

if he 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
Dixon, in said County, on the *fourth* Monday of *November*

A. D. 1861, to ~~answer unto~~ *prosecute his suit against James
Crankie on our appeal*

in a plea of

to the damage of said plaintiff, as he say in the sum of
~~dollars.~~

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

Witness, BENJAMIN F. SHAW, Clerk of our said Court,
and the Seal thereof, at Dixon aforesaid, this *fourteenth*
day of *November* A. D. 1861.

Benjamin F. Shaw CLERK.

for Joseph Ball D.C.

But inasmuch as the said Summons is not now
amongst the papers in said Cause, the Sheriff's return
thereon cannot be given in this Record.

and afterwards, at a regular Term of the
said Sev County Circuit Court, begun and
holden at the City of Dixon on the second
Monday of February in the year of our Lord
one Thousand eight hundred and sixty two
then present: Honorable William W. Horton Judge
of the said 22nd Judicial Circuit &c

David M. Cartney, States Attorney
of the said Judicial Circuit

Benjamin F. Shaw Clerk of the
said Sev County Circuit Court

and
Arnold Porter Sheriff of the
said Sev County.

And on the 27th day of February A.D. 1862
(the same being one of the regular days of the
said February Term) the following proceedings
were had in said court and appears to us of
Record, that is to say:-

"Asa D. Seawles
" "
James Crombie appellants } Impeach
} Appeal of

On this day comes
the Plaintiff in this suit by Dees & Frost his
attorneys, and also comes the Defendant by
Russell and Eustace his attorneys; also
come a jury of good and lawful men to wit:

William Wood, Samuel Lawrence, William Wood
Charles Thornbly, James Cowan, Charles W. Chadwick

Norman P. Mead, Daniel Sweeney, Edmund Arnold
Charles Thornbly, James Cuman, Charles W. Chadwick
W. D. Talcott, Isaac E. Hunt, William Griffin
Amos C. Stillman, Henry K. Strong & David Morrison
who were duly elected, tried and sworn well
and truly to try the issues joined, and the said
jury having heard the evidence, and the ar-
gument of Counsel now return in charge of a
sworn Officer to consider of their verdict, and
by agreement of Counsel the said jury are direc-
ted to seal their verdict and to meet the Court
to-morrow morning at half past eight o'clock.

And afterwards to wit on the 28th day of
February A.D. 1862 (the same being one of
the regular days of the said February Term)
the following proceedings were had as appears
by the Record, that is to say:
Charles B. Seawles }
James Crombie Appellant } In presence
of the Court }
On this day
again came the said parties by their respective
counsel; also came the jury heretofore em-
panelled in this behalf; and the said
jury now return into Court the following verdict
to wit: - "We the undersigned jurymen in the
case of Charles B. Seawles vs. Crombie find Defendant not

"Guilty" and thereupon the said Plaintiff
enters his motion for a new trial herein"

And afterwards to wit on the first day of
March 1862 (as yet one of the regular
days of the said February Term) the follow-
ing proceedings were had in said Court
that is to say:

"Asa B. Sewles

James Crombie Defendants

vs
Plaintiff
Appeal

On this day again
came the respective parties to this suit by
their Counsel aforesaid, and the motion for
a new trial coming on to be heard, is by the
Court overruled, to which ruling the said
Plaintiff by his Counsel then and there
excepted. It is considered and adjudged
by the Court that the Defendant herein and
recover of the Plaintiff in this suit his costs
and charges by him in and about this suit
expended, and that he have Execution therefor.

And now on motion of the said Plaintiff
he has leave to file his Bill of Exceptions
in thirty days from this date. And the
said Plaintiff now brings an appeal from the
judgment of this Court to the Supreme Court
of the third Grand Division of this State
which appeal is by the Court allowed on

condition, that the said Plaintiff do within
thirty days hereafter file his

condition, that the said Plaintiff do within thirty days from this date file an appeal Bond herein properly conditioned in the sum of Five Hundred Dollars with Owen O'Connor as security thereon "

And the Instructions on behalf of the said Plaintiff in said Cause are as follows -

"1. That the fact of ownership is not in controversy in this case, that possession of personal property is sufficient to found an action of Trespass upon, and if the Jury believe from the evidence that the man in question was in the possession of the Plaintiff, no matter whether he owned the man or not, and if they further believe that the Defendant took the man from the possession of said Plaintiff, then they should find the Defendant guilty "

"2. The Jury are instructed that possession of personal property is prima facie evidence of ownership, and if they believe from the evidence that Crombie took the man in question from the possession of the Plaintiff, then they will find the Defendant guilty - unless the Defendant has shown some right to her in himself or that he assisted in such taking - "

Sequenced

3 That if the jury believe from the evidence that the man in question was in the pasture field of said Plaintiff, this is sufficient possession of the man by the Plaintiff to charge the Defendant with the trespass if they believe that the Defendant either by himself or with others took the man from the said pasture field without right - "

4 If the jury believe from the evidence that the defendant, in any manner assisted in taking the man from the pasture field of the Plaintiff then the jury will find the defendant guilty - unless the Defendant has proved some right in himself or those with whom he acted - "

5 If the jury believe from the evidence that the Defendant Crombie, aided or in any manner assisted in taking the man in controversy from the possession of the Plaintiff Seales, & if they further believe that the man was Seales at the time of the alleged trespass, the jury must find the Defendant Crombie guilty - "

6 That all of the Statements of the Witness Badger as to what Seales said when he took the man from the post in Amboy is evidence in this case as to Seales title to the man, it being the law that all of a parties statements, made at the same time are to be taken together.

The Defendant asked the Court to instruct the

11 The Defendant asked the Court to instruct the jury as follows:

1. That in order for the plaintiff to recover he must among other things establish to the satisfaction of the jury, that the man was not taken under a valid claim of right "

2. That the Plaintiff must establish that he was the owner of the man or had a right to the possession as against those who took her away "

3. It is perfectly immaterial to whom the horse belonged; ^{the jury believe from the evidence it was not stolen from} provided the jury believe from the evidence that the horse in controversy was not stolen; they must find for the Deft "

4. That he must further establish that the Defendant aided, or assisted or abetted in taking her from his possession "

5. That if the Plaintiff has failed to prove that the man in question was his property; or if he has failed to prove, that the Defendant either actually took her himself, or aided or abetted others in taking her from the possession of the plaintiff, then the Verdict should be for the Defendant "

6. That if the jury believe from the evidence that Crombie went to where the man

Green

was, for the purpose of aiding House in her identification; and did not aid, abet or encourage or assist in her capture, then the Verdict should be for the Defendant "

Green

That no matter for what purpose Crombie may have gone to where the matter was; if he is proved to have gone there; yet if when there he did not aid or assist, or abet and encourage in taking said man, then the Verdict should be for the Defendant - "

Green

That the burden of proof is upon the Plaintiff; and unless he has established affirmatively, that he was the owner of the man as against the Defendant, and that the Defendant took or aided or abetted in the taking her away, then the Verdict should be for the Defendant - "

all of which said instructions are on file in said Court

And afterwards to wit on the 26th day of March A.D. 1862 the said Plaintiff filed his appeal Bond as he was directed with the Clerk of said Court, and which said appeal Bond is as follows to wit:

and D. Seawles, Principal and Owen O

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000

Now all Men by these Presents that see
And D. Searles, Principal and Owen C
Comer as security, are held and firmly bound
unto James Crombie of the County of Lee
and State of Illinois in the penal sum of
Four Hundred Dollars, well and truly to be
paid, we and each of us, bind ourselves,
our heirs, executors administrators and
assigns, jointly, severally and firmly by
these Presents.

Witness our hands and seals
this 25th day of March A D 1862

The consideration of the above obligation
is such that whereas the above bounden
And D. Searles, did at the last Term
of the Lee County Circuit Court, to wit:
at the February Term A D 1862 in an
action of Trespass, bring an appeal to the
Supreme Court from a certain judgment
rendered in said Court, in favor of the
above named James Crombie Defendant
and against the said And D. Searles
Plaintiff, in said suit which said appeal
was allowed by the judges of said Court
Therefore if the above bounden And D.
Searles, shall well and truly prosecute
said appeal with effect, and without
delay, and shall pay or cause to be

paid all the costs herein, as by the judgment of our said Court in case said judgment shall be affirmed in the said Supreme Court, and shall abide and obey all orders of said Supreme Court then the above obligation to be void otherwise to remain in full force & effect.

Signed sealed and
delivered in presence of

Ada P. Sewles Esq

W. E. Suez

Oliver Comstock Esq

Witnessed March 26th 1862

Benj. F. Shaw Clerk

per Joseph Ball D.C.

And on the back of said Bond so filed as aforesaid is indorsed the words and figures as follows to wit: "Filed March 26th 1862
B. F. Shaw Clerk per Joseph Ball D.C."

And afterwards on the 30th day of March A.D. 1862, the said Ada P. Sewles filed his Bill of Exceptions in said cause in the words and figures as follows to wit:

Bill of Exceptions

157
State of Illinois }
Lee County } S.D. In the Lee County Circuit-Court
of the February Term A.D. 1862

Asa B Searles }
vs } Trespas - appeal
James Crombie } appellant -

Be it remembered that on the 27th day of February A.D. 1862 the same being one of the regular days of said February Term A.D. 1862 of the said Lee County circuit court this cause coming on to be heard for trial before a jury empannelled in this cause, who were duly selected tried & sworn well and truly to try the issue joined herein; and thereupon the said plaintiff in this cause to maintain the said issues on his part, called Millard Sulstury as a witness, who being duly sworn testified as follows: -

I know the parties to this suit - Searles lives a little west of Binghampton, a little north east of Amloy - I was going down with Crombie & Almy to Amloy, got down in the creek and Crombie got out and went over in the pasture, he said he came down to see Mr House take his mare out of the pasture which House claimed was his - Mr Almy and Mr Crombie met in the pasture with Almy, some one caught the horse, I was talking with Franklin and did not see the horse

16
captured. I can't say as I saw Crombie catch
the horse; or any thing of the kind, Crombie
& Almy went over to the field where House
was, I saw the horse upon they caught it. I
saw Crombie go up towards the horse with
them. The horse was taken about six rods from
the fence I first saw Mr House in the pasture
Crombie & Almy come in the same wagon with
me. Mr House did not come with me. Crombie
had a saddle in the wagon. House got the
saddle to ride the horse off. I cannot tell who
took it out of the wagon. I don't know whose
saddle it was. Never saw Mr Crombie use it. nor
saw him use any saddle. House rode or led the
horse away (went with it towards Benhamton I
I don't know whether there were ears where they
took the mare out or not. or whether they took off
the boards. The pasture was about 160 rods from
Seals House. The pasture was on the North side
of the road running to Ambley. The fence was close
to the road. The mare they took out of the pasture
would be colled brown, never saw seals on the
mare, never saw here before. There were other hor-
ses in the pasture I think. After the mare was caught
Almy came and drove the wagon up to Bainters shop.
where the mare was. The saddle was not taken
out of the wagon until it was driven up to Bainters
shop. It is about 160 rods from the shop
to Seals House. Could not see seals house from

1 to 2 did not see House upon leaving. See

pasture. Did not see Hause upon leaving Lee Centre. It might have been a year or two since I saw house till that morning. When I first saw house he stood talking to Mr Crombie. I dont know who let down the bars or fence crop by - It was in spring of 1860 - it must have been betwixt 9 & 10 in forenoon. Crombie got in Wagon with me and went to Amboy when Hause took Mare. I am not certain whether Almy or Crombie came back and drove Wagon up to shop. Hause lived in Lee Centre about one or two years before I saw him that morning.

The plaintiff then called Won Franklin who was duly sworn and testified as follows: - Heard testimony of Saulsbury. Recollect the circumstance. I suppose at the had spectacles of. I came along, I saw Saulsbury in the road to Cromby & Almy & a horse in the lot I looked so short a time I can't say they were doing anything, can't swear whether they were mowing or standing still did not see the horse unless I saw it then saw no one take down the fence. Did not see the horse caught, can't say that I saw saddle or bridle in the Wagon saw a wagon. dont know whose it was.

The plaintiff then called, O. D. Reed who was duly sworn and testified as follows: - Know parties, I believe I know Mare in controversy, have known her some nine or ten

Years, to the best of my knowledge, off and on.
 Mr Seals I suppose owned her, I don't know
 what Mare was taken out of the pasture Seals
 owned & Mare, a dark bay or brown, Seals
 had two such Mares, I would call one the Mother
 of the other, don't know the age of the Mother, they
 looked very much alike, I can't state positively
 whether I saw one of the Mares in May or June or not.
 Went with Seals to look for the Mare, first saw
 her in Chicago some sixty days after it was said
 Seals lost a Mare; I first saw her, upon look-
 ing at her I called her Seals Mare. I saw her
 next Monday after that & the next day, I was employ-
 ed by Seals to hunt for that Mare. I went to
 Chicago on that business & found the Mare, where
 the Mare was first purported to be taken Seals
 came to me, I wrote to a friend in Chicago,
 found Mare had been seen several times and had
 been sent to Indiana we found the Mare that had
 sent her to Indiana. It was the young Mare I
 was looking after. The old Mare was said to be
 dead. I may have seen the Mare a few days before
 she was taken away, but am not positive, saw
 the Mare when she come back, she was in bad con-
 dition then, she looked as though she had had hard
 usage. Seals has been in possession of this pas-
 ture for a long time, I do not know what
 Seals expenses were in hunting the Mare. The

freight on her from Indiana to Chicago was I
 believe eight dollars. The bill of lading for the Mare

expenses were in hunting the mare. The
freight on her from Indiana to Chicago was I
believe eight dollars. The bill of keeping the mare
in Chicago before bringing her home was \$1 ⁵⁰/₁₀₀ dol-
lars. The saddle bridle and keeping was \$3 ⁵⁰/₁₀₀ dol-
lars. I let Seards have five dollars to pay boys ex-
penses in riding mare from Chicago home. Let
boy two or half day to ride mare out the boys ser-
vice was worth \$2 ⁵⁰/₁₀₀ dollars. It was worth six dol-
lars to bring mare from Chicago to Aubrey. I don't
know of any other expenses. Seards incurred in getting
mare home we paid ten dollars for board at one
place in Chicago. There were other expenses. The fare
from Aubrey to Chicago and return for both of us
was \$12 ⁵⁰/₁₀₀ dollars, fifty cents a day a good
horse would be worth. Cross examined —

(When I say I know mare in controversy I
mean mare I found in Chicago — The mare I found
in Chicago was some eight years old at the time,
to the best of my judgment the mare I saw in
Chicago was Seards. I think I saw her in May
1860 saw her in Seards town or barn I think
But am not positive. It is so long ago, I swear
only to my impression. As long as spring of '52
that I speak of Seards having a mare and colt.
I don't know of anything that called my attention
to this mare after 1852 till I saw her in Chicago.
It was a sucking colt I think. I bought colt of
Seards in fall of '55. he had a black horse colt
and this mare they were both of the same age.

about the next spring, he told me to take my choice and I took the black horse colt, since that time my attention has not been called directed towards her & I have not had occasion to look at her until seeing her in Chicago.

The plaintiff then called Samuel Brown who was duly sworn and testified as follows:—
Heard conversation between Crombie and Searls in reference to this mare. It was in spring or summer of last year in Amboy. I state can't state every word in fact I did not hear it all, I was going to the post office heard some loud talk got opposite them, they appeared to be engaged in a free quarrel about the first conversation that I took notice of Searls was accusing Crombie of stealing or helping to steal the mare then Crombie rather cautioned him to be careful how he accused him of stealing and about the same time Crombie says to him I ~~take~~ did take or help to take her I can't say which but said he she was none of your mare and help yourself if you can, there was not a great deal more passed when Searls said to me, I want you to take notice and remember what he said, I don't know the mare in controversy, they referred to the mare that was purported to have been taken out of Searls pasture, I have stated all I know about it.

The plaintiff then called John Gibson

21 who was duly sworn and testified as follows:—

21

Who was duly sworn and testified as follows:—
 I resided near Searles in 1860, I recollect of Searles having a horse that was lost, had known her for twelve months. I was there when she was missing. I presume I saw her a day or two before she was gone, can't say where she was, saw her pitched up, and in the pasture, the pasture came close up to the road, saw Mare after she was brought back, she was the same one I think that was in the pasture, she was not worth much when she come back, I am a doctor I she would have brought \$125⁰⁰ dollars when she went away, she was a poor looking object when she come back. I called her a dark brown, (Mr Searles had no other that I know, I think she went away some time in May, and come back in the fall, this Mare had a colt I think the summer before she was taken away. Cross examined:—

Don't recollect seeing the Mare before May 1860 but think Searles had her one year before that (Here Plaintiff rested his case)

The defendant then called N.P. Almy who was duly sworn for defence and testified as follows:—

I saw the Mare, I examined her mouth. I profess to be able to tell the age of a horse sufficiently to satisfy myself when dealing, I should judge the Mare was ten or eleven years old at that time, in spring of 1860. (Mr Crombie examined)

12
in Mouth also. Crap examined

It was in the road at the East end of the pasture, I was in the field where House caught the mare. Mr Leonard was in the field. It was immediately after House took the mare out that I examined the mouth, the examination was not very hasty, The Mare was Brown

The defendant then called Henry Hennon, who being duly sworn testified as follows:- Six four Miles from Aubrey have lived there between two and three years. Some one brought a mare to my place said to be Searles Mare, a brown mare in spring about May 1859 I was not at the house when she was brought I kept her something near a week I suspect Mr Searles took her away, I did not go out to the stable with him. It was about dark. I don't know where that mare was taken to. Mr Leonard come and inquired for her after she had left, there were two men came and inquired for her. Crap examined:

I asked Searles for mare to assist in doing my work. I did not understand that this mare was brought to me to work, I worked the mare one half day only.

(The defendant then called Simon Badger, who being duly sworn testified as follows:-) I know of Searles having a mare strayed away. I should say it was three or four years ago - she was three years old

when she strayed. I think she would be

was shot. I don't what year the matter was shot.

The respondent then called W. E. Dues, who being duly sworn, testified as follows:

Once New House he lived in Amuloy in 1855 or 9 I commenced a replevin suit in this court for him against Mr Charles in 1855 or 9 for the Mare. The Mare could not be found told House he could proceed in trousser.

A. P. Almy was then called for defence & testified as follows:- I examined the Mare to see if I could find any shot marks as I had heard there were some. her hips roots of her tail I did not find any they no marks whatever or scars; I found no indications whatever of her having been shot. My attention was specially ~~and~~ directed to it, Cross Examined.

This was at the same place of the first Combie assisted me in making the examination (Here defendant rested his case)

George Northway was then called for plaintiff and being duly sworn testified as follows: Don't recollect having any conversation saw her pitched to the post which clowned and which I thought was his, I thought it was his because I saw her before she strayed & she had been shot. I went over town to see if I could pick out the Mare & I found her and picked her out from the shot marks - Saw Mare once after I mean saw saw her

to Combie was said to have taken her I

Saw Mare once after I saw her
Saw her out from the show

25 after Crombie was said to have taken her I think she was shot about in 1856. I thought she was then three years. Herp Examined: I saw her the next day or two after she was shot, I did not put my hands on her but I saw some blood I looked at the color of the Mare &c that was all I don't recollect of looking in her mouth. It was in Rubin Bridgman's field where she was shot.

Wm B. Stuart, was then called & being duly sworn for the plaintiff testified as follows: - I don't know as I know the mare in controversy, know what Mare Charles took from the post: know it was his, I know he advertised her. I know the mother of this mare. It was in May or June 1852 that this mare was foaled, I won't swear positive that it was Jay Lind that Charles took from the post. I did not see her after the fall she was past three till I saw her at the post I never "show" her after she was taken from the post.

George Northway was here recalled by plaintiff and testified as follows: - I saw her two her two or three days after she was shot, and did not again see her till I saw her at the post I was one or two about about one or two years after she was shot before I saw her at the post."

The foregoing was all the evidence offered and given in said cause upon the trial thereof. The plaintiff thereupon asked the

20 Court to instruct the jury as follows:—
1st "That the fact of ownership is not in contro-
versy in this case, that possession of personal
property is sufficient to found an action of tres-
pass upon, and if the jury believe from the evi-
dence that the mare in question was in the pos-
session of the plaintiff, no matter whether he owned
the mare or not, and if they further find that
the defendant took the mare from the possession
of said plaintiff, then they should find the
defendant guilty"

Which said instruction the court refused
to give, and to which refusal the said plaintiff
his counsel then and there excepted.

The said plaintiff also asked the Court to
instruct the jury as follows (except as to the words
included in Brackets, thus [—] in said in-
structions numbered 2: 3rd & 4th which words in-
cluded in Brackets were added and inserted by
the court) to wit:

2nd "The jury are instructed that possession of personal
property is prima facie evidence of ownership
and if they believe from the evidence that Crombie
took the mare in question from the possession of the
plaintiff then they will find the defendant guilty
[unless the defendant has shown some right to
her in himself or those he assisted in such
taking]

3rd "That if the jury believe from the evidence that

1. Mare in question was in the pasture field of

27
the mare in question was in the pasture field of
said plaintiff this is sufficient possession of the
mare by the plaintiff, to charge the defendant with
the Trespass, if they believe that the defendant
either by himself, or with others took the mare
from the said pasture field [without right]

4th "If the jury believe from the evidence that the
defendant in any manner assisted in taking
the mare from the pasture field of the plaintiff
then the jury will find the defendant guilty [un-
less the defendant has proved some right in
himself or those with whom he acted]"

The court refused to give said instruc-
tions as asked by the plaintiff, numbered 2, 3
& 4, but on his own motion, modified the
same by inserting therein and adding thereto
words included in Brackets as above written,
and gave to the jury the said instructions so mod-
ified, to which the said plaintiff by his coun-
sel also then and there excepted -

The said defendant then asked the court
to instruct the jury as follows to wit:

Said jury returned into court with their verdict, which
said verdict is in the words and figures as follows to
wit:- We the undersigned jurymen in the case of Seades
do solemnly find the defendant not guilty:

Isaac C. Hunt.	H. P. Mead	Henry K. Strong	Edward Arnold
W. C. Steadman	W. P. Lelcott	Charles Lumbly	William Griffin
W. Chadwick	James Barrett	Daniel Seamus	Donal Morrison

And thereupon the said Plaintiff by his Counsel entered his motion for a new trial in said cause and afterwards to wit on the 1st day of March A.D. 1862, the said Plaintiff's motion for a new trial coming on to be heard, was by the Court overruled, to which ruling the said Plaintiff by his Counsel then and there excepted; and thereupon the Court entered judgment against the said Plaintiff for costs of suit; and ordered the said Plaintiff to have his Bill of Exceptions signed & sealed & filed in thirty days from that date.

And farasmuch as the matters aforesaid & the exceptions aforesaid, do not otherwise appear of Record, the Plaintiff asks that this his bill of exceptions, may be signed & sealed by this Honorable Court in pursuance of the statutes in such case made and provided, and may be made a part of the Records in said cause which is hereby done accordingly.

W. W. Heaton {Seal}

Judge of the 3rd Judicial Circuit

Dated March 29th 1862.

And upon the back of the said Bill of Exception is endorsed the words following to wit: "Filed this 29th day of March A.D. 1862
DePue Club vs Joseph Paul & Co."

And the following are the Bills of Cost in said Cause

And the following are the Bills of Cost in

Appellate 25 - file & papers 10 - 11	House file 2.40	and call June 20	\$ 4. 65
call & drug June 15 - 10, call 20, 12	appts for W. H. 1.20	surg officer 5	1. 90
and real verdict 20	Ent mo for new trial 20	Ent exception 20	Suits 15
75			
mo for leave to file Bill of Excepts 20	order and motion 20	mo for appeal 20	60
and granting appeal 20	Bill of Cost in Chancery 20	Manuscript 8.20	8. 95
14. 65			
Balances of Shropshire was not on files			
Witnesses Mrs. William B. Stuart	10	Camps 14 miles	10. 70
" " E. B. Bradman	4	" 12	4. 60
" " O. D. Reed	11	" 12	\$ 11. 60
" " " "	20	" 12	\$ 21. 60
33. 20			
" " E. H. Northway	5	" 12	5. 60
" " John Gilson	4	" 12	4. 60
" " Samuel Brown	5	" 12	5. 60
" " Tom Franklin	6	" 19	\$ 6. 95
" " " "	2	" 19	\$ 2. 95
9. 90			
" " William Selsky	4	" 12	\$ 6. 60
" " " "	2	" 12	\$ 2. 60
9. 20			
" " Rev. Isaac P. Howell	18	" 12	18. 60

Total Chancery Cost \$128.85

Cost in Justice Court as per transcript

L. Brown \$3.50	Cost Court 45	E. F. Baker 1.55	June 1.50	\$ 7. 00
W. Selsky 50	T. Franklin 50	O. Reed 50	J. Peoples 20	J. Edwards 20
9. 50				

I certify the foregoing to be a correct Copy of Plaintiffs Costs in Justice Court in said Cause as appearing on my Tax Book (F. 130)

Benjamin F. Shaw Clerk
W. Joseph & Bull D. Co.

Copy of Defendants Costs in said Cause

Appellants. Ent appeal \$250 - 4 Spas \$1.60 fil 4 put 20	1. 55
Dependants \$40 - 9 affs 90 - Ent Ordinat in Decketing 20	2. 00
Ent 20 - out on the for new trial 20 - Judge for Ent 20 - for out for Exes	95
ent on to security, on appeal Bond 20 - Bill of Cost 20 - Copy of Costs 20	70
Ent 35 - Jury Fees 3.00	3. 35
Sherriff Fee, (June 120, Indwell Spw 4.75 - Spw 2.65 (byrn) Spw 3.35 Spw 3.5 = 15.70	15. 70
Witnesses N P Army 2 Days + 12 miles (Nov)	2. 60
" " N P Army 4 " 12 " (Feb)	7. 60
" " Simon Badger 6 " 12 " (Nov)	6. 60
" " Simon Badger 6 " 12 " (Feb)	6. 60
" " Henry Hummer 3 " 16 "	3. 80
" " E. F. Baker 2 " 14 "	2. 40
" " Wm Stearns 6 "	6. 00
" " H. E. Badger 5 " 12 "	5. 60
	<hr/> \$65.75

I certify the foregoing to be a correct Copy of Defendants Costs in said Cause from my Book (F 130)
 Benj. F. Shaw Clerk
 Joseph M. Dall D. C.

Recapitulation - Plaintiffs Cost 128.85
 Cost in Justice Court 9.50
 Defendants Cost 65.75
 \$204.10

33
State of Illinois }
Lee County } 14

I Benjamin F. Shaw Clerk of the Circuit Court in and for said County in the State aforesaid do hereby certify that the foregoing is a full, true and complete simplification of all the Records in said Cause and the Bill of Costs therein, all of which appears in the Books and files of my office.

In Witness whereof, I have hereunto set my hand and the Seal of said Court at Dixon this 1st day of April A.D. 1864
Benjamin F. Shaw Clerk
Joseph Dull D. C.

Assignment of Errors

1st The Court Erred in refusing to give plaintiffs 1st instruction

2^d The Court Erred in refusing to give said plaintiffs 2^d, 3^d & fourth instructions as asked, but modified each of them on his own motion

3^d The Court Erred in overruling plaintiffs motion for a new trial and in entering judgment against plaintiff

4th Court Erred in giving each of defendants $\$1000$ & $\$2000$ for p^lt^f & $\$2000$

Joinder in Error

Burford & Insdell

186 155-

Wm B. Seales
James Crombie
Breed

Filed Apr. 8. 1862
S. Veland
Ch.