

No. 11977

Supreme Court of Illinois

Mason.

VS.

Fenn.

71641  7

Heat. C. I. On the 23^d of June, 1851, Fern brought an action of replevin against Mason executor of Smith. On the same day, the parties entered into an arrangement as follows: "It is hereby agreed by the parties to the foregoing suit, that the property claimed by the plaintiff in said suit, to wit, the boiler, back-stand and mud-valve, may remain in its present position, in the engine house attached to said mill in the possession of the defendant and subject to his control, until the right of the plaintiff is decided, without prejudice to the rights of the plaintiff; and should the claim of the plaintiff be sustained, the said property shall be delivered up to the plaintiff, or its value paid to him; the rights of the plaintiff to be the same, as if the writ of replevin had been executed by taking the property into the possession of the Sheriff." The cause was submitted to the court, at the October Term, 1851, on an agreed state of facts substantially as follows: On the 27th of February, 1847, Smith leased to Barley & Quick a steam flouring mill in Leacon, for the term of two years from the 15th of March following, and Barley & Quick agreed to pay as rent the sum of \$600 for the first year, and \$700 for the second year; and the lease concluded as follows: "The said parties of the second part also agree to have said engine and mill run by good, sober and competent men, and also to put up a new set of wheat elevators, and also put a floor upon the basement; to be allowed the sum of \$5.62 for putting up the wheat elevators, and to be deducted from the

first payment of rent, the floor to be done as cheap as possible, and deducted from any payment of rent that may become due after the same is done; and other fixtures the said parties of the second part may put in said mill beneficial to the same, at the expiration of said term said Smith agrees to pay for at a price to be agreed upon between said parties, or said parties to have the privilege of removing the same at the expiration of two years; said mill to be delivered up at the expiration of said term to said Smith, in as good repair as received, natural wear and fire only excepted." Barley entered under the lease, and continued in possession until sometime in June, 1849. During the Spring of 1848, it became unavoidably necessary in order to use the mill, to procure a new boiler for the steam engine, the old one having given out; and Barley, after informing the agent of Smith, procured the boiler, back-stand and mud-valve now in question, and had them set in the furnace in the engine house attached to the mill, where they have since remained and been used in running the mill. On the 27th of January, 1849, Barley made a note to the plaintiff for \$500, payable on the 1st of November thereafter; and at the same time, he executed a mortgage to the plaintiff on the boiler, back-stand and mud-valve, to secure the payment of the note. The mortgage was duly acknowledged and recorded, and contained a provision that Barley might retain the possession of the property. On the 3rd of April, 1849, Smith obtained an injunction

restraining the plaintiff and Barley from removing the property from the mill; and at the October term, 1849, the injunction was dissolved, and the suit afterwards abated by the death of Smith. In November, 1849, immediately after the dissolution of the injunction, the plaintiff demanded the property of Barley and Smith; Barley desired to deliver it, but Smith refused to let it be removed. At the expiration of the lease in March, 1849, one year's rent was unpaid; no settlement was ever made by the parties to the lease, and Smith never offered to pay Barley for the property. The property was worth \$350. The parties agreed that if the plaintiff was entitled to the property, judgment should be entered in his favour for the value thereof. The court decided that the property belonged to the plaintiff, and that he was entitled to damages for the detention thereof at the rate of six per cent interest on the value from the time the property was demanded of Smith; and judgment was accordingly entered in favour of the plaintiff for \$391.42.

We agree in opinion with the circuit judge that the articles in question were fixtures within the agreement of the parties, for which compensation was to be made by the landlord, or the tenant might remove them at the expiration of the term. They were clearly of a beneficial character, for without them the mill could not be used. The old boiler became worthless, and it was absolutely necessary to the enjoyment of the demised premises that a new one should be procured. We are not inclined

to hold that the landlord had the right to retain the articles, because the tenant covenanted to restore the premises in as good a state of repair as he received them, with the exception of natural wear and casualty by fire. The parties could hardly have contemplated such extensive expenditures in the way of reparations. It was their intention that the tenant should incur all necessary expense, in keeping the buildings and machinery in good repair; not that he should be compelled at his own cost to erect buildings and provide new engines and boilers, in the place of those that could not be repaired. For any additions to the property in the way of repairs, the tenant could not demand compensation, nor could he detach the materials used and take them away. But the old boiler without any fault on his part became incapable of being repaired, and without a new one the mill would not operate. It was not his duty, under such circumstances to furnish a new boiler at his own expense for the benefit of the landlord. The articles in question were entirely new, and were put in the mill for the temporary convenience of the tenant. And they could be removed without detriment to the mill, and without injury to the landlord. The agreement secured the tenant compensation for the improvements, or the right to take them away at the end of the term. But independent of this provision in the lease,

he had the right at common law to make the improvements, and remove them during the term. As between landlord and tenant, improvements put on the demised premises by the latter for purposes of trade or manufacture, and which can be detached without material injury to the estate, may be removed by him before he quits the possession. 2 Kent's Com. 343: Archbold's Landlord & Tenant 365.

But the articles were not removed during the continuance of the lease and it is therefore insisted that the tenant had lost his right to reclaim them. We think otherwise. He remained in possession of the premises after the expiration of the term, and, as we must presume, with the assent of the landlord. His right of removal continued so long as he was rightfully in possession. But he was prevented from exercising this right until long after he abandoned the possession, by an injunction sued out by the landlord. It would be wrong to permit the landlord to raise this ^{objection} ~~injunction~~, after he had interfered and prevented the tenant from availing himself of his privilege of removal. The tenant and his assignee, although out of possession, had a reasonable time after the injunction was dissolved within which to remove the property; and they have not forfeited ^{this} rights by any neglect to assert them. Immediately on the dissolution of the injunction they endeavored to obtain

the property, but were prevented from doing it by the defendant.

It is contended that the plaintiff was precluded by the terms of the agreement, from claiming damages for the detention of the property. This position is not tenable. By the agreement, instead of recovering the specific property, he was to have a judgment for its value. The agreement did not embrace the matter of damages. If the plaintiff had insisted upon receiving the property, he would have been entitled to recover such an amount of damages as would compensate him for the loss of the use of the property while it was withheld by the defendant. Agreeing to receive the value instead of the property itself, he was equally entitled to damages for the detention. The court considered his damages equivalent to six per cent interest on the value of the property, for the time it was detained by the defendant. This compensation was not given in the way of interest, but because the use of the property was worth six per cent on its value. It was but a mode of ascertaining the real amount of damages sustained.

The
judgment is affirmed

Judgment affirmed

Massachusetts

Seal

Cephalon

Treat

No
115-1852

Records

Prepared by report

State of Illinois, set.

WRIT OF ERROR—FREE TRADER PRINT.

The People of the State of Illinois,
To the Clerk of the Circuit Court for the County of *Marshall*—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 *Marshall* county, before the Judge thereof, between

William Penn plaintiff and *Charles Mason*
Executor of *Jesse C Smith* deceased—

1852
defendant it is said manifest error hath intervened, to the injury of the aforesaid *Charles Mason*
as we are informed by *his* complaint, and we being willing that error, if any there be, should be corrected 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 *2^d 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 *twenty eighth* day of *June* in the year of our Lord one thousand eight hundred and fifty *two*.

S. Leland Clerk of the Supreme Court.
By J. W. Leland Deputy Clk.

Marshall

Charles Mason & Co.
vs.
William Fenn

Writ of error.

115

Filed June 28th 1852.
L. Leland Clk.
By T. H. Leland Depy.

11977

1852

Charles Mason, Exor. & of
Jesse C. Smith dec'd

vs.

Wm Tenn

Error to Marshall

And the said Pff. in error comes & says that in the record of proceedings aforesaid & in the rendition of the judgment aforesaid, there is manifest error, in that to wit, the said circuit court rendered judgment against the said Mason & in favour of the said Tenn, when the said court should have rendered a judgment in favour of said Mason & against the said Tenn. — And for further specification of error said Pff. in error assigns the following, to wit,

1. The said circuit court erred in finding that the property repleaded was in the pff. below =
- 2 = Said circuit court erred in finding for the Pff. being, inasmuch as the facts agreed & shown in the case did not warrant any such finding.
3. The circuit court ^{erred} in allowing interest & rendering judgment therefor against the deft. below =
- 4 = There is no sufficient cause of action shown by the plaintiff below; & the judgment of the circuit court is thereby erroneous & against law. Wherefor said Pff. in error prays that the said judgment may be reversed & annulled & for nothing esteemed &c.

Enslow Peters for Plaintiff

And the said Defendant in Error comes & says
that in the Records & Proceedings aforesaid and
in the Rendition of the Judgment aforesaid
there is no Error wherefore he prays that
said Judgment may be affirmed

June 28 1852.

Wm. O. Phelps
Scrips atty

A record of the orders judgments Decrees & proceedings
of the Honorable Circuit Court of Marshall County began
& held at the Court house in the town of Lacon on the third
Monday being the 3rd day of October in the year A
D Eighteen hundred & fifty one Honorable J S Dickey
Judge of the 9th Judicial Circuit ~~presiding~~ of the
State of Illinois presiding
present G S Fort Shiff & John Burns Clerks

Among other proceedings in said court were the
following (were)

William Henn
Charles Mason Executor } Replevin
of Jesse C Smith

On the 23^d day of June 1851 the plaintiff filed in said court
in this cause a plaint^{+ mesage} in the words or figures following

William Henn
Charles Mason Executor } Marshall Circuit Court
of Jesse C Smith deceased } October Term A D 1851
Replevin Damages \$ 100

Issue a writ of Replevin returnable to next term for the following
Goods & Chattels to wit One Boiler for Steam Engine also
One Back Stand & one Mud Valve belonging to said Boiler the same
Boiler Back Stand & Mud Valve which were sold & conveyed by John
W. Baxley to said William Henn by Chattel Mortgage dated 2nd
January 1849 & then in possession of John W Baxley at Smiths
Mill in Lacon now in possession of said defendant in
the Engine house attached to said Mill

Lacon June 21st 1851

John Burns Ranger & A C Purple Atty
for plaintiff

State of Illinois
Marshall County } William Fern plaintiff in the above entitled
Cause makes oath & says that he is the owner
& lawfully entitled to the possession of the goods & chattels above
described under by virtue of the Chattel Mortgage aforesaid that
the same are wrongfully detained by said defendant & have not
been taken for any tax assessment or fine levied by virtue
of any law of this State nor seized under any execution or attach-
ment against the goods & chattels of the said plaintiff
Subscribed & sworn to before me J. W. Fern

this 23rd day of June 1881

John W. Fern Clerk

Whereupon a writ of Replevin issued in the above cause in the
words & figures following (to wit)

State of Illinois Marshall County

The people of the State of Illinois

To the Sheriff of Marshall County Greeting
Of William Fern of the said county shall give you
bond with good & sufficient security to present to his
suit to effect & without delay & to make return of the following
described goods & chattels the property of him the said William
Fern (to wit) One Boiler for Steam Engine also one Rock
Stand & one Mud Valve belonging to said boiler which Boiler
Rock Stand & Mud Valve were sold & conveyed by John
W. Raley to said William Fern by Chattel Mortgage dated
the 27th day of January 1849 which said goods & chattels
were then in possession of John W. Raley at Smith's Mill in
Lacon & now in possession of the defendant herein in the
Engine house attached to said mill which Charles
Mason Executor of Jephiah Smith deceased also of
said county took & unjustly detains against gaze
& pledges as he saith if return thereof shall be awarded

And further to save & keep you harmless in Replevying said property, then you are to Cause the said goods & Chattels to be replevied & delivered to the said William Kern without delay and to summon the said Charles Mason Executor aforesaid personally to be & appear before our circuit court in & for said county on the first day of the next term thereof to be holden at the Court house in the town of Lacon on the third Monday in the month of October next to answer the plaint of the said William Kern for unjustly detaining the goods & Chattels aforesaid And make 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 execute the same

Witness John Ruess clerk of said Court this 23^d day
Seal of June in the year of our Lord 1881

John Ruess clerk
with said writ the sheriff made the following return (Orig)

Executed this writ by Replevying the within described property this 11th day of October A.D. 1881 & left them in the possession of the defendant as by agreement hereto attached the within Charles Mason is not found in my county

G. J. Holt Sheriff, Marshall Co Ill

Accompanying which return was the following agreement

It is agreed by the parties that the sheriff may return this writ executed by levying the same on the goods & Chattels within described and that the said Goods are left in possession of the defendant as per agreement of the 23^d of June 1881 on file Replevin bond waived

Oct 1st 1881

Ramsey & Fleming
Attys for Deft

The agreement referred to of the 23^d of June 1881 & on file with the papers in said cause is in the word & figure following (Orig)

It is hereby agreed by the parties to the foregoing suit that property claimed by plaintiff in said suit to wit the Boiler back stand & mud valve may remain in its present position in the Engine house attached to said mill in the possession of the defendant & subject to his control until the right of the plaintiff is decided without prejudice to the rights of the plaintiff & should the claim of the plaintiff be sustained the said property shall be delivered up to the plaintiff or its value paid to him the right of the plaintiff to be the same as if the writ of Replevin had been executed by taking the property into possession of the Sheriff - Replevin bond waived

Sacon June 23rd 1881

Charles Mason Executor &c

Isa S Leum of counsel plaintiff

Whereupon on the 10th day of October 1881 the plaintiff filed his Declaration herein which is as follows (viz)

State of Illinois

Marshall County

Marshall Circuit Court

To October Term A D 1881

William Leum the plaintiff in the suit complains of Charles Mason Executor of Jesse C Smith deceased defendant in a plea of Replevin for that the said defendant on the first day of June in the year of Our Lord one thousand Eight hundred & fifty one at the County of Marshall aforesaid was possessed of certain Goods & Chattels of the said plaintiff (to wit) One Boiler for Steam Engine Also one back stand and one mud valve belonging to said Boiler which Boiler back stand & mud valve were sold & conveyed by John W Basley to said William Leum by Chattel Mortgage dated the 2nd day of January 1849 which said Goods & Chattels were then in possession of John W Basley at Smiths Mill in Sacon & now in possession of the defendant herein in the Engine house attached to said Mill

to be delivered to the said plaintiff when the said
defendant should be thereto afterwards requested
And the said plaintiff avers that on or about the twenty
second day of June 1881 and before the commencement
of the suit at the County aforesaid the said plaintiff demand-
ed said goods & Chattels of the defendant & the said
defendant then & there refused & still refuses to deliver
said goods & Chattels or any part thereof to him the
said plaintiff; plaintiff also avers that he demanded
said goods & Chattels of said Jesse C Smith in his
life time (to wit) about the 14th day of June A.D. 1880
at the County of Marshall aforesaid & that the said
Smith then & there refused to deliver said goods and
Chattels to the said plaintiff & so the said defendant
unjustly & wrongfully & wrongfully detains the same
to the damage of said plaintiff six hundred
Dollars

Henn & Bangs

Plff's Atty

And now this cause came on to be heard upon the agreed
case made by the parties which is in the words & figures
following to wit

William Henn	{ Marshall County Court October	
Charles Mason Exr of		Term A.D. 1881
Jesse C Smith deceased		Replevin

It is admitted & agreed by the parties hereto that
John W Masley held & occupied the Steam flouring mill of
said Jesse C Smith in Lacaw under & by virtue of a Lease
a copy of which is herewith filed as part of the evidence
in this cause from the 10th of March 1847 until the
day of June 1849 holding over his term of two years that some
time in the Spring of the years 1848 it became unavoidably
necessary in order to operate said mill to procure a new

Boiler for the Steam Engine the old one having given out & failed to perform its office. that said Smith being absent in the state of Iowa & Silas Ramsey being the agent of said Smith at Lacon said Baxley informed said Ramsey of the failure of the boiler & of the necessity of procuring an other & consulted with him upon the subject that said Baxley proceeded to St Louis & procure a new Boiler with Mud Valve & Back Stand & had the same set in the furnace in the Engine house attached to said Mill where the same has remained & been used up to the present time for the purpose of operating said Mill It is also admitted that said Baxley is indebted to said Heun the plaintiff to the amount of five hundred Dollars & that to secure the payment thereof said Baxley made & executed to said Heun the note and Chattel Mortgage copies of which are hereto attached as part of the evidence in this cause that the goods & chattles mentioned in said Mortgage are the same which were purchased by said Baxley & put into the Mill as before stated & the same for which this suit was brought

It is further admitted that on the seventh day of April 1849 a writ of Injunction was granted by said Court at the instance of said Smith & duly served by the sheriff of said County on the said Baxley & said Heun enjoining & restraining them & each of them & others in their behalf from taking possession & removing said Boiler & Valve & Back Stand that said Injunction continued until the October term of said Court 1849 when on the second day of November it was dissolved & the cause continued with leave to amend the bill till it abated by the death of said Smith

It is further admitted that on the first day of November 1849 the day when said Note fell due the same

was presented to said Basley for payment & payment not being made said Chattel Mortgage was produced & said goods & Chattels demanded & said Basley offered to turn them out according to the provisions of said Mortgage that the same were then in the possession of said Smith & were demanded by said Kew of said Smith on the 4th day of November 1849 & again on the 6th & again sometime afterwards before the death of said Smith that said Smith at each & every time absolutely refused to deliver the same.

It is also admitted that at the expiration of said lease one year rent of said Mill remained in arrear that no settlement was made that no offer was made by said Smith or by any one for him at that time to pay said Basley for said Boiler Backstaid & Mud Valve.

It is agreed that said Smith died about the month of August 1850 & that said Mason is duly authorized to act as executor of his estate.

October 12th 1851

Ramsey & Whiting Attys for deft
Kew & Bangs of counsel for plff

Copy of Note

\$500 ¹⁰⁰/₁₀₀

Gaon January 27th 1849

on or before the first day of November next I promise to pay to the order of William Kew Five hundred Dollars Value received

J. W. Basley
JWB

The copy of the lease referred to in the above agreed case is as follows (viz) -

Articles of agreement entered into the 3rd day of February A.D. 1847 between Jesse C. Smith party of the first part & John W. Basley & John Limer parties of

the second part all of the town of Lebanon voting that the said Jesse B Smith party of the first part for & in consideration of the rents & covenants herein after named has this day rented unto the said parties of the second part his steam flowing mill fixtures & mill lot and also the two lots and appurtenances on the East side of Water Street & immediately ^{opposite} ~~back~~ of the Mill & Mill lot except that the said Smith reserved to himself the privilege of using the frame house on said lots untill he disposes of the Engine now stored in the same for the term of two years from the 18th day of March next and the said Smith guarantees to the said party of the second part the quiet & peaceable possession of the same for the said term of two years and the said Raelley & Lusk the said parties of the second part agree on their part to pay unto the said Smith or his agent for the use & occupation of the aforesaid premises Two hundred Dollars on the 15th day of July 1847 Two hundred Dollars on the 15th day of November A.D. 1847 Two hundred Dollars on the 15th day of March A.D. 1848 & Two hundred & thirty three Dollars on the 15th day of July A.D. 1848 Two hundred & thirty four Dollars on the 15th day of November A.D. 1848 & Two hundred & thirty three Dollars on the 15th day of March A.D. 1849 at which time said parties are to deliver up peaceable possession of said premises to said Smith or his assigns, the said parties of the second part also agree to have said Engine & Mill run by good & sober & competent men & also to put up a new set of wheat elevators & annex & also put a floor upon the basement to be allowed the sum of five ⁰⁰/₁₀₀ Dollars for putting up the wheat elevators & to be deducted from the first payment of rent the floor to be done as cheap as possible & to be deducted from any payment of rent that may become due after the same is done and any other fixtures the said parties of the second

part may put in said Mill beneficial to the same
at the expiration of said term said Smith agrees to pay
for at a price to be agreed upon between said parties
or said parties to have the privilege of removing the same
at the expiration of two years said Mill to be delivered
up at the expiration of said term to said Smith in as
good repair as received natural wear & fire only excepted
In testimony of the foregoing the said parties have hereunto
set their hands & seals the day & year just above written
Signed & sealed in the presence of { J. C. Smith Seal
Silas Ramsey { John W. Waseley Seal
Duplicate Copy { John L. Litch Seal

Lacon April 9th 1847

For value received I affirm the within article of
agreement to Silas Ramsey with my hand & seal
the day & date above written
Copy J. C. Smith Seal

The following is a copy of the Chattel Mortgage
referred to in the foregoing agreement (viz)

This Indenture made & entered into
this 2nd day of January in the year of our Lord Eighteen
Hundred & forty nine between John W. Waseley of the
County of Marshall & State of Illinois of the first
part & William Allen of the County of Marshall
& State of Illinois of the second part It is covenanted that
the said party of the first part for & in consideration
of the sum of five hundred Dollars & — cents in hand
paid the receipt whereof is hereby acknowledged
does hereby grant bargain & sell convey & confirm unto
the said party of the second part his heirs & assigns forever
all & singular the following described goods & Chattels
(to wit) One Worley for Steam Engine now in possession

of said Waxley at Smiths Mill in Vacon also one
Boat Stand & One Mud Valve belonging to the same

Together with all & singular the appurtenances there-
unto belonging or in anywise appertaining To have & to
hold the above described Goods & Chattels unto the said
party of the second part his heirs & assigns forever

provided always that these presents are upon this express
condition that if the said John W. Waxley his heirs
executors administrators or assigns shall on or before
the first day of November A.D. Eighteen hundred & forty
nine pay or cause to be paid to the said William Henry
or his lawful attorney or attorneys heirs executors admini-
strators or assigns the sum of five hundred Dollars &
cents according to the tenor of a certain promissory
note or obligation dated the 2th day of January A.D. Eighteen
hundred & forty nine executed by the said John W.
Waxley to the said William Henry that then & from
thence forth these presents & every thing herein contained
shall cease & be null & void any thing herein contained
to the contrary notwithstanding

provided also that the said John W. Waxley is to
retain possession of & have the use of said goods and
chattels until the day of payment aforesaid & also at
his own expense to keep said goods & chattels
And also at the expiration of said time of payment
if said sum of money shall not be paid to deliver
up said goods & chattels in as good condition
as they now are to the said William Henry or his heirs
executors administrators or assigns

And provided also that if default in payment as
aforesaid shall be made that then the said William
Henry or his attorney agent or assigns or heirs exec-
utors or administrators shall take possession of said

goods & chattels & sell the same at public sale to
the highest bidder for cash in hand after giving at
least twenty days notice of the time place & terms
of said sale together with a description of the goods
& chattels to be sold by at least four advertisements
posted up in public places in the vicinity where said
sale is to take place to make the sum of money & interest
as aforesaid together with his reasonable costs in
so doing and if there shall be any overplus
he shall pay the same to the said Wesley or his legal
representative In witness whereof the said party
of the first part hath hereunto subscribed his name
& affixed his seal the day & year first herein written
Signed sealed & delivered in presence of

us } J. W. Wesley Seal
State of Illinois }
Marshall County }

The Mortgage was acknowledged before
me by John W. Wesley the Mortgagor the 17th day of March
A.D. 1849 Aloah S. Mc Kinney Justice of the peace

On which Mortgage was the following endorsement
Filed for record March 17th 1849

John Burns R. M. L.
State of Illinois } Recorder's Office April 4th 1849
Marshall County }

I John Burns Recorder of said County
hereby certify that I this day recorded the within Mortgage
& certificate in Book 8 page 78

John Burns Recorder
The Supplication referred to in the foregoing agreement
is as follows

State of Illinois } The people of the State of Illinois
Marshall County } To John W. Wesley William Kern and
to their Counselors Attornies solicitors & agents

& each & every of them Greeting

Whereas it has been represented unto me in our Court of Chancery in & for said County of Marshall on the Complaint of Jesse B. Smith the Complainant that he has lately exhibited his bill of Complaint in our said Court of Chancery before the Honourable J. L. Dickrey Judge of our said Circuit Court against you the said John W. Baxley & William Kern to be relieved touching the matters therein complained of in which said bill it is stated among other things that you are combining & confederating to injure the said Complainant touching the matters set forth in said Bill & that your doings & doings in the premises are contrary to Equity & good conscience We therefore in consideration thereof & of the particular matters in the said bill set forth do strictly command you the said John W. Baxley & William Kern & the persons before mentioned & each & every of you under the penalty of the law that you do absolutely desist & refrain from removing the boiler & fixtures or any machinery or fixtures out of the mill or from the same or in any wise injuring the same until the further order of the ^{said} Court of Chancery

Witness John Kerns Clerk of our said Court
& the seal thereof at Lacon this 17th day of April
1849

To the Sheriff of Marshall County to execute

John Kerns Clerk

Which writ has the following endorsement by
Executed the within writ of Injunction by sending
the same to the within named John W. Baxley & William Kern
& delivering to each a true copy on this 17th day of April
1849 Service 2 or copy 100 Mileage 12 1/2 Return 12 1/2 228

Henry S. Crane

Sheriff of Marshall Co

on the 22nd day of October 1851 the parties to said suit
made & filed in said cause the following agreement
(viz)

William Allen	} Replevin
Charles Mason Est ^{ee}	
Jeffer C Smith	

It is further agreed by the parties
to this suit that in case judgment is given in favour
of the plaintiff the court or a jury shall assess the value
of the property found to be in the plaintiff & detained
by the defendant & judgment shall be entered against
defendant for said sum so found due & assessed
to be paid in due course of administration

O C 22nd 18 51

Ramsey & Wellingford deft
Allen & Mangs for plff

And the parties also further agree that the value of the property
Replevied is three hundred & fifty Dollars and the parties being
fully heard & the court fully advised finds for the plaintiff
& that the property mentioned in said agreed case is the
property of the plaintiff And thereupon the plaintiff
moved the court to assess the damages for the detention
of the plaintiff the only evidence to entitle the plaintiff
to such damages being the agreed case aforesaid &
papers aforesaid and thereupon the court decided that
the plaintiff was entitled to six percent interest per
Annum on the sum of three hundred & fifty Dollars the
value of said property from the time demand was
made therefor on 100th Feb^{ry} 1849 the same amounting to the
sum of \$414² There was no other evidence in the case

Whereupon the following judgment was rendered in
said cause & entered of record ~~to wit~~ on the 24th day of
October A D 1851

William Heene
vs
Charles. Watson Executor
of Jesse C. Smith

Replevin

This day come the parties by
their attorneys & this cause is submitted to the Court upon
the facts stated in their agreement herein filed & the papers
herein filed & referred to in said agreed case a jury being
waived And having heard the proofs & allegations of the
parties & being fully advised in the premises the Court
is of opinion that the right to the property herein replevied
is in the plaintiff. And the parties ~~agreeing~~ ^{agreeing} that
the value of the property may be estimated by the
Court at the sum of three hundred & fifty Dollars
and that the Court assess the damages thereon for the
detention of said property all of which is submitted to
to the Court by the agreement of the parties stated in the
presence of the Court & contained in the said agreement
herein filed and the Court having assessed the plaintiff's
damages for the detention of said property at the sum of
fortyone Dollars & fortytwo cents

It is therefore considered by the Court that the plaintiff
have & recover of the defendant the sum of three hundred
& twentyone Dollars & fortytwo cents the value of the
property & damages aforesaid for the detention thereof
likewise his costs & charges by him about his suit in this
behalf expended to be paid by defendant in due
course of administration

To the foregoing decision of the Court the defendant excepted
& prayed that his bill of exceptions may be allowed
signed & sealed by the Judge & made part of the record
in this cause which is done

J. S. Dickey LS

State of Illinois } Clerk's office circuit court
Marshall County }

I John Runns Clerk of said court
do hereby certify that the foregoing is a true & perfect
copy of the record & proceedings had in said circuit
court at the October term A.D. 1881 in the foregoing entitled
cause wherein William Heen is plaintiff & Charles
Mason Executor of Jephthah Smith is defendant as appears
from the records & files in my office.

Witness my hand & the seal of said court
the 28th day of May A.D. 1882

J. M. Runns

Clerk Circuit Court

Marsh
Wm. Thayer
W.

Charles Mason, Esq.
of J. C. Smith &
Record

Col's fee for making & certifying
this Record \$9.00

Filed June 28. 1852.
L. Schmitt, Clerk.

