No. 12087

Supreme Court of Illinois

Bell

---

vs.

Shrieve

71641

Page 1

Pleas before the Honorable Edwin S Leland Judge of the Ninth Judicial District of the State of Illinois Presiding in the Circuit Court of Marshall County— at a Term thereof begun and holden on the Twenty fourth day of January in the year of our Lord one thousand eight hundred and fifty three at the Court house in the Town of Lacon in said County of Marshall and State of Illinois

Present

Hon— Edwin S Leland Judge

William H L Wallace States Attorney

Greenberry L Fort Clerk &

Henry L Crane Sheriff

Be it remembered that— heretofore that is to say on the Twenty seventh day of July A. D. 1852 George S. Bell filed in the office of the Clerk of said Court

L2087-1

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Transcripts from the Docket of David Chamberlin one of Hezekiah I Crane Justices of the Peace of said county in a suit wherein Joshua Shrieve is Plaintiff and the said George I Bell is the defendant which said transcripts are as follows that is to say.

Transcript from Chamberlin

Joshua Shrieve, vs George Bell } July 3d 1852 this suit-brot in an action of Trover Damages $85.00

Justices fees 68
Trans paid by plff 35
Constable fees 95

Summons issued returnable on the 10th day of July at 10 oc A.M and given to D.M Robertson const Served the within by reading the same to the within named Defendant July 6th 1852 D.M Robertson const

1852 July 10th the defendant appeared and filed his affidavit praying for change of venue. Change granted and the papers ordered to H.I Crane the next nearest Justice of the Peace.

A true copy taken from my Docket of the proceedings in the above entitled cause
July 10th 1852 D Chamberlin J.P.

Indorsed Joshua Shreve vs Geo Bell Filed 27th July 1852 J Burns Clerk

Transcript from H. Crane

State of Illinois Marshall County ss

Joshua Shieve
vs
George Bell

Change of Venue from David Chamberlin Esquire

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D Chamberlin fees	1 03	July 3d sent Brot in an
Doct sent	12½	action of Trover Damages $85.00
Ent commence	12½	Summons issued returnable
Subp for Plff	18¾	on the 10th day of July at 10 oc
Subp for Deft	18¾	A.M. and given to D M Robertson
Venire for jury	25	const
Swearing jury	37½	Served the within by reading the
Swear 4 wits	25	same to the within named
Ent judgement	25	Deft July 6th 1852
J P fees	$1.75	D M Robertson const
Justice Chamberlin fees	1.03	1852 July 10 the defendant
Const Rs fees	9.50	appeared and filed affidavit
Jury fees Pd by Plff	1.50	praying the change of
Wits fees.	6.50	Venue. Change granted
	$20.28	and the papers directed to
Ent appeal	25	A J Crane the nearest
Bond	50	Justice of the peace
Transcript	25	A True Copy taken from
Paid by Deft.	$1.00	my docket of the proceedings
Wits Jus John Hedenck	50	in the above entitled cause
John Clemens	50	
W. Latimus	50	July 10th 1852 D Chamberlin J.P.
J C Bell	50	
Charles Cliff	50	1852 July 10 Parties appeared
Geo Bell	50	
B Martin	50	and the cause continued until
John C Clemens	50	
2d day Wits Woolf	4.00	the 13th July 1852 at 10 Oclk AM
Cuse Perry	50	
Jas B Martin	50	Subp issued for Charles Cliff
John C Clemens	50	
James C Clemens sen	50	Mark Bangs Levi Fleiber & John
Pro Deft		
Charles Cliff	50	Hedenck on part of Deft & given
John Hedenck	50	
Mark Bangs	50	to Const Robertson
Levi Fleiber	50	
	6.50	

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Subp on part of Plff issued for Pierce Perry Jr James B Martin John P Clemens & James Clemens and given to Const Robertson Venire for jury issued at request of Plff and given to Const Robertson Returnable on the 13th July 1852 at 10 oclock A M.

1852 July 10th Subps returned served by reading 8c

1852 July 13th Parties appear and a jury being empannelled and returned to Wit Thomas C Nichols George W F Bird Abraham S Fishburn William Bird George O Barnes, and Joseph Kuhn who being sworn after hearing the evidence &c on their oaths say that the said George Bell is guilty of the Trover & conversion in manner and form as the said Joshua Shrieve hath alledged against him, and that the said Joshua Shrieve hath ~~all~~ sustained damages by reason thereof to sixty five dollars.

Therefore it is considered that the said Joshua Shrieve do recover against the said George Bell his damages aforesaid & the jury aforesaid in form aforesaid apeped to sixty five dollars and ~~four~~ his costs which costs are taxed at twenty dollars and twenty eight cents.

From which judgment Deft Damages 65,00
has taken appeal Cost bill 20 28
85,28
Entry appeal 2,25
Bond 5,00
Transcript ,25
1,00
Paid by Deft

Page 5

State of Illinois Marshall County

I Hezekiah I. Crane a justice of the Peace of the county aforesaid certify that the foregoing Manuscript and the papers accompanying the same contain a full and perfect Statement of all the proceedings had before me in the cause aforesaid between the parties in the plea aforesaid Given under my hand and seal at Lacon the twenty seventh day of July AD 1852

H I Crane J P [Seal]

Indorsed. Joshua Shriene vs George Bell Transcript—
Filed July 27th 1852 J Burns Clk

Summons

State of Illinois
Marshall County ss

The People of the State of Illinois to any Constable of said County Greeting

You are hereby commanded to summon George Bell to appear before the undersigned a justice of the Peace of said County at his office in Lacon in said county on the 10th day of July at 11 o'Clk A.M. in the forenoon to answer Joshua Shriene of A Plea of Trespass on the case for converting and disposing of the goods and chattels of the said Joshua Shriene to his damage Eighty five dollars and have you then and there this precept Given under my hand

51 2087-3

and seal this 3d day of July 1852

David Chamberlin J P Seal

Endorsed

Summons Joshua Shreve
vs George Bell. Damages $ 85.00
Cost .50 Served the within writ
by reading the same to the Deft
July 6th 1852 Service 25
Mileage 70 = $ 0 95 D M Robertson
Const Filed July 27th 1852 J Burns Clk

State of Illinois
Marshall County } ss

Venire

The People of the
State of Illinois to any Constable of
said County Greeting

We Command you to Summon
six lawful men of your county
to appear before me at Lacon
on the 13th day of July Inst at
10 o'clock A M. Who are not of
kin to Joshua Shreve Plff or to
George Bell. defendant to make a
jury between said parties in a
plea of Debt Case as well the said
plaintiff as the defendant have put
themselves upon the county for
trial and have there then the names
of the jury and this writ

Witness my hand and seal at Lacon the
10th day of July A D 1852

H I Crane J P (Seal)

Page 7.

Indorsed,— I have executed the within writ by summoning six jurors namely Thomas C Nichols George W Bird Abraham S Fishburn William Bevel George C Barnes and Joseph Kuhns & they are all present before the Court July 13th 1852
Service 50 attendancy jury 25 — $0,75

D M Robertson const

Joshua Shreve vs George Bell
Venire for a jury to 13th July 1852 at 10 oclock A. M. Filed July 27th 1852 J Burns Clerk,

Defts offset

Joshua Shreve vs George I Bell } Trover before Justice Crane

Defendants Defence General Issue

Set off to wit:

To 1 Note	$ 206,50
Cash paid on execution for said Shreve ads of Thompson	46,21
Cash	10,00
Keeping of horse 1 week hay & Corn	1,00
Cash paid Samuel Rogers	1,00
Board & horse keeping at sundry different times	5,00
Use of horse two weeks	7,00

Indorsed. Defts offset 13th July 1852
Filed 27th July 1852 J Burns Clerk

[2087-4]

Bond

Know all me by these presents that we George Bell and Joseph M Bell are held and firmly bound into Joshua Shrieve in the penal sum of two hundred 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 the ninetieth day of July A.D. one thousand eight hundred and fifty two

The condition of the above obligation is such that whereas the said Joshua Shrieve did on the thirteenth day of July A.D 1852 before Hezekiah I Crane a justice of the peace of the County of Marshall recover judgement against the above bounden George Bell for the sum of eight five dollars and twenty eight cents from which judgement the said George Bell hath taken an appeal to the circuit court of ~~Marshall~~ the County of Marshall and State of Illinois Now therefore if the said George Bell shall prosecute his appeal with effect and shall pay whatever judgement may be rendered by the court upon dismissal or trial

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of said case appeal then the above obligation to be void otherwise to remain in full force and effect

George J Bell (Seal)
Joseph M Bell (Seal)

Approved by me at my office the twenty seventh day of July one thousand eight hundred and fifty two

H I Crane J P (Seal)

Indorsed Joshua Shrieve vs George Bell Bond on appeal
Filed 27th July 1852 J Burns clerk

Whereupon was issued a Summons to the said Joshua Shrieve of which the following is a copy

Summons

The People of the State of Illinois to the Sheriff of Marshall County Greeting

We command you to summon Joshua Shrieve to appear before our circuit on the first day of the term thereof to be held at Lacon within and for the said county of Marshall on the 2d day of September next then and there in our said Court to answer George J Bell on an appeal by him obtained from a judgement rendered against him before H I Crane J P.

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on the 13th day of July 1852 for $65 00
costs on suit-
Hereof fail not and make due return
of your doings hereon
Witness John Burns
Clerk of our said Court and
the seal thereof at Lacon
this 27th day of July in
the year of our Lord one
thousand eight-hundred
and fifty-two
John Burns Clerk

Seal

Indorsed
Served the within by reading
to the within named Joshua
Shrieve this 19th day of Sept. 1852
Service 50
15 Miles 75-
return 10
$1,35
G L Fort- Sheriff
of M. Co. Ills

Joshua Shrieve vs George I Bell
Summons Filed Oct-11th 1852 J Burns Clerk

Defts
Pleas

Joshua Shrieve
vs
George I Bell

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Wednesday February 2d AD 1853
Court met pursuant to adjournment
Present same as heretofore.

Be it remembered that among other
things the following proceeding was
had

Joshua Shrieve
vs
George I. Bell } Appeal

Trial

Be it remembered
this day this cause comes on to be
heard. The Parties ~~present~~ personally and
by Counsel. were present The Plaintiff by Samuel
L. Richmond For the Defendant
Ino J. Fenn Mark Bane Samuel L
Fleming and I L Dickey. and the
issue being joined a jury comes
to try the same Who are as follows
To wit. Amasa Garrett James
Thompson William Callen Thomas
Miller Manuel Snyder Samuel
Richey Cornelius Huffman John
Stevens Alston Bowman John
A Warren Stephen B Wilmoth James
W Maxwell who after hearing the
evidence of the parties retired to
consider of their verdict. after which
they return into court the following
Verdict To wit. We the jury find
for the Plaintiff. and assess his

[illegible]

damages at sixty five dollars.
It is therefore considered and adjudged by the Court that the said Plaintiff have and recover of the said defendant the aforesaid sum of Sixty five dollars likewise his costs and charges by him about this his suit in this behalf expended and it is ordered that ~~execution~~ he have execution therefor.

Plff Instructions

The Plaintiff asks the Court to instruct the jury
1st That if the jury believe from the evidence that the horse in controversey was owned by the Plaintiff at least and that he was entitled to the posepion of said horse at that time and if they also believe from the evidence that the plaintiff made a demand of Bell for the horse when the Plaintiff was entitled to the posession and that said defendant refused to give up the horse when demanded they will find for the Plaintiff
Indorsed
Joshua Shrieve vs George Bell Plffs Instructions Filed Feb 3d 1853 G Hart Clerk

For Defft

Defendants Instructions

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Given ("A")

That if Bell had posepion of the sorrel (Bill) horse with the right to retain the posepion of him — and the horse in controversary was delivered to Bell by Shrieve with the understanding that he was to be kept by Bell in the Steed of the Bill Horse — and to be held upon the same terms that the Bill horse was held by Bell — then the right to the posepion of the horse in question would depend upon Bell's right to retain the posepion of the Bill horse if the Change had not been made

Given.

That if it is proven that Shrieve had a Sorrell horse (Called Bill) in the fall of 1851 — and Bell took posepion of said horse in the fall of 1851 and there is no evidence that ~~Shrieve~~ Shrieve had any other sorrel horse at any time — the jury may infer from such evidence that it was the Bill horse that was Mortgaged

Indorsed Joshua Shrieve vs George Bell Defendents Instructions
Filed Feb 2d 1853 G L Fort clk

[12087-7]

Feb 2d AD 1853. Court in Sefion Present Same as heretofore

Joshua Shrieve
vs
George I Bell
Appeal

Order of Appeal

Be it remembered that this day comes the defendant and moves the Court for a new trial herein to grant a new trial in this cause which motion is overruled by the Court.
Whereupon ~~comes~~ prays an appeal to the Supreme Court of this State which is allowed upon his entering into bond within forty days from the adjournment of this Court with John E P Bell as security in the penal sum of one hundred dollars.

Appeal Bond

Know all men by these presents that we George I Bell and John E P Bell are held and firmly Bound unto Joshua Shrieve in the penal sum of one hundred 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 & seals

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the twenty third day of February in the year of our Lord one thousand eight-hundred and fifty three,

The Condition of the above obligation is such that Whereas on the second day of February AD 1853 in the Circuit Court of Marshall County Illinois in a certain action of Trover & Conversion pending in said Circuit Court at the January Special Term thereof Wherein the above ~~Lowndes~~ named Joshua Shreve is Plaintiff and the said George I Bell is defendant a judgement was rendered in favor of said Plaintiff for the sum of Sixty five dollars and the Costs of said suit from which said judgement of said Court the said defendant George I Bell has prayed an appeal to the supreme court of the State of Illinois.

Now if the said George I Bell shall pay and satisfy the said judgement interest and damages in case the said judgement shall be affirmed, and shall duly prosecute his said appeal then this Bond shall be void otherwise remain in full force

George I Bell (Seal)
John E Bell (Seal)

Indorsed
I hereby approve of the within bond
Jacon March 15th 1853 G L Fort Clerk
Joshua Shreve vs George I Bell appeal Bond Filed March 15th 1853 G L Fort Clerk

Σ 12089-B
Book 12

State of Illinois Marshall County & Circuit-court thereof Jan. Special Term Term 1853—

Joshua Shrieve
vs
George I Bell } Action of Trover
Appeal from
Judgement of the
Justice of the Peace

Be it remembered that on the trial in this suit in said court. The Plaintiff called Pierce Perry who testified in substance that sometime about the first of April 1852— Witness and Plaintiff went to defendants house — found defendant at his Stable — There were four horses in the Stable at that time one of which was a bay horse,
That Plaintiff in presence of defendant called the said bay horse his offered to sell him to Witness— Defendant at the same time called the said horse Shrieve's and encouraged witness to buy him of plaintiff, Witness after some negotiation agreed to take the horse at the price asked viz $165—
Plaintiff then went to take

said bay horse away when defendant objected - said he could not have him until he got done plowing - Therefore a dispute arose between Plaintiff and defendant in which defendant said that Plaintiff had let him have his Bill horse last fall (fall of 1857) to keep through the winter and Spring work — and that Plaintiff had taken the Bill horse away and left this bay horse in the possession of Deft — in the place of the Bill horse Defendant complained that the bay horse could not do as much work as the Bill horse — in the same conversation Plaintiff said that defendant agreed to let him have the Bill horse in the Spring when he should commence breaking prairie, and he had commenced breaking prairie — That the reason why he took the Bill horse away and left the bay ~~horse~~ for his sequel was because the bill ~~horse had~~ got lame. — Defendant said he was not so lame but that he was worth more to work than the bay horse. — Defendant in the same conversation said to Plaintiff — You can have your horse on the tenth ~~day~~ of May and not before —

Plaintiff and witness left without getting the horse —

12087-D

Witness further stated that Plaintiff had done some breaking that spring before that conversation — On cross examination Witness stated that that was earlier than prairie breaking was usually done —

That people commonly begin to break in May that he had known some people to break in March and April — Witness further stated that the Bill horse he had spoken of was a sorrel horse — and that the bay horse he had spoken of was at the time of the demand worth sixty five dollars — Plaintiff called one Clemens as a witness, who testified that said bay horse was worth sixty five dollars — and on that proof rested his case —

Defendant after proving that the following Chattel Mortgage and note were executed by plaintiff read the same in evidence The following are true copies thereof —

This indenture made and entered into this thirty-first day of December in the year of our Lord eighteen hundred and fifty between Joshua Sheive of the County of Marshall and State of Illinois of the first part and George I Bell of the County of Marshall and State of Illinois of the second part Witnesseth that the said party of the first part for and in consideration of the sum of Two hundred and six dollars & 50/100 in hand paid the receipt whereof is hereby acknowledged, do hereby grant bargain and sell convey and confirm unto the said party of the second part his heirs and assigns forever all and singular the following described goods and Chattels To wit

one bay horse & one sorrel horse and one lumber Wagon & one two horse harness together with all and singular the appurtenances thereto belonging or in anywise appertaining To have and to hold the above described goods and Chattels unto the said party of the secon part his heirs and assigns forever.

Provided always that these presents are upon this express

condition that if the said Joshua Shrieve heirs executors administrators or assigns shall on or before the first day of November A D eighteen hundred and fifty pay or cause to be paid to the said George I Bell or his lawful attorney or attorneys, heirs executors administrators or assigns the sum of Two hundred and six dollars and fifty cents together with the interest that may accrue thereon at the rate of six percent per annum from the thirty first day of December A D eighteen hundred and fifty until paid according to the tenor of one certain promissory note or obligation dated December 31 eighteen hundred and fifty and executed by the said Joshua Shrieve to the said George I Bell, that thenceforth these presents and everything herein contained shall cease and be null and void any thing herein contained to the contrary notwithstanding

Provided also that the said Joshua Shrieve to retain possession of and have the use of said goods and chattels until the day of payment aforesaid.

And also at his own expence to keep said goods and Chattels: and also at the expiration of said time of payment if said sum of money together with interest as aforesaid shall not be paid to deliver up said Goods & Chattels in as good condition as they now are to said George I Bell or his heirs executors administrators or apigns

And provided also that if default in payment as aforesaid shall be made that then the said George I Bell or his attorney agent or apigns or his executors or administrators shall take possession of said goods and Chattels and sell the same at public Sale to the highest bidder for cash in hand after giving at least ten days notice of the time place and terms of sale together with a description of the goods and 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 and 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 Joshua Shreve or his legal representative—

In witness Whereof the said party of the first part

J2087-H

the said party of the first part has hereunto subscribed his name and set his seal the day and year first herein written

Signed sealed and delivered in presence of } Joshua his Shreve mark ES

State of Illinois
Marshall County ss

This Mortgage was acknowledged before me by Joshua Shreve the Mortgagor this 31st day of Dember A D 1850

S W. Brooks Seal
Justice Peace

Copy of the promissory note read in evidence —

Lacon Dec 31 1850

For value received I promise to pay George T Bell two hundred and six dollars & fifty cents by the first day of November 1851 with interest

Joshua his x Shreve mark

Defendant then called then one John Bell who testified that sometime in June last he had a conversation with Plaintiff in substance as follows — Witness asked Plff whether he and

defendent had settled that difficulty about that horse — Plff said they had not that he intended to sue defendant = that his Lawyer advised him that he could make defendent keep the horse and he plff intended to do it — Witnes said he understood that defendent held the horse in the place of "Bill horse Plaintiff replied that is true. Then said the Witnes to the Plaintiff the matter will depend upon what terms defendent held the Bill horse on" Witnes was here asked "what reply plaintiff made to that?" Witnes said I do not remember that he made any particular answer to it = He did not deny it — Here Defendant rested the case — Plaintiff here recalled the Witnes Clemens who testified that Shriver bought the horse in Controversary from the son of the Witnes — Witnes was asked whether this bay horse was, or was not the bay horse mentioned in the Mortgage Here defendants attorney said you need not examine on that subject — Defendant does not claim that the horse in Controversary was embraced in the Mortgage — He only claims that he held

[12087-12]

him in Stead of the Bill horse, and he the Bill horse is embraced in the Mortgage— and thereupon Witness was examined no further on that subject— and he did not answer the question.

This was all the evidence in the case

The Court at the request of the ~~Plaintiff~~ Plaintiff instructed the jury as follows, That if the jury believe from the evidence that the horse in Controversay was owned by the Plaintiff in April last—, and that he was entitled to the possession of said horse at that time and that the plaintiff made a demand of Bell for the horse when the Plaintiff was entitled to the possesion and that defendant refused to give up the horse when demanded they will find for the Plaintiff

To the giving of which instructions the defendant then and there excepted—

The Court at the request of the defendant instructed the jury as follows—

That if Bell had possesion of the Sorrel (Bill) horse with the right to retain the possesion of him and the horse in Controversy

Page 25

was delivered to Bell by Shreve with the understanding that he was to be kept by Bell in the stead of the Bill horse and to be held upon the same terms that the Bill horse was held by Bell then the right to the posession of the horse in question would depend upon Bell's right to retain the posession of the Bill horse if the change had not ~~been~~ been made —

That if it is proven that Shreve had a Sorrel horse (called Bill) in the fall of 1857 and Bell took posession of said horse in the fall of 1857 — and there is no evidence that Shreve had any other horse at any time — the may infer from such evidence that it was the Bill horse that was mortgaged — & These were all the instructions given in the Case — On the rendering of the Verdict the defendant moved the Court for a new trial which motion for a new trial was overruled by the Court — To which decision of the Court overruling said motion for a new trial the Defendant by his Counsel then and there excepted and prayed that this his bill of exceptions

[12087-19]

Should be signed & Sealed and made part of the Record which is done.

E S Leland Seal

Judge &c

Indorsed,

Marshall circuit-court

Shriver vs Bell.

Bill of Exceptions

Filed Feb 4th 1853

G L Fort clerk

Clerks fee of Marshall County

To Copy of Record 6,50

Certfy seal 35

$6,85

Page 27.

State of Illinois }
Marshall County } ss

I Greenberry L Fort Clerk of the Circuit Court of said County of Marshall do hereby certify the foregoing to be a full true and perfect copy of the Record and papers on file in the said Cause of ~~Ex~~ Joshua Shreve Vs George Bell, as appears of Record and on file in my office,

In Testimony Whereof I have hereunto set my hand and affixed the the seal of said Court at Lacon this first day of June in the year of our Lord one thousand eight hundred and fifty three

Greenberry L. Fort
Clerk

[12087-14]

State of Illinois - Supreme Court -
June Term 1853 -

George T. Bell
vs
Joshua Shreve
} Appeal from Marshall County -

And comes the said George T. Bell by T. L. Dickey & W. H. L. Wallace his attorneys and says that there is manifest error in the proceedings and judgment of the circuit Court of Marshall county - and that said judgment ought to be reversed - And assigns the following errors -

1st. The court erred in giving the instruction asked for by appellee -
2nd The court erred in overruling the appellants motion for a new trial -
3d - The court erred in giving judgment against the appellant -

Dickey & Wallace
for appellant

And the said Joshua Shreve says that in the record and proceedings aforesaid there is no error

B. K. Fox

And the said Joshua Shreve by Glover & Cook his attys. comes and says that in the record proceedings and proceedings aforesaid there is no error

Glover & Cook
for deft in error

[illegible]

~~Filed June 1853 3 Hundred~~

George T. Bell

vs.

Joshua Shriver.

Record-

63

Filed June 15th 1853.

L. Leland Clk.

By P. K. Leland D.C.

Release

1853

Geo. T. Bell
vs
Joshua Shrim
} Appeal from Marshall

I B. L. Cook state on oath that before this term or on the first day of the term I don't recollect which I received a letter from S. S. Richmond Esq counsel for appellee requesting me to attend to this case in this Court for appellee. That owing as I claim to the blind and illegible Style in which the letter was written I read the name Shaw instead instead of Shrim, that on tuesday or wednesday of last week I examined the record for Mr Shaws case & found none. I wrote to Mr Richmond telling him that the record was not here & asking for a Transcript. I received a letter Yesterday informing me that the record had been sent & one in which letter the name was written So that it may possibly be read Shaw, I looked at the record & found that while I had been writing for Mr Shaw. Mr Shrim's Judgment had been returned for his defendt

I State that the only reason why I did not join in error in this case was that I was deceived & misreading the name

I communicated the above facts to the counsel for appellant Yesterday last afternoon

I think from an examination of the record that there is no error in it but that the Judgment of appellee is a legal & just Judgment

B. L. Cook

Sworn to & subscribed before me June 21. 1858.
L. Leland Cl.

[2087-14]

Reed vs. Shriver

Affidavit.

Filed June 21st 1853.
L. Leland Clk.
By P K Leland Dep.

12087

Supreme Court - June Term 1853.

Bell vs. Shrieve - Appeal from Marshall.

This was an action of trover by Shrieve brought against Bell - for the value of a bay horse - July 3d 1852.

The case was tried by jury.

Note — The proof showed that on 31st Dec. 1850 Plaintiff executed a note to Bell for $206,50, to be paid 1st Nov. 1857

Mortgage — and at the same time executed a chattel mortgage to secure the same on "one bay horse", "one sorrel horse" & "one lumber wagon" - with a proviso that Shrieve shall keep possession until the day of paymt. & in default of paymt. Bell might take possession & sell to satisfy the debt & pay surplus to Shrieve - 2d pages 19. 20. 21.

The sorrel horse mentioned in the mortgage was usually called "the Bell horse" page 18. 24.

Page 17. — In fall of 1857 Shrieve surrendered to Bell the possession of the Bell horse named in the mortgage (page 17) with an understanding that he should keep him through the winter and Spring work.

Afterward, Shrieve - with Bell's assent

17. took away the Bill horse and left the horse in controversy worth $65 in the stead of the Bill horse to be held by Bell by the same right that he held the Bill horse.

See page 23.

About the 1st of April 1852 Shrive demanded of Bell the unconditional surrender to him of the horse in controversy - which Bell refused, but said he would give him up on 18th May 1852 -

Page 16. page 16 This is the conversion complained of.

At this interview Bell called the horse Shrieve's - and Shrive claimed that Bell had agreed to let him have the horse when he commenced breaking prairies that Spring - & he had broken some prairie that Spring - 17 -

18 Proud prairie breaking usually begun in May or June - 18 -

This was all the evidence.

The Court instructed the Jury - If Bell had possession of the Lowe (Bill) horse - with the right to retain the possession of him - and the horse in question was

Instruction delivered to Bell by Shrieve - with

(Page 25) understanding that he was to be kept by

Bell in the stead of the Bill horse and to be held on same terms that the Bill horse was held by Bell.

Then the right to the possession of the horse in question would depend upon Bell's right to retain the possession of the Bill horse if the change had not been made-

Verdict for Shriver - Motion for new trial - overruled - & the decision excepted to by Bell - See page 25.

The only point made in this is, that the verdict was palpably against the law and evidence and ought to have been set-aside by the Circuit-Court.

[12089-18]

Zell
vs
Shriver

Abstract & points
presented by
Appellant

Filed July 20th 1853
Leland Clk.
By P. K. Leland Dep.