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No. _____

Supreme Court of Illinois

Buckley

vs.

Lampett et al

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STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 233.

Richard
Dickley

STATE OF ILLINOIS, } THIRD GRAND DIVISION.
SUPREME COURT. } APRIL TERM, A. D. 1860.

SAMUEL B. BUCKLEY.
vs.
EDWIN D. LAMPETT

} *Error to Tazewell.*

Abstract of the Record.

This was an action of trespass, brought by Lampett against Buckley, a constable of Tazewell county, for taking one grey horse, one two-horse wagon, and set double harness, which he had levied upon by virtue of an execution in favor of Hamilton & Dugger against William Fields. The case was tried at the February term, 1860, of Tazewell circuit court, before Harriott, judge, a jury being waived by parties.

Page of
Record.

- 1 Precipe for summons.
- 2 Summons, dated twenty-third of January, 1860, and sheriff's return thereon.
- 3 Declaration, charging defendant with taking one grey horse, one two-horse wagon, and one double harness, the property of plaintiff.
- 4 Proceedings at February term, A. D. 1860.
- 5 1st. Plea of not guilty.
2d. Plea avowing the taking of the said grey horse, one two-horse wagon, and said double harness, as constable of Tazewell county, by virtue of an execution in favor of Hamilton & Dugger, for \$73 67 debt, and \$10 03 costs, and against William Fields; which execution came to the hands of defendant on the 24th of December, 1859; and that the said horse, wagon, and harness were the property of said William Fields, and not the property of said plaintiff.
- 7 The plaintiff's replication, that the said grey horse and one double harness in the declaration mentioned are the property of plaintiff, and not the property of said William Fields.
- 8 Issue joined.
- 8 Affidavit for security for costs.
- 9 Security bond.
- 10 Trial. Jury waived. Judgment for plaintiff for \$300.
- 11 Motion for new trial. Overruled. Prayer of appeal. Bond to be filed in thirty days, T. N. Gill as security.
- 12 Bill of exceptions setting out all the evidence.

Plaintiff offered a chattel mortgage, dated April 28, 1859, from William Fields to Thomas C. Reeves, for one dark bay horse, seven years old; one grey horse, eight years old; one two-horse wagon and one set double harness, conditioned that, if said Fields should pay said Reeves for the redemption of said property, \$300, on or before first of January, 1860, according to tenor and effect of a note, then the mortgage was to be void. Said Fields was to retain the possession.

15 Plaintiff called Alexander Orr, who testified that he knew the horse in controversy. The horse, wagon, and harness were levied upon and taken by the defendant on the twenty-first of January, 1860. The horse was taken to Gill's office. The horse and harness were in the stable of plaintiff at the time the levy was made. The stable was not on Fields' lot or premises. The plaintiff lives with William Fields. Fields is plaintiff's step-father. Plaintiff has been driving and using the team since midsummer. The horses had been kept in stable where they were taken by defendant, ever since in October, 1859. Plaintiff had possession of it when the levy was made.

16 Plaintiff then called William Fields, who testified that he knew the property in controversy. The property belonged to plaintiff on the twenty-first of January, 1860, and had since some time in the early part of the summer of 1859. Witness never owned the horse; he had owned the wagon the whole time, and sold to plaintiff in the summer of 1859. Plaintiff was to pay witness \$75, and pay off mortgage for team. I traded another wagon for the one in question, and Thomas C. Reeves paid \$50 difference for me. The plaintiff's mother bought the horse of Thomas C. Reeves last spring. I am the husband of the mother of plaintiff. I gave the mortgage, which has been read, to Thomas C. Reeves. The debt for which it was given was never paid. The mortgage was closed by Reeves. The horses, wagon, and harness were away when the mortgage became due. Plaintiff took them off that day and did not return with them until after night. As soon as the horses came back the mortgage was closed. The property was sold by Flory under the mortgage.

On cross-examination, witness stated, that he never owned the horse. Plaintiff's mother bought the horse for him. I gave my note for \$350, and the mortgage to secure the same. The price of the horse was included in the \$350 note; the horse was \$175, and the balance of the \$350 I owed Reeves. The horse was in possession of plaintiff while the mortgage was on the same. Plaintiff is my step-son. He lived with me. Plaintiff rented the stable in which the horse was kept of Joseph Bequith; it was not in my possession or on my premises.

I traded the wagon to the plaintiff about one year ago this spring. On the second of January, the team was over the Mackinaw, distant about seven miles. It was taken away by plaintiff on the morning of January 2d, and was returned same evening after night. Plaintiff did not want the property taken under the mortgage, but said it would have to go, but Reeves must come after it. The team was only gone one day—on the second of January, 1860—from morning till night. The horse was worth \$175, wagon \$95, harness \$30. Lampett, the plaintiff, was born in June, 1838, and will be twenty-two years old next June.

17 Plaintiff called Thomas C. Reeves, who is the mortgagee in the mortgage read. I sold the horse to Mrs. William Fields for her boy. The boy took the horse away at that time. The note was not paid at maturity. I took the property on the third of January, 1860. When I went after the property on that day, and found that William A. Tinney had levied two small executions against William Fields on the same, I paid off the same, and took the property, and had it sold under the mortgage; and I bid the property in myself, and then sold it to plaintiff. I went to Fields' on the second of January. The plaintiff was then away, and had driven off the team, and Mrs. Fields could not tell where he had gone, or when he would return with it, and Fields was not at home. On the third of January, early in the day, I told plaintiff that I must have the property. He said, if I must have it,

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I should come and get it. After I bought the property I kept it at my house. I sold it to plaintiff on the sixth day of January, 1860. He then took it away. The horse, wagon, and harness were worth \$300. Mrs. Fields made the bargain nearly a year ago for the horse. I never owned the wagon. William Fields gave me the mortgage on the property. I went for the property January 2d, 1860. Mrs. Fields told me that the plaintiff had gone to the country. I do not know that I should have taken the property that day.

- 19 Ralph Flory called by plaintiff, who testified that the property was sold at auction by him, at Reeves' request, under the mortgage, on the fourth or fifth of January, 1860. Reeves bought the property for \$215.
- 19 William A. Tinney called by defendant, who testified that he knew the property. Witness took possession of the property under two executions in his hands as constable, sent from Logan county, against William Fields, for \$47 72. Gill told witness, when he gave him the executions, to hold on, and see if Reeves took the property under his mortgage; and Reeves did not seize the property under the mortgage. On the third of January, 1860, Reeves came to me much excited, and paid off the executions in my hands and took possession of the property. I took the property from the stable of Fields in the forenoon of January 3d, 1860. The stable was pointed out to me by Tharp. I have repeatedly seen the property in William Fields' possession last spring, but don't recollect seeing him use them since midsummer.
- 20 Cross-examined by plaintiff. The property was not on the place where Fields lived, and don't know that Fields owned or had possession of the stable; and took the horse when no one was present. The execution read in evidence was sent to witness by defendant. Soon after he had surrendered the property to Reeves, witness declined taking it, and returned the execution to defendant.
- 20 Plaintiff admitted that there was a judgment obtained before James Galbraith, a justice of the peace of Tazewell county, in favor of Hamilton & Dugger, for \$73 67 debt, and \$10 03 costs, against William Fields, upon which execution issued on the twelfth of December, 1859.
- 20 Execution, dated 12th December, 1859, in favor of Hamilton & Dugger against William Fields for \$73 67 debt, and \$10 03 costs, issued by James Galbraith, a justice of the peace in Tazewell county.
- 21 Indorsement of constable: Execution came to his hand December 24, 1859, and levied on one grey horse, one wagon and double harness, January 21, 1860, and sold February 1, 1860.
- 22 Robert Parker called by defendant, who testified that the defendant was, at time of levy and sale of property, a constable of said county of Tazewell, state of Illinois. Thomas C. Reeves, the plaintiff, and William Fields live in the city of Pekin.
- 22 John Gridley called by defendant, who testified that he is clerk of the county court of Tazewell county, and that defendant was elected constable of said county on the 6th of April, 1858, and is still a constable of said county.
- 22 Rawley S. Doolittle was called by plaintiff, who stated that he employed the plaintiff to break some land for him in the fall and summer of 1859, with his team, and that he settled with plaintiff for the same.

The court gave judgment for plaintiff for \$300 and costs of suit.

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22 The defendant then moved for a new trial on the following grounds :

1st. The judgment is contrary to evidence.

2d. The judgment is contrary to law.

23 The court overruled the motion for a new trial, to which defendant then and there excepted.

23 Appeal bond.

24 Certificate, seal and signature of clerk to record.

Errors assigned :—

1st. The court erred in not granting a new trial.

2d. The judgment should have been for defendant.

3d. The judgment is manifestly unjust, and contrary to law and the evidence.

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Samuel B. Buckley

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Edwin D. Lampett

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Filed Apr. 19. 1860
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