

No. 12853

Supreme Court of Illinois

McBridge.

vs.

Kimmel.

State of Illinois
Mercer County, ss

Plead Continued and held at the
Court House in Keithsburg within and for the
County of Mercer in the Fifth Judicial Circuit
of the State of Illinois before the Honorable
John S. Thompson Judge of the said Fifth Judicial
Circuit, of the August Term thereof, to wit
on the 9th day of September in the year
of our Lord One Thousand Eight Hundred
and fifty-seven.

James C. McBride
vs
Henry Kimmel
In Replevin

Be it remembered that heretofore a writ
on the 23^d day of May A.D. 1856, ^{Case} James
C. McBride by his Attorney and filed with
the Clerk of the ^{said} Circuit Court of said County
of Mercer the following affidavit in replevin
to wit:

State of Illinois
Mercer County, ss Mercer Circuit Court
James C. McBride
vs
Henry Kimmel
In Replevin

(1255-1)

On this 23^d day of May
A.D. 1856 Personally appeared before me

James C McBride, who after being duly sworn according to Law says that he is the owner of fifteen hogs and two pigs of the value of one hundred and ten dollars described as follows, to wit, One Sow about two years old of a mixed color Black & white, marked a half crop off the right ear on the upper side mark somewhat defaced by the ear having been frozen For small pigs or shoats, black and white spotted one a barrow and marked as the above the other a Sow and unmarked fifteen hogs about one year old barrows and Sows some of of mixed or different colors and some of them white and all marked with a half crop off the upper side of the right ear and the left ear of one of said Hogs has been torn or slit by a dog.

That said hogs and pigs on or about the 16th day of May A.D. 1856 at the County of Mercer aforesaid were wrongfully and unjustly taken by the said ^{Defendant} ~~Plaintiff~~ removed from the possession of the said Plaintiff James C McBride. That the said Plaintiff is now entitled to the possession of said hogs and pigs That the said Defendant wrongfully retains the possession of the said property from the said Plaintiff That the same has not been taken for any tax assessment or fine levied by virtue of any Law of

this State nor seized under any execution
or attachment against the goods and Chat-
tels of said Plaintiff liable to execution or
attachment and further this deponent with-
out

(Signed) James C McBride
Sworn to & Subscribed before me this 23^d May
A D 1856

(Signed) Thomas B Coaburn
Clerk

(Endorsed) Filed May 23rd 1856

Thos B Coaburn Clerk

And thereupon the said Plaintiff by his attor-
ney sued out a Writ of Replevin against
the said defendant as follows, to wit,

The People of the State of Illinois to
The Sheriff of Mercer County

Greeting,

We command you that without delay you cause
to be replevied and delivered to James C McBride
the following described Goods and Chattels
to wit Sixteen Hogs & two pigs of the value
of one hundred and ten dollars described as
follows viz one Sow about two years old of a
mixed color Black & White marked a half crop
off the right ear on the upper side. Mark
somewhat defaced by the ear having been frozen
Two small pigs or Shoats Black and White spot-
ted one a barrow and marked as above the
other a Sow and unmarked. fifteen hogs about
one year old barrows & Sows some of a

mixed or different Colours and some of
them white and all marked with a half crop
off the upper side of the right ear the left
ear of one of said Hogs has been torn off
by a dog.

Which Henry Kimmel wrongfully
detains from the said James C McBride
as is said; and to summon the said Henry
Kimmel to be and appear before our Circuit
Court on the first day of the next Special
Term thereof to be held at the Court House in
Keithsburg in and for the County of Merca
on the last Monday of August next to
answer unto the said James C McBride for the
unlawful detention of the Goods and Chattels
aforesaid. Provided however that the said
James C McBride shall give you bond with
good and sufficient security to prosecute his
suit to effect without delay and make return
of the Goods & Chattels if return thereof shall
be awarded and further to keep you harmless in
exploring said property and have you there
and there the said Bond together with this
writ and an endorsement thereon of the manner
in which you have executed the same.

Witness My hand Clerk of our
said Court and the Seal there
of this 23 day of May in the

Year of our Lord one thousand eight
hundred and fifty six.

(Signed) Thomas B. Coaban, Clerk

And afterwards to wit on the 25th of August
A.D. 1856, the said Writ was returned to the
Court aforesaid by the said Sheriff, endorsed
as follows to wit,

I have served the within writ by reading the
same in the hearing of the within named Henry Kim
bell and by notifying the within named prop
erty and have delivered it to the within named
James C. McBride, on this 23rd day of May 1856

(Signed) James H. Linn, Sheriff

Filed Aug 25th / 56

Thos B Coaban Clerk

And afterwards to wit on the return of the
said writ, came the said Sheriff and filed
the following Bond to wit

Know all Men by these Presents, That we
James C. McBride & W. M. Hays are held and firmly
bound unto James H. Linn Sheriff of the County
of Mercer in the sum of Two Hundred and twenty
Dollars to be paid to the said James H. Linn his
heirs, executors or administrators to which pay
ment well and truly to be made we bind our
selves our heirs, executors and administrators
jointly, and severally firmly by these presents seal
ed with our seals and dated this 23rd day of May
A.D. 1856

The Condition of the above Obligation is such that
whereas, James C McBride did on the 23rd day May
A D 1856 Cause a writ of Replevin to be issued
from the office of the Clerk of the Circuit Court
of Mercer County, under the Seal thereof against
Henry Kimbell to recover possession of six
teen Hogs & two pigs of the value of one hundred
and Ten dollars described as follows, viz, one
Sow about two years old of a mixed color, black &
white marked a half crop off the right ear on the
upper side, mark somewhat defaced by the ear having
been frozen, two small pigs or shoats Black and
white spotted one a barrow & marked as above
the other a Sow & unmarked, fifteen hogs about
one year old barrows and sows some of mixed
or different colors, & some of them white & all
marked with a half crop off the upper side of the
right ear, the left ear of one of said hogs has been
torn or slit by a dog of the value of one hundred
and ten dollars which said writ is directed to and
placed in the hands of said Sheriff to execute and he
being about to execute the same, Now if the
said James C McBride shall prosecute his suit
against the said Henry Kimbell to effect and with
out delay and make return of said property as about
to be replevied if return thereof ^{shall} be awarded and shall
sue and keep himself said Sheriff in replevying
the said property at aforesaid then this obligation

to be void otherwise to remain in force
Signed Sealed and delivered in presence of (Signed) James C. McBride
(Signed) W. M. Houghton
James H. Linn

Md Aug 25th / 56

Thos B. Cobern Clerk

And now this 15th day of August A.D. 1856 comes
again the said James C. McBride by his attorney
and files his declaration herein as follows to
wit:

State of Illinois

Mercer County vs the August Term of the Circuit
Court of the aforesaid A.D. 1856

Henry Kimmel the defendant in this suit was
summoned to answer James C. McBride Plaintiff
in this suit of a plea wherein he took the hogs
Pigs and Shoats of the said Plaintiff seventeen in
number and unjustly detained the same, against
oaths and pledges until he and thereupon
the said plaintiff by his attorneys complains
to wit that the said defendant on or about
the 16th day of May A.D. 1856 in the Township of
of Ohio & in a certain close therein situated in
the County of Mercer and State of Illinois did
then and there to wit on or about the day
and year aforesaid and in the close & County
and State aforesaid take the hogs and pigs of the
said plaintiff described as follows to wit

One Sow about two years old of a mixed color
black and white mark a half crop off the right
ear on the upper side (mark somewhat defaced
on account of ear being frozen.) Two small
pigs or shoats, Black and white spotted one a
barrow marked as above mentioned, the
other a Sow and unmarked, fifteen hogs about
one year old Barrows and Sows some of mixed
or different colors and some of them white
and all marked with a half crop off of the up-
per side of the right ear (& the left ear of one
of said hogs has been torn or slit by dogs) all
of said hogs & pigs are of great value & worth of
the value of one thousand dollars and the de-
fendant unjustly detains the same against su-
rities and pledges &c whereupon the said plain-
tiff says he is injured and hath suffered dam-
ages to the amount of one thousand dollars and
thereupon he sues &c Valafinist & Gore

Atty for Pltff.

Filed Aug. 15th 1856

Thos B Leaburn Clk.

State of Illinois, Mercer Circuit Court
Mercer County, August Term A.D. 1856
Tuesday September 2nd 1856

James C McBride,

vs Replevin

Henry Kimmel & and now at this day

came the defendant and moves the Court
for a rule on the Plaintiff to file a proper
Bond in this case the present Bond being
entirely insufficient irregular and imperfect;
and after hearing said Motion it is consid-
ered by the Court that the same be over-
ruled.

Tuesday September 2nd 1856

James C. McBride

vs

Replian

Henry Kimmel } And now at this day
comes the defendant by his atty and
moves the Court to quash the writ and
strike the Declaration from the files for reasons
on file.

As follows to wit
McBride }

vs

Kimmel }

1st Declaration declares for
17 hogs the writ replies 18 hogs.

2nd Declaration declares the value
to be \$1000 the writ \$100.

3rd The declaration proceeds for
a wrongful detention alone while the writ
proceeds for a wrongful taking & detention

Pepper & Boardman

Filed Sept 11th 1856

Thos B Caben Clerk

Saturday September 6th 1856
James C. McBride
vs

Replian
Henry Kimmel
And now this
Cause came on to be heard on the Motion made
here on the 2nd day of this term to quash
writ &c and after having heard said Motion
and duly considered the same it is considered
by the Court that the same be overruled.

Whereupon it is ordered by the Court that
this Cause be given to Plead by the 1st day
of Next Term; And that this Cause
stand Continued Generally.

State of Illinois, Mercer Circuit Court
Mercer County, 3rd March Term A D 1857

James C. McBride
vs

Replian
Henry Kimmel

Now at this time the de-
fendant having filed his pleas and each party
having filed their papers herein it is repre-
sented to the Court that the files in this Cause
was lost and could not be found whereupon
by the agreement of the parties this Cause is

ordered to be continued generally and that the parties have leave to renew the files by the 4th day of the August term of said court

State of Illinois, Mercer County, Circuit Court
Mercer County, August Term A.D. 1857

James C. McBride

vs

Replevin

Henry Kimmel,

And afterwards to wit on the 2nd day of September 1857

Came said defendant by his attorney and filed his Pleas herein as follows

James C. McBride vs August Term A.D.

vs

1857 of the Circuit Court

Henry Kimmel of Mercer County Illinois

1 And now ^{said} defendant comes and defends the wrong and injury when &c because he says that he hath not wrongfully detained and doth not wrongfully detain the said hogs and pigs &c in the said Plaintiff's declaration described or any or either of them as is in said declaration alleged and of this he puts himself upon the Country &c

And Plaintiff doth the like
by Beardsley Madden & al
Attys —

Pepper Douglas & Cordune
Defend Attys

2 And for further Plea in his behalf the said defendant by leave of Court says Actio non, because he says that the said hogs and pigs in the said declaration described were not at the time when the property of the said plaintiff but were the property of the said defendant; and this he is ready to verify wherefore &c.

Pepper Douglas & Harding
Deft Attys

3 And for further plea in this behalf the said defendant says Actio non &c because he says that at the time when &c the said hogs and pigs declared for in this case were running at large in the Township of Ohio Grove Mercer County, Illinois. And in and upon the Close and freehold of said defendant there situate and that at said time when &c there was a valid Township Law order or regulation in force duly adopted and enacted by the voters of said Township and while the same was known as the Township of Ohio Grove prohibiting swine from running at large at and within said Township and subjecting the owner of such hogs running at large to pay all damages they may do and authorizing any person to take up and detain the hogs of any one person the same or run at large and authorizing the person taking up such hogs to claim and

demand therefor the sum of five cents for each
hog so taken up and requiring the person so
taking up such hogs, within two days thereafter
to notify the owner thereof if known, which
borough Law is in the words and figures
following, to wit,

No Such Record not found

And the defendant avers the said taking and
detention of the said hogs and pigs charged against
him in said declaration was a taking and de-
tention of the same by this defendant in and
upon Defendant's said Close and freehold in
pursuance and by authority of said Borough
Law and is the same taking and detention
of said hogs and pigs in said plaintiff's
declaration alleged. And defendant further

avows that after he took up said hogs and pigs as aforesaid and within two days thereafter the defendant notified said plaintiff of said taking up of said hogs and pigs had committed in and upon the said close of said defendant, which sum of five cents per head on said hogs and pigs so taken up as aforesaid said plaintiff refused and still refuses to pay and never has paid and has never paid said defendant the damages occasioned him by the intrusion and entrance of said hogs and pigs in and upon defendant's said close and freehold all of which deft is ready to verify whensoever.

Duppre Deonglart & Harding.
Deft's Atty.

- 4 And ~~the~~ said Defendant for further plea by leave of Court in this behalf says actis non 9c because he says that he well avows the taking and detention of the said hogs and pigs in ~~said~~ plaintiff's declaration described at the time when &c in the said place in which &c and justly because he says that at and just before the said time when &c the said hogs and pigs were running at large in the ~~said~~ Township of Ohio Grove Mercer County Illinois and that the said Defendant

was Pound Master in and of said Town-
ship, that as such Pound Master the said
defendant did take and detain said Hogs &
pigs which is the same taking and deten-
tion complained of in said Plaintiff's decla-
ration and that said taking and detention
was made by him as such Pound Master
under and by virtue of the provisions of a
Law then in force and before that time
duly and legally adopted by the voters of
Ohio Grove Township aforesaid at an an-
nual Town Meeting in accordance with the
Law &c which Law is in words and figures
following to wit:

"Proceedings of a Special Town
Meeting Held August 25th 1854—
"In pursuance of a petition filed in the Town
"Clerk's Office, a Special Town Meeting was held
"at the School House in District No. 6 in Ohio
"Township Mercer Co. August 25th A.D. 1854 for
"the purpose of reconsidering the Resolution
"adopted at the last meeting in regard to Hogs &
"Sheep running at large. The Meeting was call-
"ed to order by the Town Clerk. On Motion of
"Samuel Miller, Samuel Deibel was chosen as Mod-
"erator & duly sworn according to Law.
"The Meeting being ready for business, On Motion
"Levi Butterfield, F. S. Robb & Wm. Hays were appoin-
"ted a committee
"to draft resolutions to offer to the meeting

"for Consideration. On Motion of W^m M. Hays
the Resolutions adopted in regard to Hogs and
Sheep were recorded -

"On Motion of Samuel Miller the resolutions
drafted by the Committee were read, con-
sidered and adopted by a vote of 13 to 9 which
are as follows -

"1st It shall be unlawful for Swine & Sheep to run
at Large within the limits of said Township

"2nd If any such Animals shall be found run-
ning at Large within the boundaries of said Town-
ship It shall be lawful for any individual person
with to take them to a Pound Master and
leave them in his charge.

"3rd It shall be the duty of the Pound Master
to take in charge and impound such Animals
as above named, and either notify the owners
of the same ^{or} to post up notices describing
such Animals and requesting the owners to
come and pay charges and receive their
property -

"4th It shall be the duty of every Pound Master
to exact and receive of the Owners of such Animals
before releasing them from the pound 25 cents
for every Hog over two months old & 10 cents a
head for Sheep

"5th If the same Animals shall be the second
time impounded then the Amount exacted of

"the owner shall be double the above amount,
"6th The Amount paid in Conformity, to Sec 485
"hereof shall be paid by the Pound Master to
"the Supervisor for the use of the Town, after de-
"ducting his own fees provided for under the
"Law for Township Organization
"7th The Pound Master shall also exact & receive
"before releasing such Animals, for feeding &
"taking care of the same while under his charge
"5 cents per day for Swine and Sheep
"8th If after notice has been given as provided
"in Section 3 for ten days or the owner per-
"sonally notified they shall neglect or refuse to
"appear and pay charges and take their prop-
"erty it shall become the duty of the Pound
"Master, to advertise and sell such Animals
"after posting up notices of sale for six days
"Provided - However if at any time before the
"sale of such Animals the owners of the same
"shall come and pay to the Pound Master, 50 cents
"for advertising sale he shall receive his property
"9th If any Animal shall be sold after notice
"has been given as above provided, after paying
"all the expenses together with the 50 cents, to the
"Pound Master for posting up notices of sale
"the remainder if any shall be paid to the owners of
"such property on demand.
"On Motion Samuel P. Caban Nicholas Walters, James
"Burnette and Albert Webster were elected

"Pound Master. the Above resolutions to take
effect from and after the 15th of Sept next
" Samuel Michel Quod
" J. S. Robb Clerk " (Record on page 445.)

And defendant further avers that by the provis-
ions of said Law the said hogs and pigs were
prohibited running at large and by said Law
it was made the duty of him said Defendant
as such pound Master as aforesaid to take
up and impound all hogs and pigs found by
him running at large in said Township and
that the said taking and detention complained of con-
sisted of the taking of the said hogs and pigs de-
scribed &c found by defendant running at large
in said Township, and their detention by said de-
fendant in a pound established in said Town-
ship according to said Law in which by said Law
he was authorized to impound the same All
of which he is ready to verify

Piper & Co. at Hearing
Sept 18th 1875

5 And for further plea in this behalf Leave
of the Court first had and obtained the de-
fendant says Acts now Because he says
that before the grievances committing of the grievances
in the plaintiffs declaration mentioned the defen-
dant was in possession of a certain close at

and within the County of Mercer & State of
Illinois being there and there surrounded by a
lawful fence and while so surrounded by said
fence before the time when &c. the said hogs & pigs
&c broke and entered the said close of which
the said Plaintiff then & there had notice and that
after said breaking & the notice to the plaintiff
as aforesaid, the said Plaintiff neglected and
refused to secure said pigs hogs &c. & prevent
them from trespassing, and that afterwards the
Defendant then and there secured the said
hogs & pigs &c. which is the same grievance
laid to the Defendant by the Plaintiff above in
declaring And of this the Defendant is
ready to verify whereupon he prays judgment
&c.
Harding & Longstaffe

And afterwards or wit on the 3rd day of
September comes the Plaintiff and files
his demand to the Defendant's third fourth
and fifth Pleas as follows -
State of Illinois

Mercer County, St August Term of the
Mercer Circuit Court A.D. 1857

McBride }
vs
Kimmel }

And the said Plaintiff says
That the said Recovery of the said Defendant
and the matters therein contained in manner

and forms as the same are ~~there~~ above
pleaded and set forth are not sufficient in
Law for the said Defendant to answer or ac-
knowledge the taking of said Hogs & pigs in the
said Declaration above mentioned in the
said place in which &c to be just and that
he the said Plaintiff is not bound by Law to
answer the same And this he the said
plaintiff is ready to verify therefore he prays
Judgment and his damages by reason of
the taking & unjustly detaining of the said
Hogs & pigs to be adjudged to him &c

Madden & Beardsley
Attys for Plaintiff.

McBride

of August Term A.D. 1857 of the
Kimmel } Mercer Circuit Court
And the said Plaintiff saith that the said
County of the said Defendant and the
Master therein contained in name & form as
the same are forthly above pleaded and
set forth are not sufficient in Law for the said
Defendant to answer or acknowledge the taking
of the said hogs & pigs in the said Declaration
above mentioned in the said place in which &c to be just
and that he the said plaintiff is not bound by Law to
answer the same and this ^{he} the said Plaintiff is
ready to verify Wherefore he prays

Judgment & his Damages by reason of the taking &
detention & unjustly detaining of the said hogs and
pigs to be adjudged to him &c

Madden & Beardsley

Atty for Plaintiff.

McBride &

Remond & Angust Term 4th 1887 of the Mercer
Circuit Court.

And the said Plaintiff as to the
said Plea of the said Defendant by him
of the above pleaded with that the same
the matters therein contained in manner and
form as the same are above pleaded and
set forth, are not sufficient in law to bar or
preclude him the said Plaintiff from having
or maintaining his aforesaid action thereof
against the said defendant and that he
the said Plaintiff is not bound by law to answer
the same ~~wherefore~~ by reason of the insufficiency
of said Plea in this behalf the said Plaintiff
prays judgment and his Damages by reason
of the taking and unjustly detaining of the said
hogs & pigs in the said declaration above
mentioned to be adjudged to him &c

Madden & Beardsley

Atty for Plaintiff.

Friday 14th Sept 1857

James C McBride

vs

3 Replevin

Henry Kimmel 3

This cause coming on to be heard on the Plaintiff's Demurrer to the Defendants 3rd 4th & 5th Pleas - And the Court having considered said Demurrer, overrules the same as to the 4th plea, and sustains the same as to the 3 & 5th Pleas - Thereupon on Motion of the Plaintiff leave is given to reply double to Defendants 4th Plea

Sept 3rd 1857 And now comes the Plaintiff and files his replication to the second Plea of the defendant as follows

State of Illinois - August Term 1857 of the County of Mercer 3 Circuit Court of said County

James C McBride

vs

3 In Replevin

Henry Kimmel 3

And the said McBride as to the Plea of said Kimmel Secondly above pleaded in bar says that he ought not to be barred of his aforesaid action because the pigs and hogs in the said Declaration mentioned at the time when he were the property of him the said McBride and not of him

said Kimmel as said Kimmel in his
said second plea has alledged and of
this he puts himself upon the Country &c

And defendant with the } Madden Stewart Salaferris &
like } Kain's Attys for Plff

Pepper Douglas & Harding
deft Attys —

Sept 4th 1857.

And now comes the Plaintiff and
files his replications to the Defendant. 4th plea
as follows.

James M^cBride } Circuit Court Mercer
vs } County Aug Term 1857.
Henry Kimmel

1 And now said Plf in the above entitled
suit as to the 4th plea of said deft by him fourth
ly above pleaded says procludi now because
he says that said deft at the time when &c at
the place when &c was not a legal Police
Master in and of said Township of Ohio Grove
as in said plea is alledged & of this he puts
himself on the Country &c

And the said deft with } Beardsley & Madden chal
the like by } his Attys —
Harding & Douglas }
for deft.

2 And for further Replication in this behalf as
to said 4th Plea of said Deft the said Plf. by
leave of Court &c says precludi now. because he
says that at the time when &c at the place
when &c there was no valid law in force &
legally adopted by the voters of said ~~Ohio Grove~~
Township of Ohio Grove prohibiting hogs & pigs
from running at large as in said plea is
alleged & puts himself on the Country for
trial &c by

And Deft doth the like
by Harding & Douglass
for Deft.
Beardsley Madden & al
his Attys

3 And for further replication in this behalf
by leave of Court &c as to said 4th plea of
said ~~Deft~~ ^{said Plf.} says precludi now. because he
says that at the place when &c there is not
now any valid law in force in said Town-
ship of Ohio Grove prohibiting hogs and
pigs from running at large at and
within said Township. and that said law
(if any such law ~~ever existed~~ was ever in
force in said Township) was by the voters
of said Township at a legal Town Meeting
held for that purpose been duly & un-
conditionally repealed and is not now in

force and this the said Plf is ready to
verify &c by

Beardsley Madden & al
his Attys.

4 And for further Replication in this behalf
said Plf by leave &c as to said 4th plea
of ~~said defendant~~ of said Deft says precludi
now because he says that at the time when
&c at the place when &c there was no
legally located & established pound at or
within said Township of Ohio Grove within
which hogs or pigs might be lawfully im-
pounded & this said Plf is ready to verify
Whereupon he prays judgment &c by

Beardsley Madden & al
his Attys.

5 And for further replication in this behalf
said Plf by leave of Court &c as to said
4th plea of said Deft by him formally above
pleaded say precludi non because he
says that the said Deft at &c when &c did
not as pound master of the said Township of
Ohio Grove take and detain said hogs & pigs
as in said plea is alledged and of this
he puts himself upon the Country for trial &c &

And Deft doth the like } Beardsley Madden & al
by Pepper Longlaff & Harding } his Attys
his Attys

Friday Sept 4th 1857

James C. McBride

vs
Henry Kimmel } Replication

And now comes the said
Judah Kimmel and files his Answer to
Plaintiffs 3rd Replication to Defendants 4th
Plea. And the Court having considered
said Answer sustains the same.

Which said Answer is in words and fig-
ures as follows

McBride &

Kimmel &

And now comes the said De-
fendant & defends the wrong & injury wherein
& says that the Plaintiffs 3rd replication
to Defendants fourth plea & the matters
& things therein are not sufficient in law
to be answered unto & that the defendant
is not bound by law to join thereto and
that he is ready to verify wherefore he
prays judgment of said replication &c
Harding & Douglass

And now again comes the said Deft
and files his rejoinder to the Plaintiffs
4th replication to Defendants 4th plea

in words and figures following to wit
McBride v
Hemmel

And the Said Defendant
by ~~rejoinder~~ leave of the Court &c for
rejoinder to the Plaintiff's 4th replication
says Actio now because he says at the
time and place when &c there was a
legally located and established pond in
Said Township used for impounding ani-
mals &c & of this he puts himself upon the
Country &c

And Plf doth the like by } Hearingt Douglass
for Deft
Beardsley Maddux & al
Attys

Filed Sept 4 1857

H S Lentin Clerk

Friday 4th Sept 1857

James C McBride

vs

Henry Hemmel

Replieine

And now comes the parties
and their Attorneys and the issue being joined
for trial the parties put themselves upon the
Country; Thereupon came a Jury of the
Jurors to wit. Robert Scott. R W Kiley James
H Gibson Samuel Artz John F Calhoun

William Hunt Jacob Wharton Joseph J Wordin
William Smith Oliver Emerson Daniel M Tondle
and John W Deibel who were duly empanelled
& sworn to well and truly try the issue joined
and after hearing the evidence the said Jurors
returned their verdict into Court which is as
follows to wit "We the jury find the issues
joined in this case for the plaintiff and as-
sess his damages at five (5) cents."

Thereupon came the defendant by his attor-
ney and entered his motion for a new
trial herein

as follows to wit
James C McBride

vs
Henry Kimmel

Sept 4 1859

And now comes the said
defendant and moves the Court for a new
trial in this cause for the following reasons

- 1 The verdict is against the Law and the
evidence
- 2 The Court erred in allowing evidence offered
by the Plaintiff to go to the jury of damages to the
hogs & pigs &c while in the hands of the Defendant
by reason of the said hogs pigs &c not being
properly fed & being harmed & injured while so
in his hands & impounded
- 3 The Court Erred in excluding Evidence

offered by the Defendant
4 The Court ended in sustaining the Plaintiff's demand to the Defendant's third & fifth Pleas

Harding & Douglass
Atty's for Deft.

And now again comes the Defendant and moves for an arrest of judgment in this Cause as follows

James C McBride

vs

Sept 4 1857

Henry Kimmel

And now comes the Defendant & moves the Court in Arrest of judgment in this Case

- 1st For the want of a sufficient Declaration
- 2 Because there is not sufficient Record
- 3 For the want of a sufficient verdict

Harding & Douglass
Atty's for Deft

Wednesday 9th Sept 1857

James C McBride

vs
Henry Kimmel

Replevin

This day this cause came on to be heard on the motion by the Defendant made herein on the 9th day of this Term for a New Trial and the Court having considered said Motion

orders the same to be overruled to which overruling the Counsel for the defense excepted and prayed an appeal to the Supreme Court. It is thereupon ordered by the Court that an appeal be allowed and that an appeal bond be filed within sixty days with security to be approved by the Clerk in the sum of Two Hundred dollars. And it is also further ordered by the Court that defendant be allowed to file his Bill of Exceptions in sixty days.

And afterwards to wit on the 15th day of October A.D. 1867 came the said defendant and filed his Bill of Exceptions herein as follows to wit

But it is remembered that at the August Term A.D. 1867 on the trial of the case wherein James C. McBride was plaintiff and Henry Kimmel was defendant in the Circuit Court of Mercer County, Illinois; the plaintiff to maintain the issues on his part proved that at the time of the taking and detention complained of in his declaration he was the owner of the hogs and pigs described in said declaration and that before the commencement of this suit he demanded of said defendant said hogs and pigs and that said defendant declined and refused to deliver them to him.

The plaintiff then offered to prove that said hogs and pigs were injured while in said defendant's possession and stated that his object was to recover damages in this action for such detention; that ill-treatment might be considered in estimating damages; and defendant then and there objected to the introduction of such evidence but the Court overruled the objection of defendant and allowed the plaintiff to introduce evidence, which plaintiff then did, tending to prove that said hogs and pigs were injured by ill-treatment by defendant while in his possession to the amount of ten dollars, to the introduction of this evidence and the overruling of his said objection thereto the said defendant then and there in open Court excepted.

The plaintiff then proved that he at the time of said taking resided in the Township of Ohio Grove Mercer County Illinois.

This was all the evidence introduced in this said case on the part of the plaintiff.

The Defendant then proved by Wm. Kimmel that the said hogs and pigs were well treated by said defendant while in his possession and that the same were not injured by him and that the said hogs and pigs at before the time of said taking were running at large in the Township of Ohio Grove Mercer County Illinois.

The defendant then offered in evidence the Book of Records of the Township of Ohio Grove which was admitted to be the genuine Book of the Proceedings of said Township so far as related to the record of the proceedings of the Town Meetings in said Township in August 1854, in April 1856 and in April 1857, which were admitted by the court and a copy of which said several records is as follows:-

(Copy of Record of said Township of Ohio Grove, made at a Meeting held on the 25th of August 1854)

"Proceedings of a Special Town Meeting held August 25th 1854

"In pursuance of a petition filed in the Town Clerk's office a Special Town Meeting was held at the School house in district N^o 6 in Ohio Township Mercer County August 25th A D 1854 for the purpose of reconsidering the resolution adopted at the last meeting in regard to Hogs and Sheep running at large -

"The meeting was called to order by the Town Clerk - On Motion of Samuel Muller, Samuel Wilhel was chosen as Moderator & duly sworn according to Law.

"The Meeting being ready for business, on Motion, Levi Butterfield, S S Robt Wm Hays were appointed a committee to draft resolutions to offer to the meeting for consideration

" On motion of Wm M Hays, the resolutions adopted in regard to Hogs & Sheep were rescinded.

" On Motion of Samuel Miller the resolutions drafted by the Committee were read considered, & adopted by a vote 13 to 9, which are as follows

" 1st It shall be unlawful for Swine & Sheep to run at large within the limits of said Township

" 2nd If any such Animals shall be found running at large within the boundaries of said Town, it shall be unlawful for any individual forthwith to take them to a Pound Master and leave them in his charge.

" 3rd It shall be the duty of the Pound Master to take in charge and impound such Animals as above named and either notify the owners of the same or to post up notices describing such Animals and requesting the owners to come and pay charges & receive their property.

" 4th It shall be the duty of every Pound Master to exact and receive of the owners of such Animals before releasing them from the pound 25 cents for every hog over two months old and 10 cents a head for sheep

" 5th If the same Animals shall be the second time impounded then the amount exacted of the owners shall be double the above amounts.

" 6th The Amounts paid in conformity to Sec 4 & 5 hereof shall be paid by the Pound Master to the Supervisors for the use of the town after

" deducting his own fees as provided for
under the Law for Township Organization
" 7th The Pound Master shall also exact
and receive before releasing such Animals
" for feeding and taking care of the same
" while under his charge 5 cents per day for
" Swine & Sheep

" 8th If after notice has been given as provided in
" Section 3 for ten days or the owners personally
" notified, they shall neglect or refuse to appear
" and pay charges & take their property it shall
" become the duty of the pound Masters to advertise
" and sell such Animals after posting up
" notices of Sale for six days -

" Provided however if at any time before the sale
" of such Animals the owner of the same shall come
" and pay to the pound Master 50 cts for ad-
" vertising sale he shall receive his property.

" 9th If any Animals shall be sold after notice
" has been given as above provided after pay-
" ing all the expenses together with the 50 cts to
" the pound Master for posting up notices of Sale
" the remainder if any shall be paid to the
" owner of such property on demand

" On motion Samuel P. Leaburn Nicholas Wal-
" ters James Burdett and Albert Webster
" were elected Pound Masters - The above res-
" olutions to take effect from & after the 15th of Sept next
" J. S. Robb Clerk. Samuel Leibel, Mod

(There is no record of the proceeding of the
Meeting in April 1856)

(A Copy of the proceeding of a Meeting
held in Ohio Grove Township Mercer County
Illinois April 7th 1857)

"

" Minutes of Town Meeting held at the school
" house in district No 6 Ohio Grove Township
" Mercer County Ill on the 7th day of April
" 1857

" On Motion Mr H. Williams was appointed
" moderator of the meeting and Elijah Forsythe
" Clerk pro tem.

" On Motion reports of officers were called
" on Motion, resolved that a vote on the
" hog law be taken by ballot —

" That Town Officers be elected by ballot
" The report of Comr. of Highways was presented
" and read

" The following motion was offered and carried
" Resolved. that the hog law adopted at Special
" Town Meeting August 25, 54 and re-adopted
" at the Annual town meeting April 1856
" which is recorded in Town Book page 445
" is hereby repealed. And all pounds be
" discontinued after this 7th day of April
" 1857.

" The Commissioners of Highways having as
" estimated the amount necessary to be expen
" ded in the township for bridges the ensuing
" year at six hundred dollars the Township
" order that amount to be levied
" Horace Williams Moderator
" Elijah Forsythe. Clerk pro tem.

The said Records of Proceedings of said Town meet
ing in April 1856 not showing that any law reg
ulating the time & manner in which hogs should
be allowed to run at large in said Town had
been adopted or passed, the Defendant then
offered to prove by Samuel Miller that he was
Town Clerk at the Town Meeting in April 1856
of said Township. The Defendant then proposed
and offered to prove by said Miller that the Hog
Law adopted at the August Town Meeting 1852,
was adopted at the April Town Meeting 1856
but the plaintiff objected and the Court refused
to allow said defendant to introduce said parol
proof, whereupon the said defendant then and
there excepted to the said ruling of the court
in refusing to permit him to prove said facts.

The doct by his Counsel then moved the
Court to compel by order of said Court the Town
Clerk of said Town of this Grove to record the proceed
ings of the April Town meeting of said Township in

1856 relating to the passage by said meeting of the said Hog law which said motion the said Court then and there refused to allow to which refusal of the court the deft by his Counsel then and there excepted.

The defendant then offered evidence to prove that the defendant was at the time of the said taking and detention a Pound Master in and for said Township. That the said Hogs and pigs were taken and detained by him as such Pound Master and the place where said hogs & pigs were detained was the pound used by him as such pound Master and that the hogs & pigs were at the time of the said taking running at large in said Township all of which evidence and every part of it the Court on the objection of the plaintiff refused to allow the defendant to introduce, to which said several rulings of the Court the said defendant then & there excepted & still excepts.

The defendant then moved for a new trial for the following reasons

- 1 The verdict is against the Law and the evidence
- 2 The Court erred in allowing evidence offered by the Plaintiff to go to the jury of damages to the hogs & pigs &c while in the hands of the defendant by reason of the said hogs pigs &c not being properly fed & being harmed & injured

- while so in his hands & impounded
- 3 The Court erred in excluding evidence offered by the Defendant.
 - 4 The Court erred in sustained the Plaintiff's demand to the Defendants third & fifth pleas

And also in arrest of judgment which the Court refused to grant & overruled both of said motions to which ruling of the Court Defendant then and there excepted and still excepts and prays that this his bill of exceptions may be signed & sealed by the Court & will ever pray. &c

187.60

John S. Thompson (Dea)

Filed - 15th Oct 1867

H. J. Linton C. K.

Copy of the Bond

Know all men by these Presents that we Henry Kimmel and William Gayle are held and firmly bound unto James McBride in the Penal sum of One Thousand Dollars 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 1st day of October Anno Domini one

thousand eight hundred and fifty, Beon
The Condition of the above obligation is
Such: That whereas James McBride did
on the day of September 1857 in the
Circuit Court within and for the County
of Mercer and State of Illinois recover a Judgment
against the above bounden Henry Kimmel for
the sum of five cents and costs of Suit from
which judgment of said Circuit Court the said
Henry Kimmel has prayed for and obtained an
Appeal to the Supreme Court of said State -

Now of the said Henry Kimmel shall duly
prosecute his said appeal with effect and shall
moreover pay the amount of judgment cost
interest and damages rendered and to be ren-
dered against him in case the said judgment shall
be affirmed in the said Supreme Court then the
above obligation to be null and void, otherwise
to remain in full force and virtue

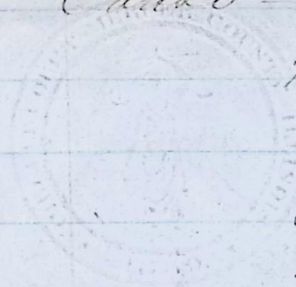
Approved by me H S Senter Henry Kimmel *JS*
Clerk of the Circuit Court Mercer Wm Gayle *JS*
County this 15th day of October A.D. 1857
Harvey Senter Clerk

State of Illinois

Mercer County

I Harvey Senter Clerk of the Circuit Court of said
County do Certify that the foregoing is a full and complete
transcript of the summons, pleadings of the parties respectively
the verdict of the Jury, the Judgment, all

Orders made by the Court in the
Said Cause, the Bill of Exceptions
and the Appeal Bond filed in said
Cause.



Witness my hand and the seal
of said Circuit Court at my
office in Aledo this 20th day of
September 1858

C. L. Senter, Clerk

287

Wm. H. H. H.

W

Ch. H. H.

Transcript

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12853

Filed Sept. 22nd 1859.

d. H. H.
Clerk.

1859

Record
for W. H. H.