

No. 14253

Supreme Court of Illinois

Ballance

vs.

Rynearson

STATE OF ILLINOIS,

27
SUPREME COURT,

Third Grand Division,

No. 81.

~~14253~~

Reynolds
vs
Dallan

1862

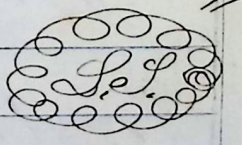
Be it remembered that heretofore to wit: on
the twenty first day of April in the year of our Lord
one thousand eight hundred and fifty there was
filed in the office of the Clerk of the Circuit Court
in and for the County of Peoria in the State
of Illinois a summons and Transcript
in the words and figures following, to wit:

Summons.

" State of Illinois, }
Peoria County, } The People of the State of Illinois
to my Constable of said County, Greeting:

You are hereby Commanded to summon Ephraim
Ryneason to appear before me at my office in
Peoria, on the 30th day of March A. D. 1860 at
1 o'clock P. M. to answer the Complaint of Charles
Ballance for a failure to pay him a certain demand
in damages in trespass on the Case not exceeding
\$300; and hereof make due return as the law directs.
Given under my hand and seal, this 17th day of
March A. D. 1860.

Julius G. Lueder
Justice of the Peace



(Endorsed)
Served on Ephraim C. Ryneason by reading to
him this writ this 17th day of March A. D. 1860.
D. A. Wheeler, Const."

Transcript

" Charles Ballance, }
vs } Suit Commenced by
Ephraim C. Ryneason, } Plaintiff on March 17th
A. D. 1860 in trespass }
on the Case. }
Demands \$50.00

Justice's fees Summons issued on March 17th A.D. 1860,
 Summons 18^{3/4} Made returnable on March 30th A.D. 1860 at
 docket 12^{1/2} 1 o'clock P.M. handed to Constable D.A.
 2 subps 37^{1/2} Wheeler's Summons returned by said Constable
 1 do 18^{3/4} on return day duly served 2 subpoenas
 4 oaths 25 issued, 1 do subpoena, one subpoena not returned.

Judgment 25 And now on this 30th day of March A.D.
 1860 the parties appeared in Court, when after
 \$1.62^{1/2} having heard the testimony of the witnesses,

Constable's defendant pleaded non suit, on which the
 Court rendered judgment against plaintiff
 for costs of suit,
 for subps 45 Witness fees claimed by Wendel Stone
 " depts 25 hard & Joseph Rather
 \$1.55

Appeal taken by plaintiff to
 Conia County Circuit Court
 Witness fees Julius S. Lueder, J. P.
 Wendel Richard 50^c
 Joseph Rather 50^c
 \$1.00

Total
 Justice's fees \$1.62^{1/2}
 Constable's do 1.55
 Witness do 1.00
 \$4.17^{1/2}

State of Illinois, D.S.
 Conia County, I, Julius S. Lueder one of the Justices of the
 Peace within and for said County do hereby certify, that the ^{going} pre-
 viously Copied from the books in my office in the case of Charles Wallace
 vs Ephraim E. Reynolds, given under my hand and seal at Conia on this
 19th day of April A.D. 1860. Julius S. Lueder, J. P. Seal

And afterwards to wit: on the twenty third day of April in the year of our Lord one thousand eight hundred and Sixty there was filed in the office of the clerk of said Court in said Cause an appeal bond in the words and figures following, to wit:

Appeal
bond.

"Know all Men by these presents, that we Charles Dallance by L. N. Webb, his attorney in fact and — are held and firmly bound unto Ephraim C. Rynearson in the penal sum of nine dollars, lawful money of the United States; for the payment of which, well and truly to be made, we bind ourselves, our heirs and administrators, jointly and severally, and firmly, by these presents. Witness our hands and seals, this 19th day of April A. D. 1860.

The Condition of the above obligation is such, that whereas, the said Ephraim C. Rynearson did on the 30th day of March 1860 before Julius S. Lueder a Justice of the Peace for the County of Peoria he does a judgment against the above bounden Charles Dallance for the sum of four $4\frac{2}{100}$ dollars; from which judgment the said Charles Dallance has taken an appeal to the Circuit Court of the County of Peoria aforesaid, and State of Illinois: Now if the said Charles Dallance shall prosecute his appeal with effect, and shall pay whatever judgment may be rendered by the Court upon dismissal or trial of said appeal, then the above obligation to be void, otherwise to remain in full force and effect.

Approved before me at my office, this 19th day of April A. D. 1860. Charles Dallance
By L. N. Webb atty in fact
W. Williamson
Julius S. Lueder
Seal
Seal

On the same day, to wit; on the twenty third day of April in the year of our Lord one thousand eight hundred and Sixty there was issued out of said Court in said Cause & under the Seal of said Court a Summons which with the return of the Sheriff endorsed thereon are in the words and figures following, to wit;

The People of the State of Illinois

To the Sheriff of Peoria County, Greeting:

We Command you to Summon Ephraim P. Ryneason if he may be found in your County, to appear before our Circuit Court on the first day of the term thereof, to be held at Peoria, within and for the said County of Peoria, on the first Monday of May next, then and there in our said Court to defend a suit lately brought against him by Charles Pallance before Julius G. Lueder a Justice of the Peace in and for said County and appeal from the judgment of said Justice of the Peace, to our Circuit Court by said Pallance for further adjudication and make return of this writ, with an endorsement of the time and manner of serving the same, on or before the first day of the term of the said Court to be held as aforesaid. Witness Enoch P. Sloan Clerk of our said Court, and the Seal thereof, at Peoria, this 23^d day of April in the year of our Lord one thousand eight hundred and Sixty.

E. P. S.

Enoch P. Sloan, Clerk,
By J. Newton Dpty."

(Endorsed)

"I have duly served this summons by reading to the within named Ephraim Ryneason this 27th day of April A. D. 1860. John Ryner, Sheriff."

On the same day, to wit; on the twenty third day of April in the year of our Lord one thousand eight hundred and Sixty there was issued out of said Court in said Cause & under the Seal of said Court a Summons which with the return of the Sheriff endorsed thereon are in the words and figures following, to wit;

The People of the State of Illinois

To the Sheriff of Peoria County, Greeting:

We Command you to Summon Ephraim C. Pyneason if he may be found in your County, to appear before our Circuit Court on the first day of the term thereof, to be held at Peoria, within and for the said County of Peoria, on the first Monday of May next, then and there in our said Court to defend a suit lately brought against him by Charles Pallance before Julius G. Lueder a Justice of the Peace in and for said County and appeal from the judgment of said Justice of the Peace, to our Circuit Court by said Pallance for further adjudication and make return of this writ, with an endorsement of the time and manner of serving the same, on or before the first day of the term of the said Court to be held as aforesaid. Witness Enoch P. Sloan Clerk of our said Court, and the Seal thereof, at Peoria, this 23^d day of April in the year of our Lord one thousand eight hundred and Sixty.

E. P. S.

Enoch P. Sloan, Clerk,
By J. Newton Dpty."

(Endorsed)

"I have duly served this summons by reading to the within named Ephraim Pyneason this 27th day of April A. D. 1860. John Byrnes, Sheriff."

Jas. B. Smith & Co.
No. 27 S. Seventh Street.
Philadelphia.

Proceedings at a special term of the Circuit Court, begun and held at the Court house, in and for the County of Peoria, and State of Illinois, on the third Monday in the month of August, in the year of our Lord one thousand eight hundred and Sixty, it being the twentieth day of said month, in pursuance of an order of said Court, made and entered of record at the last May term thereof which said order is in words following, to wit: "Ordered by the Court that a special term of the Circuit Court of Peoria County, State of Illinois for the trial of civil cases, be held at the Court house, in the City and County of Peoria, on the third Monday in August next."

Present the Honorable Elisha N. Powell Judge of the 16th Judicial Circuit in said State, John Bryner Sheriff, and Enoch P. Sloan, clerk, to wit:
Thursday September 6th A.D. 1860.

Charles Gallance

vs

Appeal from J.P.

Ephraim T. Pearson

By agreement this cause is continued.

Proceedings at a term of the Circuit Court begun and held at the Court house in the City and County of Peoria, State of Illinois, on the nineteenth day of November, in the year of our Lord one thousand eight hundred and Sixty, it being the third Monday of said month. Present the Honorable Elisha N. Powell Judge of the 16th Judicial Circuit, in said State, John Bryner Sheriff and Enoch P. Sloan, clerk, to wit:

Tuesday December 4th A.D. 1860.

Charles Ballance

vs Appeal from J.P.
Ephraim C. Ryneason.

This day came the plaintiff, in person assisted by Groves his attorney and the defendant by Davidson his attorney, and it is ordered that a jury be impannelled to try the issues in this cause, whereupon came a jury of twelve good and lawful men, to wit: - James Dougherty, Archibald Palmer, Matthew Faggart, James Fryden, A. J. White, Charles Jacobs, Edward Anderson, Samuel Dimon, P. N. A. Aylwood, J. V. Cutwright, Geo. C. Tabcock and Daniel R. Buck who being duly chosen, tried, and sworn to well and truly try the issues joined in this cause and a true verdict give according to the evidence, do say, the Jury find for the Plaintiff and assess his damages at the sum of thirty three dollars. Therefore it is considered by the court that the said Charles Ballance have and recover of the said Ephraim C. Ryneason the said sum of thirty three dollars, and also his costs and charges by him about his suit in this behalf expended and that he have execution therefor.

Thursday December 13th A.D. 1860

Charles Ballance

vs Appeal from J.P.
Ephraim C. Ryneason

This day this cause come on to be heard on motion of defendant for a new trial and the court on consideration overruled said motion. Whereupon the defendant pray an appeal to the Supreme Court of this State.

Wednesday December 26th A.D. 1860.

Charles Ballance

vs

Appeal from J.P.

Ephraim C. Pyneason

The appeal to the Supreme Court of this State, prayed by the defendant is allowed, on his filing his bond in the penal sum of two hundred dollars payable to said plaintiff, with Samuel Shute as security, with the Clerk of this Court in thirty days said bond to be conditioned as the law directs.

Monday December 31st A.D. 1860.

Charles Ballance

vs

Appeal from J.P.

Ephraim C. Pyneason

This day came the parties and it is agreed that the bill of exceptions herein, shall be signed at the next term of this Court.

And afterwards to wit: on the twenty fifth day of March in the year of our Lord one thousand eight hundred and sixty one there was filed in the office of the Clerk of said Court in said cause the defendants Bill of Exceptions in the words and figures following, to wit:

Bill of Exceptions.

State of Illinois }
Peoria County }
Charles Ballance

In the Circuit Court of }
Peoria County }
November Term A.D. 1860

vs
Ephraim C. Pyneason

Appeal from J.P.
Bill of Exceptions

Be it remembered that on the trial

of said Cause before the Court & a jury at said term of said Court, the Peff to maintain the issues & suit on his part produced Paul Derig a witness on the part of Peff who being duly sworn testifies that he knew parties to this suit - that during the year A.D. 1858 he (witness) worked for Peff - that witness knew Joseph Reeder in his life time, also knew Mrs. Reeder the widow of said Joseph Reeder dec'd - witness knew of Mrs. Reeder having a sale on the premises when she lived in Peoria County (in fall of A.D. 1858) - witness knows that Peff had a wagon at said sale - that Peff before sale commenced requested Deft who was one of the sale for Mrs. Reeder to sell a wagon for Peff, that Deft promised to do so - that Deft did sell said wagon - that at the time said wagon was sold Peff said that whoever purchased said wagon would find the neck yoke & whiffle-trees & could get them at Peff's house in Peoria - that Deft also said that neck yoke & whiffle trees were at Peff's house in Peoria & whoever bought wagon could go there & get them - that people at the time of sale talked about the wagon being the property of Peff - that a number of persons were talking about it & witness heard no person deny Bullance's ownership of the property - that after the wagon was sold Peff told Deft that he Bullance must go home & requested Deft to bring in note for the wagon (some time) when he was coming into town (Peoria) that Deft said he would bring Peff the note the first time he Deft.

Jas. B. Smith & Co.
No. 27 S. Seventh Street,
Philadelphia.

Came to Peoria - that then Peff went home - that
deft never brought said note to Peff as wit-
ness knew of - that William Robinson bought
said wagon at said sale - that witness went
out with Peff to bring said wagon home

On Cross examination witness said
that parties who talked about the ownership
of wagon were at the (tail) end of the wagon -
did not know that deft, heard any of the
Conversation - that deft was busy selling
the wagon - that it was some time after
the sale of said wagon on same day ~~that~~
the Peff requested the deft to bring note -
deft might have brought note & witness
not know it.

Peff then called William Robinson who
being sworn testified as follows -

Knows parties to this suit - knows Mrs. Reeder
& where she lived in 1858 - knows of her having a
public sale in the fall of A.D., 1858 - I was at sale
deft was auctioneer & cried the sale ^{for} Mrs.
Reeder - I bought wagon at said sale for
\$33.50 - Ballance claimed the wagon, I
understood from him & others at the sale that
wagon belonged ^{ed} to him - that several persons at
time wagon was sold said that wagon was Ballance's -
that at that time Ballance said that whoever bought
the wagon could get the neck yoke at his (Ballance's)
house - that on evening after sale he (witness)
made note for wagon & gave security or note
& that deft was present at time - that note was

not made payable to Ballance) - does not recollect to whom it was made payable - that deft. afterwards had note in his possession - that Rhinehart the Clerk of the sale drew this note & that the Clerk drew all the notes - that witness took wagon away & afterwards went to Ballance's house & got neck yokes & whiffletrees -

On Cross examination, witness said that he did not know that deft. heard Peff. claim to own the wagon - did not know that deft. heard others say that Ballance owned wagon - could have heard it if he had been listening, as the talk was loud enough to be heard by him if he had been listening - (I was at tail end of wagon & deft. was the end of the tongue) deft. at the time was busy selling the wagon - at time note was made deft. objected to note being made to any except Ballance - that widow (Mrs. Reeder & her sons) objected to note being made to Ballance & considerable noise and fuss was made by Mrs. Reeder & sons to have note made as they wanted it - (deft. then offered to prove by said witness the whole conversation at the time the note was made to show that Ryneason in good faith attempted to have note made to Peff. & did not consent that it should be made to any other person, but Peff. objected to such proof & the Court then & there sustained said objection of Peff. & excluded said evidence from the jury to which ruling of the Court in sustaining Peff.'s said objection & in excluding

Said evidence & in refusing to allow debt to
issue the said conversation, debt by his attorney
then & there objected & excepted) witness said
that debt was at the time of said sale & has
been ever since a Justice of the Peace in Peoria
County, Ills. - that debt had said note (after-
wards in his possession) as a Justice of the Peace
to collect - that witness was sued on ^{said} his note
before debt as J. P. - that said note was made
payable to Mrs. Reeder & by her transferred to
one Ulrichsen who sued the note before
debt as J. P. - that debt had note as J. P.
only so far as he knew.

Deft here rested his Case.

Deft then on his part called John Reeder who
testified that he knew the parties to this suit - knew Mrs.
Reeder who had the sale spoken of by witnesses - that said
Mrs. Reeder was witnesses (mother) - that sale was
was about two years ago - that witness is now
about 18 years of age - witness knew the wagon
sold at the time of his mother's said sale -
wagon was sold to Wm. Robinson, the witness -
that wagon belonged to the estate of witness's father
then deceased - that father died in the Spring
of A. D. 1858 & that his father owned the wagon
at the time of his decease - that witness's
father in his life time bought wagon of Deft
that wagon was delivered to witness's father by
Deft & that witness's father Joseph Reeder had
held possession & used said wagon about 18 months

before he said Joseph Reeder died - that (said) Joseph Reeder when he died left him surviving his widow (said) Mrs. Reeder, witnesses Mother & three children a daughter then about 18 years old - the witness a son then about 16 years old & one other son then about 14 years old (children of Mrs. Reeder witnesses Mother) these were all the heirs of said said Joseph Reeder (decd) at the time of his death - that witness' father after he bought said wagon repaired said wagon, put a new wheel & a new axle tree - that witness was present at time of (his Mother said) sale - that there were two wagons there, but only one sold - that the wagon sold was advertised by witness' Mother with other property & was sold & was not the property of Mary Reeder, witness' Mother but belonged to the estate of said Joseph Reeder deceased & so belonged to the heirs of said Joseph Reeder deceased - that witness was present when the notes were given after the sale - was the same day or the evening of the day of sale after said sale - that the clerk (of said sale one Rhinchart) took the notes for the sales - & took them payable to my Mother - was present when note from (said) Robinson was taken for wagon sold - that Robinson's note was taken payable to my Mother the same as the other notes - that at the time that note from Robinson was taken Rynearson, deft herein, attempted to have said note made to said Ballance - said that Ballance claimed to ~~have~~ own said wagon & wanted him to get the note & take it in to said Ballance - that

My mother & my brother & I objected - that my mother claimed that Ballance did not own the wagon & said the note should not be made to said Ballance - that Rynearson said he did not know who owned the wagon, but said that Ballance claimed to own it & that Ballance requested him to bring him the note for the wagon, and that he Rynearson wanted to do right, and wanted the note to satisfy Ballance - that Rynearson did not consent that the note should be taken to Mrs. Reeder - that on account of the objection made against giving the note to Ballance, the note was made payable to Mrs. Reeder, my mother not to Ballance -

On Cross examination witness said that his father in his life time bought the wagon of Peff - that it was to be paid for in building fence & splitting rails - that the work was done & the wagon paid for in the life time of witnesses father - that a few days before the sale (of said Mrs. Reeder) Ballance came out to the place where my mother resided with one (Erhard Kram) and that (Peff) claimed there was rent yet due on the farm my father had rented of him (Ballance) which had not been paid - that Ballance wanted the pigs for the rent that I told him that he could not have the pigs for they belonged to me - that my father had given them to me before he died - that Peff then threatened to issue a distress warrant unless he (Peff) was paid - that then my mother agreed to give him wagon & one stack of hay to

settle all the claims of said Ballance - that my father had rented the farm of Ballance in his life time - that Ballance was to receive a share of the crops for rent for all except the last year & that witness did not know anything about the bargain of the last year & was not present when bargain was made - that his Mother (Mrs Reeder) was not administratrix of the estate of his father - that no administration was ever appointed (or had on the estate of witnesses said father) that his father declared before three men shortly before he died & while he was sick that he wanted his children to have all his property (& this declaration was all the will he made) - that (witnesses) father did not appoint any executor - that Peff got the stack of hay - that the wagon was left on the place - that we occupied said farm 4 years - three years before my father decessed & we occupied the same season & raised crop, during the spring of which, father ~~did~~ died, which makes 4 years - that crops were bad generally - one season father was sick & others weather too rainy & seasons bad & so not much raised, but peff was paid his share of what crops were raised - Peff here showed witness two leases & asked witness if he was acquainted with his fathers signature - witness said he was - he was then asked if (the signatures to the leases were his fathers, & witness said they were not.)

On re-examination by doct witness said that at the time Ballance claimed rent &

threatened to levy a distress warrant that Mrs. Reeder claimed that he (Ballance) had got his share of the crop - that Mrs. Reeder told Ballance that the property belonged to the children & that she wanted to do what was best for them & had rather settle than have trouble - that then she agreed to let Ballance have the wagon & one stack of hay to settle -

Defendant then called Wendell Rhinichart who being duly sworn testified that he knew the parties to this suit - knew Mrs. Reeder - was at the sale testified to by other witnesses - was the clerk of said sale (was employed by Mrs. Reeder) knew the wagon sold to Robinson - wagon was advertised to be sold by Mrs. Reeder with other property - that it was sold - that deft. cried the sale - that I was present when notes were drawn for said sale & drew & took the notes - took the note of Robinson for the wagon - Pymearson was present & wanted to have the note taken to Ballance - that deft. said that Ballance claimed the wagon & requested deft. to bring him (Ballance) the note for the wagon - that Mrs. Reeder & her two sons objected & claimed that Ballance did not own the wagon - that the wagon belonged to ^{them} ~~her~~ - that deft. tried to have the note made to Ballance for the wagon, but that Mrs. Reeder & the boys said he should not have the note - that Mrs. Reeder & the boys (her sons) were very noisy in their objection & that the note was not made to Ballance on account of their objections.

Byrne arson did not consent that the note should be made to Mrs Reeder - that at the request of Mrs Reeder I assigned the notes (Robinsons note for the wagon with the rest) to one Ulrich arven with whom she had made some arrangement or bargain & the notes were by her all delivered to him (Ulrich arven) - I put her name on the notes at her request - she could not write - I knew the wagon belonged to Joseph Reeder the husband of said Mrs Reeder in his life-time & that he had the same for more than a year previous to his decease & up to the time of his decease -

On Cross examination witness stated that he did not know of whom Joseph Reeder in his life time got the wagon - had seen the wagon at Mrs Reeder since & knew that she & her sons had used the wagon since his decease - that Mrs Reeder was not administratrix of Joseph Reeder dec^d - there never was any administration granted on (the estate of said) Joseph Reeder deceased - that deft did not hear Byrne arson forbid Byrne Robinson from taking away the wagon - did not hear any thing about that & did not know whether deft did forbid Robinson or not from receiving the wagon -

Deft here tested his case

Deft then called as a witness one Erhard Kram who testified that about ten days before Mrs Reeder said sale he went

out to the farm where Mrs Reeder lived with Peff.
that Peff wanted Mrs Reeder to pay up the rent -
that Mrs Reeder said that Peff had all his share
of the Crops already (except ^{of} by the hay) but Peff
insisted that he was not paid & threatened that if
she Mrs Reeder did not pay him or turn out prop-
erty to (him) Ballance for the rents that he (Peff)
would buy a distress warrant on the property -
Mrs Reeder then after a good deal of talk with
Peff & with her children agreed to give Ballance
a wagon & one stack of hay to settle & they did
settle in this way - that Peff did ^{then} buy the
wagon & the stack of hay in the manner aforesaid -
that Peff did afterwards get the hay - that the
wagon was not removed.

On Cross examination, witness said
that the reason Mrs Reeder consulted her sons was
because she said she did not own the property
& that the children owned it & that she must
get their consent - she said that if they were willing
she would turn out some of the property to Peff
rather than have trouble with Peff - that the only
children present were the two boys, one a witness
here - the boys were both minors, not 21 years of
age -

On re examination by Peff witness said
that the boys did consent & agree to the bargain
& the bargain was then made -

Peff then called Peter Sperry, who being
duly sworn testified as follows - that he was
at Mrs Reeder's sale & after it was over, he was

out to the farm where Mrs Reeder lived with Peff.
that Peff wanted Mrs Reeder to pay up the rent -
that Mrs Reeder said that Peff had all his share
of the Crops already (except ^{of} by the hay) but Peff
insisted that he was not paid & threatened that if
she Mrs Reeder did not pay him or turn out prop-
erty to (him) Ballance for the rents that he (Peff)
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Mrs Reeder then after a good deal of talk with
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here - the boys were both minors, not 21 years of
age -

On re examination by Peff witness said
that the boys did consent & agree to the bargain
& the bargain was then made -

Peff then called Peter Sperry, who being
duly sworn testified as follows - that he was
at Mrs Reeder's sale & after it was over, he was

Present at the sale of a wagon sold by debt
as auctioneer & bought by Mr Robinson as purchaser
the sale was had at a little distance from the house
in which the house hold furniture had been sold
& where the Reeder family was at the time, but in
plain view of it - the wagon was currently spoken
of at the time as peffs wagon & no one disputed
it that he heard.

Mr Peter Upperly was then called & tes-
tified as follows to wit: - I was present at
Mrs Reeder's sale - know wagon in controversy
was in Mrs Reeder's house after her sale was
through or nearly through - heard Peff say to
deft, let us go & sell the wagon - deft &
Peff did then go where the wagon was in
sight of the door & sell the wagon -
wagon was a short distance from Mrs Reeder's
house - It was after the sale of all Mrs
Reeder's things & peff & deft were at the house
of Mrs Reeder when Peff said to deft let us
go & sell my wagon

Peff then called Charles Finney, who testified
as follows to wit: that he was acquainted with
the signature of Joseph Reeder, dec^d - witness
was here shown the two leaves previously shown to
John Reeder & was asked if the signatures to them were
genuine & he said they were & in the hand writing
of said Joseph Reeder - that one of said leaves
was in my hand writing - I was at the time
agent of Peff & subscribed my name to it as a

witness in presence of said Reeder & Law Reeder
Reeder subscribed his name to it.

Here both parties rested their cause
& the foregoing was all the testimony in the case
before the jury —

Off then asked the Court to give the jury
the following instructions

" Ballance vs Pyneason

" 1. If the jury believe from the evidence that the
plaintiff retained & employed the defendant to sell
a waggon for the plaintiff & the defendant promised
to sell the waggon for the plaintiff and bring the
note to the plaintiff and failed to do so the plain-
tiff is entitled to recover in this action and the
jury should allow the plaintiff such damages as he
has sustained by reason of the misconduct of
the defendant."

" 2. Whatever rights the jury may think others
may have in the wagon if the jury believe from the
evidence that the defendant admitted plaintiff's right
to it, and promised to sell it for him, and bring
him the note for it, it is ~~not~~ ^{not} competent for him to
set up an out-standing title to it. He was bound
to return to the plaintiff the wagon or the proceeds
of it."

" Ballance vs Pyneason

" 3rd. If the jury shall believe from the evidence
that Francis Reeder had been in his lifetime the
tenant of plaintiff and died while the crops were

" Given "

" Refused "

" Refused "

Growing without paying the rent and that afterwards and before the close of the year Barbara Retter the widow of said Francis settled the rent with said plaintiff and as part pay let him have the wagon in controversy she had a right to do so and had no right afterwards to set up a claim thereto

"If the defendant undertook to sell the wagon for Ballance and to get a note for it, it was the duty of the defendant to get the note of the purchaser & failing in that the defendant should have refused to allow the purchaser to take possession of the wagon under the sale, without giving Ballance notice."

"Ballance vs. Thynerson"

"Plaintiff further asks the court to instruct the jury that the presumption of law is that where there is no contract to the contrary an auctioneer is entitled to a reasonable compensation for his services and therefore if the jury believe that defendant undertook to sell said wagon for plaintiff and bring him the note for the same said presumption for a reasonable pay would be a sufficient consideration to support said promise"

On the giving which instructions deft then & those by his atty objected, but the court overruled defts objections & gave the jury said instructions asked by Puff to which ruling of the court in overruling defts objections & giving said instructions for Puff to the jury deft then & there objected & excepted -

"Puff"

"Green"

Deft then asked the Court to give the jury the following instructions on his part

"1. If the jury believe from the evidence that the wagon sold was not the property of the plaintiff (Ballance), then the jury will find for the defendant"

"Given"

"2. If the wagon was the property of Francis Reeder at the time of his death then the wagon would belong to the administrator or administrators & to no other person or persons"

"Refused"

"3. If the wagon was the property of Francis Reeder at the time of his death, & that his widow was not the administrator of the goods & effects of said Francis Reeder deceased, then the said widow could not sell the wagon to the plaintiff or any other person so as to convey property - neither could the children of Francis Reeder deceased sell the same."

"Refused"

"4. If the jury believe from the evidence that after the wagon has been sold that the Plaintiff requested the defendant Pynearson to bring him a note for the wagon & that Pynearson then promised to bring in a note to Ballance the first time he came in & that there was no consideration for said promise in such case, the promise cannot be enforced against Pynearson by said Ballance."

"Given"

"5. That there was a consideration for the promise from said Pynearson to said Ballance is for the plaintiff to prove."

"Given"

" 6. If the jury believe from the evidence that the deft Pynearrow, believing that Ballance owned the wagon sold by Pynearrow & so believing sold said wagon & promised Ballance to bring him a note from the fur chaser for the same, yet if the jury further believe from the evidence that Pynearrow found out that Ballance did not own the wagon & for that reason did not and could not get the note for Ballance in such case Pynearrow is not liable "

~~of~~

" G. Linn "

" 7. It must be established in evidence that Pynearrow is in fault or the jury will find for him the deft. "

" Ref. Reed "

" 8th If the jury believe from the evidence that the widow of Francis Reeder decd. sold a wagon to Ballance the Plff. in this case, which wagon belonged to the estate of said Francis Reeder deceased & that said ~~Reeder~~ widow was not duly appointed administratrix of the estate of said Francis Reeder decd. then said widow made herself the administratrix de bon tort. Could only convey her own interest in said wagon "

" Ref. Reed "

" If the jury believe from the evidence that the wagon sold by Pynearrow belonged to Francis Reeder at the time of his death, then the wagon would belong to the estate of said Francis Reeder decd. & not to the widow of said Francis Reeder decd. "

"Refused"

"The personal property of a person deceased goes to his executor or administrator except those articles specified by law as belonging to the widow."

The Court gave the 1st, 4th, 5th, & 7th instructions asked by deft without modification - But the Court refused entirely to give the 2nd, 3rd, & 8th instructions asked by deft & did not give them to the jury - to which ruling of the Court in excluding & refusing to give to the jury the 2nd, 3rd & 8th instructions asked by deft, said deft by his atty then & there objected & excepted - and the Court refused to give the 6th instructions asked by deft without modification & modified said instructions so as to read thus

"Given"

"6 If the jury believe from the evidence that the deft Ryneason, believing that Ballance owned the wagon sold by Ryneason & Co believing sold said wagon & promised Ballance to bring him a note from the purchaser for the same, but if the jury further believe from the evidence that Ryneason found out that Ballance did not own the wagon & for that reason did not and could not get the note for Ballance - in such case Ryneason is not liable, if the jury further believe from the evidence that he acted in good faith and was prevented from getting the note by no fault of his."

He then gave said instructions to the jury so modified to which said modifications of said instructions & to the reading of said instructions so modified to the jury the deft then there objected & excepted at the time -

The jury then found the following verdict for plaintiff C. Balance

vs
E. Rineason

We the jury find for the Plaintiff and assess the damages at \$33.00

Saml Dimon

E. Anderson

C. M. Jacobs

G. C. Babcock

Daniel R Buck

W. Jagart

P. H. Hayward

A. S. Palmer

James Daugherty

J. V. Leutright

James Bryden

A. J. Whyte

Deft then made motion to the court for a new trial in said cause

"State of Illinois," }
Peoria County, 3 } On the Circuit Court of Peoria
Charles Balance } County - November Term A.D.
Ephraim C. Rineason } 1860. Appeal from Justice
of the Peace - Case

And now Comes said Defendant on the above entitled Cause & makes his motion by P. Davidson & Ch. Feinse his attys, for a new trial in said Cause for following reasons, to wit:

1st Because the evidence did not & could not support this form of action - *See*,

2nd Because the Court admitted improper evidence in behalf of the plff to the jury

3^d Because the Court refused to admit competent & proper evidence for deft, to the jury

4th Because the Court gave improper instructions to the jury in behalf of the plaintiff

5th Because the Court refused to grant proper instructions in behalf of the defendant to the jury

6th Because the verdict of the jury in said Cause was contrary to law

7th Because the verdict of the jury contrary to the evidence.

8, Because said verdict was contrary to the weight of evidence

9th Because said verdict was contrary to law & evidence

10th Because the verdict in said Cause should have been for the defendant & against the plff

Davidson & Feinse
attys for deft."

But the Court overruled said motion for a new trial & refused to grant the same to which ruling of the Court in overruling

said motion for a new trial & refusing to grant a new trial deff then & there at the time objected & excepted.

Deft then made motion in arrest of judgment

" State of Illinois }
Pena County } vs. } In the Circuit Court
Charles Ballance } of Pena County - November
Term A.D. 1860 -
vs } Appeal from Justice of
Ephriam C. Rynearson } the Peace - 2 Case.

And now comes said deft Rynearson & makes his motion in arrest of judgment in the above entitled cause for the reasons on file in a motion for a new trial in said cause filed by deft, and also for the further reason that said motion for a new trial was overruled & other reasons &c

By Davidson & Feinze
attys for Deft."

but the Court overruled said motion & refused to grant the same to which ruling of the Court in overruling said motion in arrest of judgment & refusing to grant the same deft by his atty then & there at the time objected & excepted and prayed an appeal & his bill of exceptions which is hereby signed & Read

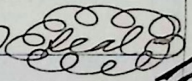
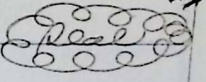
E. N. Powell seals

On the Eighth day of January in the year of our Lord one thousand eight hundred and Sixty one there was filed in the office of the Clerk of said Court in said Cause an appeal bond in the words and figures following to wit:

"I Now all Men by these presents that we Ephraim C Ryneason as principal and Samuel Shute as surety are held & firmly bound unto Charles Ballance in the penal sum of two hundred dollars, to the payment whereof well and truly to be made to said Ballance his heirs, executors & administrators we do hereby severally, jointly and firmly bind ourselves our heirs, executors & administrators by these presents — Witness our hands & seals this third day of January A.D. 1861

The condition of the above obligation is such that whereas judgment was rendered in the Circuit Court of the County of Peoria & State of Illinois against the above bounden Ephraim C Ryneason for the sum of thirty three dollars & costs of suit at the November Term of said Court A.D. 1860 in favor of said Ballance in a suit then pending in said Circuit Court by appeal from a Justice of the Peace wherein said Ballance was plaintiff & said Ryneason was defendant, and from the judgment rendered against said Ryneason in the said Circuit Court aforesaid said Ryneason has prayed and taken an appeal to the Supreme Court of the State of Illinois —

Now if the said Ryneason shall pay
all judgments, Costs, interest & damages
in Case said judgment shall be affirmed
and shall prosecute his said appeal
diligently & with effect then the above
obligation shall be null & void, otherwise
to remain in full force & effect.

Ephraim C. Ryneason 
Samuel Shute 

State of Illinois, B. L.
County of Peoria, B. V. Crock, Clerk
Clerk of the Circuit Court in and for the
County of Peoria in the State of Illinois, do
hereby certify that the foregoing is a full
true and correct Transcript of proceedings
in said Court in a certain Cause wherein
Charles Ballance is plaintiff and Ephraim
C. Ryneason is defendant as the same
remain of Record of and on file in my office.

In witness whereof, I hereto
set my hand and affix the
Seal of said Court at office
at Peoria this 28th day of
March A. D. 1861.

61-337 81

Ephraim C. Rynearson

v

Charles Ballance

Recd

Filed April 25, 1861

L. Leland
Clerk

33,00
10
Dmgs 33,000

\$7.20