

No. 12815

Supreme Court of Illinois

Rhea.

vs.

R
Miner.

184 78

Jacob C. Riner
vs

Olias B Rhea

12815

1869

Elias B. Rhoads }
Plaintiff
Jacob L. Rhoads }

Be it remembered that heretofore to wit on the 11th day of May A.D. 1857. came the Plaintiff by his attorneys Douglass & Craig & and filed out of the office of the Clerk of the Circuit Court of said County his certain writ of Replevin which reads in words and figures following to wit
State of Illinois. Sweet County W.

The people of the State of Illinois To the Sheriff of said County Greeting Whereas Elias B. Rhoads the Plaintiff in this suit hath complained on oath to Josephus Arms Clerk of the Circuit Court of said County that Jacob L. Rhoads the defendant herein unlawfully and wrongfully hath taken and doth detain the following described goods and chattels to wit One certain Bay Mare Black mane and tail about eight years old this Spring & about sixteen hands high of the value of One Hundred and fifty Dollars, and that the said Plaintiff is the owner of and is now justly entitled to the possession of the above described property— Therefore we command you that if the said Plaintiff shall give you Bond with good and sufficient security in double the value of the said property above described as required by law to prosecute his suit in this behalf ^{to} with effect and without delay, and to make return of the said property if return thereof shall be awarded, and to do and keep you harmless in replevying said property— you cause the said property to be replevied and delivered to the said

Plaintiff without delay; and also that you sum-
mon the said defendant to be and appear
before the Circuit Court of said County, on the
first day of the next term thereof to be holden
at the Court House in Knoxville in said
County, on the third Monday in the Month
of October to answer unto the said Plaintiff
in the premises, and have you then, show this writ
with an endorsement thereon in what manner you
have executed the same, together with the Bond
which you shall have taken from the said Plaintiff,
as before commanded. before executing this writ

Witness Cephas Arms Clerk
of our said Court and the Seal
thereof at Knoxville in said County
this 14th day of May, A.D. 1837
Cephas Arms Clerk

The Sheriff's Return, endorsed on the back of
said writ, is in the following words to wit
State of Illinois }
Knox County } ss. In obedience to the within
command I did on the 16th day of May A.D. 1837
Replein the within described property and deliver
and ~~return~~ the same to the within named C. B. Phelps
and send the same by reading to the within
named defendant Jacob C. Liner and together
with the Bond taken (as described by the Statute)
are herewith returned

J. W. Enke Sheriff

1
State of Illinois }
Knox County } 3

Now before the Honorable
John S. Thompson Judge of the Tenth Judicial
Circuit of the State of Illinois, at a Court
begun and held at the Court House in
Knoxville on the third Monday of the
month of October in the Year of our Lord
one thousand Eight hundred and fifty
seven, being the nineteenth day of said
Month, in said Year.

Present Hon John S. Thompson Judge
James M. Stuart Scty Atty
Geo. W. Euker Sheriff
Cephas Annis Clerk

Elias B Rhea }
vs } Replevin
Jacob C. Riner }

Be it remembered that
heretofore to wit; on the 9th day of October
A.D. 1857, the defendant by his attorney
filed his Declaration in this cause
which reads in the words and figures
following to wit;

"
State of Illinois }
Knox County }
Knox County }
October Term A.D. 1857

Jacob C. Riner the defendant in this suit
was summoned to answer Elias B. Rhea

2

the Plaintiff in this suit of a Plea wherefore
 he wrongfully took the Man of the said
 Elias B Rhea and unjustly and wrongfully
 detained the same against Justice and
 pledges until &c. And therefore the said
 Elias B Rhea by Douglass & Craig his
 attorneys complains. For that whereas
 the said defendant on the 12th day of
 May A D 1857, on a certain farm situate
 in Township 9 North, Range 4 East of the
 4th principal meridian in the County
 of Knox and State of Illinois, took the
 Man, to-wit: one bay Man, black main
 hair, about Eight Years old this Spring
 (to-wit: the Spring of A D 1857) about sixteen
 hands high of the said Plaintiff of great
 value, to-wit: of the value of one hundred
 and fifty dollars, and unjustly and
 wrongfully ^{retained} ~~detained~~ the same against
 Justice and pledges until &c. And
 for that whereas, the said defendant on
 the 12th day of May A D 1857, in a certain
 close then called North West quarter of
 Sec 10, in Township 9 North Range 4 East
 of the 4th principal meridian in Knox
 County and State of Illinois, took the Man
 to-wit: to-wit: one bay Man, black main
 hair, Eight Years old this Spring about
 sixteen hands high of the said Plaintiff
 of great value to-wit: of the value of one
 hundred and fifty dollars and unjustly
 and wrongfully detains the same

3

against sureties and pledges until &c

And for that the said defendant on the 12th day of May AD 1857, on a certain farm then and there called or described as the North West qr of Section 40th in Township Nine North Range four East of the fourth principal meridian in Knox County and State of Illinois detained the man, to-wit: one boy man, black man and tail, Eight Years old this Spring about sixteen hands high of the said plaintiff, of great value to-wit: of the value of One hundred and fifty dollars and unjustly and wrongfully detains the same against sureties and pledges until &c

And for that the said defendant on the 12th day of May AD 1857, on his farm in Township Nine North, Range four East in the County of Knox and State of Illinois detained the man to-wit: one boy man black man and tail, Eight Years old this Spring, about sixteen hands high of the said plaintiff of the value of One hundred & fifty dollars & unjustly and wrongfully detains the same against sureties and pledges until &c Wherefore the said plaintiff saith that he is injured and hath sustained damage to the amount of Two hundred dollars and therefore he brings his suit

Douglas being atty for
Def

And afterwards, to-wit: on the 21st day of October A D 1857 at the term of the court then holding the defendant by his attorney filed his ^{by first count of} Demurrer to the plaintiff's Declaration, which reads in the words and figures following to-wit:

State of Illinois } Knox Circuit Court
Knox County } October Term A D 1857

Jacob C Riney }
at }
Elias B Rhea }

The said defendant by Tyler & Sanford his attorneys comes & defends the wrong and injury when & and says that the said first count of the said Declaration and the matter and things therein contained as above pleaded are not sufficient in law for the said plaintiff to have and maintain his aforesaid action thereof against the said defendant & the said defendant is not bound by law to answer the said, and this he is ready to verify wherefore he prays Judgment &c

And for Special Cause of Demurrer he assigns the following
1st Because the place where the deed in the said first count mentioned was taken, is not described with sufficient certainty
Tyler & Sanford

3- And afterwards, to-wit: on the 21st day of October A D 1857, the following order was entered upon the Records of said Court to-wit:

Elisa B Rhea }
107 } Replein
Jacob C Rhea }

This day came the
defendant by his attorney and filed his
Demurrer to ^{the first Count of} the plaintiffs declaration
filed herein, and after hearing the argu-
ment of counsel thereon it is ordered
by the Court that the Demurrer be overruled
thereupon on motion of plaintiff's attorney
defendants attorney's leave is given them
to withdraw their Demurrer, and to plead
to the 1st Count of the plaintiffs Declaration

And afterwards, to wit, on the 21st day of October A.D. 1857, the defendant by his attorney, filed his pleas N^o. 1. 2 & 3 which read in the words & figures following to wit:

State of Illinois }
Knox County } October Term AD 1857.

Jacob C Riney }
at } Replevin
Elias B Rhea }

The said defendant by
Tyler & Sanford his attorneys says that he

6

did not take & unlawfully, unjustly
 & wrongfully detain the said man in
 said plaintiffs first & second counts
 of his Declaration mentioned in manner
 & form as the said plaintiff in said first
 & second counts has above thereof complain-
 ed against him and of this the said
 defendant puts himself upon the country
 &c
 Plff does like
 Douglas for Plff

Tylor & Sanford
 attys for Deft

And for further Plea in this behalf the
 said defendant says that he does not
 detain the said man in the said plaintiffs
 third & fourth counts of his Declaration
 mentioned in manner & form as the
 plaintiff has above complained of him
 in said third & fourth counts and of this
 the said defendant puts himself on the
 country
 Plff does the like
 Douglas for Plff

Tylor & Sanford
 attys for Deft

And for further Plea in this behalf
 the defendant says that the property of
 the said goods & chattels in said De-
 claration mentioned at the said time
 when &c was in him the defendant
 without this that the property of the said
 Goods & chattels or any part thereof at
 the time when &c was in the said

17
the said plaintiff as by the said Dec
laration is above supposed and of this
he puts himself upon the country &c
Plff does the like } Tyler Sanford &
Douglas Strong } Atty for the Dft
for Plffs }

And afterwards, to-wit: on the 21st day
of October AD 1857, the following order
was entered of record to-wit:

Elihu B Rhea }
127 } Replein
Jacob C Riner }

This day came the
parties and their attorneys and issue
being joined for trial put themselves
upon the country, thereupon came a
jury to-wit: E B. Main Amos Ward, David
Mason, William R Tibbitts, Henry Nichols,
Michael Anderson, John H Snyder, Samuel
H Richey, Isaac Martin, Alex Osborn John
B. Cox and Wilson Dredg who being
elected tried and sworn well and truly
to try the issue joined herein ~~was~~ ^{was} ~~for~~ ^{for}
after hearing part of the evidence were
permitted to disperse under charge of
the court and required to meet the court
at 8 1/2 O'clock tomorrow morning

And afterwards to-wit: on the 23rd day of
October AD 1857, the following order was
entered of record, to-wit:

8 Elias B Rhew }
 or } Plaintiff
 Jacob C Rhew }

This day again came the Jury empanelled herein heretofore and after hearing the evidence and argument of counsel upon their oath do say "We the Jury find the issues for the Plaintiff and assess his damages at one cent; thereupon came the defendant by his counsel and entered his motion for a new trial herein

And afterwards, to-wit; on the 23^d day of October AD 1857, the following order was entered of Record to-wit;

Elias B Rhew }
 or } Plaintiff
 Jacob C Rhew }

This day again came in this cause for hearing on the defendants motion made herein for a new trial, and after being advised in the premises it is ordered by the Court that the motion be overruled. Therefore it is considered by the Court that the Plaintiff recover of the defendant the sum of one cent, the amount of his damages as found by the Jury aforesaid together with his costs by him in this suit expended and may have execution therefor, thereupon came the defendant by his attorney and prayed an appeal to the Supreme Court which is allowed upon the defendant entering into bond in the sum of Two hundred dollars with John Thompson as security Bond and bill of exceptions to be filed in 60 days

1

And afterwards, to wit: on the 18th day of December AD 1857, the defendant by his attorney and filed his bill of exceptions which reads in the words and figures following to wit:

State of Illinois }
County of Knox } Knox Circuit Court
Oct Term AD 1857

Elis B. Rhea }
vs }
Jacob C. Riney } Replevin

Be it remembered that that at the October Term AD 1857 of the Circuit Court in & for the County of Knox & State of Illinois, came on to be heard this cause before the Judge of said court and a Jury, and the Plaintiff to maintain the issue on his part called, as a witness James Paddock who being duly sworn testified that he knew the parties, did not know any thing about the trade had a conversation with Deft at the time I took the mare coly to Deft last Spring, was told to take her by the self, left the mare with deft, heard him tell his wife that they traded horses, I went to Riney on Saturday evening he was not at home, came home in the evening, that evening some of the hands put the mare in the stable, defendant turned her out in the feed, she was stiff in the morning. Deft did not say

What means he traded, said a week
 afterwards that if Coley was as well as
 well as she was when they traded it
 would be all right, Coley got over her
 stiffness by the next Sunday, did not
 know that Rhea Plff demanded the
 man, told Dft. (me) came after the man
 Jan. Dft told me when I left to tell Rhea
 if he did not send the man up in a week
 to come down after her, And upon
 cross examination testified that he took
 the man to Dept in April of 1857 late in
 the evening was sent with her by Plff
 wife and children at home, I did not
 put the man in the stable myself. Dft
 did not tell me to tell Plff that he would
 not receive the man Coley, and for him
 to send down for her just as I was going
 back home, Rhea used Coley some
 brought her from Ohio, my hands plowed
 her some before I took her down to Rhea
 I told dft I brought Mr Rhea's man
 down to him, did not say anything, one
 of the hands put her in the stable, I can't
 say whether I put her in the stable, or not
 did not see any one tie her in the stable
 I just know she was lamed on Sunday
 morning, don't know of any person turning
 the man out of the stable into the field
 do not recollect of talking with George Rhea
 sent, did talk with Rhinehart did not
 tell him that I knew she was lamed

11 the evening before, Rimer said if the man Coley did not get over the stiffness he would not have her, Coley is brown Sam is bay.

John Kirby next called and sworn for Pelf & testified as follows, to wit: Pelf sent me down to Dept after a maid about a week after Paddock took the man down & Dept then had Coley. I told Rimer I come after the man Rhea traded for, Rimer said he had not got down using her, Dept said Coley had not got over her stiffness, thought she was going to have the Pole eye and that under the circumstances, he was not willing to let Sam go,

Obed Rhinehart next called & sworn on the part of Pelf & testified as follows to wit: I know the parties & James Paddock went down after the time John Kirby did to Dept, think it was the same or next day, James Paddock & two other Young men went down with us, Rhea demanded the maid Sam, Rhea told him he come after the maid Sam and Rimer told him he did not feel disposed to give her up Rimer said if you will take Coley and say nothing more about it, I will give you five dollars, Coley was not lame but a little stiff, Coley got over her stiffness in about a week after she had a cold Rimer the Dept told Pelf that if Coley was all right as she was when they traded

62 it moved be all right & said if Coley
got over her stiffness he would let Pff.
have Sam, and upon cross examination
said witness stated as follows, to wit, did
not ^{know} when the man Coley was taken down
to Apt. Paddock & Rhinehart were present
at the time of the conversation. Apt ob-
jected to giving up the man Sam. Apt
asked Pff if he was not going to take
Coley. Pff said he was not. Sam is 16
hands high or a little over, with a few
white hairs on her face. Apt said he
would rather give five dollars than have
any trouble, parties live about seven
miles apart. Apt said that if Coley was
in the condition she was when he traded
for her, ^{he would take her} Coley got over her stiffness. before
Sam was replaced

George Rhinehart was
called & sworn on the part of Pff & testified
to wit: know man Sam, she was about
16 hands high and black main hair
white on her hind foot. Sheiff took her
on Rivers farm in Salem Township
farm that Rivers lived on. Encke Re-
ceived May 16th 1857. I took Coley to the
for Mr. Rivers a week before Sam was
replaced and Apt took her up to Pff on
the same day. I know when Paddock
brought Coley down, Sam was in Apt
possession up to the time she was replaced
Cross Ex. by Apt testified as follows
to wit: I was in the field at the time

13

Paddock brought the man down. it
 was on the 2^d day of May little before
 Sun down Mr Paddock Mrs Riner
 were present at the time the man was
 brought, when I came up from the field
 Paddock was at the stable with his sick
 man & Coley was in the stable at the
 time and Paddock told me he hitched
 Coley in the stable, and that night Pad-
 dock told me to turn Coley out of the stable
 because she was heavy with food. Deft
 told Paddock the next day after he brought
 her down, that if Coley did not get over
 her stiffness he would not receive her
 Deft told Mr Paddock to tell plaintiff that
 he would not receive Coley unless she got over
 her stiffness. Deft in the ~~presence~~^{absence} of the Plff
 told me he was to keep Jane until he got
 through his plying, and he did not get
 through his plying until after she was
 replaced, and both parties claimed that
 if any thing happened to either man it
 was to be no trade, Riner the deft took
 the man Coley up to Plff second time,
 and she was put in Plff's stable it was
 fourteen days from time Paddock brought
 Coley down to the time that Jane was
 replaced, Jane Coley was stiff the day I
 took her up to Mr Riner. Plff's house, after
 I turned the man Coley out of the stable
 the day she was sent down to Deft by Mr.
 Paddock, I told all of them at the house
 that the man was stiff, Paddock

14

was in the room at depts house at the time and said he did not know she was lame when he started down to Defts from Plffs Coley was very stiff in all of her legs and could hardly walk, about a week after she was sent down to Defts, was an hour and a half going up with Coley to Plffs from defts.

The Defendant to maintain the issue on his part introduced as a witness John W. Rimes who after being duly sworn in the cause testified as follows, that Sunday morning about 8 O'clock the Deft. Paddock came over to my house, I went to Defts, I observed that the man Coley was stiff. Deft. said that he would not have any thing to do with the Coley man in the condition she was in, said the same to Paddock when he left the defts on the day after he Paddock brought her down to Deft, and when Paddock left on that day Deft. sent the same word to Plff, Coley was diseased, had what I call Pole ail, I did not hear Deft say anything about sending the man same up to Plff. If the plff did not come after her, or if the Plff did not come after her that he Deft would send her up, did not hear any such conversation, on the same day evening when Paddock was about starting back from bringing man Coley down, or at any other time when I was there, when Paddock left defts this wife was with him, I heard

15-

another conversation between the Puffs
dept, at the Puffs house or near there, after
wards and at the time Dft took Coley back
to Pff in which conversation both parties
said if either of the Mares got crippled
or injured or any thing was the matter
with either of them, before they exchanged
Mares, each of the parties was to bear the
loss of the injury to his own mare and it
was to be no trade, I live about two miles
and a half from Pff South West, George
Rhenchert came to my house with Coley
about noon, Dft was at my house & we
all went up to Pffs together, I went with
my Wagon & we had Coley behind the
Wagon, we walked the horses pretty much
or all the way up to Pffs, Coley was very
stiff and could not trot well, When
Rhenchert, when he came to my house
with Coley that day he came from towards
the Pffs And upon cross examina-
tion said Witrop testified as follows, I am
brother of Dft, cant say sure that she had
the Pole Evil, am not much of a Judge
of the diseases of horses,

John Bell called & sworn for defendant
testified as follows, I was present at a
conversation near McRheas the Pffs house
between the parties, and the same conversation
that Mr. John W Reiser testified about, both
parties said if either of the Mares got crippled
or injured in any way, or any thing was the

16
This matter with them before the parties ex-
changed. Each of the parties was to bear the loss of the
injury to ~~himself~~ his own man, don't ^{know} whether
they said if any thing happened it was to be
no trade, don't recollect it, heard Poff say
that he had rather the property was exchanged
at the time of the trade for he did not like to
run the risk of Coley having a colt and if she
had a fine colt he might not want to trade
or care about trading, Upon cross
examination stated that he saw the man
Coley about a week after conversation at
Poffs could not discover that the man
was stiff at all, the day at Poffs, I did not
see as she was much stiff that day of
conversation, she trotted off a good lick
Poff always said it was a fair trade. Riner
at Poff, at the time Coley was taken back to
Poff, said he put Coley in Poffs stable & Poff
told boy to turn her out in road, never saw
Poff or his boys use Coley, since he returned
Jane Riner did not pasture Coley to my know-
ledge, I live on Poffs place, about one week
after I went down to Poffs Dept, Dept came
up into Coley, Dept said he had brought
up Coley Poff said he would not have her
and told Kerby to turn her out, she was
not stiff when Dept brought her up, this was
before suit, at the conversation at Riners
they said they had traded one and Riner
was to keep Jane to Riner, Poff got possession
of Jane some ten or twelve days after Coley
was brought back,

17 George W. Eake, was then sworn on the part of the deft and testified as follows that he Pff said "would be damned if he would not have a good summer work out of mine" this conversation took place at the time I went to replevy the man going from Elmwood to where the man was replevied and upon Cross Examination stated that Pff claimed the man was his, and that he had traded his man for this Coly man found her in Township 9 N 14 E. Knox Co. Ill. on defts farm, she had black man, legs and tail and was a dark bay

The Pff then called and had sworn John Bell who testified that the man was not stiff when brought back to Pff, or did not notice any stiffness, Obed Blumharts was then sworn for Pff and testified, could not see as the man Coly was stiff when brought back

John Kirby was then sworn on the part of Pff and testified that he was present at the time that Coly was brought back, and she did not appear to be stiff

James Paddock was then called & sworn as Witness for Pff and testified was present at time man Coly was brought back did not notice as she was stiff, And upon Cross Examination stated that if either man got injured it was to be at the risk of the party having the man, or no trade, or

to that effect. The foregoing is all the evidence introduced on the trial of said cause, Whereupon the Court at the request of the plaintiff gave the following instructions to the Jury, to-wit:

- 1st If the Jury believe from the evidence that the defendant traded the mares referred to the plaintiff for the colt mares & that deft was to have the use of the mares referred for a time and that that time had elapsed before the commencement of this suit & that the Plaintiff demanded the mares before the commencement of this suit and that the plaintiff deft refused to deliver her they will find the issues for the Plaintiff
- 2 The Jury is instructed that if they believe from the evidence that the contract for the trade of the Horses was that if the mares either of them became injured before the time expired for which the parties were bound then that the person in possession of the horse injured should pay the loss occasioned by the injury to the other & if they believe from the evidence that the mares traded to defendant became injured before the time expired, still the proof of those facts do not invalidate the contract & that the defendant must see for the loss occasioned by the injury

19

To the giving of the said instructions so asked by the plaintiff, the defendant then and there accepted and objected

And the defendant then and there asked the court to give the following instructions which the court then & there refused to give, to wit:

4 If the jury believe from the evidence that there was to be a contract if either horse ~~was~~ ~~was~~ ~~was~~ before the exchange was that the only ~~was~~

7 If the jury believe from the evidence that the parties to this suit contracted to exchange mares the one for the other and that each was to retain the mare he had before said contract at his own risk for some days after said contract was made and that said mares were not to be exchanged until some days after said contract was made and that said plaintiff never had possession of the mare Jane prior to the commencement of this suit the plaintiff cannot recover in this suit

Refused

8 The jury are further instructed that there is a distinction between a contract for a sale, and a sale. That to constitute a sale of personal property there must be a delivery of possession & that the plaintiff must have shown a delivery of the mare Jane which by the defendant in order to recover in this action

Refused

to the refusal of the Court to give said instructions so asked the defendant then and then excepted and objected. The defendant then asked the Court to give the following instructions, to wit:

- 1 If the Jury believe from the evidence that the Defendant was to retain the mare Lane until he he got his plowing done and that if any thing happened to either of the mares before the time for delivery it was not to be a trade, and that the debt was not done plowing at the time the mare Lane was taken and that the mare Coley was stiff or lame they will find for the Debt—
- 2 If the Jury believe from the evidence that the title to the mare was not passed or it was not to be a trade if any thing was the matter with either of the mares, and that the mare Coley was stiff or lame before Lane was to be delivered by the contract they will find for the defendant
- 3 If the Jury believe from the evidence that the Debt was to leave the mare Lane to flow with until he got his spring plowing done and that he had not got his plowing done at the time the Sheriff took the mare upon the writ in this suit and at the time this suit was commenced & the debt did not deliver the mare Lane to the Piff before the commencement of this suit the Jury

21

will find for the deft.

14 If the Jury believe from the evidence that by the contract between the parties the possession was not to pass of the main until the defendant got his plowing done and that the deft did not get his plowing done before the main land was replowed and the possession of land was not delivered by deft to Plff & the defendant refused to receive the coly main as a trade the Jury will find for the defendant.

5 That in order for the Jury to find the issues for the Plff, they must believe from the evidence that the main land is the main described in the Declaration and the property of the plff & was at the time of the commencement of this suit & that the plff was entitled to the possession of the main land at the time of the commencement of this suit.

6 That the Jury must believe from the evidence that the plaintiff demanded either by himself or agent, the main land from the defendant, after the making of the contract and before the commencement of this suit or they will find for the defendant.

Which the court then read and then refused to give as asked, but gave the 3^d, 11th, 5th & 6th as asked & refused to give the 1st & 2^d.

as asked, but gave the same Modified so as to read as follows, to-wit;

- 1 If the Jury believe from the evidence that the Deft was to retain the mare Sam until he got his plowing done, and that if any thing happened to either of the mares before the time for delivery it was not to be a trade and that the deft was not done plowing at the time the mare Sam was taken and that the mare Colly afterwards got hurt or became unsound they will find for the defendant
- 2 If the Jury believe from the evidence that the title to the mares was not to pass or it was not to be a trade if any thing was the matter with either of the mares before delivery and that the mare Colly was seriously injured by stiffness or lameness before Sam was to be delivered by the contract they will find for the defendant

To the refusal of the Court to give said instructions first & second as asked and the giving the same so Modified as aforesaid, the Defendant then & there Excepted and objected

Whereupon the Jury retired to consider of their verdict & returned into Court with their verdict, in the following words

23

"With the Jury find the issues for the Plaintiff and assess the damages at one cent" to which verdict the defendant then there excepted and objected. Thereupon the Defendant moved the Court for a new trial for the following reasons -

State of Illinois } Know Circuit Court
County of Knox } Oct Term AD 1857

Elias B Rhea }
Jacob C Rineer } Replevin

This day came the said Court & moves the Court for a new trial for the following reasons to-wit:

- 1 Because the 1st & 2^d instructions given on the part of Plff is not the law
- 2 Because the 1st & 2^d instructions given on the part of Plff were not applicable to the facts of the case
- 3 Because the 1st Instructions asked for by the defendant was not given as asked but modified by the Court by crossing out the words "was stiff" or lame" and inserting in the place thereof the words "Afterwards got hurt or became injured unsound"
- 4 Because the Court did not give the 2^d

24 instruction as asked for by the Dept. but
modified the same by interlining the words,
"seriously injured by stiffness"

5 Because the court did not give the 7th & 8th Instructions asked for by Dept but refused the same

6 Because the verdict was against the law and the evidence

7 Because the verdict ~~was~~ of the Jury was against the evidence & the instructions of the court.

8 Because the evidence did not show a sale or transfer of property & change of title

9 Because the man Coley was lame at the time she was sent to Dept & by contract Dept was not bound to receive her in that condition & deliver up his man James & refused to do so and the trade was never consummated

Syler & Sanford atty for Dept

Which motions the court then & there overruled of which motion the defendant then & there excepted & objected, that the matter aforesaid might be made a matter of Record. J. John S. Thompson

25 the Judge of said Court have caused to
be signed and sealed this bill of
Exceptions in open Court during the
Term aforesaid John S. Thompson (Seal)

And afterwards, to-wit: on the 18th day
of December AD 1857, the parties filed
their stipulations in this cause, which
reads in the words & figures following
to-wit:

Knox Circuit Court
Oct Term AD 1857

E. B. Rhea }
J. C. Rhea } Replein

It is stipulated in this
case that the appeal bond may be app
roved by the clerk of this court and that
the Record need not be filed in the
Supreme Court for the April Term AD
1858, but may be filed for the succeeding
term thereof without prejudice to the
Appeal

Douglas Hering
Atty for Plff
Tyler & Sanford
Atty for Defendant

And afterwards, to-wit: on the 18th day
of December AD 1857, the defendant
filed his appeal bond, which reads as
follows, to-wit:

Know all men by these presents, that

We Jacob C Riner and Folia Thuman
 are held and firmly bound unto Elias B Rhea
 in the sum of Two hundred dollars to be paid
 to the said Elias B Rhea his executors
 heirs or administrators for the payment
 of which we jointly and severally bind
 ourselves our executors and administrators
 by these presents, Witness our hands and
 seals this 27th day of November A D 1857
 The condition of the foregoing obligation is
 such that Whereas on the 23^d day of
 October A D 1857 in the Circuit Court
 of Knox County & State of Illinois said
 Elias B Rhea as Plaintiff in an action
 of Replevin recovered a Judgment
 against said Riner for one cent damages
 costs of suit, and that said Rhea retains
 possession of the property replevied from
 which said Judgment the said Riner has
 taken an appeal to the Supreme Court
 of the State of Illinois. Now therefore if the
 said Riner shall prosecute his said
 appeal with effect and shall pay whatever
 Judgment may be recovered & costs interest
 & damages in case the Judgment of said
 Circuit Court shall be affirmed in said
 Supreme Court, then the foregoing obligation
 to be void, otherwise to remain in full force
 & effect

J. C. Riner (Seal)

Folia Thuman (Seal)

Approved by me at my office this 28th day of
 December A D 1857 C. Adams Clerk

27 State of Illinois
Knox County
I, Cephas Armes Clerk
of the Circuit Court within and for said County
do hereby certify that the foregoing contains
a full complete and correct copy of the
Record in the foregoing entitled cause
as appears from the Records and
files of my office.



Given under my hand and the
Seal of said Court at the City of
Knoxville this 19th day of May
A.D. 1858
Cephas Armes Clerk

184

Elias B. Rhea

Jacob Le Riner

Transcript &
Agreement to Subvert.

Filed April 18, 1838
L. Leander
Clark

For \$8.00 Paid by ~~apt~~
C. A. ~~clerk~~

E. B. Rhea }
J. C. Rivier }

Argument & authorities
for sustaining the verdict
& judgment in this case

This is an action of replevin
brought to recover one Bay
Mare called Jane

^{1st} It appears sufficiently from the
evidence that Rhea traded
his Black Mare Coby to Rivier
for the Mare in controversy called
Jane

2 It is insisted that it was a part
of the trade that if either was
injured before the exchange that
it was to be no trade on their
part the evidence is conflicting
as to whether it was to be no
trade or whether the injury if any
was to be made up or paid to the
opposite party & the evidence being
conflicting the jury had the right to
find either way on that point & their
finding on that point is correct

J. C. River appellant } Supreme Court April
v } Term A.D. 1859
E. B. River Appellee }

It is agreed that this
Cause is submitted upon the Briefs
& arguments filed & shall be decided
at the time of the Court.

Douglas & Craig
attys for appellee

Tyler & Sanford
attys. for appellant

J. C. Davis

L. B. Wheeler

Agreement to
submit —

J. C. Davis

L. B. Wheeler

Agreement to
submit —

Closure on the parties

1 Gilman 84

1. Scammon 832.

3. Scammon 97

- 3 The evidence shows that Defendant when he received the Coby Mare from Paddock knowing that she was stiff but word to Plaintiff to come after the Mare Jane in one week & that in a week Plaintiff by the Witness Kirby demanded the same Mare and Defendant refused to deliver her.
- 4 The evidence shows that Defendant while he had the Coby Mare in his possession agreed to give up the Mare Jane if the Coby Mare got over her stiffness.
- 8 The evidence shows that 10 or 12 days before this suit was commenced the Defendant returned the Coby Mare to the Plaintiff.

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and wanted to secure the Con-
tract & the evidence showed to
the satisfaction of the jury that
the Coly Mare had got over
her stiffness, & that the Plain-
tiff refused to receive her and
turned her out of his stable where
the defendant had placed her

6 Paddock who knew the mare
traded to defendant, & who took
her to the defendant, testified
that she was not stiff when he
started with her to go to the de-
fendant & the evidence showing
that she was over the stiffness
in a short time. The jury was
authorized in coming to the
Conclusion that the injury if any
was temporary & that it was re-
moved before suit brought and
that there was no real injury or
damage to the Mare & if so were
authorized in finding for the
Plaintiff

7 The jury had the right the mare
body being heavy with foal from
all the evidence to come to the

Conclusion that the Stiffness was
merely a temporary disability by
reason of her being with foul &
that therefore there was no injury
or damage resulting from the
stiffness & their finding was
conclusive on that point

- 8 The Contract of sale of the Mare
in Controversy was absolute the
Property was ascertained and all
the terms of the Contract being
ascertained & Complete the prop
passed to the Plaintiff

13 Picking	175 ⁰⁰
20 Picking	280 ⁰⁰

9

This was not a Conditional Con
tract to depend upon any future
Contingency & was not an a
greement to make a Contract
as in the Cases cited by the
Defendant, but was absolute
one Horse for the other an
even trade Horse for Horse
as the Defendant told the terms
& the title passed

Wheeler v. Henry 14 M. 378

10 If the Mare of Plaintiff become injured that gave the Defendant no right to determine the Mare unplivied for damages for injury to the other Mare. The payment of the damages could not be insisted upon as a Condition precedent, to the delivery of the Mare in Case Trovety. 20 Pickering 284

11 The jury had the right to determine whether it was the intent of the parties to make the sale absolute 20 Pickering 284

12 If the property was in a state ready for delivery & the payment of the purchase money or giving security therefor was not a Condition precedent, & the property was ascertained the title passed 20 Pickering 284
12 Minor 169

10 If the Mare of Plaintiff become injured that gave the Defendant no right to determine the Mare upheld for damages for injury to the other Mare. The payment of the damages could not be insisted upon as a condition precedent, to the delivery of the Mare in Case Trovory 20 Pickering 284

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12 Minors 169

13 The Plaintiffs first instruction as to demand of the property is the same as the Defendants fifth instruction and as the evidence of Paddock and Kirby & Pinchard show that the demand was made at or after the time when the Defendant put word to the Plaintiff to come after the Mare in Country. The jury could not have been misled

14 Plaintiffs second instruction is technically correct. Because the payment of damages was not a condition precedent to the title to the property passing & Defendant had no lien known to the common law & therefore was bound to sue for the damages

15 This instruction could not mislead if not correct because the jury could see from the evidence that the injury was removed at the time the Defendant tried to rescind the Contract

- 16 The Defendant's first instruction was properly refused because there was no evidence that Defendant was to retain the Mare in controversy until his flowing was done
- 17 Defendant's second instruction was properly refused because it is the province of instructions to inform the jury what the conclusion of law is upon the facts proved, & in this instruction they are called upon ~~to~~ to decide a question of law to wit whether the title to the property passed
- 18 This instruction is too vague. It does not direct the mind of the jury to the Contract between the parties to ascertain the terms of the Contract but allows the jury to roam in the broad field of conjecture
- 19 The Defendant's 7th & 8th instructions were properly refused because they assume the law to be that there is no valid Contract

E. B. Rhea ¹⁸⁴

V

Jacob C. Riner

— — — — —
Argument

Filed April 23, 1839

L. Leland
clerk

& the Plaintiff could not be re-
litted to the Possession of the
Mare in Controversy unless
he had previously had the
Mare in his actual posses-
sion

20 Because these instructions as-
sume that there is no sale with-
out & that a delivery is a
necessary ingredient in a sale

21 The verdict in this case is
right & the Court can see
it, & if so it will not be
disturbed

3 Scammon 17

1 Scammon 491-496

1 Gilman 478

22 The Defendants fifth instruction
authorizes the finding of the
jury

Douglass & Lewis
Attys for Appellee

Chris B. Rhoads } In the Supreme Court
 vs } April T. T. D. 1857.
 Jacob C. Rhoads } Replevin —

The Argument of
the Deft. Counsel in said Cause

In order for the Plff. to recover in this
 action, it is necessary for him to
 make out a Case, and the burden
 of proof is upon him to show property
 in the Man Replevied. Either that
 she was his or he entitled to the possession
 of her at the time the Suit was commenced
 or demand made for her of the Deft.

The Deft. claims that he never sold
 or traded the Man to the Plff. and
 that he never by Contract parted with
 his title to the Man Replevied and
 now under the facts of this Case sees
 by law bound to deliver up the Man
 to the Plff. But that the Contract
 was a Exchange means the man for
 the other at a future time when he

the Deft. got through his poring —
provided they win in the same condition
as when ^{the} trade was made for a sale
But if not in the same condition it
was to be no trade. We assume on
the part of the Deft. that the evidence
in this case shows this state of facts

The Deft. in this case introduced 4
witnesses for the purpose of showing
a sale of the property or exchange
of horses, to wit, James Paddock, John
Stirby, Abel Rhineheart & George Rhineheart
James Paddock stated he bought Rhine-
heart down skin, the only man, Deft. said
if the only man did not get over his stiffness
he would not have him, about a week after
John Stirby went down to Deft. for Sam.
Deft. said only had not got over his stiffness
and under the circumstances he was not willing
to give up Sam. Abel Rhineheart went down
after the time that John Stirby did Sam or
next day Deft. down and said Sam, only was
a little stiff at the time Deft. refused
to give up Sam because only was not
all right as she was when they traded,
Geo. Rhineheart says that at the

time Paddock brought Colby & Deft. he
Deft. sent word to Puff by Paddock
that he would not recover Colby
& give up his man I am unless he
got over the shipper. This was the evidence
introduced by the Puff. & show title to the
man recovered. All four of these witnesses
state that the Deft. at all times refused
to give up this man and claimed
that he was not bound to give him up
under the contract between the parties
No evidence so far in this case that
shows that the Deft. ever consented &
part with the title of his man or that
he was bound to do so by any contract
of his with the Puff. or that there was
any time when the Puff. was entitled
to the possession of him. George Blumhert
the Puff. witness also states that both Puff.
& Deft. claimed that if "anything happened"
"either man it was to be no trade."

This explains satisfactorily to our
minds the reason why the Deft. refused
to give up his man "Sam" and why
the Puff. did not. Any further was the
contract between the parties at the time
when it was mentioned.

The Deft. then

called John W. River and upon this point of the Confirmation of the trade he said he was at Deft. house Sunday the day after Paddock brought Coly down that Deft. said he would not have any thing to do with ^{the} Coly were in the condition she was in and that she was stiff. I told Paddock I tell Jeff. he would not discuss Coly unless she got over her stiffness and that both parties ~~agreed~~ ^{stated} that if anything ~~happened~~ ^{was the matter with} either man it was to be no trade before they exchanged each party was to bear the loss & his share of the injury & his own man & it was to be no trade —

John Bell was the next witness called for Deft. he sworn upon this point to the same except that he did not recollect that they said it was to be no trade — here is six witnesses in this case 4 of Jeffs. & two of Defts and all of the witnesses in the case except Geo. W. Enloe who does not testify upon this point. State substantially the same thing that the Deft. never agreed to part with the property referred at any time during the whole transaction. that the Coly man was lame or stiff, that the contract for an exchange was

Conditioned, Five of the Seven Witnesses
in the Case all agree that the
Contract between the parties was that
it was to be no trade if anything
was the matter with either of the Mares
before the Exchange took place and
Colonel Paul the 7th Witness also states
that if anything was the matter with
either of the Mares before the Exchange
each party was to bear the loss of the
injury & his own mare but he does not recollect
whether they said it was to be no trade
Seven Witnesses and all the Witnesses who
speak upon that point in the Case
admit & state that the mare was
suff or something the matter with her
at the time she was brought & the
Defts for the Exchange and also
afterwards until the day she was taken
by the Deft. & the Plff. and then some
of the Witnesses state she was not
suff or suff as they testified, but from
the very first time that the lady mare
was taken & Deft. down to the commencement
of this suit the Deft. has always refused
to exchange Mares on account of the
mare's not being in the same condition
she was in when she was in at the Exchange

And it does not appear that the
Plff. ever denied that it was so when
the Deft. gave his reason for not taking
Coly.

I take it from the evidence there
that one point is clearly established that
the Deft. was not bound to trade his
man Sam or to give him up for Coly to
the ~~Plff.~~ if anything was the matter
with Coly at the time appointed
for the Exchange of Property.

The question
then arises was anything the matter
with Coly when the Plff. sent Sam
for ~~Sam~~ ^{Sam} to get his Coly man & Deft.
or when he made the demand
for Sam. Saddock says she was
lame Stiby. Says ~~she was a little~~
~~stiff~~ Deft. said she had not got over
her stiffness. Obid Rhinehart says she
was a little stiff she got over her
stiffness about a week after she had a
cold. Mrs. Rhinehart ^{says} Coly was very stiff
in all her legs and could hardly walk
John W. River ^{says} on the day she was
taken up to the Plff. & put in his stable
Coly was very stiff & could not walk
well. John Bell also says that

He did not see as she was much
stiff on that same day - nor are
his witnesses in this case that day
that the Coly man was stiff taken
with declaration of the Deft made
to the Plff to his Agents who demanded
the man from him and to the
jur & him the whole evidence in
the case shows that the Coly man
was stiff from the time she was
taken to the Deft until ^{after} she was
taken back to the Plffs by the Deft.
There is no other state of facts is there
any law that would compell the
Deft to take this man & give up his
Contract to the Contractor between the
parties. We say the Deft was at
liberty & refused to take the Coly man
& give up his man from him, and that
the Plff never had any title to this
man replied. We say the evidence
clearly shows that there was "something"
"the matter" with the man Coly and it
was no trade. -

The Deft recalls three of his witnesses
& John Bell to prove that at the
time the man Coly was brought

back to the Duff by Deft. She was
not stiff - And they say they did
not notice that she was stiff.
But Mr. Rhinehart & Jacob Rimer
who took the Coly Man up to the Duff
with the Deft. & had an opportunity
to notice whether she was stiff then
that she was, so that on the
same day they did notice that
she was stiff. And one of the witnesses
namely David Rhinehart says she got
over her stiffness after she had a
colt and she did not have a
colt at that time, so that by the
evidence of 3 of the six witnesses
she was stiff at that time although
the other 3 witnesses did not notice
it.

The Deft. was at liberty under
the contract & was free to take Coly
if she was stiff after the proposed
trade. Although apparently she
might be over it for a day or so
he was not bound to trade if anything
happened to the Coly Man and
something did happen to the Coly Man
and the Deft. was never bound to take
her although ^{she} did not appear ~~come~~
or stiff at a particular day.

If anything was the matter with
the Deft. when they, at any time
after the trade or preparation for a
trade & before the exchange the Deft.
was not in law bound to take the
Coly (more, because the horse once
unwell or stiff, although for a short
time apparently well again, may
be unsound and the Deft. was not
bound to run the risk of taking him
after she was once stiff than he was
at liberty to refuse to exchange —
The ^{Deft.} was the one who was to judge whether
she was in the same condition as
when they traded and whether anything
was the matter with her, as the contract
was never consummated —

A Court or Jury have no right to take
a man's property from him without
his consent or to make a contract
for a man in violation of his
own Express Contract — that is what
the Jury under the instructions of the
Court did in this case have done

It appears from the evidence in this
case that the Deft. was intended
to have the man same until

he got his plowing done ~~if he had~~
~~not been stiff~~ so that the Exchange
was not to have taken place until
the Deft. got his plowing done &
the Evidence shows that Deft had
not got his plowing done when the
Man was deprived so that the
Plff was not entitled to recover
on upon this point as he had no
right to the possession of Man

The Coby Man never was in
a Condition so that the Deft.
under the Contract was willing to
trade or consummate the Sale
or Exchange of property, —

The offer of the Deft to give five
dollars & return them have any
trouble does not prove or tend to
prove a Sale of property —

The Evidence shows the Defendants state
that each one was to bear the loss
of the injury & his own Man. ~~It~~ Shows
that they understood that the title

& the property was not to pass
until the Exchange & could not
and that the same man was
the Deft. & the Cdy the Plff
and ~~Bull~~ ~~Storer~~ further upon this
point & show that the Plff. Considered
that he was to have the Cdy & Cdy
if anything happened and that she
gave his man until the Exchange
Bull says Plff. said he had rather the
"Property was exchanged at the time of the
"trade for he did not wish to run the risk
"of Cdy. having a cot—

If any damage was done to Cdy
before the exchange if the Deft.
was willing to take Cdy or, and
the damage in money & give up
his man, he was entitled to his
money before the Plff. could take
the man from him

If a jury An^d Authority disregard
the Evidence in a Case and make
Contracts for men in plain Conflict
with all the Evidence in a case
then the Plff. ought to have recovered
if not the Deft. was entitled to

to return the mare Dan and
this case looks very much like a
Court & jury undertaking to make
a man trade horses against his
will and establishing the precedent
that when a man has got a
horse trade half made, all he
has to do was to call on a court
& jury to finish it for him and help
him get the property.

In this case
if the Court are satisfied from
the evidence & the law as they
must that the App. was not
entitled to the mare referred,
and that the instructions of the
Court were wrong, they will reverse
the judgment.

J. H. & S. H. S. H.
Attys for App. D.

ELIAS B. RHEA, } STATE OF ILLINOIS,
vs. } IN THE SUPREME COURT,
JACOB C. RINER. } APRIL TERM, A. D. 1859.

APPEAL FROM KNOX.

ABSTRACT.

- I. This was an action of Replevin commenced in the Knox Circuit Court, to recover one bay mare claimed by Plaintiff, and was tried in that Court, before a Jury, at the October Term, A. D. 1857. Verdict and judgment for Plaintiff. Motion for a new trial by Defendant overruled.
- II. Declaration was as follows :
1st count charges that Defendant, on 12th May, 1857, on a certain farm in Township 9 N. R. 4 E. of 4th P. M., Knox county, Illinois, took one bay mare, black main and tail, about 8 years old Spring of 1857, 16 hands high, of the Plaintiff, of value of one hundred and fifty dollars, and unjustly and wrongfully detains the same against sureties, &c.
- III. 2nd count same as first, but describes the close as N. W. Qr. Sec. 10, in same Township.
3d count same as 2d, except it charges that Defendant "*detained*" instead of "*took*" the mare.
4th count same as 3d, except changes the place as on his farm in Township 9 N. R. 4 E. 4th P. M., and lays damage at two hundred dollars.
- IV. On 21st day of October, A. D. 1857, at same term of the Court, Defendant filed his general demurrer to the 1st count of Plaintiff's declaration, and pleas to 2d, 3d, and 4th counts of said declaration, and assigned as special cause of demurrer that the place whence mare was alleged to have been taken, was not described with sufficient certainty.
- V. And afterwards, on same day, the Court overruled the demurrer to said first count of said declaration, and upon motion of Defendant, granted leave to withdraw the demurrer, and plead to said first count, and the said Defendant, on the the same day, filed his plea to the first count of said declaration.
- VI. The Pleas were as follows :
1. Plea to 1st and 2d counts of declaration, that Defendant did not take and unlawfully, unjustly, and wrongfully detain the said mare.
 2. Plea to 3d and 4th counts of said declaration, that he did not detain the said mare.
 3. Plea to whole declaration, property in Defendant.

Elias B. ¹⁸⁴⁴Rhea
21
Jacob C. Riner
Argument of
Riner Cornell

Filed April 23. 1839
L. Leland
Clerk

VII. Issue was joined on the 1st, 2d, and 3d pleas of Defendant, to the country, and Jury sworn.

IX. The Plaintiff, to maintain the issue on his part, called as a witness James Paddock, who testified that he knew the parties; did not know any thing about the trade; had a conversation with Defendant at the time I took the mare Coly to Defendant last Spring; was told to take her by the Plaintiff; left the mare with Defendant; heard him tell his wife that they traded horses. I went to Riner's on Saturday evening; he was not at home, came home in the evening; that evening some of the hands put the mare in the stable; Defendant turned her out in the field; she was stiff next morning. Defendant did not say what mare he traded; said a week afterwards that if Coly was as well as she was when they traded, it would be all right; Coly got over her stiffness by the next Sunday; did not know that Rhea, Plaintiff, demanded the mare; told Defendant that we came after the mare Jane; Defendant told me, when I left, to tell Rhea if he did not send the mare up in a week to come down after her.

On cross examination, he further testified that he took the mare to defendant in April, 1857, late in the evening; was sent with her by plaintiff; wife and children at home; I did not put the mare in the stable myself; defendant did not tell me to tell plaintiff that he would not receive the mare Coly, and for him to send down for her, just as I was going back home; Rhea used Coly some; brought her from Ohio; my hands plowed her some before I took her down to Riner; I told defendant I brought Mr. Rhea's mare down to him; did not say anything; one of the hands put her in the stable; I can't say whether I put her in the stable or not; did not see any one tie her in the stable; I just know she was lame on Sunday morning; don't know of any person turning the mare out of the stable into the field; do not recollect of talking with George Rhinehart; did talk with Rhinehart; did not tell XI. him that I knew she was lame the evening before; Riner said if the mare Coly did not get over the stiffness he would not have her; Coly is brown, Jane is bay.

The plaintiff then called John Kirby. Plaintiff sent me down to defendant's after a mare about a week after Paddock took the mare down; defendant then had Coly; I told Riner I come after the mare Rhea traded for; Riner said he had not got done using her; defendant said Coly had not got over her stiffness; thought she was going to have the pole-evil, and that under the circumstances he was not willing to let Jane go.

The plaintiff then called Obed Rhinehart, who stated that he knew the parties, and James Paddock; went down after the time John Kirby did to defendant's; thinks it was the same or next day; James Paddock and two other young men went down with us; Rhea demanded the mare Jane, and Riner told him he did not feel disposed to give her up; Riner said if you will take Coly, and say nothing more about it, I will give you five dollars; Coly was not lame but a little stiff; Coly got over her stiffness in about a week after she had a colt; Riner the defendant told XII. plaintiff that if Coly was all right as she was when they traded it would be all right, and said if Coly got over her stiffness, he would let plaintiff have Jane.

On cross examination he further stated—Did not know when the mare Coly was taken down to defendant's; Paddock and Rhinehart were present at the time of the conversation; defendant objected to giving up the mare Jane; defendant asked plaintiff if he was not going to take Coly; plaintiff said he was not; Jane is 16 hands high, or a little over, with a few white hairs on her face; defendant said he would rather give five dollars than have any trouble; parties live about seven miles apart; defendant said that if Coly was in the condition that she was when he traded for her, he would take her; Coly got over her stiffness before Jane was replevied.

The plaintiff then called George Rhinehart, who stated he knew the mare Jane; she was about 16 hands high, and black main and tail, white on her hind foot; Sheriff took her on Riner's farm in Salem Township; farm that Riner lived on; Enke replevied May 16th, 1857; I took Coly to Rhea for Mr. Riner, a week before Jane was replevied, and defendant took her up to plaintiff on the same day; I know when Paddock brought Coly down; Jane was in defendant's possession up to the time when she was replevied.

- XII. On cross examination witness further stated—I was in the field at the time Paddock brought the mare down; it was on the 2d day of May, little before sundown; Mrs. Paddock and Mrs. Riner were present at the time the mare was brought; when I came up from the field Paddock was at the stable with his sick mare, and Coly was in the stable at the time, and Paddock told me he hitched Coly in the stable, and that night Paddock told me to turn Coly out of the stable because she was heavy with foal; defendant told Paddock the next day after he brought her down, that if Coly did not get over her stiffness he would not receive her; defendant told Paddock to tell plaintiff that he would not receive Coly unless she got over her stiffness; defendant in the absence of plaintiff told me he was to keep Jane until he got through his plowing, and he did not get through his plowing until after she was replevied, and both parties claimed that if anything happened to either mare, it was to be no trade; Riner, the defendant, took the mare Coly up to plaintiff second time, and she was put into ~~defendant's~~⁴ stable; it was fourteen days from time Paddock brought Coly down to the time that Jane was replevied; Coly was stiff the day I took her up to Mr. Rhea's, plaintiff's, home; after I turned the mare Coly out of the stable the day she was sent down to defendant by Mr. Paddock, I
- XIV. told all of them at the house that the mare was stiff; Paddock was in the room at defendant's house at the time, and said he did not know she was lame when he started down to defendant's from plaintiff's; Coly was very stiff in all her legs and could hardly walk; about a week after she was sent down to defendant; was an hour and a-half going up with Coly to plaintiff's from defendant's.

Here the Plaintiff rested.

Defendant then called John W. Riner, who testified that Sunday morning about 8 o'clock, the defendant and Paddock came over to my house; I went to defendant's; I observed that the mare Coly was stiff; defendant said he would not have any thing to do with the Coly mare in the condition she was in; said the same to Paddock when he left the defendant's on the day after he, Paddock, brought her

down to defendant's; and when Paddock left on that day, defendant sent the same word to plaintiff; Coly was diseased; had what I call the pole-evil; I did not hear the defendant say anything about sending the mare Jane up to plaintiff's, if the plaintiff did not come after her, or that if the plaintiff did not come after her that he, defendant, would send her up; did not hear any such conversation on the Sunday evening when Paddock was about starting back from bringing mare Coly down, or at any other time when I was there when Paddock left defendant's and his wife

XV. was with him; I heard another conversation between the plaintiff and defendant at the plaintiff's house, or near there, afterwards, and at the time defendant took Coly back to plaintiff, in which conversation both parties said if either of the mares got crippled, or injured, or anything was the matter with either of them before they exchanged mares, each of the parties was to bear the loss of the injury to his own mare, and it was to be no trade; I live about two miles and a-half from plaintiff's, south-west; George Rhinehart come to my house with Coly about noon; defendant was at my house, and we all went up to plaintiff's together; I went with my wagon and we had Coly behind the wagon; we walked the horses pretty much all the way up to plaintiff's; Coly was very stiff and could not trot well; when Rhinehart came to my house that day with Coly, he came from towards the plaintiff's.

On cross examination further stated—I am brother of the defendant; can't say sure that she had the pole-evil; am not much of a judge of the diseases of horses.

The defendant then called John Bell, who testified as follows: I was present at a conversation near Mr. Rhea's, the plaintiff's, house, between the parties, and the same conversation that Mr. John W. Riner testified about; both parties said that if either of the mares got crippled or injured in any way, or anything was the

XVI. matter with them before the parties exchanged, each of the parties were to bear the loss of the injury to his own mare; don't know if they said if anything happened it was to be no trade; don't recollect it; heard plaintiff say he had rather the property was exchanged at the time of the trade, for he did not like to run the risk of Coly's having a colt, and if she had a fine colt he might not want to trade, or care about trading.

On cross examination he further stated—that he saw the mare Coly about a week after conversation at plaintiff's; could not discover that mare was stiff at all; the day at plaintiff's I did not see that she was much stiff; that day of conversation she trotted off a good lick; plaintiff always said it was a fair trade; Riner, at plaintiff's, at the time Coly was taken back to plaintiff, said he put Coly into plaintiff's stable, and plaintiff told boy to take her out in road; never saw plaintiff or his boys use Coly since he replevied Jane; Rhea did not pasture Coly to my knowledge; I live on plaintiff's place; about one week after I went down to defendant's, defendant came up with Coly; defendant said he had brought up Coly; plaintiff said he would not have her, and told Kirby to turn her out; she was not stiff when defendant brought her up; this was before suit; at the conversation at Riner's they said they had traded even, and Riner was to keep Jane to plow; plaintiff got possession of Jane some ten or twelve days after Coley was brought back.

XVII. The defendant then called George W. Enke, who testified that the plaintiff said

he would be damned if he would not have a good summer's work out of Jane; this conversation took place at the time I went to replevy the mare; going from Elmwood to where the mare was replevied.

On cross examination, stated that plaintiff claimed the mare was his, and that he had traded his ~~mare for the~~ ^{for Jane} Coly mare; found her in Township 9 N. 4 E. Knox County, Illinois, on defendant's farm; she had black main, legs, and tail, and was a dark bay.

The plaintiff then called John Bell, who stated that the mare was not stiff when brought back to plaintiff's, or did not notice any stiffness.

The plaintiff then re-called Obed Rhinehart, who stated—could not see as the mare Coly was stiff when brought back.

The plaintiff then re-called John Kirby, who stated—was present at the time mare Coly was brought back; she did not appear to be stiff.

The plaintiff then re-called James Paddock, who stated—was present at the time mare Coly was brought back; did not notice as she was stiff.

On cross examination stated, that if either mare got injured, it was to be at the XVIII risk of the party having the mare, or no trade, or to that effect.

This was all the evidence in the case.

The plaintiff then asked the Court to instruct the Jury as follows:

1st. If the Jury believe from the evidence that the defendant traded the mare replevied to the plaintiff for the Coly mare, and that defendant was to have the use of the mare replevied for a time, and that that time had elapsed before the commencement of this suit, and that the plaintiff demanded the same before the commencement of this suit, and defendant refused to deliver, they will find the issues for the plaintiff.

2d. The Jury is instructed that if they believe from the evidence, that the contract for the trade of the horses was, that if the mares either of them became injured before the time expired for which the parties were to use them, that the person in possession of the horse injured should pay the loss occasioned by the injury to the other, ~~and~~ if they believe from the evidence that the mare traded to defendant became injured before the time expired, still the proof of those facts do not invalidate the contract, and that the defendant must sue for the loss occasioned by the injury.

XIX. Which instructions were given by the Court, to the giving of which the defendant then and there objected and excepted.

The defendant then asked the Court to instruct the Jury as follows:

1st. If the Jury believe from the evidence that the defendant was to retain the

XX. mare Jane until he got his plowing done, and that if anything happened to either of the mares before the time for delivery it was not to be a trade, and that the defendant was not done plowing at the time the mare Jane was taken, and that the mare Coly was stiff or lame, they will find for defendant.

2d. If the Jury believe from the evidence, that the title to the mare was not passed, or it was not to be a trade if anything was the matter with either of the mares, and that the mare Coly was stiff or lame before Jane was to be delivered by the contract, they will find for the defendant.

3d. If the Jury believe from the evidence, that the defendant was to have the mare Jane to plow with until he got his Spring plowing done, and that he had not got his plowing done at the time the Sheriff took the mare upon the writ in this suit, and at the time this suit was commenced, and the defendant did not deliver the mare Jane to the plaintiff before the commencement of this suit, the Jury will find for the defendant.

XXI. 4th. If the Jury believe from the evidence, that by the contract between the parties, the possession was not to pass of the mares until the defendant got his plowing done, and that defendant did not get his plowing done before the mare Jane was replevied, and that the possession of Jane was not delivered by defendant to plaintiff, and defendant refused to receive the Coly mare as a trade, the Jury will find for the defendant.

5th. That in order for the Jury to find the issues for the plaintiff they must believe from the evidence that the mare Jane is the mare described in the declaration and the property of the plaintiff, and was at the time of the commencement of this suit, and that the plaintiff was entitled to the possession of the mare Jane at the time of the commencement of this suit.

6. That the Jury must believe from the evidence, that the plaintiff demanded either by himself or agent the mare Jane from the defendant after the making of the contract, and before the commencement of this suit, or they will find for the defendant.

XIX. 7. If the Jury believe from the evidence, that the parties to this suit contracted to exchange mares the one for the other, and that each was to retain the mare he had before said contract at his own risk for some days after said contract was made, and that said mares were not to be exchanged until some days after said contract was made, and that said plaintiff never had possession of the mare Jane prior to the commencement of this suit, the plaintiff cannot recover in this suit.

8. The Jury are further instructed, that there is a distinction between a *contract for a sale*, and a *sale*; that to constitute a sale of personal property there must be delivery of possession, and that the plaintiff must here show a delivery of the mare Jane to him by the defendant in order to recover in this action.

XIX. The Court refused to give the 7th and 8th, and refused to give the 1st and 2d as
XX. asked, and gave the 3d, 4th, 5th, and 6th, as asked by defendant.

To the decision of the Court in refusing to give the 1st and 2d instruction as asked, and refusing to give the 7th and 8th, the defendant then and there objected and excepted to the decision of the Court.

XXI. The Court gave the 1st and 2d instructions asked by the defendant, as modified
XXII. by the Court, which are as follows:

1st. If the Jury believe from the evidence, that the defendant was to retain the mare Jane until he got his plowing done, and that if anything happened to either of the mares before the time for delivery it was not to be a trade, and that the defendant was not done plowing at the time the mare Jane was taken, and that the mare Coly afterwards got hurt or became unsound, they will find for defendant.

2d. If the Jury believe from the evidence, that the title to the mares was not to pass, or it was not to be a trade if anything was the matter with either of the mares before delivery, and that the mare Coly was *seriously injured* by stiffness or lameness before Jane was to be delivered by the contract, they will find for the defendant.

To the giving of the said instructions so modified by the Court, the defendant then and there objected and excepted.

XXIII. The cause was then submitted to the Jury, who found the issues for the plaintiff, and assessed damages at One Cent, to which verdict the defendant then and there objected and excepted.

VIII. The defendant then filed the following motion for a new trial:

State of Illinois, }
County of Knox, } ss.

KNOX CIRCUIT COURT,
October Term, A. D., 1857. }

ELIAS B. RHEA, }
vs. } REPLEVIN.
JACOB C. RINER. }

This day comes the said defendant and moves the Court for a new trial for the following reasons, to-wit:

1. Because the 1st and 2d instructions given on the part of the plaintiff is not the law.

2. Because the 1st and 2d instructions given on the part of the plaintiff are not applicable to the facts of the case.

3. Because the 1st instruction asked for by the defendant was not given as asked, but modified by the Court by crossing out the words "*was stiff or lame,*" and inserting in the place thereof the words "*afterwards got hurt or become unsound.*"

XXIV. 4. Because the Court did not give the 2d instruction as asked for by the defendant, but modified the same by interlining the words "*seriously injured by stiffness.*"

5. Because the Court refused to give the 7th and 8th instructions asked for by the defendant.

6. Because the verdict was against the law and the evidence.

7. Because the verdict was against the evidence and the instructions of the Court.

8. Because the evidence did not show a sale or trade of property and a change of title.

9. Because the mare Coly was lame at the time she was sent to defendant, and by contract the defendant was not bound to receive her in that condition and deliver up his mare Jane, and refused to do so, and the trade was never consummated.

TYLER & SANFORD, *Att'ys for Defendant.*

VIII. The Court refused to grant a new trial, and the defendant then and there excepted to the decision of the Court.

TYLER & SANFORD, *Att'ys for Defendant.*

XXV.

E. B. RHEA,	}	REPLEVIN.
<i>vs.</i>		
J. C. RINER.		

It is stipulated in this cause that the Appeal Bond may be approved by the Clerk of this Court, and that the Record need not be filed in the Supreme Court for the April Term, A. D., 1858, but may be filed for the succeeding Term thereof, without prejudice to the appeal.

DOUGLASS & CRAIG, *Att'ys for Plaintiff.*

TYLER & SANFORD, *Att'ys for Defendant.*

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Abstract
Filed April 18, 1859
Leland
Clark

J. C. RINER, *Appellant*,
vs.
E. B. RHEA, *Appellee*. } SUPREME COURT,
APRIL TERM, A. D., 1859.
APPEAL FROM KNOX.

BRIEF FOR APPELLEE.

1. The contract of sale of the horse in controversy was absolute; the property was ascertained, and all the terms of the contract being completed, the property passed to the Appellee. *Macomber v. Parker*, 13 Pickering, 175; *Riddle v. Varnum*, 20 Pickering, 280.

2. This was not a conditional contract to depend upon any future contingency, and was not an agreement to make an agreement, as in the cases cited by the Defendant, but was absolute, one horse for the other, and as between the parties the title passed. *Urdike v. Henry*, 14 Illinois, 378.

3. If the mare of Plaintiff become injured, that gave the Defendant no right to retain the mare replevied for damages for injury to the other mare; the payment of the damages was not a condition precedent. 20 Pickering, 284.

4. The Jury had the right to determine whether it was the intent of the parties to make the sale absolute. 20 Pickering, 284.

5. If the property is in a state ready for delivering, and the payment of money or giving of security therefor is not a condition precedent, and the property is ascertained, the title passes. 20 Pickering, 284; 12 Illinois, 469.

6. If the property passed, and the Plaintiff was entitled to the possession of the property when the suit was brought, the verdict must stand.

7. The Court will not reverse the judgment even though they would come to a different conclusion, if they can see justice has been done. 3 Scammon, 17; 1 Scammon, 491, 496; 1 Gilman, 475.

The Defendant's fifth instruction under the evidence authorizes the verdict.

DOUGLASS & CRAIG, *Att'ys for Appellee*.

J. C. River ⁷⁸
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Brief for Appellate

Filed April 18, 1839

L. Keland
Clerk

ELIAS B. RHEA, }
vs. } KEPLEVIN.
JACOB C. RINER, } IN THE SUPREME COURT,
APRIL TERM, A. D. 1859.

The Defendant's brief of law in said cause :

There never was any change of title to the property replevied, the contract for a change of *possession and title* was never consummated, it was a mere *contract for a sale* and not a *sale and delivery of the property*—the property replevied was the Defendant's. Jennings vs. Gage, et. al., 13 Ill. 611, 613. O'Keefe vs. Kellogg, 15th Ill. 352. Chitty on Cont. 375. 12 Pick. 82 & 83. 13 Pick. 175. 20 Pick. 280.

The evidence in this case shows that the contract for an exchange of property was executory and conditional, the title was to pass by delivery at a future day, if both horses were in the same condition as when the contract for a sale was made, if not, no property passed. Reed vs. Upton, 10 Pick. 522. Fairbanks vs. Phelps, 22d Pick. 535. Tibbetts vs. Towle, 3 Fairfield 341. Shep. Touchstone 118, 119, 120. Wheeler vs. Lathrop, 16 Maine 17. Hurd vs. West, 7 Cow. 752. Ward vs. Shaw, 7 Wend. 404. 26 Maine, 13 Shep. 243. Lighton vs. Stevens, 9 Shep. 252. Manwell vs. Briggs, 17 Verm. 176. Lucy vs. Bundy, 9 N. Hamp. 298. Scott vs. Wells, 6 Watts & Serg. 357. Rose vs. Story, 1 Penn. State Reps. 190. McBride vs. Whitehead, Geo. Decis, Part 1st, 165. 1 Rice 421. 7 Yerg. 497.

In order to constitute a binding contract there must be a definite promise by the party charged, accepted by the person claiming the benefit of such promise, there must be a request on the one side and an assent on the other, *they must assent to the same subject matter in the same sense*. Chitty on Cont. Page 9. 3 Johns. 534. Bruce vs. Pearson, 1 Sumner 218. Tuttle vs. Love, 7 Johns. 470. Gleason vs. Henshaw, 4 Wheat. 425. Falls vs. Gaither, 9 Porter 605. Hutchinson vs. Bowker, 5 Mee. & Wels. 535. Hubbard vs. Coolidge, 1 Met. 93. Eskridge vs. Glover, 5 Stew. & Porter 264.

The 1st Instructions given on the part of the Plaintiff was wrong, because *demand must have been made at a time when the Plaintiff was entitled to the possession* as well as before the suit, or it would not be good. By the instruction given it would. The instruction is founded on a partial view of the case, and supposes an *absolute trade* when the evidence shows a *conditioned one*, and is not applicable to the facts of the case.

The 2d Instruction given on the part of the Plaintiff was wrong: 1st. Because not applicable to the facts of the case and calculated to mislead a Jury. 2d. Supposed a state of facts not in the evidence. 3d. Not the law, because if Plaintiff's mare was injured before the exchange and Defendant was bound to trade for her, the Plaintiff was bound to tender the amount of the damages to the Defendant before he could compel the Defendant to give up his mare, instead of the Defendant being compelled to sue for it. Chitty on Contracts, 7th American edition, Page 374, 442, 443, 426. Co. Lit. Sect. 340. Seward vs. Palmer, 2 Moore 276. Crawley vs. Hillary, 2d Maule & Selw. 122.

If an irrelevant instruction be given although it be unobjectional as an abstract proposition of law, which is calculated to mislead the Jury, it will be error. Coughlin vs. The People, 18 Ill. 267 & 8. Ewing vs. Runkle, 20 Ill. 448. Galena & Chicago Union Rail Road Co. vs. Jacobs, 20 Ill. 486 & 7.

In order for the Plaintiff to recover in this action he must not only show the wrongful detention of the property replevied, but also his right to immediate possession. Amos vs. Sinnott, 4 Schm. 445.

TYLER & SANFORD, Att'ys. for Def't.

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Filed April 19, 1859
L. Leland
Clerk

J. C. RINER, *Appellant*,
vs.
E. B. RHEA, *Appellee*.

} SUPREME COURT,
APRIL TERM, A. D., 1859.
APPEAL FROM KNOX.

BRIEF FOR APPELLEE.

1. The contract of sale of the horse in controversy was absolute; the property was ascertained, and all the terms of the contract being completed, the property passed to the Appellee. *Macomber v. Parker*, 13 Pickering, 175; *Riddle v. Var-num*, 20 Pickering, 280.

2. This was not a conditional contract to depend upon any future contingency, and was not an agreement to make an agreement, as in the cases cited by the Defendant, but was absolute, one horse for the other, and as between the parties the title passed. *Udike v. Henry*, 14 Illinois, 378.

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5. If the property is in a state ready for delivering, and the payment of money or giving of security therefor is not a condition precedent, and the property is ascertained, the title passes. 20 Pickering, 284; 12 Illinois, 469.

6. If the property passed, and the Plaintiff was entitled to the possession of the property when the suit was brought, the verdict must stand.

7. The Court will not reverse the judgment even though they would come to a different conclusion, if they can see justice has been done. 3 Scammon, 17; 1 Scammon, 491, 496; 1 Gilman, 475.

The Defendant's fifth instruction under the evidence authorizes the verdict.

DOUGLASS & CRAIG, *Att'ys for Appellee*.

J. C. River
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E. B. Rhea

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Filed April 18. 1838
L. Leland
Clerk

ELIAS B. RHEA, } REPLEVIN.
 vs. } IN THE SUPREME COURT,
 JACOB C. RINER, } APRIL TERM, A. D. 1859.

The Defendant's brief of law in said cause :

There never was any change of title to the property replevied, the contract for a change of *possession and title* was never consummated, it was a mere contract for a sale and not a sale and delivery of the property—the property replevied was the Defendant's. Jennings vs. Gage, et. al., 13 Ill. 611, 613. O'Keefe vs. Kellogg, 15th Ill. 352. Chitty on Cont. 375. 12 Pick. 82 & 83. 13 Pick. 175. 20 Pick. 280.

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If an irrelevant instruction be given although it be unobjectional as an abstract proposition of law, which is calculated to mislead the Jury, it will be error. Coughlin vs. The People, 18 Ill. 267 & 8. Ewing vs. Runkle, 20 Ill. 448. Galena & Chicago Union Rail Road Co. vs. Jacobs, 20 Ill. 486 & 7.

In order for the Plaintiff to recover in this action he must not only show the wrongful detention of the property replevied, but also his right to immediate possession. Amos vs. Sinnott, 4 Schm. 445.

TYLER & SANFORD, Att'ys. for Def't.

United States of America }

STATE OF ILLINOIS, COUNTY OF COOK, S. S. }

Pleas, before the Honorable George Manierre

Judge of the Seventh Judicial Circuit of the State of Illinois, and Sole Presiding Judge of the Circuit Court of Cook County, in the State aforesaid, and at a term thereof begun and held at the Court House in the City of Chicago, in said County, on the Second Monday, (being the eleventh day) of

October in the year of our Lord one thousand eight hundred and fifty eight and of the Independence of the said United States the Eighty Third

Present, Honorable

George Manierre Judge of the 7th Judicial Circuit of the State of Illinois. }

Carlos Haven

States Attorney.

John S. Gibson

Sheriff of Cook County.

Attest:

Wm S. Chuang Clerk.

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Apptk brief

Filed April 19, 1859
L. Leland
Clerk