

8515

No. _____

Supreme Court of Illinois

E. C. Colvard

vs.

J. Bagwell

71641  7

Edward C. Colvard, appellant

v.

Joseph B. Barger, Sheriff

for use of George Har-

clown. appellee.

In the Supreme Court

1st Grand Division

at Nov. Term, 1885

Appeal from Gallatin.

And the said appellant, Edward C. Colvard, comes and says there is manifest error in the record and proceedings herein, and for grounds of error assigns the following:

1st The Court below erred in overruling the objection of the defendant below to the introduction in evidence of the writ of ^{replevin} ~~attachment~~, and return thereon.

2nd. The Court erred in receiving in evidence the copy of the order of the Circuit Court in the replevin suit.

3rd The Court erred in allowing Joseph B. Barger sheriff, to amend the return on the writ of replevin, when the service of said writ and return thereon were made by B. C. Slov, and not by Barger.

4th The Court erred in refusing ^{generally} the 1st, 2nd & 4th instructions, asked for by defendant below.

5th The Court erred in refusing to grant a new trial, and to arrest the judgment.

6th And in entering a judgment against the defendant below.

And there is other and manifest error in the said record - wherefore he prays &c

Edward C. Colvard plff

in Error by

A. L. Freeman atty

State of Illinois }
Gallatin County }

Be it remembered
that at a Circuit Court began and
held at the Court House at Shawan town,
at the dates hereinafter designated by
the pleadings, in and for the County
of Gallatin and State of Illinois the Hon
S. S. Marshall then presiding Judge and
afterwards the Hon Downing Bunch,
John E. Heall Clerk & J. W. Richard
Richeson Sheriff. The following pleadings
were had in a Circuit suit pending
in said Court wherein Joseph B. Baizer
Sheriff for use of George Harnelson was
Plaintiff and Edward L. Holvance
was Defendant. To Wit,

Summons

State of Illinois
Cassatin County

The People of the State of Illinois. To any Constable of said County greeting, You are hereby Commanaded to Summon William Pritchett and Edward L. Colvard to appear before you at my office in Shawanetown on the 29th day of January 1853 at 12 o'clock M to answer the Complaint of Joseph B. Barger Sheriff of Cassatin County for the use of George Harrison for a failure to pay him a certain demand not exceeding one Hundred Dollars, and hereof make due return as the law directs Given under my hand and seal this 22^d day of Jan'y A.D. 1853

D. N. Hamilton SS
Justice of the Peace

Return

Served the writs the 22 day of January 1853 by reading to Edward L. Colvard.

Wm Robison C. C. L.
William Pritchett not found in my bailivick this 27th day of January 1853
Wm Robison C. C. L.

Transcript of J. P.

Joseph B. Barger Sheriff of Cassatin County I do for the use of George Harrison

On Bonds
\$50. 00

William Pritchett & Edward L. Colvard

Summons

Spued to Robison 22 day of January 1853 returnable 29th inst at 12 o'clock M, Subpa for loop & Butt served by Hardin

Summons returned served by reading
to Edward Le Colvard on the 22 day
January 1853, William Pritchett not found
27th January 1853.

On this 29th day of January
1853 came the Plaintiff by A McCallum his
Atty also N E Freeman his appearance
on the part of Mrs Pritchett and went
into trial, and after hearing all the
evidence brought forward on trial and
duely considering the same it is considered
and therefor adjudged that the Plaintiff
recover of the Defendant a Judgment for
Fifty dollars and costs of suit,
Given under my hand and seal this 2^d day
of Feby 1853

D. A. Hamilton J.P.

State of Illinois
Callatin County

I Davis A Hamilton do certify
that the above is a true Transcript of
a Judgment on my Docket in the
above entitled cause.
Given under my hand & seal this 21 day
of February 1853

D A Hamilton J.P.
Justice of the Peace

"Filed February 24th 1853"
J. E. Keall Clerk

Appeal Bond

Know all men by these presents that Mr
E. L. Colvard & N E. Freeman are held and
firmly bound unto George Newelson in the
penal sum of one hundred & twenty dollars
lawful money of the United States for
the payment of which well & truly to be
made we bind ourselves our heirs and
administrators, jointly, severally & jointly
by these presents, Witness our hands

seals this 21st day of February 1853.

The Condition

of the above obligation is such that whereas the said George Harrison on the 2^d day of February 1853 before Davis N Hamilton a Justice of the Peace for the County of Gallatin Illinois, recover a judgment against the above defendant E. C. Colvard for the sum of thirty one 814/100 dollars from which judgment the said E. C. Colvard has taken an appeal to the Circuit Court of the County of Gallatin aforesaid, Now if the said E. C. Colvard shall prosecute his appeal with effect & 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 & effect.

E. C. Colvard (Seal)

A. G. Freeman (Seal)

Approved by me this 21 day of February 1853

D N Hamilton (Seal)

Justice of the Peace

Summons to Appellee

State of Illinois }
Gallatin County } Sec

The People of the State of Illinois
To the Sheriff of said County greeting.
We Command you to summon George Harrison if to be found in your County, to 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 Shawneetown on the first Monday in the month July next, to answer to an appeal obtained by E. C. Colvard from a judgment rendered against said Colvard in favor of said Harrison before D N Hamilton

Esq a Justice of the Peace of said County
on the 29th day of January A.D. 1853. for the
sum of \$50 and all costs of suit and
honor make due return to our said
Court as the law directs,

Seal Witness I E Heale Clerk of our said
Court, and the Judicial seal
thereof at Shawmutown this 14th
day of March A.D. 1853
I E Heale Clerk

Return
Suma the within by reading the same
to George Hearlson the 18th day of March
1853.
Richard Richardson Sheriff
By Enos Robison Deputy,

Affidavit for Continuance

C. C. Colvard } In Gallatin Cir Court
at }
Lo B Bange for use } Oct Special Term 1853
of Geo Hearlson }

A. L. Freeman atty for the
said deft states on oath. that the evidence
of Russel Hewitt is material in the
defense of this cause & that the said
Hewitt is the same person, whose deposition
has been held by said Court to be defective
he states that he expects to prove by said
Hewitt that the man in controversy was
the same man which he, said Hewitt,
mortgaged to Mrs Pritchett, that said
mortgage was in force in the State
of Kentucky at the time said man
was reclaimed by said Pritchett from
said Hearlson, he states that he ascertained
these facts by conversing with sd Hewitt
himself - that both said Pritchett & sd
Hewitt have resided in Union County
Ky for many years & do still, he states

Order of Court

Saturday 3rd July 1853

Joseph B Barga Sheriff
vs
use of Geo Hearnson

Edward G. Colvard

Appeal

On this day came the parties
by their Attorneys and say let a Jury come
whereupon came a Jury of 12 good and lawful
men to wit, Mr Leathers John Hinkles, Vashell
Hentchison, Mr M Spence, David Andrews, Stacy
Hinkles Henry R Willis, Mr Larrison, Jackson
Bull John Reid, Pleasant H Walker, & John J
Gorns, who being elected tried & sworn and
proofs being being heard for verdict do say, "We the
Jury find for the Plaintiff \$50 debt and apx
damages to the amt of \$29.00" whereupon
came the defendant and moved the
Court for a new trial, and in arrest of
Judgment, which motion is by the Court
sustained upon payment of all costs
It is therefore ordered & adjudged that the
Plaintiff recover of the deft. his costs in this behalf
and have execution &c

that by reason of said Hewitts depositions being held defective as aforesaid he cannot get his evidence at this time, but believes he can do so before the next term of this Court, He states that by other witnesses he can identify the man in controversy as being the same mentioned in said Mortgage, & can prove that said man was stolen property at the time sd Hanson bought him and that said Hanson now bought her from any one having right. This application is not made for mere delay, but that Justice may be done, sworn to before me
this 29th Oct 1853

A. G. Freeman

W. Estlin clk
Filed 29th Oct 1853
W. Estlin clk

Orders of Court Tuesday 18th October 1853

Joseph B Baugh Shuff
use of Geo. Hanson
vs
Edward C. Colvard

Appeal

On this day came the Defendant by Freeman his attorney and moved the Court for leave to open depositions herein, which leave is awarded.

Saturday 29th October 1853

Joseph B Baugh Shuff
for use of George Hanson
vs
E. C. Colvard

Appeal

on this day came the Plaintiff by McCallum his attorney, and excepts to the depositions herein, which exceptions are by the Court sustained, whereupon the defendant moved the Court for a continuance herein, which motion was based upon

affidavit, and cause continued at
defendants cost.

Affidavit for Continuance

Colvard &c
ats

Barger Sheriff for In Gal Cir Court
vs. Harelesson } At July Term 1854.

E. C. Colvard being sworn states that he cannot
safely go into trial at this term of this court
on account of not having the testimony of
Rufell Hewitt, who resides in Union Co Ky - by
whom he expects to prove that the mare in
controversy in the action of replevin in which
the bond sued on was given, was the identical
mare mortgaged by said Hewitt to Wm Pritchett
& that said Pritchett at the time the said mare
was stolen & brought to this County, was holding
the same under such mortgage. He states
that between 3 and 4 weeks since he sent a
deed carrier to Union Co Ky. to take said
Hewitts deposition, & that the same has not
yet arrived, that it is only 15 miles to the
place where such deposition was to have
been taken, that this application is not
made for mere delay, but that Justice
may be done, he believes he can procure
said testimony before the next term of this
court. He knows of no one within this
state by whom he can prove these facts
Sworn to before me this }
7th July 1854. } E. C. Colvard

I E Harelesson clk }

Filed 8 July 1854 }

I E Harelesson clk }

Orders of Court

Saturday 8th July 1854.

Joseph B Barger Sheriff
for the use of George Harelsou
vs

Edward L. Colvard

} Appeal

On this day came
the Defendant by Foreman his atty and
on Motion based upon affidavits this
Cause is Continued at the Cost of the
Defendant. It is therefore ordered that the
Plff recover of the Deft his Costs & charges
in & about this Continuance & that he
have execution re

~~Tuesday~~
Wednesday 25th Oct 1854

Joseph B Barger Sheriff
use Geo Harelsou
vs

Edward L. Colvard

} Appeal

Ordered that this
Cause be continued until the next
Term of this Court,

Thursday December 21st 1854

Joseph B Barger Sheriff
use of George Harelsou
vs

Edward L. Colvard

} Appeal

On this day at the
calling of this Cause for Trial, there
appearing no person to prosecute this
appeal. it is ordered that the Cause
be & it is hereby dismissed for the want
of Prosecution,

Friday December 22nd 1854

Joseph B Barger Shff, use Geo. Harelsou

vs
Edward L. Colvard

} Debt

On this day came the Plaintiff and moved the Court to set aside the order dismissing this cause at a former day of this term, which motion being agreed to by the defendant, is sustained and the cause reinstated, and now coming on for trial, the parties say let a Jury come, whereupon came a Jury of twelve good and lawful men, to wit, Joseph Sargent, Jos. L. Eaton, Alonzo Stewart, Andrew Raglin, James Brasley, G. W. Hise & J. Bird, G. W. Simmons, Mr. Blades, Thos R. Cherry, Perry Spencer & Isaac C. Lane who being elected tried & sworn and proof being heard and arguments submitted by the respective Counsel, the Jury return and into Court the following verdict, "We the Jury find for the plaintiff \$50 Debt and damages at \$50, whereupon came the Plaintiff by his Attorney and recovers five dollars of damages assessed by the Jury, whereupon came the Defendant and moved the Court for a new trial and in arrest of Judgment, which being argued is by the Court overruled it is therefore ordered and adjudged that the Plaintiff recover of the Defendant the aforesaid sum of \$50 Debt & \$50 Damages to be discharged upon the payment of the damages, And it is further ordered that Complainant recover of Defendant the cost of this suit & that he have execution re. And the Plaintiff enters a cross motion herein for a return of the property "revere pro time",

Thursday December 28th 1855

Joseph B. Barger Esq
vs Geo. H. H. H.

vs

Edward C. Colvard

} Appeal

On this day came again the parties by their Attorneys and the cross

motion by Complainants at a former day of this term of this Court, for return of the property ~~return~~ pro tunc is now by the Court here overruled, whereupon the Defendant came and prayed an appeal to the Supreme Court of this State, which is by the Court allowed upon his filing bond in the sum of one hundred dollars with Thomas G. S. Herrod as security, in ten days.

Exceptions

Joseph B Baugh Sheriff In the Gallatin Circuit
for the use of George Harrelson Court at Dec Term 1884
vs
Edward G. Holman On Appeal from a Justice of the Peace

Be it remembered that on this day this cause came on to be tried before a Jury and the Hon Downing Baugh Judge - and Thomas G. S. Herrod was sworn as a witness for the plaintiff, and testified that he knew of a bay or sorrel mare is not certain which, being sold sometime in the year 1853, in Sharpsburg, at the race track, it was sold by H. H. Mc Butt as Auctioneer and James S. Reardon became the purchaser - The mare was worth 30¢ or \$35. Witness saw said Harrelson and William Pritchett talking together about the mare at that time. The mare was in possession of said Pritchett, never saw the mare in possession of Harrelson. Witness thinks the mare was worth from \$10 to \$15 during the cropping season, she would only be worth her feed during the rest of the year.

Mr Willis. Sworn as a witness for Plaintiff testified that some time in the year 1853 he saw a sorrel mare with a blaze in her face, sold on the race track in Sharpsburg to said Geo Harrelson by H. H. Mc Butt Auctioneer, she was worth \$30 to \$35 Her services were worth about \$20 a year. The Plaintiff then introduced in evidence a writ of replevin & the return

thereon, which is in words and figures following to wit

Writ of Replevin

State of Illinois
Gallatin County } 11

The People of the State of Illinois to the Sheriff of said County greeting Whereas William Pritchett having made plaint to the Clerk of our Circuit Court and filed his affidavit that George Harrison wrongfully & unjustly detains from him, a certain Chestnut Sorel Mare with a blaze in her face of the value of twenty five dollars of which said property the said William Pritchett is entitled to the property that the same was not taken for tax assessment or fine levied by virtue of any law of this state, nor seized under any execution or attachment against the goods and chattels of said William Pritchett liable to execution or attachment nor if the said William Pritchett shall make you safe by Bond and security, you are hereby commanded to take and deliver to him the said property, and to summon the said George Harrison to be and appear before our Circuit Court on the first day of the next term thereof, to be holden in said County at the Court House in Shawneetown on the 2^d Monday of December next to answer wherefore he wrongfully and unjustly detains the said property, against securities & pledges

Witness J E Hall Clerk of our said Court
& the Judicial Seal thereof at Shawneetown
this 1st day of November A D 1852
J E Hall clk

Return

Served by taking the within described Chestnut Sorel Mare with blaze in her face and delivered to the within named defendant this 1st November 1852

Joseph B Burger
By R. C. Stor Deputy.

(Exceptions)

to the introduction of which writ of
replevin & return thereon as aforesaid the
defendant objected & the Court overruled the
objection, to which opinion of the Court in
overruling said objection the defendant at the
time excepted,

The Plaintiff then offered in evidence a copy of
an order of the Circuit Court, which is in
words & figures following to wit,

Order of Court

Thursday 21st December 1852

William Pritchett

vs

George Hareless

Replevin

On this day came the Plaintiff
by J. J. J. his Attorney & takes herein a non
suit, It is therefore ordered that the defendant
recompense of the Plaintiff his costs in this behalf
shewn executions &c.

to the introduction of
which said order in evidence the defendant
objected. and the Court overruled said objection
& allowed said order to go in evidence
to the Jury, to which opinion of the Court
in overruling said objection & in allowing
said order to go in evidence to the Jury
the defendant at the time excepted,
The Plaintiff then introduced in evidence
the bond in words & figures following, to wit,

Bond

Know all men by these presents that we
William Pritchett and G. C. Colvard are
held and firmly bound unto Joseph B
Barger Sheriff of Gallatin County Illinois
in the penal sum of fifty dollars to
the payment of which well and truly
to be made we bind ourselves Executors
and Administrators jointly and
severally and firmly by these presents
Witness our hands and seals this 1st
November 1852

The Conditions of the above obligation is such that whereas the above bonded William Pritchett has this day sued out from the Clerks office of the Circuit Court of Gallatin County Illinois against George Hanson defendant, a writ of replevin for the possession of a certain Churned Sornel. Escure with a blaze in her face, grow if the said Pritchett shall prosecute said writ of replevin to effect & without delay and make return of the property, if return thereof shall be awarded, and save and keep harmless the said Sheriff in replevying such property, then the above obligation to be void, otherwise to remain in full force.

Wm Pritchett

E. G. Edward.

Then the Plaintiff noted his cause, and the defendant answered that he had no proof to introduce, and the Counsel commenced the argument to the Jury and during the argument to the Jury, the Counsel for the Plaintiffs asked leave of the Court to get Joseph B. Barger the former Sheriff of said County, to amend the return on the said writ of replevin to which the defendant objected and the Court overruled said objection and permitted said Barger to amend said return so as to read as follows to wit,

Served
by taking the within described Churned
Sornel Escure with blaze in her face and
delivered to the within named Plaintiff
this 1st November 1852

Joseph B. Barger
By R. C. Slov Deputy

to which opinion of the Court in overruling said objection & in permitting said amendment to be made, the defendant at the time excepted,

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

- 1st The deft asks the Court to instruct the Jury to find for the defendant. Refused
- 2 The deft asks the Court further to instruct the Jury that the damages in this case can at most be only nominal, unless the Plff in the replevin suit has failed to return the property after a return thereof has been awarded. Refused
- 3 That unless they believe from the evidence that Pritchett replevied the property in controversy from the Harlow they must find for the defendant, Given
- 4 That the Plff in this suit is not entitled to recover the value of the property in controversy unless they believe from the evidence that there was a failure to return the property after a return thereof was awarded. Refused
- 5 That the return on the writ as amended since the proof has been closed is no evidence before the Jury unless it has been introduced as evidence in the amended form. Given
- And the Court gave the 3rd & 5th of said instructions, and refused to give the 1st 2nd & 4th of said instructions, to the opinion of the Court in refusing severally to give said 1st 2nd & 4th instructions, the defendant at the time excepted. And after said 3rd & 5th instructions were allowed as aforesaid and before they were read to the Jury the Plaintiff again offered in evidence the writ aforesaid with the return thereon, amended as aforesaid. It was agreed between the parties that Robert L. Hor was the Deputy by written appointment of said Barger, at the time of the service of said writ, but that his appointment had never been recorded. And this was all the evidence in the case, the Jury then

returned a verdict for the Plaintiff and the defendant moved for a new trial and in arrest of Judgment upon the following grounds

1st because the verdict was contrary to law
2^d because the verdict was contrary to evidence
3^d because the Court erred in refusing to give the 1st 2^d & 4th instructions asked for by deft. and the Court overruled defendants motion for a new trial & entered a Judgment against the defendant. To which opinion of the Court in overruling said motion for a new trial & entering Judgment the defendant at the time excepted & prayed this his bill of exceptions to be signed & sealed by the Court & made a part of the record which is done at this same time.

D Barch (Seal)

Filed 29th Decr 1854. }
J. H. Hall clk. }

Appeal Bond

Know all men by these presents that Mr Edward C. Colvance and Thomas S. Meers, are here and firmly bound unto Joseph B. Barch for the use of George Harrison in the full and true sum of one hundred Dollars, lawful money of the United States for the payment of which well and truly to be made we bind ourselves our heirs and Administrators jointly, severally and firmly by these presents. Witness our hands and seals this 3rd day of January A.D. 1855.

The Conditions of the above obligation is such that whereas Joseph B. Barch Sheriff for the use of George Harrison, did, on the 28th day of December 1854 in the Circuit Court of Gallatin County Illinois render a Judgment against Edward C. Colvance

for Fifty dollars debt and Fifty dollars
damages and costs of suit from which
Judgment the said Edward C Colvard defen-
dant in the aforesaid cause, has taken an
appeal to the Supreme Court of the State
of Illinois, Now if the said Edward
C. Colvard shall prosecute his appeal
with effect, and shall pay the said
Judgment, Cost, interest & damages in
case the said Judgment shall be affirmed
in said Supreme Court, then this
obligation to be void, otherwise to
remain in full force and effect

E. C. Colvard (Seal)
J. G. Herod

Filed 3rd July 1855

State of Illinois
Calleau County

I John E Hall clerk of the Circuit
Court in & for said County do Certify that the foregoing
16 pages contain a true and complete record in a certain
suit in said Court wherein Joseph B. Barger Sheriff
for the use of George Harrelson was Plaintiff and
Edward C. Colvard was defendant, all of which
appears from the records & files of my office.

Given under my hand and the
Seal of said Court at office in
Shawneetown this 18th day of July 1855

J. E. Hall clk

Clerks fee for Record \$6.50

~~10~~ 12
Edward C. Colvard

vs. } Appeal from
Gallatin - }

Joseph B. Barger, Sheriff
for Use of Geo. Haralson

Filed Apr. 12. 1855.
A. L. Johnston, clk



