

12233

No. _____

Supreme Court of Illinois

Wheeler

vs.

Chubbuck

State of Illinois
Livingston County

Now before the Honorable
Edwin S. Ireland Presiding
Judge of the Ninth Judicial
District of the State of Illinois
at a Circuit Court Commenced
and held in and for the County
of Livingston at the Court
House in Pontiac in said County
on Monday the thirtieth day
of April in the year of our
Lord One thousand eight
hundred and fifty five

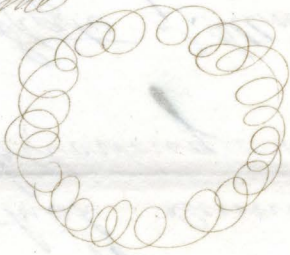
Whereupon heretofore, to wit on the Seventeenth
day of July A.D. 1854 there was sued out of the
Office of the Clerk of the Circuit Court of said County
a certain Summons in an appeal from a
Justice's Court wherein Harrison B. Chubbuck is
Plaintiff and Edwin S. Wheeler is Defendant
which summons is in the words and figures
following to wit

State of Illinois
Livingston County

The People of the State of Illinois to the Sheriff of said
County - Greeting

We Command You, that you Summon Edwin S. Wheeler
if he shall be found in your County, personally 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 in Pontiac in said County

on the second Monday (11th day) of September next,
to answer unto Harrison P Chubbuck in a plea of
Appeal from the docket of Abalom Hallam Esq
and have you show and shew this writ, with an
endorsement thereon, in what manner you executed the
same



Witness George H Boyer Clerk of our said
Court and the Seal thereof at Pontiac
this 17th day of July Anno Domini 1854
Geo H Boyer Clerk

Upon which summons the Sheriff makes his return
which is in the words and figures following to wit

Served by reading to the within named
E L Wheeler, Sept 6th 1854
Sheriff, Fee Serving returning 60³ J Mathis Sheriff
" " 18 miles travel ⁵⁰ 71.40.3 By J P Garner for Deft.

And afterwards to wit on the 11th
day of September 1854 the following order was
entered of Record in the above entitled cause viz

Harrison P Chubbuck
Edwin L Wheeler App^{ts} Appeal

On motion this cause is
continued for want of service

And afterwards to wit on the 1st day
of May ad 1855 the following further order
was entered of Record which order is in the
words and figures following to wit

M. B. Chubbuck }
Edwin S. Wheeler } On Appeal

And now at this time came the said
parties and the Plaintiff by Hanna & Sackett his
Attorneys enter his motion to substitute James Arguebaugh
as security for cost in place of M. B. Chubbuck which
motion having been heard by the Court is
sustained and new security is given and placed
upon file.

And afterwards to wit on the 2^d day
of May ad 1855 the following further order
was entered of Record viz

M. B. Chubbuck }
Edwin S. Wheeler } On Appeal

Now at this time came the
Plaintiff by his Attorneys and on his motion leave
is granted him to withdraw the bond for security
for cost in this suit by leaving a copy on file.

And afterwards to wit on the same day
Another order was recorded which is in the
words and figures following to wit

H. B. Chubbuck

E. M. Wheeler

On Appeal

This day came the parties and
thereupon came a jury to try the issue joined to wit
Jesse Titus, William Lee, Olin Richardson
Malachi Spence, James Garner, William Pop
J. F. Johnson, Samuel McNamee, Samuel Thompson
William Figgie, Peter Kyan & M. D. Edgington
who being elected, tried and sworn well and truly
to try the issue joined in this cause after hearing
the evidence adduced and argument of counsel
thereon upon their oaths do say, "That the Jury find that
the Defendant owes to and unjustly detains from the
Plaintiff the sum of Fifty Dollars, and thereupon the
Defendant by his attorney enters his motion for
a new trial which motion being heard by the
Court is overruled

And afterwards to wit on the
same day (May 2^d 1835) the following
further order was entered of Records viz

A. P. Chubbuck

vs
On Appeal

E. S. Wheeler

This day came again the
parties and the Defendant by Court his
Attorney moves the Court to arrest the judgment
which motion being heard by the Court is
overruled, and thereupon the Defendant enters
his motion to apportion the cost of this Cause
which motion being fully explained to and heard
by the Court is sustained. It is therefore ordered
that Plaintiff recover of and from the said Defendant
his cost before the Justice and three fourths of
his cost in this Court and it is further ordered
that Judgment be entered against the said
Defendant for Fifty Dollars the amount
aforesaid assessed and three fourths of the
cost by the Plaintiff expended in this Court
and all his cost before the Justice and that
Execution issue therefor

And afterwards to wit on the same day
the following further order appears of Record viz
H B Chubbuck }
E S Wheeler } On Appeal

This day came the Defendant
by his Attorney and tender his bill of exceptions
which is signed, sealed and intended to be filed
and made part of this Record which exceptions
are in the words and figures following to wit

Wm B Chubbuck }
Edwin S Wheeler } Livingston County Circuit Court
April Term 1855

Be it remembered that
on the trial of this cause the plaintiff offered
proof tending to show that at different times
between the 1st day of March 1853 and the 1st day
of December 1853 said defendant was the owner
of from 16 to 18 hogs and pigs and that said
defendant permitted said hogs and pigs to run at
large in said County of Livingston between the
days aforesaid, and that said defendant then
resided in said Livingston County. The
defendant offered evidence tending to show
that he was the owner of only 9 hogs
at the time spoken of by the witnesses
and that said hogs were not permitted
to run at large

This was all the evidence

The Court at the request of the Plaintiff instructed the Jury as follows,

If the Jury believe from the evidence that the defendant was the owner and possessor of the hogs and pigs in question and that the defendant was a resident of the County of Livingston between the 1st day of March 1853 and the 1st day of November 1853 and any time between said days being such resident permitted his hogs to run at large in said County then they ^{will} find for the plaintiff five dollars for each hog and pig they believe from the evidence was so permitted to run at large.

To the giving of which instructions the defendant then and there assented.

The Court at the request of defendant instructed the Jury as follows.

1st That it is an action upon a penal statute and greater strictness of proof is required than in an ordinary action upon a contract and the plaintiff must prove all the facts necessary to constitute the offence under the Statute before he can recover.

2^d The mere fact of defendant's hogs running at large does not constitute the offence mentioned in the Statute. To constitute this offence it is necessary that the defendant permitted his hogs to run at large.

3^d

The jury in this case can find a verdict against the defendant for no more than one running at large at several different and distinct times the plaintiff can only in this action have judgment for one such offense that is he can only recover five dollars for each hog though said hog may have been permitted to run at large more than once

4th

The plaintiff cannot in this case recover for several different and distinct acts of the defendant in permitting the same hogs at several distinct and different times to run at large

The defendant asked the Court to instruct the jury as follows

To the different times that the plaintiff has proven that the defendant permitted his hogs to run at large he is entitled to recover \$5 per hog unless said amount shall exceed the sum of \$100 in which case the case is not within the jurisdiction of the Justice and the plaintiff is not entitled to recover in this action which instruction the Court refused to give and to such refusal of the Court to give said instruction the Defendant then and there accepted

The Jury found a verdict for the Plaintiff
in the sum of fifty dollars.

The defendant
moved for a new trial which motion
the Court overruled and the defendant
then and there excepted to the decision
of the Court in overruling said motion

The defendant
moved the Court in arrest of judgment
which motion the Court overruled, to
which decision of the Court in overruling
said motion the defendant then and
there excepted and prays that this
bill of exceptions be signed, sealed
and made part of the record which
is done

E. S. Leland 
Judge

And afterwards to wit on the same
day (May 2^d 1855) the following further order
appears of Record viz

H. B. Chubbuck

vs
Edwin L. Wheeler Applt

 On Appeal

This day came again the
parties and on motion of the Defendant an appeal
to the Supreme Court is granted him upon his
entering into Bond with Chester Morris as
Security in the penalty of One Hundred

and Fifty Dollars payable to the said
H B Chubbuck Plaintiff and Conditioned
as the law directs within twenty days from
this date

And afterwards to wit on
the 10th day of May 1855 the said
Edwin L Wheeler presented his Bond with the
Security above mentioned which was filed
and is in the words and figures
following to wit

Now all men by these presents
that we Edwin L Wheeler and Chester Morris
are held and firmly bound unto Harrison
B Chubbuck in the penal sum of One
Hundred and Fifty dollars for the
payment of which sum well and truly
to be paid made we hereby jointly and
severally bind ourselves our heirs, executors
and administrators unto him the said
Harrison B Chubbuck

The Condition of the
above obligation is such that whereas
the above named Harrison B Chubbuck
recovered a judgment in the Livingston
County Circuit Court at the April Term
thereof for the year 1855 against the
above bound Edwin L Wheeler for the sum of
fifty dollars besides cost of suit from
which judgment of said Circuit Court

the said Edwin L. Wheeler has prayed for and
obtained an appeal to the Supreme Court
of the State of Illinois. Now if the said
Edwin L. Wheeler shall prosecute his said
appeal with effect and shall pay the said
judgment together with all such damages
interest and cost as may be adjudged
against him in case said judgment shall
be affirmed by said Supreme Court
then obligation shall be void otherwise
to remain in full force and effect

Witness our hands and seals this

2^d day of May A.D. 1855

Approved by me at
my Office in Chicago
this 10th May A.D. 1855

Geo. W. Boyer

Clk

Edwin L. Wheeler

Chester J. Morris

Seal
Seal
Seal

State of Illinois,
Livingston County

Geo. W. Boyer Clk

of the Circuit Court in and for said
County in the State aforesaid do hereby
certify that the foregoing is a full
complete and correct copy of
all the proceedings had in said
Circuit Court in the above entitled
Cause



In Testimony whereof I have
hereunto set my hand and
affixed the Seal of our said
Circuit Court at Pontiac this
2^d day of June A.D. 1855



Wm H Pope Circuit Clerk
Jm H Grieve Deputy Clerk

And now comes the said appellant & says that in the record & proceedings
aforesaid there is manifest error in this & viz

- 1st The court erred in giving each of the instructions asked for by plaintiff
- 2nd The court erred in refusing the instructions asked by defendant ^{2nd person}
- 3rd The court erred in overruling the motion for a new trial
- 4th The court erred in overruling the motion in arrest of judgment
- 5th The court erred in rendering the judgment aforesaid as
manifestly & for which errors & others in said
record manifest he prays said judgment be reversed

B. C. Cook
for appellant

56

Wm H Pope

Edwin L. Wheeler

Transcript

Filed June 11. 1855.
L. Ireland Clerk

For under in Error.

Bushnell & Gray.
for appellee.

Edwin Wheeler }
vs } Error to Livingston
H B Schubert }

This is an action
of debt on a penal statute for
allowing boys to run at large

Began before a justice of the peace
and appealed into the Circuit Court
of Livingston County

On the 1st day of
May 1855 cause came on for trial
before the jury against the
defendant Wheeler that he owes and
unlawfully detains from the plaintiff
the sum of fifty dollars. Defendant moves
for a new trial. Motion overruled

On the trial of this
cause the plaintiff offered proof tending
to show that at different times
between the first day of March 1853
and the first day of September 1853
said defendant was the owner of from
15 to 18 boys and that defendant
permitted said boys to run
at large in said County of Livingston
between the days aforesaid and that
said defendant then residing in said Co.

The defendant offered evidence tending to show that he was the owner of only nine hogs at the time spoken of by the witnesses and that said hogs were not permitted to run at large.

For the plaintiff the Court instructed the jury.

If the jury believe from the evidence that the defendant was the owner of the hogs and pigs in question and that the defendant was a resident of the county of Springfield between the first day of March 1853 and the first day of November 1853 and any time between said days being such resident permitted said hogs to run at large in said county then they will give for the plaintiff \$5.00 for each hog and pig they believe from the evidence was so permitted to run at large.

To the giving of which instruction the defendant then and then excepted.

For the defendant the Court instructed the jury.

That it is an action upon a penal statute and greater strictness of proof is required.

then in an ordinary action upon a contract and the plaintiffs must prove all the facts necessary to constitute the offense under the statute before he can recover.

2nd The mere fact of the defendant's hogs running at large does not constitute the offense mentioned in the statute. To constitute this offense it is necessary ^{to prove} that the defendant permitted his hogs to run at large.

3rd The jury in this case can find a verdict against the defendant for no more than one running at large at several different and distinct times. The plaintiffs can only in this action have judgment for one such offense. That is he can only recover fine and costs for each hog though said hog may have been permitted to run at large more than once.

4 The plaintiffs cannot in this case recover for several different and distinct acts of the defendant in permitting the said hogs at several distinct and different times to run at large.

The defendant asks the Court to instruct the jury as follows

For the apparent times that the plaintiff has proven that the defendant permitted his hogs to run at large he is entitled to recover \$50 per hog unless some amount should ~~be~~ exceed the sum of \$100 in which case the case is not within the jurisdiction of the justice and the plaintiff is not entitled to recover in this action.

Which instruction the Court refused to give and to such refusal the defendant then came then excepted

The jury found a verdict for the plaintiff in the sum of \$50.00
The defendant moves for a new trial. Court overrules the Motion
Defendant excepts to the ruling of the Court. Defendant moves in arrest of judgment Court overrules the motion to which ruling of the Court the defendant by his counsel then came then excepted and prays an appeal to the Supreme Court which is granted.

86
Edmund H. Hall
H. B. C. Hubbard

1855

Filed July 11. 1855.
L. Veland Clerk

12233

Edwin S. Wheeler, Appellant
vs.
Harrison B. Chubbuck, Appellee } Appeal from
Livingston.

Argument and Points made by Appellee.

This was an appeal from a Justice of the Peace to the Livingston Circuit Court. The action was brought to recover a penalty under an act entitled "An act to prevent sheep and swine from running at large in Henry, Will and Livingston Counties" approved January 27, 1853.

Laws of 1853 Page 152.

The record shows that the appellant, residing in Livingston County, permitted his hogs to run at large, at different times between the 1st of March 1853 and the 1st of November 1853.

1st The first question presented is, Did the Court below err in giving the instruction asked for by the appellee? We say, that the instruction is good law.

It is contended by the appellant, that the act in question is a public act, and that, under the 23^d Section of Art. 3, of our State Constitution, this law did not take effect on 1st of March 1853, but took effect some time in April of that year - that is to say, 60 days after the end of the session, at which the law was passed.

The section of the constitution under consideration provides, that "no public acts of the General Assembly shall take effect and be in force until the expiration of 60 days

from the end of the session at which the law may be passed, unless in case of emergency the General Assembly shall otherwise direct.

We admit this act to be a public act, and that it falls within the constitutional provision; but we submit, that the Legislature in the act itself, by express terms, have decided that this act shall take effect "from and after the first day of March next" and have thus determined that such case of emergency has arisen in the counties named, and have accordingly directed this law to take effect and be in force before 60 days after the adjournment of their body.

For our purposes, it is not necessary for us to make it appear to this Court (as suggested by counsel for appellant) that such emergency had arisen; sufficient is it for us to know, that the General Assembly in this instance, in their wisdom, and in the exercise of a constitutional discretion, have so declared, and none can gainsay it. This Court will not undertake to say, that such emergency as the Constitution provides for, and leaves with the Legislature to exercise their discretion upon, has not arisen.

To say (as contended by appellants' counsel) that the prohibition of this act, might perhaps have gone into operation on March 1st, and yet the penalty did not until 60 days had elapsed after the end of the session, thus separating the prohibition of the law from its sanctions; though both were prospective, and evidently

intended to go hand in hand, and operate together as public policy absolutely required, we submit is an absurdity, which this court will not approve. Chancellor Kent. (Vol 1. p. 466 Com.) says, that a statutory prohibition is equally efficacious, and the illegality of a breach of the statute the same, whether the thing is prohibited absolutely, or under a penalty.

2^d. The counsel of appellant argues, that the act is unconstitutional, and assigns a single reason — that it is not uniform in its operation. Is not this law uniform in its operation upon all persons within the limits of the counties named, and does the counsel mean to claim that penal statutes may not apply only to particular counties? But the counsel say, that under this law, a resident of LaSalle county, may suffer his hogs to run at large in Livingston county, and he, in such case, would not incur this penalty. This we deny, but for the sake of the present argument, we will admit this is so. and we say, what of it? Has not the Legislature a right to confine the offence to residents of the counties where the law is to operate. certainly. And does it lay in the mouth of Wheeler, who was a resident, to claim exemption, because non-residents are not included? To illustrate. The Charter of the City of Ottawa is declared a public act. The 5th Art. Sec. 4. of the Charter (Laws of 1853 p. 303) provides that the Mayor, in case of riot, may "call on every male inhabitant of said City over 18 years of age" to enforce the laws and ordinances, and impose

a penalty of \$5.00 on every such person disobeying the call. But says an inhabitant who has thus disobeyed when called on to suppress a riot, (in the language of counsel for appellant-) this provision is unconstitutional - it is not uniform in its operation - it does not provide that the Mayor may call upon transient visitors in the city - or upon females - or upon persons residing out of the limits of the city - it is not uniform in its operation, ergo, it is unconstitutional - from sequitur, we say. The plea would not avail. We hold that the Legislature intended to provide such offence (as this act provides for,) committed in the localities enumerated, whether the person committing the offence resided in such counties or not. and we submit, that the word "residing" which occurs in this act, merely refers to the class of persons before enumerated, and was not intended to limit the class, or in any way to narrow the offence, and does not necessarily, by the rules of construction governing penal statutes, make residence in the counties, an essential element of the offence provided for.

Such construction would operate to destroy what the Legislature evidently intended to accomplish. The reasoning of the appellants' counsel would equally prove to be unconstitutional, the Game Laws for particular counties, the ordinances of cities imposing penalties for ~~disturbance~~ within their limits, passed under their respective charters, all of which have been upheld and sanctioned by repeated adjudications of this Court, and even upon the subject in controversy, this Court, on a hog case from Bureau Co.

(Eaton vs. Graham 11 Ill. 619) never questioned its constitutionality.

3^d

Did the Court below err in refusing the instruction asked for by the appellant, in regard to the limits of a Justice's jurisdiction in such case to \$100. We say, that the Court did not err, as the instruction was not law.

The Constitution, in Art. 5, Sec. 27, provides that Justices of the Peace "shall exercise such jurisdiction as may be prescribed by Law".

We argue, that by this act itself, necessarily the extent of the Justice's jurisdiction in regard to amount, is unlimited. and that the jurisdiction in this case is not to be limited by any previous law in regard to other subjects of jurisdiction to \$100.

For these reasons, and the record clearly showing that justice has been administered by the verdict of the jury, we think the judgment ought to be affirmed.

Bushnell of Gray
pro Appellees.

No. 86.

Edwin S. Wheeler

vs.

Harrison B. Chubbuck.

Appeal from Livingston

Argument and Points
made for Appellee

Bushnell & Gray.
pro appellee.

Edwin Wheeler }
vs } Error to Livingston
H B Chubbuck }

This is an action of debt
brought on a penal statute for perm-
itting Hogs to run at large
Begun before a justice of the Peace
and appealed into the Court
of Livingston Co

On the 1st day of May
1854 this cause was tried before
the jury against the defendant Wheeler
that he was and unlawfully detained from
the defendant plaintiff the sum of
fifty dollars

Bill of exceptions to the fact
that on the trial of this cause the
plaintiff offered proof tending to show
that at different times between the
1st day of March 1853 and the 1st day
of December 1853 said defendant was
the owner of from 16 to 18 hogs ^{hogs} and
that defendant permitted said hogs to
run at large in said Co of
Livingston between the days aforesaid
and that said defendant then
resided in said County of Livingston

The defendant offered evidence
tending to show that he was the
owner of only 9 Hogs at the time
spoken of by the witnesses and
that said Hogs were not permitted
to run at large.

For the plaintiff
the Court instructed the jury as
follows, If the jury believe from
the evidence that the defendant was
the owner and possessor of the Hogs
in question and that he was a
resident in the County of Livingston
between the first day of March 1853
and 1st of December of the same year
and any time between such days being
such a resident in said County permitted
said Hogs to run at large in said
County then they will find for the
plaintiff \$5.00 for each Hog if they
believe from the evidence that he
permitted to run at large.

To the jury of which
Instruction the defendant then
and then objected.

For the defendant
the Court instructed the jury
That this is an action upon a

penal statute once greater strictness of proof is required than in an ordinary action upon a contract once the plaintiffs must prove all the facts necessary to constitute this offense under the statute before he can recover

2 The mere fact of the defendant's hogs running at large does not constitute the offense mentioned in the statute. To constitute this offense it is necessary to prove that the defendant permitted his hogs to run at large

3 The jury in this case can bring a verdict against the defendant for no more than one running at large at several different and distinct times. The plaintiffs can only in this action have judgment for one such offense that is he can only recover \$5.00 for each hog though said hog may have been permitted to run at large more than once

4 The plaintiff cannot in this demand recover for several different and distinct acts of the defendant in permitting the said hogs at several

arrested and different times to run at large

The defendant asked the Court to instruct the jury as follows

For the different times that the plaintiffs has proved that the defendant permitted his boys to run at large he is entitled to recover \$5.00 per boy unless unless said amount would exceed the sum of one hundred dollars in which case the case is not within the jurisdiction of the justice and the plaintiffs is not entitled to recover in this action.

When instructed the Court refused to give one to suit refusal the defendant then and there excepted

The jury found a verdict for the plaintiffs in the sum of \$50.00 The defendant moved for a new trial Court overruled the motion Defendant excepted to the ruling of the Court Defendant Moore in arrest of judgment Court overruled the motion to arrest ruling of the Court The defendant then and there excepted and prayed an appeal to the Supreme Court which is granted.

Edwin Wheeler
H^{rs} B C Hubbard
Abstract

County owning 1000 sheep may allow them
to run at large in Livingston County and
he can not be punished under the act
he is not a person residing in Livingston County
& of course don't come within the description
of persons upon whom the act imposes
a penalty

If a law which imposes a penalty
upon a man who does an act forbidden
if the man resides in Livingston County
and does not impose a penalty upon
another man who does the same act
at the same time ^{& in the same place} but who by good luck
lives in Saline County then the law
is uniform in its operation, & constitutional
then this law is so & not otherwise

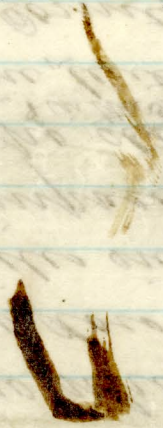
Has a man who resides in Saline County
a better right to allow his hogs to run at
large in Livingston County than a man
who resides in Livingston County

By no rule of construction which can legally and
properly be applied to a general Statute can
it be made to appear that such an emer-
gency had arisen as to require the act to
go into immediate operation And even if
so much of the act as made it unlawful
for hogs to run at large after 1st March could
be construed as having gone into effect at
that time, and then certainly is no time
fixe for the latter provisions of the act to wit
the provisions imposing a penalty to go into effect

B. C. Cook
att'y for appellants

Wheeler to Chulicun

Argument for appeal -
 Sent



B. C. Carr

86

E. L. Wheeler

vs

H. B. Chubbuck



1855

Conty Taxes