

12081

No. _____

Supreme Court of Illinois

Hamilton.

vs.

Hunt.

71641 7

49

Alfred J. Hamilton
v.
Richard Hunt

49

Prepared

1853

12081

Hunt-appellee vs. Hamilton appellants

Pleas before the Honorable Edwin S Leland Judge of the Ninth Judicial District of the State of Illinois. Presiding in the Circuit Court of Marshall. at a term begun and holden on Eleventh day of April in the year of our Lord one thousand eight hundred and fifty three at the Court house in the Town of Lacon in said County.

Present.

The Hon Edwin S Leland
Judge

William H L Wallace

States Attorney

Greenberg & Fort - Clerk

Henry L Crane Sheriff

Be it remembered that heretofore that is to say on second day of December A.D. 1852 Alfred J Hamilton filed in the Office of the Clerk of the Circuit Court of said County a transcript in the Case of Richard Hunt vs Alfred J Hamilton from the Docket of Joseph Toyer a Justice of the Peace of said County in words and figures following That is to say

Transcript
from J. P.

Richard Hunt } Justice Court before
vs } the undersigned
Alfred J. Hamilton } Action of Trespass

Summons issued in the above en-
titled suit - November 1st 1852
returnable 10th inst at 10 o'clock A M
Summons delivered A Gardner Constable

Plaintiff demands for Trespass to
personal property to his damages of
\$ 50.00

Nov 1st 3 subpoenas issued at request
of Plff for twelve witnesses

and also a venire for a jury of six
issued by request of Plff he depositing
the money with the justice for their fees

Subpoenas & Venire delivered to
A Gardner Const.

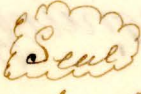
Nov 10th 1 subpoena issued for
two witnesses delivered to same Constable
Said summons was returned by
said Constable. Indorsed served by
reading to Defendant November 3rd
1852. all of said subpoenas were
returned served. also the venire
returned by said constable Indorsed
served on Henry Snyder & Robinson
H J Smith S Merritt & Wilson
and Matthew Hoyt.

and now on this 10th inst at
the hour appointed comes the parties
and a jury being duly empanelled

and sworn and the evidence of
 witnesses being heard the jury returned
 retired and after due deliberation
 returned a verdict into court for the
 Plaintiff that the defendant is
 guilty as charged in said declaration
 and award the damages at thirty seven
 dollars and fifty cents.

It is therefore ordered that the said
 Plaintiff have judgement against
 the said Defendant for the sum
 of Thirty Seven dollars and fifty
 cents. debt and also for costs of this
 suit except such as by law are taxed
 to the Plaintiff

Appeal Bona fide and approved
 by me Nov 27th 1852

Jos C. Lozier 
 Justice of the Peace

Justices fees

Entry 12 ¹ / ₂ Summs 18 ³ / ₄ 3 subp 56 ¹ / ₄ =	\$.87 ¹ / ₂
Venue Warrant 25 Debt subp 18 ³ / ₄ Subpy 25 =	68 ³ / ₄
adm 13 oaths 81 ¹ / ₄ Juegt 25 =	1.06 ¹ / ₄
Fil Bona 25 Trans 25. Transmt pas 1.00 =	1.50
	<u>\$ 4.12¹/₂</u>

Constable Gardners fees

on sums .55 on subps 3.24 =	3.79
Serving jury Warrant 50 atts trial 25 =	.75
	<u>4.54</u>

Witness fees Jas Clark, 50 J A Fisher 50 =	1.00
A Robinson 50 A Spencer 50 =	1.00
J W Barnes 50 P McScott 50 =	1.00
Jury fee paid by Plff	1.50
	<u>5.50</u>

State of Illinois
Marshall County }

I do hereby
certify that the foregoing transcript
and the papers herewith transmitted
to the Clerk of the C. C. of said County
contains a full and perfect transcript
of all the proceedings in said suit

Witness my hand and seal
this 30th day of November 1852

Jos C Tozner 
Justice of the Peace

On which Transcript is the following
Indorsement

Richard Hunt vs Alfred J Hamilton
Transcript. - Filed Decr. 2^d 1852
J Burns Clerk,

Also said Alfred J Hamilton filed
the original summons in said
office with said Transcript which
summons is in words and figures
following to wit.

State of Illinois
Marshall County } set

The People of
the State of Illinois to any Constable
of said County Greeting.
You are hereby
commanded to summons Alfred

Summons in
Court below

of Hamilton to appear before me at
my office in Henry on the 10th day
of November in the year of our Lord
one thousand eight hundred and fifty-
two at 10 o'clock A.M. To answer the
complaint of Richard Hunt to an
action of Tresspass to personal property
for a failure to pay him a certain de-
mand not exceeding one hundred dollars
and hereof make due return as the law
directs

Given under my hand and
seal this 1st day of November A.D. 1852

Jos. C. Tozier 
Justice of the Peace

Indorsed

Upon which is the following Indorsement
I Served the within summons by reading to
the within named Alfred J. Hamilton
November 3/52

Service 25

Mileage 30

55

A Gardner

const

Hunt vs Hamilton 3 Tresspass. Sumt
Damages \$50.00 Cost \$1.00

Filed Dec 7 3^d 1852 J. Burns, Clerk

Declaration in
Court below

Richard Hunt vs Alfred J. Hamilton } In Justices Court before
Joseph C. Tozier
In Tresspass
Richard Hunt the above named Plff

comes in his own proper person and complains and says that on or about the 29th day of October 1852 in the County of Marshall and State of Illinois the above named Deft A J Hamilton with force and arms caused to be killed, carried away or removed then and there the property of said Plff R. Hunt and of Great Value of the value of fifty dollars and to his said Plff Great damage of fifty dollars and said Deft has refused and still refuses to pay said Damage although he has been frequently asked so to do Therefore he sues this suit

Richard Hunt

Endorsement

Richard Hunt vs Hamilton Declaration
Filed Dec 3rd 1852 J Burns Clerk

Also said Hamilton filed his appeal Bond in said cause which in words and figures is as follows that is to say,

Bond Appeal
from J. P.

Know all men by these presents that we Alfred J Hamilton and Chauncey W Barnes are held and firmly bound unto Richard Hunt in the penal sum of ninety five dollars and thirty two Cents 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. Wit'nef our hands and seals
this 27th day of November 1852

The condition of the above obligation is such that whereas the said Richard Hunt did on the tenth day of November AD 1852 before Jos C. Lozier a Justice of the Peace for the County of Marshall recover a judgement against the above bounden Alfred J. Hamilton for the sum Thirty seven dollars and fifty cents and costs of suit from which judgement the said Alfred J. Hamilton has taken an appeal to the Circuit Court of the County of Marshall aforesaid and State of Illinois

Now if the said Alfred J. Hamilton shall prosecute his appeal with effect and shall pay whatever judgement may be rendered by the Court upon dismissal or trial of said appeal then the above obligation to be void otherwise to remain in full force and effect

Alfred J. Hamilton 
Chauncey W. Barnes 

Approved by me at my office
this 29th day of November 1852

Jos C. Lozier
Justice of the Peace

Indorsed

Richard Hunt vs Alfred J. Hamilton. Bond
Filed December 2^d 1852 J. Burns Clerk

Whereupon the Clerk of said Court issued a summons to the Plaintiff which in words and figures is as follows To Wit

Summons
from Circuit
Court

The People of the State of Illinois
To the Sheriff of Marshall County
Greeting

We Command you to
Summon Richard Hunt to appear
before our Circuit Court on the first day
of the term thereof to be held at Lacon
within and for the said County of Marshall
on the fourth day Monday of January
next then and there in our said Court
to answer Alfred J. Hamilton in an
appeal by him obtained from a
judgement rendered against him by
J. C. Sojour & P. on the 10th day of Nov
AD 1852 for thirty seven dollars and
fifty cents and costs of suit
Hereof fail not and make due
return of your doings hereon

Witness G. L. Fort Clerk of
our said Court and the
Seal Seal thereof at Lacon this
9th day of December in the
year of our Lord one thousand
eight hundred and fifty
two

G. L. Fort Clerk

Indorsed Served the within writ by reading the same
to the within named Richard Hunt January
11th AD 1853

Service 50 Mileage @ 10 = \$120. H. L. Crane Sheriff
of Mc Co Ills

Filed Jan 24th 1853

G. L. Fort Clerk

Thursday February 3^d A.D. 1853 at the
January Special Term.

Continuance
Richard Hunt }
vs } appeal
Alfred J Hamilton }

Be it remembered
that this day come the parties in this
cause and by agreement this cause by
order of the Court is continued
generally till Court in course.

At the April Term. A.D. 1853 as
heretofore set forth,
Wednesday April 14th A.D. 1853 Court
met pursuant to adjournment Present same
as heretofore. Among other things the following
proceeding was had

Trial by
jury.
Richard Hunt }
vs } Appeal
Alfred J Hamilton }

Be it remembered
that this day comes the Plaintiff by Onslow
Peters and William Gallaher his attorneys
as well in person. and also comes the
said Defendant in person and by
J. L. Dickey his attorney, and the issue
herein being joined a jury comes to try
the same. who are as follows that is to
say David Verney, Meshack Scholer James
M. Vansant Robert Dennis James M.
Maxwell Stephen Carrither Richard Harz

James Sharp Livingston Robert George
W Bonham. William M Evans and Samuel
Wilson twelve good and lawful men of
the body of the County who are duly em-
pannelled and sworn well and truly to
try this said issue, now joined according
to the evidence, who after hearing the
evidence adduced by the parties retire
to consider of their verdict and after
deliberation return into court and
say, We the jury find the issue for the
\$35.00 Plaintiff and assess his damages at
the sum of thirty five dollars. And
now when the jury come to be polled it
is found that Richard Gray one of the
jurors is absent. And by agreement of
the parties it is ordered that the verdict
of the other eleven jurors be entered as
the verdict of the whole twelve.

And now the defendant comes and
moves the Court for a new trial herein
which motion is overruled by the Court.

It is therefore considered and adjudged
by the Court that the said Plaintiff have
and recover of the defendant the
aforesaid sum of thirty five dollars
together with his costs and charges by
him about his suit in this behalf
expended. And ordered that Execution
issue therefor.

Thursday April 15th AD 1853 Court
met pursuant to adjournment
Present same as heretofore

Order of
Appeal

Richard Hunt }
vs } Appeal
Alfred J Hamilton }

Be it remembered
that this day comes the defendant by
J. L. Dickes his Attorney and prays an
appeal herein to the ^{by the Court} Supreme
Court which is allowed upon the
condition following that is to say
that the said Defendant enter into
bond in the penal sum of one
hundred and fifty dollars with
Jenah Bonham as his security
within forty days from the ad-
journment of this court.

April 16th 1853 Court
met pursuant to adjournment
Present same as heretofore.

Among other things the following
order was made

Order appointing Bond
Richard Hunt }
vs } Appeal
Alfred J Hamilton } Be it remembered

that this day comes the defendant
and presents his appeal bond in this
cause in open court. Which bond
is approved by the court and ordered
that the same be filed

Which Bond is in words and
figures following that is to
say,

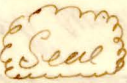
Appeal
Bond

Know all men by these presents
that we Alfred J. Hamilton as
Principal and Geriah Bonham
as surety are held and firmly bound
unto Richard Hunt in the penal
sum of one hundred and fifty
dollars to the payment of which sum
well and truly to be made we do
bind ourselves our heirs executors and
administrators jointly ~~severally~~ ^{severally and}
firmly by these presents

Witness our hands and seals this
sixteenth day of April A.D. 1853

The Condition of the above
obligation is such that whereas the
at the April term of the Circuit Court
of Marshall County State of Illinois in
the year 1853 the said Richard Hunt
by the consecration and judgement
of said court recovered judgement
in said court against the above
bondmen Alfred J. Hamilton for the
sum of thirty five dollars and costs

of suit - from which judgement of
the said Circuit - Court - the said
Alfred J Hamilton has prayed an
appeal to the Supreme Court of the
State of Illinois - Now therefore if the
said Alfred J Hamilton shall duly
prosecute his appeal and shall
pay to the said Richard Hunt his
heirs executors administrators or
assigns the amount of said judgement
costs interest and damages thereon in
case said judgement shall be affirmed
by said Supreme Court then this obligation
to be void otherwise to be and remain
of force.

Alfred J Hamilton 

Jeriah Bonham 

Indorsed as follows. "Richard Hunt
vs Alfred J Hamilton. Appeal Bond
Filed April 16th 1853 G. H. Hunt clerk

Be it Remembered that this day comes
Alfred J Hamilton and files in the
office of the clerk of this court his
bill of Exceptions herein which
in words and figures is as follows
that is to say

State of Illinois } and Circuit Court
Marshall County } thereof April Term
1853

Richard Hunt Plaintiff }
vs
Alfred J Hamilton Defendant } Appeal

Be it remembered that on the trial of this cause Plaintiff called a witness named Scott who testified that sometime last fall he held a note against ~~the~~ Defendant and one Cochran on which there remained due about twenty five dollars. — and witness called on them for payment and as part payment thereof they sold to witness a red steer, then running at Large at the price of some sixteen dollars — for which witness gave them credit for so much paid on said note — that at that time they promised to point out said steer at any time when witness (Scott) should thereafter send for the same — On cross examination witness said — he did not know whether said steer at the time of ~~the~~ his purchase was Cochran's or Hamilton's — does not remember whether it was stated or not at that time, to which of them it belonged. — Can't say that they did not represent it as Cochran's — Witness further stated in his examination in Chief

that shortly after his purchase as aforesaid he
sold said Steer while ^{he yet} ~~it~~ was at large to one
Clark a butcher in the town of Henry

Said Clark was then produced and sworn
and testified that shortly after his purchase (as
aforesaid from said Scott) of said Steer he
went out into the country to get said Steer
and called on defendant to show him said
Steer - Defendant then went out with
him a short distance into the open barrens
where cattle were running at large and
pointed out a certain red Steer which was
~~there~~ ^{there} and ~~there~~ told witness that that was the
Steer Scott bought - Witness asked
defendant if he was sure of it - defendant
said he was sure of it - that the Steer
Scott bought had a crop off the left ear
and a hole through the right - and that
was certainly the Steer. Said Clark
then shot said Steer and killed him.
When it was found that the Steer shot
had a crop off the left ear but no hole
through the right ear - Defendant having
his attention called to this said he would
have sworn that the Steer Scott bought had
a hole in the right ear - but he might
be mistaken about that - he then went
off to where there were some other Cattle
running at large and shortly returned
saying it is a fact I made a mistake -
the Steer that Scott bought is over yonder
running with those other cattle - Clark
further testified that he Clark butchered
the Steer he thus ^{had} ~~shot~~ ~~made~~

made beef of him. sold it and got
the money for it. It was further
proven by the Plaintiff ^{that the} Steer
Clark, was not the Steer sold to Scott
as aforesaid — but was at the time
he was shot the property of the Plaintiff
and was worth thirty five dollars —
and that Plaintiff's said Steer was
larger older and more valuable than
the Steer sold to Scott —

It further appeared in evidence that
the Steer sold to Scott as aforesaid had
before said sale been running on a
farm occupied by Cochran & Hamilton
that Cochran at that time called him
his and spoke of buying a mate for
him.

Plaintiff asked the Court to
instruct the jury as follows viz —

If the jury believe from the evidence
that the Steer charged to have been killed
was the property of the Plaintiff Hunt
and that it was killed under the
direction of Hamilton the defendant
they will find for the Plaintiff
and if they find for the Plaintiff
they will give for his damages the
value of the Steer killed, to the
giving of which of which instructions
defendant then and there objected
but the Court overruled the objections
and gave the instructions to the
jury as asked — to which decision of
the Court the defendant then and

there excepted.

The defendant then asked the Court to instruct the jury as follows

That if the jury believe from the evidence that Clark killed the Steer in controversy and that Hamilton had nothing to do with the killing directly nor indirectly except that Clark enquired of Hamilton ~~had nothing to do with~~ "What Steer was sold to Scott;" and Hamilton by mistake pointed out the plaintiffs Steer to Clark as the one that had been sold to Scott, — that is not such a "direction" as is spoken of in the instructions given at the request of the plaintiff — and would not constitute a ~~misapprehension~~ ^{misapprehension} by Hamilton, to the giving of which the Plaintiff objected and the Court sustained the objection, and the Judge thereof wrote the word "refused" in the margin thereof and refused to give the same to the jury as law, — to which decision of the Court in sustaining said objection of the plaintiff ^{and refusing said instruction the defendant} then and there excepted, and prays that this bill of exceptions may be sealed signed and made part of the record which is done.

C. Leland ^{Esq}
Judge cc

State of Illinois }
Marshall County }

I Greenberry L Fort
Clerk of the circuit-court of the said
county of Marshall do hereby Certify
the foregoing to be a true copy and
perfect copy of the Record and
papers on file in the said cause
of Richard Hunt vs Alfred J
Hamilton, lately tried in said
court, and appealed to the Supreme
Court of said State

In testimony whereof
I have hereunto set my
hand and affixed the
Seal of said Court at
Lacon this tenth day
of May in the year of our
Lord one thousand eight
hundred and fifty three

Greenberry L Fort
Clerk

Hamilton
vs
Hunt } Appeal from
Marshall -

Now comes said Hamilton
by Dickey his attorney and
says there is manifest error
in the judgment & proceeding
of said Circuit - and
for special points of error
says -

The court erred in refusing
the instruction asked for
by the defendant ^{Hamilton} (appellant)
in the Circuit Court - -

and said judgment ought
to be reversed -

Dickey for
appellant

In much estimation

O. P.

for Dkt - Error

49
Alfred J. Hamilton

Richd. Hunt

Record

Filed June 10. 1853.

L. A. Land
- Clerk -