

No. 12683

Supreme Court of Illinois

case

vs.

Hall

191 85

Loyal L. base
vs
Luther Hall

191

12683

1859

State of Illinois
Cyle County ss

Pleas in the Honorable the Circuit
Court of said County.

Be it remembd that on the nin-
teenth day of May A.D. 1857 Miller & Miller attorneys of
said Court filed therein a Praecipe in the words and figures
following to wit

Cyle County Circuit Court
June term 1857

Lucius Hall
vs
Legal & Lease
Trespass
Damages \$ 300

The Clerk will please issue a Summons
the above ^{named} defendant made returnable at the next term of Court
Action & Damages as above

Miller & Miller
Attorneys for Plff.

endorsed on back

"Filed May 19th 1857"
"Al W Smith"
"Clerk"

And thereupon a Summons was issued in said
cause in the words & figures following to wit

State of Illinois
Cyle County ss

The People of the State of Illinois to the
Sheriff of said County Greeting We command you to summon
Lucius Hall if he shall be found in your County personally to
appear before the Circuit Court of said County at the first of
the next term thereof to be ~~held~~ begun and holden at the Court
house in Oregon on the first Monday of June next to answer
Lucius Hall in a plea of Trespass with damage of the said

Plaintiff as he says in the sum of three Hundred Dollars
 And here you then and there this wit- Witness M W Smith
 Clerk of Our said Court and the
 Seal thereof this 19th day of May A.D.
 1857
 M W Smith Clerk

Seal

upon the back was the following endorse ment
 not having found the within ^{sealing} Sheriff return the within
 Legal lease made 22nd 1857
 E R Gaylor Sheriff
 By W. L. Goddard Deputy

Filed ~~May~~ 26th 1857
 M W Smith Clerk

And afterwards to wit on the day and aforesaid the said Miller
 & Miller filed a declaration in the words & figures to wit

Ogle County Sheriff-Clerk
 June Term 1857

Ogle County of.

Luther Hall plaintiff by Miller & Miller his
 attorney complains of Legal, L. lease defendant being summoned of a
 plea of Trespass &c.
 For that whereas the said Legal L lease defendant
 on the twentieth day of November Eighteen hundred and fifty six with
 force and arms &c. &c. at the town of Byron in the County of Ogle
 and State of Illinois Seized. Took down &c. &c. away and to his
 own use disposed of and converted certain goods and chattels of the said
 plaintiff of great value to wit to the sum of the value of three hundred
 dollars and others wrong and injury to the goods and chattels

of the said plaintiff then and there did to the great damage
of the said plaintiff and against the peace of the people of the State of
Illinois & whereof the said plaintiff says that he is injured and has
sustained damages to the amount of three hundred dollars therefore
he brings suit &c

And also for that whereas the said
defendant on the twenty sixth day of November Eighteen hundred
and fifty six with force and arms did go to at Byron in the County
of Rock and State of Illinois with a drove and carried away and
to his own use disposed of and converted certain other goods chattels
and property of the said plaintiff of great value to wit twelve swine
or hogs of the value of three hundred dollars. And other wrongs
and injury to the goods and chattels of the said plaintiff then
and there did to the great damage of the said plaintiff
and against the peace of the people of the State of Illinois
wherefor the said plaintiff says that he is injured and has sus-
tained damages to the amount of three hundred dollars therefore
he brings his suit &c

Miller & Miller
Attorneys for Plaintiff

And afterwards to wit at the June Term AD
1857. of said Court there is an Order in said Cause. in
the words and figures following to wit

Luther Hall

Loyal L Case

Defendant

Now ~~for~~ on this day comes the said
plaintiff by ^{his} Miller & Loop his Attorneys and thereupon
comes He of his and waives the issuing & service of process
herein and enters the appearance of the said defendant
and appears as attorney for said defendant

And afterwards to wit at the October term A.D. 1857
the said defendant to wit his attorney comes and
files his plea herein which are in the words and figures
following to wit

State of Illinois
Cyle County ss

In the least court of said County
October term A.D. 1857

Quaker Hall

Loyal & Lease

Trespass

1st plea

And the said defendant comes
and defends the force and injury where and saith that
he is not guilty of the said supposed trespasses above laid to
his charge in any or either of them or any part thereof
in manner and form as the said Plaintiff hath above
complained against him and of this he puts himself upon
the Jury

2^d plea

And for a further plea in this behalf the
said defendant says as to the said trespasses and conversion of
the Hops and Linen in the first and second counts of the said
Plaintiff's Declaration, set forth Action now because he says that
at the time when he was lawfully possessed of a certain close with
the appurtenances situate in the town of Byron in the County and State
aforesaid and because the hops and Linen in the first and second
counts mentioned before and at the said time when he, in the said
first and counts mentioned, was wrongfully and unlawfully and
contrary to the Ordinance of the said town of Byron in the said
close of the said defendant's eating and destroying the same grass
and herbage of the said defendant, eating there their growing
and doing great damages to the said defendant's better said
defendants, seized and took the said Linen and hops in the said

first and second counts of the plaintiff's declaration. mentioned in the said lease of the said defendants to clear, damage therein as aforesaid, as a distress for the penalty by the ^{said} ordinance of the said town of Byron made and provided for suffering hay, straw and pigs to run at large and drove the said straw and hay away from out the said lease to a pound in said pound district of the said town of Byron which pound aforesaid was within one mile of the aforesaid lease of the plaintiff and then and there impounded the same as he lawfully ought to do by the ordinance aforesaid and immediately thereafter and within twenty four hours after the impounding aforesaid notified the said plaintiff of the impounding of the said straw & hay mentioned in the first and second counts of the said plaintiff's declaration and continued the said impoundings forth the space of five days and until the said plaintiff should have paid the penalty as provided by said Ordinance to wit the sum of Eight dollars and forty cents to have had the said straw and hay released and discharged and the said plaintiff having failed to pay the same within the time aforesaid the said defendant after advertising the same as required by the said Ordinance for the space of ten days sold the same at public vendue for the purposes aforesaid and which was lawful for the said defendant to do for the causes aforesaid and which are the same supposed trespasses in the said plaintiff's first and second counts of his said declaration mentioned; all of which the said defendants is ready to verify wherefore he prays Judgment.

~~Hand. M.~~

And for a further plea in this behalf the said plaintiff says action now begun he says that at the annual town meeting of the Town of Byron in the County of Ogle and State of Illinois held in pursuance of the ^{1st} Statute in such case provided and the

Voters of said Town at said annual town meeting did pass and adopt certain regulations for restraining and punishing the running at large of Swine in the said Town, which said regulations and Ordinance it was provided that it should not be lawful to suffer any Swine to run at large in the said Town of Byram. And it was further provided by said regulations that any inhabitant of said Town finding any Swine running at large might take up the same and cause them to be delivered to the nearest Pound Master whose duty it shall be to ~~receive~~^{receive} the same in the pound of which he the said pound Master has charge and furnish said Swine with suitable feed and water till the same shall be discharged.

And the said defendant further avers that it was further provided by said regulations that the person so taking up said Swine should within twenty four hours thereafter give notice to the Owner or Owners of said Swine of the taking up and impounding of the same as aforesaid.

And the said defendant avers that it was further provided by said regulations that if within five days thereafter any person shall claim & prove to be the Owner thereof to the satisfaction of the Taker up a pound master and pay the legal fees and reasonable charges to which the pound master may be entitled and for the use of the town as a penalty the sum of One dollar for each Swine such Owner shall be entitled to immediately take away the same.

And the defendant further avers that it was further provided by said regulations that if such claimant should not appear within five days after such claim pay the aforesaid

Such charges & penalty with person shall within the same
time claim & prove the Owner of such Sum as of record then the
pound Master shall advertise such Sum for sale by giving at least
five days notice by posting up written notice of the time place & property
to be sold on the School House in said pound district and at two
other places in the ~~town~~ ⁱⁿ which the said pound Master may
consider the public and shall sell the same to the highest bidder
for cash and the proceeds of such sale shall be applied for
the payment of such fees charges and penalty and expense
of sale and the surplus if any there be shall be paid to the Owner
if any appear

And the said ^{defendant} ~~Plaintiff~~
further avers that the ^{said} Sum in the said Plaintiff declaration
mentioned, mentioned were at the said time & running at large
in said town of Byron aforesaid & in violation of the regulations
and Ordinances of the said Town adopted as aforesaid and that he
the said defendant was at the said time when an inhabitant of
the said Town aforesaid and being such inhabitant & finding
the said horse & Sum in the Plaintiff declaration mentioned at
the time when so running at large & in violation of the said
regulations & Ordinances at the said town he the said defendant
did take up the said Sum, and did drive & cause to be driven
the same to the nearest pound in said Town & the said defendant
did deliver the said Sum to the pound Master of said pound
which said pound Master did then & there receive the said Sum
& impound them with the said pound

And the said defendant
further avers that the said defendant, did immediately &
within twenty four hours after the taking up & impounding
of the said Sum as aforesaid give notice to the said Plaintiff
that he the said defendant

had taken up & impounded the said Swine in the said
 pound in said Town of Buxton and the said defendant
 was that the said plaintiff did not within five days
 after the said impounding and giving of the Notice
 of said claim and gave to the satisfaction of the taking
 up a pound Master that the said ~~plaintiff~~ Swine
 so impounded were the property of the said plaintiff
 neither did he pay the legal fees and reasonable charges
 to which the pound Master was entitled to wit the sum
 of One dollar for each Swine all of which the said
 plaintiff refused to do neither did any other person
 within the said Space of five days claim and
 prove the Ownership of said Swine nor did they pay
 and tender the fees & charges of said therefore the said
 defendant did as pound Master of said pound district
 being the defendant advertise the said Swine for sale
 by giving five days notice by posting up written notices
 thereof one of which was placed upon the School House
 in said pound district and two other notices in two
 of the most public places in the said Town of Buxton
 that he would on the day mentioned in said notice
 sell the same to the highest bidder for cash & that in
 pursuance of the said Notice the said defendant did on
 the day appointed for said sale in the said notice
 proceed to sell the same at public sale for cash
 and for the payment of the legal fees charges and
 penalty and expenses of sale paid the Corporation
 of the said sale money to the plaintiff and which
 with the same trespass complained of by the said
 plaintiff in the first and second counts of his
 said declaration all of which the defendant is ready
 to verify wherefore he prays Judgment &c

Wm. H. Mills Atty
 for Plff

Luther Hall
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Loyal & Case

Transpass

This day comes the said parties the
Attornies and therefore to try the issues herein come the
Jurors G. A. Perry, G. W. and Samuel men to wit Charles
Heiple G. M. W. Henry, Edmond Longson, Richard
Gorman P. L. Stone, E. P. Swan William J. Hawthorne
Simon Wilson Charles Potter Joseph W. Iron Samuel
Parr and John Bickford who being duly Elected
tried and sworn and having heard the Evidence the
Arguments of Counsel and the Instructions of the Court
were to consider their verdict

And afterwards at the same time on the twelfth day
thereof there is an Order upon the records of said Court
in said cause in the Words and figures following to wit

Luther Hall
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Loyal & Case

Transpass

This day come into Court the
Jurors herein and state to the Court that they are unable
to agree upon a verdict - and also that there is no probability
that they will be able to agree. It is therefore considered by the
Court that the said Jurors discharged and this cause
continued

And afterwards to wit at the same time of said
Court Sep 1858 And on the tenth day of June there
is an Order upon the Records of said Court in said
cause in the Words and figures following to wit

State of Illinois
Circuit Court

Civil County Circuit Court
of the October Term AD 1857

Southern Hall

vs
Loyal L. Leach

vs
Gaspas

And the said Plaintiff as to the first plea of the said defendant wherein he puts himself upon the country upon the country doth the like

And as to the said defendants pleas by him secondly & thirdly above pleaded the said Plaintiff says that the said pleas and the matters and things therein stated are not sufficient in law for the said defendant to bar the said Plaintiffs actions herein & that he is ready to verify whereupon he prays Judgment &c

Witness my

Hand

And afterwards to wit at the March time of said Court AD 1858, and On the Eleventh day of March there is an Order upon the Records of said Court in said cause in the Words & figures following to wit


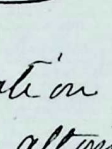
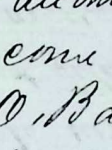
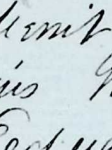
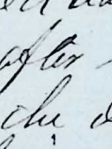
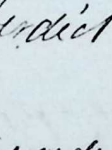
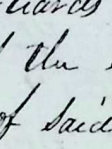
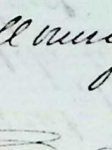
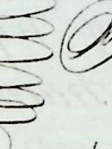
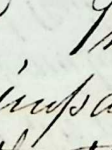
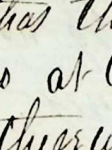
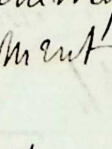
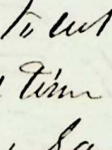
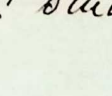
Southern Hall

vs
Loyal L. Leach

vs
Gaspas

This day comes the said Plaintiff by James and Johnston his attorneys and the Defendant by "Butcher his attorneys and note comes on to be heard the demurrer of the said Plaintiff to the second & third Pleas of the said Defendant and the Court being advised in the premises Orders that the said demurrer be sustained as to the said pleas

And afterwards on the same day there is an order upon the records of said Court in said cause with the Words & figures following to wit

Luther Hall              

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Seamus Heall
vs
Royal L. Case
Thompson

This day came the the said parties as
herebefore and now come as to be heard the defendants motion
for a writ of habeas corpus and after argument of counsel
and consideration by the Court it is ordered that said
motion be denied it is therefore considered by the said Court
that the said plaintiff has and recovers of the said defendant
the said sum of One hundred and Two dollars and forty cents
his damages so assessed together with his costs in this behalf
expended and that he. Have execution therefor. And thereupon
the said defendant prays an appeal of this cause to the
Supreme court which by Order of the Court is allowed upon
his filing a bond. herein conditioned according to the force
of the Statute in such case made and provided within
Sixty days in the sum of four hundred dollars with
Patrick Back Patrick Morgan or William Osborne assenting

And afterwards to wit on the 12th day of July 1858 came
the said Case and files in this cause an appeal Bond which
is in the words and figures following to wit

Now all men by these presents that we
Loyal & Lease and Patrick Bush both of the County
of Ogle and State of Illinois are held and firmly
bound unto Luther Hall in the penny sum of
four hundred dollars for the payment of which
well & truly to be made in hand. Our selves our heirs
executors and administrators jointly severally and
firmly by these presents. Witness Our hands and
Seals this 12th day of July A.D. 1858

The condition of the above
obligation is such that whereas the above named
Luther Hall did at the same time of the Circuit
Court of Ogle County at a term of said Court Com-
menced in Ogle County said County on the first Monday
of June A.D. 1858 render a judgment against the above
named Loyal & Lease for the sum of One
hundred & two dollars and forty cents and costs of
suit from which judgment the said Loyal & Lease
then and there prayed an appeal to the Supreme
Court of said State upon condition that said Lease would
within sixty days from the entry of said order enter
into bonds with penalty of four hundred dollars with
Patrick Bush or others as sureties

Now of the said Loyal
& Lease shall well and truly pay the of said judgment
costs interest and damages in case the judgment
shall be affirmed and shall well and truly prosecute
said appeal then this obligation shall be null and
void otherwise to remain in full force and virtue
Entire unto witnesses of
Wm W Smith Clerk

Loyal & Lease
Patrick Bush

Dated July 12th 1858
Wm W Smith Clerk

State of Illinois }
 (Clerk County ss)

I William Smith Clerk of the
 Court do hereby certify that the above and foregoing
 is a true and correct copy of the Record and paper
 in the above cause now on file in my office.

Witness my hand and seal of said

Court this 18th day of March 1887

William Smith Clerk

And now comes the appellant and says that
 in the ~~record~~ proceedings aforesaid in the
 rendition of the ~~judgment~~ aforesaid there is manifest
 error in this to wit

1st The court erred in sustaining the answer
 to 2^d & 3^d plea severally

2 The court erred in overruling motion for a
 new trial

3^d The court erred in overruling motion in
 arrest of Judgment

4th The court erred in rendering the ~~judgment~~ aforesaid
 in manner & form aforesaid

Wm. Hook for appellant

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Loyal L. Case
Luther Hall

Records

Filed Apr. 19. 1859.
Leland Ch.

~~Su. Thur. Hall
George A. Moore~~

SUPREME COURT OF ILLINOIS.

Third Division—April Term, 1859.

LOLAL L. CASE, }
 vs. } *Appeal from Ogle.*
LUTHER HALL. }

POINTS AND AUTHORITIES.

The 3d plea is good.

The legislature had the right to confer on the town the right to impound and sell hogs running at large.

Tefft vs. Size, 5 Gilm. 437.

The town had power to make regulations for impounding animals ; to impose penalties upon the owner of animals running at large.^a

This is an express grant of the power claimed in the plea, or if not express, the power is granted by necessary implication to carry out the powers granted.

The circuit court of Ogle county, will take judicial notice, that the Town of Byron is in Ogle county, and a town incorporated under the general township law.

State vs. Jootle, 2 Harring 541.

Goodwin vs. Appleton, 9 Shipley 453.

Vanderwerker vs. People 5 Wendell, 530.

B. C. COOK, *For Appellant.*

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION,

APRIL TERM, A. D. 1859.

LOYAL L. CASE *vs.* LUTHER HALL.

Appeal from Ogle County.

BRIEF OF APPELLEE.

1. The power, if delegated to the town to authorize a sale of the property upon failure of the owner to pay the penalty and charges, is unconstitutional, because it takes from the owner his property and transfers it to another, without giving him an opportunity of being heard on the facts which are ordained as the reasons for taking it. These facts should be first judicially determined. He is deprived of his property without the judgment of his peers or the law of the land, and without an opportunity of a trial by jury.

State Constitution, Art. 13, Sec. 6 and 8.

This position is presented without time for careful investigation and with doubt of its soundness, though we understand it was argued below.

2. The powers exercised in the regulations or ordinances passed at the meeting, so far as they authorize a sale of the property for a failure to pay the penalty and charges, were not delegated to the town. There is no express delegation of such power, and it can only be claimed under the 2d Sec. of Art. 2 (Scates, &c., Stat., p. 326,) of the township law, as necessary to the exercise of the enumerated or granted powers.

The enumerated powers are:

To determine the number of pound masters, and the locality of pounds.

To make rules and regulations for impounding animals.

To determine the time and manner in which hogs shall be permitted to run at large.

To enforce such penalties on persons offending against any such rule or regulation as they may think proper, not exceeding ten dollars for each offence.

These provisions constitute all the legislation that we find bearing on the questions attempted to be raised under the 2d and 3d pleas, and we insist that the delegated power only extends to fixing a penalty for a violation of the rules and regulations, to be recovered in an ordinary action of debt, and is a limitation of powers which deprives the town of imposing the severer penalty of a sale and confiscation of the property, without a trial to satisfy the penalty and expenses. The judgment for the penalty and charges should precede the executive power of selling, thus giving the party a hearing first and execution afterwards, rather than execution first and hearing afterwards.

No fees are provided for the pound master on a sale, and this indicates that the legislature did not contemplate a sale. Sec. 2, p. 334.

The second plea is bad, because it does not allege that the town of Byron ever passed any ordinance, nor does it set out what the provisions of the ordinance, if any, were—what penalties were ~~enforced~~ under it, and how they were to be enforced, &c. *Unproved*

The Court cannot take judicial notice of what the ordinance was, nor ascertain what it was from the plea, nor whether it was in force, nor whether it has been violated.

The third plea is more formal and particular, and if this is bad, the 2d being much more defective, is so clearly bad as to require nothing further to be said in relation to it.

The 2d and 3d are both bad, because it does not appear whether the town of Byron is a township under the township law, or a town incorporated under the act in relation to town incorporations. (Scates, &c., Stat., p. 195.) If a town under the latter, then the ordinance must be published before it takes effect. (P. 197, Sec. 7.) The pleader should state such facts as will make out his defence, and the pleas do not show that the delegated legislative authority was exercised by the corporation to which its exercise was delegated.

If the Court is to take judicial notice of the geographical divisions of the State, then it will take notice that there is a township of Byron, and an incorporated town of Byron; but it has no means of knowing which of these incorporations passed the ordinance. There may be an inference that it was the voters of the township of Byron, and not of the town of Byron, because the ordinances of a town are passed by the President and Trustees, and those of a township are voted by the people. But the plea would be bad because it is argumentative, and leaves it to inference that Byron is an incorporated township under the township organization law, and does not positively allege it. There are no facts in the second plea from which such an inference can be drawn.

3. The ordinance set out provides that the sale must be made to the highest bidder, and the plea does not allege that the sale was to the highest bidder; and if the law has not been complied with, then the defendant is a trespasser *ab initio*.

21 Pick. 55.

4. The defendant having attempted to justify, as a pound master, should, in his third plea, have alleged that he was duly elected and qualified. Where an officer himself attempts to justify his acts, done by virtue of his office, he should allege and prove himself *in office de jure*. *An officer* Unless the pound master files a notice in the town Clerk's office, signifying his acceptance, he is not an officer; and this, or a general allegation that he was duly elected and qualified, should have been in the plea.

Art. 6, Sec. 5, Township Law.

5. It only appears argumentatively that the ordinance or regulation was in force at the time when, &c. The time does not appear when it was voted. What annual meeting? When was it? Nor is it clearly and distinctly stated what the whole ordinance is. We claim that the ordinance and its violation are not stated with clearness and certainty enough.

6. The ordinance provides that it shall not be lawful to *suffer* any swine to run at large. It is not alleged that the plaintiff *suffered* the hogs to run at large. They may have accidentally escaped or been let out by the defendant below, or some other person, and have been at large against the will of plaintiff; and in spite of his best efforts to confine them. That they were at large is not sufficient, unless known and suffered to be so by plaintiff; and this is the gist of the violation.

It would not surely be sufficient in a declaration, for a penalty provided in case the owner shall *suffer* hogs to run at large, to allege simply that they were at large. The penalty is not enforced because the hogs were at large, but because the owner suffered or permitted them to run at large.

LELAND & LELAND,
For Appellee.

171 85

Cases Hall
Brief of appeal

5. Gilman 437
This case

SUPREME COURT OF ILLINOIS.

Third Division—April Term, 1859.

LOLAL L. CASE,
vs.
LUTHER HALL. } *Appeal from Ogle.*

POINTS AND AUTHORITIES.

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The circuit court of Ogle county, will take judicial notice, that the Town of Byron is in Ogle county, and a town incorporated under the general township law.

State vs. Jootle, 2 Harring 541.

Goodwin vs. Appleton, 9 Shipley 453.

Vanderwerker vs. People 5 Wendell, 530.

B. C. COOK, *For Appellant.*

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Case vs Hall

Points & Authorities

Filed Apr. 29, 1887
L. Leland
Clerk

SUPREME COURT OF ILLINOIS,

Third Division—April Term, 1859.

ABSTRACT OF RECORD.

LOYAL L. CASE,
vs.
LUTHER HALL.

} *Appeal from Ogle County Circuit Court.*

R. p. 2. This was an action of trespass—Declaration in usual form—two counts for taking 12 hogs.

p. 4. 1st Plea, General Issue.

2d Plea as follows:

R. p. 4. "And for a further plea in this behalf, the said defendant says as to the said trespass and conversion of the hogs and swine in the first and second counts of the said plaintiff's declaration set forth *actio non*, because he says, that at the time, when &c., he was lawfully possessed of a certain close with the appurtenances, situate in the town of Byron, in the county and State aforesaid, and because the hogs and swine in the first and second counts mentioned before and at the said time when &c. in the first and said counts mentioned, were wrongfully and unlawfully and contrary to the ordinance of the said town of Byron in the said close of the said defendant, eating and destroying the corn, grass and herbage of the said defendant, there then growing, and doing great damage to the said defendant, he the said defendant seized and took the said swine and hogs, in the first and second counts of the plaintiff's declaration mentioned in the said close of the said defendant so doing damage therein, as aforesaid as a distress for the penalty by the said ordinance of the said town of Byron, made and provided for suffering hogs, swine and pigs to run at large, and drove the said swine and hogs away from out the said close to a pound in said pound district of the said town of Byron, which pound aforesaid was within one mile of the aforesaid close of the plaintiff, and then and there impounded the same as he lawfully ought to do by the ordinance aforesaid and immediately thereafter and within twenty-four hours after the impoundings aforesaid, notified the said plaintiff, of the impounding of the said swine and hogs, mentioned in the first and second counts of the said plaintiff's declaration, and continued the said impounding for the space of five days and until the said plaintiff should have paid the penalty as provided by said ordinance, to wit: the sum of eight dollars and forty cents to have had the said swine and hogs, released and discharged, and the said plaintiff having failed to pay the sum within the time aforesaid, the said defendant after advertising the same, as required by the said ordinance for the space of ten days, sold the same at public vendue for the purposes aforesaid, and which was lawful for the said

defendant to do, for the causes aforesaid, and which all the same supposed trespass in the said plaintiff's first and second counts of his said declaration mentioned, all of which the said defendant is ready to verify, wherefore he prays judgment.

Third Plea as Follows :

And for a further plea in this behalf, the defendant says, *actio non*, because he says, that at the annual town meeting of the town of Byron, in the county of Ogle and State of Illinois, held in pursuance of the Statute in such case provided, and the voters of said Town at said annual R. p. 6. Town meeting, did pass and adopt certain regulations for restraining and preventing the running at large of swine in the said Town by which said regulations and ordinances it was provided, that it should not be lawful to suffer any swine to run at large in the said town of Byron, and it was further provided by said regulations, that any inhabitant of said Town finding any swine running at large, might take up the same and cause them to be delivered to the nearest pound-master whose duty it shall be to receive the same in the pound of which he, the said pound-master has charge, and furnish said swine with suitable feed and water till the same shall be discharged.

And the said defendant further avers, that it was further provided by said regulations that the person so taking up said swine should within twenty-four hours thereafter give notice to the owner or owners of said swine, of the taking up and impounding of the same as aforesaid.

And the said defendant avers, that it was further provided by said regulations, that if within five days thereafter any person shall claim and prove to be the owner thereof, to the satisfaction of the taker up or pound master, and pay the legal fees and reasonable charges to which the pound master may be entitled, and for the use of the town as a penalty the sum of one dollar for each swine, such owner shall be entitled to immediately take away the same.

And the defendant further avers, that it was further provided by said regulations, that if such claimant should not appear within five days after such claim, pay the aforesaid fees, charges and penalty, and no person R. p. 7. shall within the same time claim and prove the owner of such swine as aforesaid, then the pound-master shall advertise such swine for sale, by giving at least five days notice by posting up written notices of the time, place, and property to be sold, on the school house in said pound district, and at two other places in the town, which the said pound master may consider the most public, and shall sell the same to the highest bidder, for cash, and the proceeds of such sale shall be applied for the payment of such fees, charges and penalty and expenses of sale, and the surplus, if any there be, shall be paid to the owner, if any appear.

And the said defendant further avers, that the said swine in the said plaintiff's declaration mentioned, were at the said time &c. running at large in said town of Byron, aforesaid, and in violation of the regulations and ordinances of the said town, adopted as aforesaid, and that he the said defendant was at the said time, when &c. an inhabitant of the said town aforesaid, and being such inhabitant and finding the said hogs and swine in the plaintiff's declaration mentioned at the time when &c. running at large, and in violation of the said regulation and ordinances as of the said town, he the said defendant did take up the said swine and did drive and cause to be driven the same to the nearest pound in said town, and the said defendant did deliver the said swine to the pound-master of said pound, which said pound-master did then and there receive the said swine and impound them in the said pound.

*X by the suffer-
ance of the
said plaintiff
running at large
in said town &c*

And the said defendant further avers, that the said defendant did immediately and within twenty-four hours after the taking up and impounding of the said swine as aforesaid, give notice to the said plaintiff that he ^{it. p. 8.} the said defendant had taken up and impounded the said swine in the said pound in said town as aforesaid, and the said defendant avers that the said plaintiff did not within five days after the said impounding and giving of the notice aforesaid, claim and prove to the satisfaction of the taker up or pound-master, that the said swine so impounded, were the property of the said plaintiff, neither did he pay the legal fees, and reasonable charges to which the pound-master was entitled, to wit: the sum of one dollar for each swine, all of which the said plaintiff neglected to do, neither did any other person within the space of five days, claim and prove the ownership of said swine, nor did they pay and tender the fees and charges aforesaid: therefore, the said defendant did as pound-master of said pound district, being the defendant, advertise the said swine for sale by giving five days notice by posting up written notices therefor, one of which was placed upon the school house in said pound district and two other notices in two of the most public places in the said town of Byron that he would on the day mentioned, in said notices, sell the same to the highest bidder, for cash, and that in pursuance of the said notice, the said defendant did on the day appointed for said sale in the said notices, proceed to sell the same at public sale for cash, and after the payment of the legal fees, charges and penalty and expenses of said sale, paid the overplus of the said sale money to the plaintiff, and which are the same trespass complained of by the said plaintiff in the first and second counts of his said declaration, all of which the defendant is ready to verify.

Wherefore he prays judgment &c.

- P¹⁰ Similar to 1st plea, and demurrer to 2d and 3d pleas--demurrer sustained to said 2d and 3d pleas.
- P¹¹ Trial by jury, verdict for plaintiff, damages assessed at \$102 40.
Motion in arrest of judgment and for a new trial.
- P¹² Motion for in arrest of judgment and for a new trial overruled and appeal taken. Judgment rendered upon the verdict.

ASSIGNMENT OF ERRORS.

1st. The Court erred in sustaining the demurrer to defendant's 2d & 3d pleas--severally.

2d. The Court erred in overruling the motion in arrest of judgment and for a new trial.

3d. The Court erred in rendering judgment aforesaid in manner and form aforesaid.

GLOVER & COOK,
for Appellants

*The plea News Sept. 1883, both taken
up impounded & pound master -*

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Loyal L. Case
at
Luther Hall

Filed April 12. 1839
L. Leland
Clerk

Loyal S. Case

Luther Wall

as to 1st point made in depts argument on file
he says he doubts its soundness. I say "And the
appellant doth the like," I suppose that it
does not admit of a doubt that the Legislature
may confer upon Municipal corporations
the power to impound stray animals and
to sell them for a failure to pay penalty
5 Gilm 432. & charges. if they are wrongly impounded
the owner has his remedy. But upon this
point the case was decided against ap-
pellant in the court below. On 5 Gilm 435
the court say this power is clear & unquestionable.

1 The towns have power under the law
1st To make rules & regulations for impounding
animals

2 To determine the time & manner
in which dogs shall be permitted to run
at large

3 To enforce such penalties on persons
offending against any such rule or
regulation as they may think proper not

exceeding ten dollars for each offence

upon the rules of construction which are universally adopted and admitted. The towns have the authority by necessary implication which is necessary to give effect to the before granted powers.

Of what use the power of imposing the penalty & impounding the boys if they may not be sued to pay the penalty & fees.

It is said that the court will not take notice of the fact that there was a township called Byron in Ogle County.

I answer the court will take such notice. The Circuit Court of Ogle County will even take notice who are the townships & sustain as such Town.

State v. Lott 2 Harring 541

Goodwin v. Appleton 9 Shepley 453

Wanderer v. People 6 Wm 830

It is said the plea does not allege that the boys were suffered to run at large.

I answer the plea alleges that they were

running at large in violation of the
ordinance

B. L. Leach

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Loyal L. Case

¹⁰
Luther Hall

Brief argument
for appellant

Prepared