

No. 12566

Supreme Court of Illinois

McCoy, et al

vs.

Chinn

71641  7

178

John H. H.

John H. H.

185

1858

12566

X

Referred

Pleas before the Hon John S Thompson
Judge of the tenth Judicial Circuit of
the State of Illinois. At a special term
of the Court began and held at the
Court house in Mokenmouth, within and
for the County of Warrick and State of
Illinois. On the fourth Monday of
November in the year of our Lord One
thousand Eight hundred and fifty six
It being the 24th day of Said Month
Aforesaid

Present Hon John S Thompson Judge

James H Stewart, State Attorney

William Billings Clerk

James M Coy Sheriff

James M Coy
who sues for the use of
Thomas Allingham

v.
Talbot Chinn
Harvey B Hart

In Order

And afterwards to wit on
the 25th day of November 1856 the following
record was made in the above entitled Cause

James Mc Coy
who sues for the use of
Thomas Allingham

vs
Salmon C. Chinn
Harvey B. Hart

In Debt

This day came the defendant
and moves the Court for a rule on the
Plaintiff to file Copy of account sued on
which motion is Overruled by the Court.
Then came the Plaintiff and moves the Court
for leave to amend his Declaration which said
motion is allowed.

And afterwards to wit
on the 2^d day of December the following
record was made in the above entitled cause

James Mc Coy
for the use of
Thomas Allingham

vs
Salmon C. Chinn
Harvey B. Hart

In Debt

This day came the Plaintiff
by his counsel. and on his motion. it was orderd
by the Court that this suit be Continued
at Plaintiffs cost. Therefore it is considered by
the Court that the said defendant have and
recover of and from the said Plaintiff his
cost by him at this term Expended and
may have Execution Therefor

Pleas before the Hon John S Thompson
Judge of the tenth Judicial Circuit of the
State of Illinois. At a Circuit Court
begun and held at the Court house in
the City of Monmouth within and for
the County of Warren and state of Illinois
on the third Monday in the month of
September in the year of our Lord One
thous and Eight hundred and fifty ~~six~~^{six}

Present Hon John S Thompson Judge

A. M. Craig State Attorney

William Billings Clerk

James McCoy Sheriff

James McCoy who sues
for the use of
Thomas Allingham
vs

Salmon Chinn
Harvey B Hart

In (Sett)

Pleas before the Hon John S Thompson
Judge of the tenth Judicial Circuit of
the State of Illinois. At a circuit court
began and held at the Court house in
Morrison within and for the County of
Warren and State of Illinois on the third
Monday in the Month of March, In the
year of our Lord One thousand eight
hundred and fifty seven. It being
the sixteenth day of said month aforesaid

Present Hon John S Thompson Judge

James H Stewart State Attorney

William Sapienty Clerk

Charles M Mills Sheriff

James Mc Coy
for the use of
Thomas A Lingham

Salbot Chinn &
Harvey B Hart

In Debt

And afterwards to wit on
19th day of March 1857 the following record was
made in the above entitled Cause

James Mc Coy for the
use of Thomas A Lingham

Salbot Chinn & Harvey B Hart

In Debt

This day came

the Plaintiff by his Attorney and enters his
demurrer to Defendants first plea which
demurrer was heard by the Court and
Sustained

And afterwards to wit on the 20th
day of March AD 1857 the following record
was made in the above entitled Cause

James McCoy
for the use of }
Thomas Allingham }
vs }
Talbot Chinn & }
Harvey B Hart }

In Debt

This day came the parties
and their respective Counsel and issue being
joined. They waive a jury and for trial put
themselves upon the Court.

And afterwards
to wit on the 25th day of March AD 1857 the
following record was made in the above entitled
cause

James McCoy for the
use of Thomas Allingham }
vs }

Talbot Chinn & }
Harvey B Hart }

In Debt

This day again this
cause coming on for a hearing the Court
after hearing all the evidence in the case,
doth order that judgment be entered against
the said Defendants for the sum of Two hundred

and fifty dollars being the amount of the Penalty in the bond as Debt and One hundred and fifty dollars Damages. And the Clerk is hereby directed to Endorse on the Execution that the Damages only shall be Collected. Therefore it is considered by the Court that the said Plaintiff have and recover of and from the said Defendant, the aforesaid sums of Two hundred and fifty dollars as Debt and One hundred and fifty dollars Damages, Together with his costs by him in this suit in this behalf expended and may have Execution therefor &c

Thereupon Came Talbot Chinn one of the Defendants in this suit by his Attorney and prays an appeal to the Supreme Court which is allowed on the Condition that he file his bond within thirty days from this date, in the sum of Three hundred dollars with Thomas Chinn as his Security, And thirty days is hereby given to file bill of Exceptions

Copy of Amended Declaration filed Oct 1. 1856
State of Illinois County of Waneu vs
James Mc Coy for use of }
Thomas Allingham } Circuit Court
vs } November Special term 1856
Talbert Chinn }

James Mc Coy Plaintiff who sue
for the use of Thomas Allingham by leave of the
Court first had and obtained complaints of Talbert
Chinn and Harvey B Hart Defendants of a plea
that they render unto the Plaintiffs the sum of Two
hundred and fifty dollars. Which they owe to and
unjustly detain from the Plaintiff.
For that whereas, heretofore, to wit. On the thirtieth day
of October A.D. 1855. The said Talbert Chinn. One of said
Defendants made oath and Affidavit in manner and form
as required by the Statute in such case made & Provided
at and within the County of Waneu and State of Illinois
And before William Billings Esq Clerk of the Circuit
Court for and within said County, for the purpose
of Commencing an action of Replevin to recover the prop-
erty of a certain Sowed Mare in the Circuit Court for said
County, and on the 30th day of October A.D. 1855 at the County
aforesaid. A Writ of Replevin having been issued thereon
by the Clerk of said Circuit Court Returnable on the first
day of the next term thereof to be holden on the third
Monday of November A.D. 1855, and been placed in the
hands of the Plaintiff, who was then and there Sheriff of
said County to execute, and after the Plaintiff so

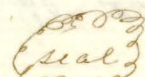
received the said Writ. the said Defendants. in further
pursuance of the Statute, then to Writ. On the 30th day of
October A.D. 1856, at and within the County and State aforesaid,
executed under their several seals, their certain
writing obligatory, to the Plaintiff aforesaid, and then and
there delivered the same to the Plaintiff (Which is now ~~here~~
to the Court here shown) and which is in the words and
figures following to Writ.

Know all men by these presents that We Talbot
Chinn as principal and Harvey B. Hart security are
held and firmly bound unto James Mc Coy Sheriff of
Warren County, in the penal sum of Two hundred and
fifty Dollars lawful money of the United States to the
payment of which, we bind ourselves our heirs & exors
&c. firmly by these presents, Sealed with our seals
and dated this 30th day of October A.D. 1855,

The Condition of the above obligation is such that
whereas the above bounden Talbot Chinn has this
day sued out of the Circuit Court of Warren County,
a Writ of Replevin for one Sorrel Mare and against Thomas
Allingham, which said Writ is about to be executed,
Now if the said Talbot Chinn shall save and keep
harmless the said Mc Coy in so, executing said Writ and
pay and satisfy all costs and damages which shall be
adjudged against him in this suit as well as make return
of said Mare if return shall be awarded by the Court,
then this obligation shall be Void Otherwise to remain
and be in full force,

Witness our hands and seals this day and date first
above written

Signed

Salbert Chimn 

Harvey B Hart 

And thereupon the said Plaintiff, as Sheriff aforesaid,
afterwards, to Wit, on the first day of November AD
1855, at and within the County of Warren aforesaid,
Replevied and made deliverance of the said Sorrel Mare
to the said Salbert Chimn, one of said defendants,
according to the duty of his said office. And afterwards
to Wit, At a term of said Court, begun and holden on
the second Monday of April AD 1856, at and within
said County, the said Thomas Allingham having appea-
red in said action and plead thereto, and issue having
having been joined, the said cause then and came on
to be tried in due form of law, and such proceedings
were had that the said Thomas Allingham recovered
of and from the said Salbert Chimn, one of said
defendants, his costs in that behalf expended and also
had judgment of said Court, for a return of said
Sorrel Mare, as by the record now remaining in said
Court will more fully appear, and afterwards to
Wit, on the 21st day of May AD 1856, at within said
said County a writ of Return, habendo was issued in
in due form of law under the seal of said Court by the
clerk thereof upon said judgment and delivered to the
said Plaintiff as Sheriff for the return of said Sorrel
Mare, and which the said Plaintiff then afterwards, to Wit,

Within the lifetime of said Wit. served the same by
calling to the said Talbot behind one of said defendants
and making search for said Sordd Mare within said
County, and being unable to find the same,

And the said Plaintiff avers that the said defendant
Talbot Chim has not at any time paid or satisfied
the costs so adjudged against him as aforesaid, or any
part thereof, and for further breach, the said Plaintiff
further avers that the said defendant Talbot Chim
has utterly failed and neglected to return the said
Sordd Mare to the said Thomas Allingham, or to any
other person in his behalf, as was awarded by the
Said Circuit Court as aforesaid,

And for further breach the said Plaintiff avers that the
said defendant Talbot Chim has not saved and kept
harmless the said Plaintiff in so executing said Wit of Replevin
according to the effect of said writing obligatory, but
hitherto hath neglected and refused to pay said costs,
to return said Sordd Mare, or to save and keep harmless
the Plaintiff, And still doth neglect and refuse so to do.

Wherefore an action hath accrued unto the said Plaintiff
to demand of and have the said sum of Two hundred
and fifty dollars above demanded, of the said defendants,

Yet the said defendants nor either of them, hath not
paid the said sum of money or any part thereof although
often demanded

And for that whereas, heretofore to Wit. On the 30th day
October AD 1856, at and within the County of Warren

And State of Illinois, the said Defendants made their certain other writing Obligation (and which is to the Court now here shown) and then and delivered the same to the Plaintiff. Which is in the words and figures following to Wit:

Know all men by these presents that we Talbot Chim as principal and Harvey B Hart security are held and firmly bound unto James Mc Coy Sheriff of Warren County in the penal sum of Two hundred & fifty Dollars lawful money of the United States to the payment of Which we bind ourselves our heirs Executors &c firmly by these presents. Sealed with our seals and dated this 30th day of October AD 1855.

The condition of the above obligation is such that whereas the above bounden Talbot Chim has this day sued out of the Circuit Court of Warren County a Writ of Replevin for one Sanel Man and against Thomas Allingham which said Writ is about to be executed,

Now if the said Talbot Chim shall save and keep harmless the said Mc Coy in so executing said Writ and pay and satisfy all costs and damage which shall be adjudged against him in this suit as well as make return of said man if return shall be awarded by the Court. Then this obligation shall be void otherwise to remain and be in full force.

Witness our hands and seals this day and date first above written

Signed

Talbot Chim
Harvey B Hart

Seal
Seal

and the said Plaintiff avers that the said Writing Oblig-
ation was given to the said Plaintiff as Sheriff of the County
aforesaid, in a certain suit then commenced & pending
in the Circuit Court for the County aforesaid wherein
the said Salbott Chinn, one of the Defendants was
Plaintiff, and the said Thomas Allingham was Defendant
to Replevy a certain sorrel mare, in which thereafter,
to Wit, at the April term of said Circuit Court AD 1856
then such proceedings were had that the said Thomas
Allingham recovered judgment for his costs in said
suit expended and also for a return of the said sorrel
mare, which had been delivered before that to the said
Defendant by virtue of the Replevin Writ in said case
by the Plaintiff, as will more fully appear by the
Record thereof now remaining in said Court.

And the Plaintiff avers that afterwards to Wit,
on the 21st day of May AD 1856, at within said County
a Writ of Retorno habendo, was issued on said
judgment, and placed in the said Plaintiffs hands,
which Writ was served upon the said Defendant,
Salbott Chinn and returned not found as to the
said sorrel mare, as will more fully appear from
said Writ, and the return thereof now on file in
said Court.

And the said Plaintiff avers that the said Defendant
Salbott Chinn, has not at any time paid the said costs
so adjudged against him or any part thereof, and for
further breach the Plaintiff avers that the said Defendant

Talbot Child has not returned the said Sorrel
mare to the said Thomas Allingham, or to the Plain-
tiff, or to any one for their benefit, but has hitherto
failed and refused and still doth fail and refuse to
return the same according to the form and effect of
said writing obligatory. Wherefore an action hath
accrued unto the said Plaintiff to demand of and
have from the said Defendants, the said sum of Two
hundred and fifty Dollars above demanded.

Yet the said Defendants have not paid the same or
any part thereof, but hitherto hath failed and refused
and still doth fail and refuse to pay the same or
any part thereof, to the damage of the Plaintiff in
the sum of Two hundred and fifty Dollars and therefore
he sues &c

Paine & Griffith
Plaintiff Attorneys

Counsel of Counsel

(For Copy of Instrument sued on the Defendants
are referred to the body of the several Counts)

Filed Dec 1st 1856
Wm Billings clk

Pleas 1, 2, & 3 filed March 19th 1857
State of Illinois } Warden Circuit Court
Warden County } November Term AD 1857
James McCoy for the
use of Thomas Allingham
vs

Salbott Chimn &
Harvey B Hart

1 And the said Defendants come and
defend the wrong and injury whereto and say that the
said Plaintiff ought not to recover more than nominal
damages in this case because they say the sorrel mare
the Property replevied in the original action wherein
Salbott Chimn was Plaintiff and Thomas Allingham
was Defendant which was pending in the Circuit Court
of Warden County and in which Judgment was had
for the Defendant at the April Term AD 1856 of said
Court and in which case the Bond sued on in
this Case was given was at the time of the trial
of the said case the property of the Plaintiff in said
case the said Salbott Chimn, and that the merits
of the case have not been and were not determined
in said case, and the Defendants set out specifically
to show the case, why the merits of the case were not
determined in the said action of Replevin, that the
action in said case was brought to recover the
possession of a certain sorrel mare particularly descri-
bed in said Declaration filed in said case which
was averred therein to be the property of the Plaintiff

in said case, and charged in said declaration to be wrongfully detained by the defendant in said case, as appears by said declaration on file in this Court and on the 24th of April AD 1884 the defendant in said case filed his pleas numbered 1, 2, 3, & 4, in said case, the first of which was the plea of non delinere designed to put in issue the detention of the said property the 2^d was a plea asserting that the property replevied was the property of the said defendant in said case, and not of said Plaintiff said Chim, the 3^d denied the Plaintiffs right of possession of the property in said declaration sued for at the time when &c, the 4th was the plea of non cepit denying the taking of the said property by the defendant in said case as charged in the declaration, all of which will more fully appear by reference to the papers in said case on file in this Court, and defendants aver that the Plaintiff in that case joined issue by adding the Similitur to the first and fourth pleas, and took issue on the 2^d & 3^d pleas by denying by replications the fact set up therein, to which defendant in said case added the Similitur all of which will more fully appear by reference to the pleas & replications in said case on file in this Court, And the said defendants aver that on the trial in said case, evidence was introduced by the Plaintiff in said case proving conclusively that the property sued for was the property of the Plaintiff in said case as alleged in said declaration in said case

which said evidence was not rebutted in said case by any evidence on the part of the said Defendants in that case.

But Defendants aver that the jury in that case found for the Defendant in that case, the Plaintiff in this case, solely in consequence of the failure of the Plaintiff in that case to prove a demand on the Defendant in that case for the property replevied in that case before the issuing of the Writ, in accordance with the instruction of the Court, and not for any other or different reasons, and the right of property to the said mare was not determined in the said suit

all of which we are ready to verify. Wherefore the Defendants pray Judgment &c

Harding & Madden
Defendants Attorneys

2 And for further plea in this behalf the Defendants say actio non, because they say that they did not make & execute the said Bond in the said Declaration described, and of this they put themselves upon the Country &c

Plff doth the like
Concy Plff atty

Harding & Madden
Defendants Attorneys

3 And for further plea in this behalf the said Defendants say actio non, because they say that they do not owe the Plaintiff in manner and form as is charged in the said Declaration, and of this they put themselves upon the Country &c

Plff doth the like
Concy Plff atty

Harding & Madden
Defendants Attorneys

Filed March 19th 1857

Jm Safety clk

Copy of Demurrer

State of Illinois } Warren Circuit Court
Warren County } March Term AD 1857

James M. Leay for
use of Thomas Allingham
vs

Sabbott Chinn &
Harvey B Hart

And the said defendants
Come and defend the wrong and injury when
vc and say that they ought not to be held to
answer unto the Plaintiff in this case, because
they say that the said Declaration & each of
said Counts are not nor are either of them
sufficient in law for them to answer unto
and of this they put themselves upon the
judgment of the Court & Pray judgment,

Harding & Madam

Atty

Filed March 16th 1857

Wm. Lafayette Clark

(Copy of Decreed to 1st plea)

State of Illinois County of Warren

James Mc Coy for
use of Thomas Allingham } Circuit Court
V } March Term AD 1857
Talbot Chinn et al }

The said Plaintiff as to the
first plea says that the same and the
matter and things therein alleged are
insufficient in law to bar the Plaintiff from
having and maintaining his action &c
Wherefore he prays judgment &c
Coudy Pltffs atty

Filed March 17th 1857
Wm Safety clk

Bill of Exceptions
filed March 26th 1857
Wm Safety clk

State of Illinois } Warren Circuit Court
Warren County } March Term 1857

James Mc Coy
who sues for the use
of Thomas Allingham
vs

Talbot Chinn &
Harvey B Hart }

Be it Remembered that on
the trial of this cause the Plaintiff offered in
evidence in Support of the Issues on his part,

The Affidavit of Talbot Chinn
made on the 30th day of October before William
Billings Clerk of the Circuit Court of Warren
County Illinois and filed on said day

(Copy of Affidavit)

State of Illinois } ss
Warren County }

Talbot Chinn being first duly
sworn according to law says that he is the owner
of a Chestnut Saddle Mare, aged 4 years, with a
small star in her forehead, of the value of One
hundred and twenty five dollars, and that he is
now entitled to the possession of said Mare.
This affiant states that the said mare is
unlawfully detained from the possession of this
affiant by one Thomas Allingham, and this
affiant states that said mare was not taken nor
is she detained for any tax, assessment, or fine
Service by virtue of any law of this State.

The Plaintiff further offered the Writ of
Replevin which reads as follows to Wit,

(Copy of Writ)

State of Illinois } The People of the State of
Wanam County } Illinois to the Sheriff of
Wanam County Greeting,

We command you, that without delay you cause
to be replevied and delivered to Talbot Chim
the following described goods and Chattles to Wit,
One Sound Mare aged four years with a small
star in her forehead, of the value of one hundred
and twenty five Dollars and that he is now
entitled to the possession of said Mare, which
said Mare is unlawfully detained from the poss
ession of the said Talbot Chim by one
Thomas Allingham, which said Thomas Allin
gham wrongfully detains from the said Thomas
Chim as is said. And to Summon the said
Thomas Allingham to be and appear before our
Circuit Court on the first day of the next
term thereof to be held at the Court house in
Monmouth in and for the County of Wanam
on the third Monday in the Month of November
next to answer unto the said Talbot Chim
for the unlawful detention of the goods and
Chattles aforesaid, Provided however that the
said Talbot Chim shall give you bond
with good and sufficient Security to prosecute
his suit to effect without delay, and to make
return of the goods and Chattles, if return

thereof shall be awarded and further to you
hands in replevying said property and have
you then and then the said bond, together
with this writ, and an endorsement thereon of
the manner in which you have executed the
same

Witness William Billings Clerk of our
said Court and the seal thereof at
Middletown this 30th day of October 1858
Wm Billings Clerk

And on the back of the foregoing writ is
the following return made by the Sheriff of
Warren County which is in the words as
follows to wit

I have served the within writ by replevying
the within named property and delivered the
same to the within named claimant.

Nov. 1st 1858

James Mc Coy Sheriff
by C B Edenburger, Cpn

Filed Sept 11th 1856

Wm Billings Clerk

The plaintiff further offered in evidence a Bond which reads as follows to Wit,

(Copy of Bond)

Know all men by these presents that we Talbot Chinn as principal and Harvey B Hart security are held and firmly bound unto James McCloy Sheriff of Warren County in the penal sum of two hundred and fifty dollars lawful Money of the United States to the payment of which we bind ourselves our heirs executors, firmly by these presents sealed with our seals and dated this 30th day of October A D 1858

The condition of the above obligation is such that whereas the above bounden Talbot Chinn has this day sued out of the Circuit Court of Warren County a Writ of Replevin for one sorrell mare and against Thomas Attingham which said Writ is about to be executed, Now if the said Talbot Chinn shall save and keep harmless the said McCloy in so executing said Writ and pay and satisfy all costs and damages which shall be adjudged against him in this suit as well as make return of said mare if return shall be awarded by the Court then this Obligation shall be void, Otherwise to remain and be in full force
Witness our hands and seals this day
and date first above written

Talbot Chinn *TS*
Harvey B Hart *TS*

The Plaintiff further offered in evidence
a record of a judgment of the Warren Circuit
Court which reads as follows.

Salbot Chinn
vs } Replevin
Thomas Allingham }

This day came the parties
and their Attorneys and issue being joined
for trial put themselves upon the Country.
Thereupon came a jury to wit, John E. Surpenny,
Jamaiah Smith, Jameson Seepie, Jacob
Miller, Luther Dixon, Henry Curtis,
B. F. Wiggins, Marshall B. Ray, Robert
Philips, Greenup Abbott, J. M. Sumner and
Josephus Wray, who being elected trial and
sworn well and truly to try the issue joined
herein, after hearing the evidence, thereupon
came the Defendant by his Attorney and
withdrew his plea of Non-cepit. Then came
the jury and upon their oaths do say, We
the jury find the issues for the Defendant.
Therefore it is considered by the Court that
the Defendant have and recover of the said
Plaintiff his costs by him in this cause laid out
and expended and may have execution therefor.
And it is further ordered by the Court that
a Writ of Return, habendo, Issue herein

The Plaintiff further offered in evidence a
Writ of Return, Habendo, which reads as follows
(Copy of Writ)

State of Illinois }
Warren County } The People of the State of
Illinois to the Sheriff of Warren County, Greeting,
Salbott Chims }
vs } Replevin
Thomas Allingham }

Whereas at the April term
of the Circuit Court in and for the County of
Warren and State of Illinois, The defendant
Thomas Allingham was summoned to appear
to answer to the Plaintiff Salbott Chims in a
plea whereof he took the goods and Chattles of
the said Plaintiff to wit one Chestnut sorrel
mare aged about four years with a small
star in her forehead of the value of One hundred
and twenty five dollars, and that the said
plaintiff afterwards failed to prosecute his
cause with effect wherefore it was then con-
sidered by the said Court that the said Plain-
tiff and his pledges of prosecuting should be in
mercy, and that the said defendant should
go without day, and that he should have
return of the mare aforesaid, and it was
ordered by the said Court that a Writ of
Return, habendo issue thereupon, We therefore
command you that without delay you
cause to be taken and delivered to the said
defendant the said Mare either from the
said Plaintiff or Wheresoever she may be found
Hereof fail not and make due return

And on the back of the foregoing writ of Return, habendo is the following return made by the Sheriff of Warren County.
I have served the within writ by reading the same to the within named Talbot & him the within named property not to be found in my County June 30 1886
James Mc Coy Sheriff
By B B Eilenburg Deputy

of your doings hereon

ES

Witness William Billings Clerk
of the said Court and the seal
thereof at Mounmouth this 21st day
of May in the year of our Lord
one thousand eight hundred and
fifty six

Wm Billings Clerk



The Defendants then and then by their Counsel
objected to the receipt in evidence of the said
Affidavit, Writ of Replevin, Bond, and
Writ of return habendo and judgment record
and each and either of them. But the Court
overruled the objections of Defendants and
allowed said Affidavit, Writ of Replevin, Bond
Writ of Return, habendo, and judgment Record
to be read in evidence to which rulings of the Court
and each of said rulings in admitting Affidavit
Writs, Bond & judgment Record in evidence the
Defendants then and then excepted and still
excepts

The Plaintiff then Proved that the
mare described in bond was worth \$125,
and the use of the same was worth \$25,
And that the Cost in said action of replevin for
which said judgment was had were paid by
the Defendant. The Court then found the issues
for the Plaintiff. And the Defendant then and
then excepted to the decision of the Court.
The Defendant then moved for a new trial
but the Court overruled the motion and

rendered judgment for the Plaintiff, and the
Defendant then excepted to the decision of
the Court in overruling the same and in
rendering judgment for the Plaintiff. This was
all the evidence introduced or offered
in the case. And Defendants pray that this
their bill of Exceptions may be signed and
sealed by the Court and made part of the
record in this case which is accordingly
Done

John S Thompson (seal)

(Copy of Bond)

Know all men by these presents that we Talbot
Chinn and Thomas Chinn are held and firmly
bound unto James McCay who sues for the use
of Thomas Allingham in the Penal sum of
Three hundred dollars for the payment of which
well and truly to be made we bind ourselves
our heirs executors ^{and} administrators jointly sever-
ally and firmly by these presents.

Witness our hands and seals this 26th day of
March Anno Domini One thousand Eight
hundred and fifty seven

The Condition of the above obligation is such
that whereas James McCay who sues for the
use of Thomas Allingham did on the 25th
day of March 1857 in the Circuit Court within
and for the County of Warren and State of Illinois
recover a judgment against the above bounden
Talbot Chinn and Harvey B Hart for the
sum of \$250. debt and \$100. Damages and
Costs of suit from which judgment of the Circuit
Court the said Talbot Chinn has prayed for
and obtained an appeal to the Supreme Court
of said State.

Now if the said Talbot Chinn
shall duly prosecute his said appeal with effect
and shall moreover pay the amount of the judgment
costs interest and Damages rendered and to be
rendered against him in case the said judgment
shall be affirmed in the said Supreme Court then
the above obligation to be null and void otherwise
to remain in full force and virtue

Talbot Chinn *TS*
Thomas Chinn *TS*

State of Illinois }
Warren County } I William Lafayette Clerk
of the Circuit Court for said County do hereby
Certify that the foregoing is a full, true, and
Complete Copy of all the Proceedings in the fore-
going case as appears from the files and Reco-
rds now in my office

In testimony whereof I have hereunto
set my hand and affixed the seal
of said Court at my office in Elkhorn
outh this 14th day of April AD 1857
Wm Lafayette Clerk

James M. Coy for use &c

Jalbo H. Chinn Appeal from Warren
and said Jalbo H. Chinn by his Attorney, James M. Coy
that in said record proceedings a paid certificate said case
there a manifest manifest error and appear for some
the following causes to said court and in sustaining
demanded to defendants' just plea.

2. The court & order permitting said affidavit
and being read, and a petition habeas and
particularly said judgment and each & either
of them to be read in evidence in said case

3. The court erred in rendering judgment
against defendant & in the ruling judgment for
defendant.
4. The court erred in overruling motion
for new trial & in arrest of judgment.

5. The court erred in admitting evi-
dence of the use of the name

wherefore the errors aforesaid the
said Talbot Chinn says that the same
may be reversed.

Geo H. H. Dwy

Attorney for Appellant

And the Appellee comes & says
there is no such error as aforesaid
& that he prays may be argued by
the Court.

George S. Fidd

Attys for Appellee

153 785

James M. C. Coy use
of Thos. Allingham

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Talbot Chinn &
Haney, B. Hart

Best Copy of
Proceedings in
Warren County
Circuit Court

Fees for Record \$8.00

Filed April 24, 1858
Wm. Leggett atk

Adm - J. L. Lard

Judgment & Appeal

Record

State of Illinois, 3rd Grand Division
Supreme Court, April Term A.D. 1858.
Robert Chinn
vs } Appeal from Warren
James McCoy who sues }
for use of Thomas Allingham }

William C. Lundy being duly sworn states that he is one of the attorneys of the appellee in said case and the only other attorney employed in this Court on the part of the appellee is his partner S. C. Judd, and this deponent further states that it is his opinion that there is no ground whatever for the reversal of the judgment of the Circuit Court of Warren County and that he is advised and believes that the appeal was taken for delay, that the only points relied upon for a reversal of the judgment are

1st That the special plea of the defendants below is a sufficient in law to bar the Plaintiffs action and the demurrer thereto was improperly overruled

2^d That there was no sufficient judgment for a return of the property

replevied to support the allegation in the declaration, and

3^d That the Court erroneously admitted evidence of the value of the use of the mare replevied & rendered judgment therefor.

And this deponent further states that a plea the same in substance and better in form was adjudged bad in the Case of Warner vs Mathews 18 Ill. 83.

And this deponent states that the judgment is for the defendant for his costs and awards, execution therefor and then follows this language " And it is further ordered by the Court that a writ of Retorno Habendo issue herein" which it is objected is not a judgment for a return of the property replevied by the writ.

And this deponent states that the only reference to the value of the use of the mare is in the Bill of Exception as follows " The plaintiff then proved that the mare described in bond was worth \$125 and the use of the same was worth \$25", and that it does not appear whether such use

was before or after the time of the trial of the replevin suit.

And this deponent states that from this state of facts the appellees attorneys are advised and believe that there is a meritorious and substantiated defence to their appeal.

And this deponent states that George H. Harding the appellants attorney knew that the appelle had employed this deponent & his partner to defend this appeal and that about ten days ago he sent by mail a printed copy of the abstract to them, that he also knew ~~that~~ at the time he procured the entry of the rule herein and the reversal of the judgment by default that the appellees attorneys was hourly expected to arrive at this Court for the purpose of defending this suit among other business and that the default was taken for the purpose of preventing a fair hearing of this case and hindering the collection of the judgment rendered below.

And this deponent states that he arrived at this Court about 1 o'clock A. M. of this day, at as early a period as

he could consistently with his other en-
gagements and in ample time to join
in error and prepare this case for
argument before the first time it could
be called on the docket.

And this deponent states that
the appeal was granted on condition
that a bond was filed within thirty
days & the record does not show that
such condition was complied with
and the appellants attorney has not
prepared and submitted the points
and authorities under the rule of this
Court on which he relies, and hence
that the appellant was not in a con-
dition to enforce any rule to join
in error.

Subscribed & sworn to
before me this 23^d day
of April 1858.
J. Ireland Clk
by J. H. Rice Deputy

W. C. Gandy

Valerius Chas. 10
24 1858
James M. Gay for
1858
affidavit to set
aside default.
Filed April 23 1858
J. Ireland
Clk

W. C.

State of Illinois, 3rd Grand Division
Supreme Court, April Term 1858.
Galbot. Quinn
vs } Appeal from Warren
James McCoy for use. }

The said Appellee comes by his
attorney and moves the Court to set
aside the default here in taken and
the order reversing the judgment of the
Circuit Court for the following reasons:

1st Because the appeal was not
properly pending in this Court, and
the appellant had not joined his co-
defendant below on the record in
this Court & hence was not entitled
to such default.

2^d Because there was no appeal
taken and the cause was not ~~taken~~
pending in this Court, the bond not having
been filed in the Court below.

3^d Because of those reasons set
forth in the affidavit filed herein,

4th Because the motion for reversal was not in writing

Gandy & Judd

Appellee's Attorney.

Salbot Chinn
vs 185

James McKay for ex
of Thomas Alburgham
185

Motion to set aside
default + order
for reversal of judgment

Filed April 23. 1858
L. Leland
clerk

Talbot Chim

n

James M^c Coy for use &c

1. The Special plea good. If the plaintiff was not the owner and the defendant was at the trial of the Replevin suit, then the damages to be recovered would be but nominal, as the loss is nominal. The plea is directly within the decision in 18 Ill. 83.

It is not necessary to aver in whom is the ownership at the time of the commencement of the suit on the Bond, as that fact is wholly immaterial. The true point of time when the ownership is material, is at the time of the trial when the verdict and judgment were rendered & had.

When the plaintiff's right of action matures. If when the Bond was executed or at any subsequent time, prior to the commencement of the suit on the Bond, the plaintiff was not the owner of the property, then he could only sustain damages to the extent of the injury sustained viz, the loss of possession & nominal damages.

13 Ill. 623; 18 Ill. 83 n.

It can make no difference that the defendant could set up the same facts in mitigation of damages under the general issue. He had the right to plead these facts specially, & compel the plaintiff to join issue.

The defendant could only prove the facts when specially pleaded.

2. The plaintiff set up in his declaration a judgment for the return of the property repleined. This was a material averment. He offered in evidence a judgment against the defendant for costs and an order "that a writ of retorno habendo issue herein".

This evidence did not support the issue, nor agree with the allegation in his declaration. It should not, therefore, have been received in evidence.

Cites to Shaw Poore 87

Whit. 371

3. The court erred in allowing evidence and rendering judgment on the bond for the use of the mare repleined. The plaintiff did not count in his declaration on any such matter of special damage. The true measure of damages, where no special damage is alleged or shown, is the value of the property at the time of conversion and interest to the time of the rendition of judgment.

9 Pick 332; 15 Pick. 78

14 Johns. 385; Sedgwick on Damages.
P. 528 - P. 524 & cases cited.

The provision in the Statute applies only to practice in Original Suits in Replein. The party comes in, in this case, and makes use of his Common law remedy, and can only have his rights as at the Common law.

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Camin
the long future

by D. H. H. H. H.
Ct. for Appellant
J. H. H. H.

Filed May 6, 1858
L. L. L. L.
Ct. H.

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✓