

12210

No. _____

Supreme Court of Illinois

Moir, et al

vs.

Hopkins

71641  7

State of Illinois }
Henderson County }

Came before the Honorable Ezekiah
M Mead, Judge of the ~~First~~
Judicial Circuit in the State of
Illinois, at a Court began and
held at the Court House in Quincy,
on the ~~First~~ Monday of April in
the Year of our Lord one thousand
Eight hundred and fifty five,

Present Now, Ezekiah M Mead Judge.
John S. Pollocke Clerk
W. D. Henderson Sheriff,

Manassah Hopkins }
or } Assumpsit
William Moir, James Moir
and Robert Moir Partners &c }

Be it remembered that heretofore
to wit, on the 23^d day of March AD 1855,
the Plaintiff by his attorney filed his
praeceps in the words and figures
following to wit,

State of Illinois } April Term AD 1855, of the
County of Henderson } Circuit Court of said County

Manassah Hopkins } Trespass vi et Armis
or } upon personal property
William Moir, James Moir } Damages \$150.
and Robert Moir Partners }

trading and doing business, in the
name firm and style of Moir & Bros.

The Clerk of said Court will in said
cause issue a Summons,

C. M. Harris attorney for said
Hopkins

And afterwards to wit, on the 23^d. day of
March A.D. 1855, a Summons issued out
of the Clerk's office, of said Court in the
words and figures following to wit,
1 State of Illinois— Henderson County, S.S.—
The People of the State of Illinois— to the Sheriff
of said County Greeting.— We Command
You to Summons William Moir, James
Moir and Robert Moir partners trading
and doing business under the name
firm and style of Moir & Bros, if they
can be found in Your County, to be and
appear before the Circuit Court of said
County on the first day of the next
term thereof, to be holden at Oquawka
in the County aforesaid, on the first
Monday of April next, to answer to
Manabah Hopkins of a plea of Trespass
Vi et Armis upon personal property,
to his damage in the sum of One
hundred and fifty Dollars, as he
says, and of this writ make legal
~~return~~ service and due return, at the
time and place aforesaid—

Witness John S Pollock Clerk of
our said Court at Oquawka

On this 23^d. day of March AD 1855,
the seal of said Court being
hereto affixed
John S. Pollock Clerk

And afterwards to wit, on the 23^d. day of
March AD 1855, the Sheriff made the
following Endorsement on the back of
said Summons, in the words and
figures following to wit,

"I have executed the within writ by
reading to the within named W^m Moir,
James Moir and Robert Moir this 23^d day
of March 1855. W D Henderson Shff
By Jas. Mitchell Dpty"

And afterwards, to wit, on the 23^d. day
of March AD 1855, the Plaintiff by his
attorney filed his Declaration, in the
words and figures following, to wit,

"State of Illinois 2 April Term AD 1855. of the
County of Henderson Circuit Court of said County
Manabah Hopkins the Plaintiff
in this suit complains of William Moir,
James Moir and Robert Moir partners trading
and doing business in the name style and
firm of Moir & Bros. defendants in this
suit, who have been summoned to answer
said Plaintiff in a plea of Trespass, For
that whereas, said Defendants on the
first day of December AD 1854, at the
County aforesaid, and before the

Commencement of this suit, with force and arms & drove, hurried, whipped, bruised and wounded a sorrel Horse of said Plaintiff of great value, to wit, of the value of one Hundred and fifty Dollars, whereby said horse being of the value aforesaid, became and was greatly damaged, lessened in value and spoiled, and became and was wholly lost to said Plaintiff, and died, to wit, at the County aforesaid. And also for that said Defendants on the day and Year aforesaid with force and arms, to wit, at the County aforesaid seized, took and drove a certain other horse of said Plaintiff, then and there found, and being of great value, to wit of the value of One Hundred and fifty Dollars, and converted the same to the use of the said defendants against the peace and other wrongs to said Plaintiff, then and there did against the peace and to the damage of said Plaintiff of One Hundred ~~Dollars~~ and fifty Dollars therefore he brings his suit &c

By E. M. Harris his attorney

And afterwards, to wit, on the Second day of April AD 1855, at a term of the Court then holden, the Defendants by their attorney filed their Demurrer to the Plaintiffs Declaration, which reads in the words and figures following, to wit

"W^m J Moir et al }
at }
Manapah Hopkins }
And the said Defen-
dants come and say that the said
Plaintiffs Declaration is not sufficient
in law &c J. N. Steward J.D."

And Afterwards, to wit, on the second day
of April AD 1855, the following order was
made, which reads in the words and
figures following, to wit,

"Manapah Hopkins }
William Moir et al } Trespas.
This day came the
Defendants by their attorney and filed
their Demurs to the Plaintiffs Declaration
after hearing the argument of counsel
and being sufficiently advised in the
premises, It is ordered by the Court that
the Demurs be overruled"

And Afterwards, to wit, on the 4th day
of April AD 1855, the Defendants by
their attorney filed their Plea to the
Plaintiffs Declaration, which reads in
the words and figures following, to wit,

William Moir et al }
at }
Manapah Hopkins }

And the said Defendants come and defend the force and injury when &c and say that they are not guilty of the said supposed trespasses above laid to their charge, or any or either of them, or any part thereof, in manner and form as the said Plaintiff hath above thereof complained against them And of this they the Defendants put themselves upon the Country &c

C. H. Stewart for Defts

And said Plaintiff doth likewise

C. M. Harris atty for said Plaintiff

And afterwards, to wit, on the 11th day of April AD 1855, the following order was made, which reads in the words and figures following, to wit,

Manupah Hopkins

or
William Moir, James Moir
and Robert Moir

} Trespass.

} This day

came the parties and their attornies and ipse being joined for trial put themselves upon the country, then upon came a Jury, to wit, Solomon Glover, Jeremiah White, James A. Campbell, Andrew Watson, George M. Foote, John M. Allison, Nelson Sherry, Samuel M. Elkhay, Asa Hart, J. B. Records, Thomas Leap

and J. W. Babcock, who being elected
tried and sworn, well and truly to
try the issue joined, after hearing the
the evidence and argument of
counsel upon their oaths do say,
"We the Jury find the Defendant Robert
Moir guilty, and assess the Plaintiffs
damages at the sum of One hundred
and fifteen Dollars, as against the
Defendant Robert Moir" thereupon
came the Defendants attorney and
entered his motion for a new trial,

And afterwards, to wit, on the
5th day of April AD 1855, an order
was made, which reads in the words,
and figures following, to wit,

Manupah Hopkins	} Trespas.
or	
William Moir. James Moir and Robert Moir	

This day again
came on this cause for hearing on the
Defendants motion made herein on
Yesterday for a new trial, after hearing
the argument of counsel, and being
sufficiently advised in the premises
It is ordered by the Court that the
motion be overruled, Therefore
it is considered by the Court that the
Plaintiff have and recover of the
Defendant Robert Moir the sum of

One hundred and fifteen Dollars
the amount assessed against him
by the Jury aforesaid, together with
his costs by him in this cause laid
out and Expended and may have
Execution therefor, And it is further
considered and adjudged by the
Court, that the said Defendants
William Moir and James Moir go hence
without day, and that they recover
of the said ~~Defendant~~ Plaintiff their
costs by them expended and may
have Execution therefor, And on
Motion and by agreement, It is further
ordered by the Court that the Defendant
have ten days to make out and file
his bill of exceptions."

And afterwards, to wit, the Defendant
by his attorney filed in the Clerk's
office of said Court his bill of exceptions
which read in the words and figures
following, to wit,

Manassah Hopkins } Henderson C. C.
James ^{Mo}ir Etal } April 7. 1855.

Be it remembered that on the trial
of this cause William Hopkins was called
as a witness on the part of the Plaintiff
and testified that he had been at work

for the Defendant as a hired hand
for some time before and after the 31st
day of November last; that Defendants
on that day wanted a team of horses
for the purpose of hauling lumber in
their Lumber Yard - Early in the Morning
of that day, Robert Moir directed the
witness to go and see if he could not hire a
team to do the hauling, and the witness
applied to several persons for a team,
but could not obtain one; He further
stated that on the day previous his
brother the Plaintiff in this action,
had been at work with his team for
the defendants hauling lumber from
the Yard and in the forenoon was
taken sick and compelled to leave and
go home, that the witness proposed to
his brother to take care of the horses
and put them up in the stable and
feed them and the plaintiff thereupon
left. The witness kept the horses about
the Yard through the day, instead
of putting them up, and used them,
and at night put them up in the stable,
and fed them. When defendant Robert
Moir, one of the defendants, found on
the morning of the 31st November that
witness had been unsuccessful in getting
a team, he directed the witness to go
and get his brother's team, and the
witness went to the stable and got the
team without the knowledge or consent

of the Plaintiff, his brother, and took it to the Yard and used it in hauling lumber during the forenoon, In the afternoon the Defendants wanted some brick hauled from the Country, a distance of Eight miles, and James Moir directed the witness to go and haul the brick. He started with the horses and wagon, got the brick, and in returning drove partly down a steep hill on the road; as he got part way down, one of the horses was forced over the bank, fell and was killed, the horse was of the value of \$115.00

Upon Cross Examination the witness stated that the was a married man, and his brother the Plaintiff was an unmarried man and lived with the witness, and also kept his horses at the stable of the ~~Defendants~~ witness that for some time previous to the time of the sickness of the Plaintiff, the Plaintiff had been in the employ of the defendants together with his team, and used the team in hauling lumber for the defendants, that the Plaintiff on being taken sick went home to the house of the witness, and was there on the next day when the witness got the team, that the Plaintiff was sick & confined for some time after the horse was killed, which was all the testimony offered on the part of the Plaintiff.

The defendants then

introduced one William Berry as a witness who testified that it was in the afternoon that the witness Hopkins started for the brick. And then introduced one John Goodbrand and offered to prove the statements of the witness Hopkins, which was objected to by the Plaintiff, and the objection was sustained by the Court and the evidence excluded, which was all the evidence offered in the cause.

And therefore the Plaintiff asked the Court to give the following instructions, to wit,

"The Court will instruct the Jury that if they believe from the evidence that the horses were taken, ~~from the evidence that the horses were taken~~ without the Plaintiff's consent, then the defendants or either of them directed the witness to go and get the Plaintiff's horses, and he did go and get them in pursuance of such instructions, without the assent, express or implied, of the Plaintiff, the person giving such instruction is a trespasser."

Given
If the defendants or either of them directed the witness to go and get the Plaintiff's horses, and he did go and get them in pursuance of such instructions, without the assent, express or implied, of the Plaintiff, the person giving such instruction is a trespasser.

Given
If a person injures personal property belonging to another, of which he has obtained possession by a trespass, he is liable to pay for such injury.

In order to constitute a trespass it is not

Given
necessary that the person committing
it should be influenced by any improper
motive,

Given
The Jury may find any one of the
defendants guilty in this case, if
they think the evidence proved such
guilt, and the others not guilty,

To the giving of which the
defendants excepted, And the Court
then gave the following instructions
on the part of the defendants, to wit,

Given
The Court will instruct the Jury that
if they believe from the evidence that
the horse, which is the subject matter
of this suit, was taken with the express
or implied consent of the Plaintiff
they will find for the Defendants,

Given
That if the horse which is the subject
matter of this suit, was legally in the
possession of the said defendants, or their
servant, when the alleged injuries
were inflicted, and that the servant
of the defendants, inflicted the said
injuries, they will find for the defendants
in this action, Unless they believe
further that the act or acts occasioning
the injuries were done by the servant
of the defendants, by the express
direction of the defendants or one
of them,

And it is further remembered that after the verdict was rendered by the Jury herein, the defendant Robert T. Moir moved the Court for a new trial herein for the following reasons, to-wit,

Manapah Hopkins } State of Illinois, County of
or } Henderson, Circuit Court
James Moir, et al } April Term A.D. 1855.

The defendant Robert Moir comes by his attorney and moves the Court for a new trial herein, and assigns in support thereof the following reasons, to-wit,

1st. The verdict of the Jury is contrary to the evidence,

2^d. The verdict of the Jury is contrary to the instructions of the Court and to the law,

3^d. The Plaintiff has failed to prove the defendant guilty as charged in the Declaration,

4th. The instructions of Court given on the part of the Plaintiff are contrary to law

And therefore he prays that a new trial may be awarded herein

J. H. Stewart J.D.
to allowance of which motion the Plaintiff objected, and upon hearing the Court overruled said motion, and refused to grant a new trial, to which decision in overruling said motion

the defendant then and there
excepted,

~~And after xxxxxx~~ ~~xxx~~, on the
Whereupon the defendants pray that
this their bill of exceptions may be
signed and sealed and made a
part of the record of the Court, which
is accordingly done,
H. M. Wead (S)

State of Illinois
Henderson County }
John S. Pollock
Clerk of the Circuit Court, within
and for said County, do hereby
certify that the above and foregoing
is a true and correct copy of the
Record in said cause, as appears
from the Record and files of my
office

In Testimony whereof I have
hereunto set my hand and
affixed the Seal of said Court
at Ogawka this 15th day
of May A.D. 1855
John S. Pollock
Clerk.

State of Illinois, Supreme Court
3^d Division, June Term A.D. 1855.
Robert Moir, Plaintiff in Error } Error to
vs }
Maurice Hopkins, Defendant in Error } Henderson.

And Robert Moir, the said Plaintiff in Error comes by his attorney and says that manifest error hath intervened to his prejudice in the cause of which the foregoing is a record, and as error therein he signifies the following, to-wit,

1st The Circuit Court wrongfully gave to the jury the 1st & 2^d instructions on the part of the Plaintiff

2^d The Circuit Court wrongfully refused to grant a new trial to the Plaintiff in Error.

3^d There are other manifest errors and irregularities appearing therein

Wherefore he prays that the judgment rendered in said Cause by the Circuit Court be reversed and counted for nought and that such other proceedings may be had as may be consistent with the rules of law.

Stewart & Goudy

Attys for Plaintiff in Error.

Robert Morris impd.
by
Manassah Hopkins

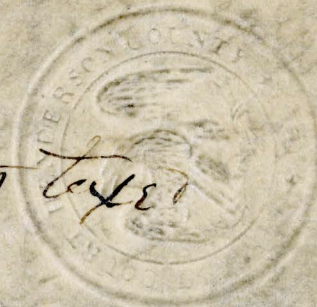
Recd

51

12210

Filed May 16. 1855.
S. Island Ck.

Certs to 400



1855

Ogden May 14th 1855-

Dear Sir

I send you Record & bill of Excep-
tions in case of Hopkins vs. Allen et al.
Please issue a summons immediately
as I want to have the case disposed
of at the June Term 1855-

Yours Respectfully

J. H. Stewart

Direct your letter with the summons
to me—

J. H. S.

STATE OF ILLINOIS,
Supreme Court,

} ss.

The People of the State of Illinois,

To the Sheriff of the County of Henderson - Greeting:

BECAUSE in the record and proceedings, and also in the rendition of the judgment of a plea which was in the circuit court of *Henderson* - county, before the Judge thereof, between *Manassah Hopkins*, plaintiff

& *Robert Elloir*, unpleaded with *William Elloir*
& *James Elloir*

Defendants, it is said that manifest error hath intervened, to the injury of the said *Robert Elloir*

as we are informed by *his* complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the state of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said

Manassah Hopkins

that *he* be and appear before the Justices of our said Supreme Court, at the next term of said court, to be holden at Ottawa, in said state, on the *2nd* Monday in *June* - next, to hear the records and proceedings aforesaid, and the errors assigned, if *he* shall see fit; and further to do and receive what said court shall order in this behalf; and have you then there the names of those by whom you shall give the said *Hopkins*

notice, together with this writ.

John D. Baton
WITNESS, the Hon. *Samuel H. Treat*, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *16th* day of *May* in the Year of Our Lord One Thousand Eight Hundred and Fifty-five.

L. Leland

Clerk of the Supreme Court.

I have executed the within writ by
Reading to the within named Mamassah Hopkins
on the 24th day of May 1855—

Sheriffs Fees

Serving writ	50
10 Miles Travel as	50
Returning writ	10
Postage on writ	3
	<u>118</u>

W D Anderson Sheriff of
Anderson County
Ill

51
Chas H Hopkins

Filed May 20. 1855.
L. Keland Clk.