

No. 12829

# Supreme Court of Illinois

Riley.

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vs.

Brown.

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71641  7

178

75

Lawrence W. Riley  
US

John Brown

1859

178 75



State of Illinois

Snover County

1  
Pleas before the Honorable John S. Thompson Judge of the South Indiana Circuit of the State of Illinois at a Court began and held at the Court House in the City of Knoxville on the third Monday of April in the year of our Lord one Thousand eight Hundred and fifty eight it being the nineteenth day of said month in said year Present Honorable John S. Thompson

Judge

James H. Stewart State Attorney

George W. Enke Sheriff

Cephas Arms Clerk

John Brown

Laurence Riley

Be it remembered that heretofore to wit on the fifteenth day of March A.D. 1858 came the Plaintiff by J. G. Frost his attorney and sued out of the clerks office of the Circuit Court aforesaid his certain writ of Habeas in words following to wit State of Illinois, Snover County ss. The People of the State of Illinois to the Sheriff of said County Greeting. Whereas John Brown the Plaintiff in this suit hath complained on oath to A. C. Riley Police Magistrate of said County that Laurence Riley the Defendant herein unlawfully and wrongfully hath taken and doth



detain the following described goods and  
 chattels to wit Two horses one double Waggon and  
 one double Harness of the value of Three Hun-  
 dred and fifty dollars, And that the said  
 Plaintiff is the owner of and is now justly enti-  
 tled to the possession of the above described property  
 Therefore we command you, that if the Plaintiff  
 shall give you Bond with good and sufficient  
 security in double the value of the said  
 property above described, as required by Law  
 to prosecute his suit in this behalf to effect  
 and without delay, and make return of the said  
 property if return therey shall be awarded, and  
 to save and keep you harmless in releasing  
 said property - you cause the said property  
 to be released and delivered to the said  
 Plaintiff without delay And also that you  
 summon the said Defendant to be and  
 appear before the Circuit Court of said County  
 on the first day of the next Term thereof to  
 be holden at the Court House in Knoxville  
 in said County on the Third Monday  
 in the Month of April next to answer  
 unto the said Plaintiff in the premises, and  
 have you then and then this writ with an  
 endorsement thereon in what manner you have  
 counted the same, together with the Bond  
 which you shall have taken from the said  
 Plaintiff as before commanded before  
 executing this writ

Witness my hand and the Seal thereof  
 of our said Court and the Seal thereof



E.B.

at Knoxville in said County this 15<sup>th</sup>  
day of March A.D. 1858

Cephas Arms Clerk  
upon which writ issued as above there appears  
the following return to wit

By virtue of the within  
writ of Replein I have duly explored and  
delivered to the plaintiff within named the  
goods and chattels within specified as  
within I am commanded to do and  
I have also caused the within defendant  
Lawrence Riley to be summoned to appear ac-  
cording to the exigency of the said writ by  
making the same to said Deft this day March  
20 1858.

G. W. C. Sheriff pro  
L. E. Conger Deputy

John Brown

Lawrence Riley

Replein

Be it remembered that here  
upon to wit on the 2<sup>nd</sup> day of July A.D. 1858  
the defendant by their attorneys filed his  
Bill of Exceptions herein which reads in the  
words and figures following to wit

State of Illinois

Knox County

vs. Knox Circuit Court April  
Term A.D. 1858

John Brown

Lawrence Riley

Replein

Be it remembered



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that at this Term of this Court this cause was  
pending between the parties to this suit and that  
the declaration Pleas & replications therein are as follows

John Brown

Declaration

Laurence Riley } Circuit Court Knox County  
State of Illinois } of the April Term AD 1858  
Plaintiff in this suit by J. B. Hunt his attorney complains  
of Laurence Riley defendant who was summoned to answer  
said Plaintiff John Brown wherefore he took two horses  
one waggon & one harness of the said Plaintiff and  
unjustly detained the same against sureties &  
pledges untill of great value to wit of the value of three  
hundred and fifty dollars and thereupon said Plaintiff  
complains for that said defendant on the first day of  
March in the year of our Lord one thousand eight  
hundred and fifty eight to wit in said County of Knox  
& State of Illinois & City of Galisburg, unlawfully took two  
horses, one waggon & one harness, the property of him the  
said Plaintiff of great value to wit of the value of three  
hundred and fifty dollars and unjustly detain-  
ed the same from said Plaintiff against  
sureties & pledges untill &c & continues to detain  
the same whereupon the said Plaintiff saith that he  
is injured & hath sustained damage to the amount of three hun-  
dred & fifty dollars & thereupon he brings this suit &c J. B. Hunt atty for P.

Pleas

John Brown

Knox Circuit Court April  
Term AD 1858

Laurence Riley

1. And now comes the said defendant by  
his attorneys Douglass and Craig and



5 depends the wrong injury when &c. And says  
he did not take and detain the said horses  
wagon & harness in manner & form or in any  
manner as the Plaintiff hath alleged  
and of this he puts himself upon the  
country &c. Douglass & Craig Attys for  
Def

2 And the said defendant for further  
plea in this behalf Lean of the Court first  
had and obtained says Actio non because  
he says that he did not unlawfully take or  
unlawfully detain the said horses wag-  
on & harness And of this he puts himself  
upon the country &c.

Douglass & Craig Attys for Def  
3. And for further plea in this behalf Lean of  
the Court being first had & obtained the de-  
fendant says Actio non because he says that  
the said property when &c was not the  
property of the Plaintiff but was the property of  
one Patrick Gibney & that he is ready to  
verify wherefore he prays Judgement &c  
Douglass & Craig Attys for Def

11. And the said defendant by Lean of the Court  
first had and obtained. Ceres and further depends  
the wrong & injury when &c & as one of the  
constables in and for the County of St. Louis &  
State of Illinois will acknowledge the taking  
of said Horses Wagon & Harness in the said  
detention mentioned in when &c. And  
justly because that hereupon to wit on the 26<sup>th</sup>  
day of February A.D. 1858 one L. C. Longon



Then one of the Police Magistrates in Galisburg  
 in said County & State as such Police Magistrate  
 issued under his hand in due form an  
 execution in favor James C. Mc Murtry as  
 Plaintiff & against one Patrick Gibney and  
 Thomas Stokes as defendants which execution  
 was issued in the name of the people of the  
 State of Illinois & directed to any Constable of said  
 County and that the said execution was  
 afterwards to wit on the 27<sup>th</sup> day of February  
 A.D. 1858 delivered to the defendant to execute  
 and that at the time of the issuing and delivery  
 of said execution to defendant & the time of taking  
 said property the defendant was an acting Constable  
 in and for said County & State & that in &  
 by said execution the defendant was commanded  
 to make of the goods and chattels of the  
 said Patrick Gibney & Thomas <sup>Stokes</sup> the sum of Two  
 Hundred and Twelve dollars & ninety cents  
 debt and one & 1/2<sup>00</sup> dollars costs which  
 James C. Mc Murtry bore said L. C. Leonger  
 had on the 26<sup>th</sup> day of February A.D. 1858  
 returned against the said Patrick Gibney & Thomas  
 Stokes & that afterwards to wit on the 8<sup>th</sup> day of  
 March A.D. 1858 the defendant as such  
 Constable served said execution upon & took  
 and detained the said Horses Wagon & Harness  
 as the property of the said Patrick Gibney  
 when property it then was as he lawfully might  
 do which is the only & same taking and detent-  
 tion mentioned in said declaration and  
 this he is ready to verify Whereupon he prays



7 Judgment of said declaration & a return of said property & his damages &c. according to the force of the statute in such case made and provided to be adjudged to him &c.

Douglass & Craig Attys for deft

5 And for further plea Lear first had and obtained says Actio non. Because he says he did not at the time when &c unlawfully detain the said Horner Wagon & Harness and of this he puts himself upon the country &c.

Douglass & Craig

Attys for Deft

Replication

Circuit Court Creek County

April Term AD 1858.

John Brown

vs  
Lawrence Kelly

And the said Plaintiff as to the said Plea of the said defendant by him thirdly above pleaded as to the said school in the introductory part of that plea mentioned and therein attempted to be justified saith that the said Plaintiff by reason of anything by the said defendant in that plea alleged ought not to be barred from having and maintaining his aforesaid action thing against the defendant because he saith that the said property is the property of the said Plaintiff & is not the property of the said Patrick Gibney in manner & form as the said defendant hath aver in his said



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Pleas in this behalf alleged and this to the  
 said Plaintiff prays may be improved of by  
 the country &c I G Hart Plffs atty  
 And doth doth the like

Douglas & Craig attys for deft  
 And the said plaintiff as to the plea of said defendant  
 by him first secondly & fifthly above pleaded & where he  
 hath put himself upon the country doth the like  
 I G Hart Plffs atty

Demurrer.

John Brown

as  
 Laurence Riley } Circuit Court Knox County  
 April Term AD 1838

Demurrer to plea

And the said Plaintiff as to the said plea  
 of said defendant by him fourthly above pleaded  
 saith that the same and the matters therein  
 contained in manner and form as the same  
 are above pleaded & set forth, are not sufficient in  
 Law for the said defendant to avoid or acknowledge  
 the taking of said property horses & wagon  
 in the said declaration above mentioned  
 in the said plea in which &c to be just; And that  
 he the said plaintiff is not bound in Law to answer  
 the same and that he the said Plaintiff is

Wherefore by reason of the insufficiency  
 of the said plea in this behalf he the said plain-  
 tiff prays judgement & his damages by reason  
 of the taking & unjustly detaining said property  
 horses & wagon to be adjudged to him &c

I G Hart atty for Plff.  
 And the said Plaintiff according to the pra



9 of the Statute in such case made and  
provided, states and shows to the Court now  
here the following causes of demurrer to said plea  
First said Plea does not allege the said prop-  
erty horses wagon & harness to be the property of  
the defendant in said execution in said  
plea mentioned or the property of either of them  
Second. Said Plea does not allege said  
property, horses wagon & harness to be the property of  
the said Patrick Gibney. And the said  
Plea is in other respects uncertain, informal &  
insufficient J G Frost atty for Pff

John Bruce

Laurence Piley } New Circuit Court  
April Term AD 1859

And the said Plaintiff for  
further Replication to the said plea of said  
defendant by him fourthly above pleaded. Leave  
of the Court being first had and obtained, saith  
that the said Plaintiff, by reason of anything by the  
said defendant in that plea alleged ought not to be  
barred from having and maintaining his aforesaid  
action thing against the said defendant because  
he saith that said property & horse & wagon harness  
were not at the time of the alleged issuing & delivery  
or Levy of said execution & taking of said property  
by said defendant the property of said Patrick Gibney  
but was the property of said Plaintiff and this  
he the said pleads may be evidenced by the  
Country J G Frost Pff atty

Left to the Clerk Douglas & Co.



10 And said Plaintiff further replying to  
the plea of said defendant by him fourthly  
above pleaded, saith that he said Plaintiff by  
reason of anything by the said defendant in that  
plea alleged, ought not to be barred from having or  
maintaining his aforesaid action there against the  
said defendant because he saith that said  
L. C. Conner did not issue said execution against  
Patrick Gibney & Thomas Stokes, nor was said execution  
delivered to said defendant to be executed, nor was  
said defendant at the time of the issuing and  
returning of said execution & taking of said property  
Constable nor did said defendant have the same  
on said property, said horses & wagon as the property of  
said Patrick Gibney, in manner & form as the said  
defendant hath above in his said plea in that  
behalf alleged and this he the said Plaintiff prays  
may be enquired by the Country  
Dys at the line J. G. Pratt Attorney at Law  
Douglas & Craig

That at said Term a  
jury was called to try said cause and  
duly sworn and the Plaintiff to maintain  
the issue on his part, called as a witness  
Patrick Gibney who being duly sworn  
Testified That he made a mortgage on the  
property in controversy to Thomas Mooney, & that  
on the 24<sup>th</sup> of February A.D. 1838 he sold  
the said property to the Plaintiff  
Fitzgerald & Mooney were present when the property  
was sold, Plaintiff was to pay me twenty five  
dollars and pay the debt to Mooney



11 The Plaintiff saw Mooney and gave him a note for Two Hundred & Seventy five dollars and Mooney gave up his claim to the property and the same day I went and gave the Plaintiff the property the same day. And Plaintiff took them home and Plaintiff kept them after that - Three or four days afterwards the Plaintiff asked me to get him a load of wood with the team and I went for the wood with the team and then defendant took the team and property and I told him the property was Brown's and he said he would take the property & he was good for it & defendant threw off the wood. James C. McMurry said in the presence of the defendant that if the Plaintiff would come & satisfy them that he owned the property it would be given up - same property described in the mortgage.

Cross Examined Witness said the defendant took the property upon an execution and I suppose he was constable he claimed that as such. He claimed to levy on the property. The levy was three or four days after the sale to Brown - at the time of the levy, Prager, and Thomas Stors & Philip Stors were there. The note was given to Mooney the same day of the sale of the property to Brown. The sale was at Mooney's place. The horses were then in Drab's stable where I kept them for three months previous. I have never had the mortgage since I made it. The note that accompanied the mortgage was given to me. I don't think



that the date of the sale was on the 24<sup>th</sup> of February only what others said. I don't say the day of the month

Thomas Mooney also called for the Plaintiff Testimony.

At the date of the Mortgage Gibney owed me the note shown of Three Hundred and <sup>Sixty</sup> ~~and fifty~~ dollars. I sold the note and mortgage to Plaintiff in February. It might have been on the 24<sup>th</sup> day. He gave me his note for Two Hundred & Seventy five dollars dated 24<sup>th</sup> February for the note and mortgage

Gibney & Brown came to my house and Plaintiff said he was about buying the horses & other property if he could arrange with me and asked me if I would take his note & I said yes. The Plaintiff and Gibney then went to the State and in half an hour they came back & Plaintiff had the property & then gave me his note then I gave him Gibney's note endorsed to him by me without recourse & delivered to him the mortgage & Plaintiff took them away. I then had the property in my possession

Cross & Amund said

At the time I delivered the mortgage to Plaintiff I did not make any assignment of the mortgage. I delivered the note and mortgage the same day the Plaintiff bought the property. And took the Plaintiff's note the same day. Afterwards in the same note I signed the assignment on the back of the mortgage. I signed it the same time it was acknowledged by me.



13 M D Cook exp I sold Plaintiff the mortgage and note & took his note for two hundred & seventy five dollars & what I owed I owed him eight or ten dollars, part for liquor all for that. at the time I took the note and mortgage from Gibney he and me for a wagon eighty five dollars. some money. five dollars. Blacksmithing Bill thirty or forty dollars & that was all he owed me. Then the witness fell down in a fit and was carried down from the stand so that neither party could examine him any further

Mr Fitzgerald Sworn for Plaintiff said I was present when the sale was made of the property to Brown last February to ~~at~~ at Mooney's Plaintiff asked me if I knew the horses & I said yes. He said he was buying them & I want you. Witness to go to Mooney's with me he has a claim on them. Bargain was concluded between them & Mooney agreed to take Plaintiff note of \$275. from Plaintiff. and the Plaintiff and Gibney went away with the team

Cross Examined said I saw Plaintiff drive the team the day of the sale and saw him drive them two or three times. Plaintiff and Gibney lived half mile apart Plaintiff gave Gibney twenty five dollars I heard when the Constable took the property. & it was four or five days after the sale - The day of the sale



14 the Plaintiff took the horses home & come back & hired the Stable of Drake where Gibney had previously kept them and put the horses in there. The Stable was a half mile from Plaintiff. after the sale I saw Gibney feed the team. At and after the day of sale the roads were muddy, too much so to make use of a team

L. C. Conger Sloom said he replaced the property when and at the place where it was advertised for sale by the defendant. L. C. Conger is my Brother and is Police Magistrate in Galisburg and I am acquainted with his signature. The signature to the execution shown him is his signature

Plaintiff opened and read in evidence the note and mortgage executed by Gibney in the following words

City of Galisburg, Sept 26. 1857

One day after date I promise to pay Thomas Mooney the sum of three Hundred and sixty dollars, it being for value received

Patience Gibney  
I assign the within without recours - Thomas Mooney

Copy of Mortgage

This indenture made this twenty six day of September A.D. 1857 between Patience Gibney of the City of Galisburg of the County of Knox & State of Illinois of the one part and and Thomas Mooney of the County and State aforesaid of the other part witnesseth That the said party of the first part, for and in consideration of the sum



15 of Three thousand and Sixty dollars current money to him in hand paid, by the said party of the second part, at or before the sealing and delivring of these presents, the receipt whereof is hereby acknowledged, does grant bargain and sell unto the said party of the second part, all and singular the personal property hereinafter mentioned, that is to say one span of Horses, dark sorrels one supposed to be seven years old the other eight. one two horse Wagon one double Harness To have and to hold, all and singular the said personal property unto the said party of the second part forever. Provided always, And these presents are upon this express condition, that if the said party of the first part, shall and do will and truly pay or cause to be paid to the said party of the second part, the sum of Three thousand and Sixty dollars and interest thereon then these presents, and every matter herein contained shall cease and be null and void. And it is expressly agreed by the parties hereto, that the said party of the first part shall have and retain possession of all the said personal property until the 26 day of September A.D. 1857. But in case default shall be made in payment of the said sum of money above mentioned, or the interest thereon, or any part thereof at the time above limited for the payment of the same, or if the said party of the first part shall sell assign or dispose of or attempt to sell assign or dispose of,



the whole or any part of the said goods and chattels, or remove or attempts to remove the whole or any part thereof from the said County of Knox without the written assent of the party of the first part, or if the same or any part thereof shall be seized by virtue of any execution attachment, or warrant of distress against the property of the said Patrick Libney, then and from thenceforth it shall and may be lawful for the said party of the second part his heirs, executors, administrators or assigns or his, her or their authorized agent to enter upon the premises of the said party of the first part, or any place or places, where the said goods and chattels or any part thereof may be, and take possession thereof, and to sell and dispose of the same for the best price or prices that can be obtained therefor at public vendue; giving six days notice of the said sale, by written or printed notice, to be posted at one or more public place or places in the said Town, and out of the money to arise by such sale thereof, to pay and retain the said sum of money above mentioned, and the interest thereon, and all charges of such sale, if so much there shall be remaining the surplus moneys (if any there shall be) to the said party of the first part. In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written

Patrick Libney *ES*

State of Illinois Knox County D. This Mortgage was before me by Patrick Libney the said Mortgage



17

this 26. day of September A.D. 1857

Zimri Pond J.P.

State of Illinois

Snook County J. I. Leephas Amos Clerk of the Circuit Court and ex officio Recorder, within and for the said County of Snook and State afore said, do hereby certify that the within & foregoing instrument of writing was filed for Record on the 30 day of September A.D. 1857 at 9 o'clock A.M. and duly recorded in Volume 3 of Chattel Mortgages on Page 67 Instrument whereof I have herunto set my hand and affixed the Seal of said Court at Knoxville

this 30 day of September A.D. 1857

Ed. 3

Leephas Amos Clerk for  
E. H. Pierce Deputy

Upon which Mortgage there appears the following Assignment to wit

\$295. For and in consideration of Two Hundred and seventy five dollars to me paid by John Brown of Walburg the receipt whereof is hereby acknowledged. I hereby sell assign transfer and set over unto said Brown the within Mortgage & property described therein including horses Wagon & harness & all my right title & interest therein to him his heirs Executors Administrators & assigns forever

Witness my hand and seal this 26<sup>th</sup> of Sep. A.D. 1858  
 Acknowledged before me Thomas Mooney J.P.  
 this 12<sup>th</sup> day of March A.D. 1858 M. D. Cook J.P.

Thereupon the Plaintiff stated his case



18 The Defendant to maintain the issue on his part introduced Henry Frans as a witness. was sworn and said the Defendant acted as Constable in said County of Knox in February and March last.

The Defendant offered in evidence and read to the jury the following execution and the Defendants endorsement written thereon in the following words and figures

State of Illinois.

County of Knox  
City of Galveston

The People of the State of Illinois. To the Marshall of said City, or any Constable of said

County greeting. We command you, that of the goods and chattels of Thomas Stokes and Patrick Gibney in your County, you make the sum of 212 dollars and 90. cents debt, and one dollar and 72 cents costs, with interest at the rate of six per cent per annum, from the 26 day of February, 1858 where judgement was rendered, which James C. Mc Murtry lately recovered before me in a certain plea against the said Thomas Stokes and Patrick Gibney, and thing you return to me within twenty days from this date. Given under my hand and seal this 26<sup>th</sup> day of Feb 1858.

L. C. Canger

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John Magistrate

This execution hereto attached came to my hands on the 27<sup>th</sup> day of February A.D. 1858 at 2 o'clock P.M. and on the 8<sup>th</sup> day of March



19 1838 I Swore the same execution upon one span of Horses Harness & waggons and on the undivided half of a Lot of wood of about two Hundred cords and on a lot of Logs.

All of said horse waggons & harness was Swore upon as the property of Patrick Gibney, and the said logs and wood as the property of Thomas Stokes And I further certify that I advertised said wood and logs on the 9<sup>th</sup> of March according to law and on the 20<sup>th</sup> March 1838 sold the wood for \$80. and the logs for \$1.60 And I certify that the horse harness & waggons were released from me by L. E. Longen Deputy Sheriff at the suit of John Brown against me as Defendant on the 20<sup>th</sup> day of March A.D. 1838

W. L. Riley Constable in & for Knox Co. Ill

Rafferty Sworn for Defendant said I saw Defendant take the team Patrick Gibney brought the team there

Philip Stokes Sworn for Defendant said I was in the house when the defendant took the team Patrick Gibney took the team there. I rode up with him. I saw Gibney drive the team by me but cant tell how long - he was after wood I think for the Plaintiff

The foregoing is all the evidence introduced on the trial of said cause

Therefore the Court at the request of



20 the Plaintiff gave to & read to the jury the following instructions numbered one, two, three, four, five, six, and seven in the following words

No 1 If the jury believe from the evidence that Brown bought the property in good faith on the 24<sup>th</sup> day of February and took possession, the fact that Gilney was drawing wood for the Plaintiff when the property was taken, does not effect a legal change of possession, or effect the validity of Plaintiff's title. And if it was loaned on and taken by deft. while thus in Gilney's use, the levy & taking was wrongful & no demand is necessary to be proved

No 2 If the jury believe from the evidence that ~~Plff~~ Plaintiff bought the property on 24<sup>th</sup> February in good faith & took possession of it on that day, he had a right to loan or hire the same to the defendant in the Execution, on the day spoken of to draw wood with & such loan does not render, or make the Plaintiff's title void, or subject the property to the execution against Gilney

No 3 Unless it is proved that Brown knew that there was fraud in the Mortgage, or that the purchase by him was made with a view to defraud, delay or hinder Creditors of Gilney, his title is not rendered invalid even though the jury should believe that the Mortgage was fraudulent & void as such for want of sufficient consideration

No 4. If the jury believe from the evidence that the Plaintiff was a bona fide purchaser of the property in controversy and received the possession of it on the 24<sup>th</sup> day of Feb. And the Execution upon which the defendant took said property did not come



21 to his hands until the 27<sup>th</sup> day of July they are instructed to find for the Plaintiff

No 5 If the Jury believe from the evidence that the Mortgage from Gibney to Mooney was not made in good faith, still if they believe from the evidence that Brown the Pff was not a party to said Mortgage, and was not a party to any fraudulent sale and had no knowledge of it but made his purchase in good faith and before the execution became a lien they will find for the Plaintiff

No 6 The Jury are instructed that they are not to infer fraud on the part of Brown the Pff, because he paid a part of the purchase money to Mooney the Mortgagee by the request of Gibney of whom Brown purchased the property and that fraud is never to be presumed but must always be proven

No 7. If the sale was actually made and possession of the property taken on the 24<sup>th</sup> day of July it is wholly immaterial that a written assignment of the Mortgage was not made till afterwards

And the Defendant then and there to the giving of the said instructions & each of them so asked by the Plaintiff and so given by the Court objected and excepted

And the Defendant then and there asked the Court to give instructions Numbered one, two, and three, which Instructions are in the following words

No 1 The Jury are instructed that if they believe from the evidence that the defendant came lawfully lawfully in possession of the property in controversy



22 then they will find for the defendant. unless they further believe from the evidence that the Plaintiff prior to the commencement of this suit made a demand of the property.

No 2 The jury is instructed that if they believe from the evidence that the Defendant was an acting constable in and for the County of Knox and that as such constable the execution shown in evidence come to the hands of the defendant to execute and that while the property in dispute was in the hands, possession or control of one, or both of the defendants in said execution, this Defendant levied said execution upon the property in controversy and took it away. That such taking and levy would not be wrongful and that this action cannot be maintained by the Plaintiff without proving a demand of the property before bringing the suit or a taking that was wrongful.

No. 3 The jury is instructed that if the defendant in good faith as constable levied on the property while the same was in Gebner's hands by virtue of said execution shown in evidence and took the same away such levy and taking would not be wrongful, and that a demand must be proven before the Plaintiff can recover. And the Court then and there refused to give the instructions so asked by the defendant. And the defendant then and there to the refusal of the Court to give said instructions objected and excepted. And at the request of the Defendant the Court then and there gave



the following instructions numbered four five  
 then six & eight as asked which instruction  
 was as follows

- No 4. The jury is instructed that the endorsement of the  
 Constable and the return of the defendant  
 attached to the execution shown in evidence  
 is prima facie evidence of the time when the  
 execution came into his hands, upon what  
 property the same was levied & the time of the  
 levy and what become of the property
- No 5. The jury is instructed that the mortgage shown  
 in evidence is void as against the execution  
 shown in evidence unless possession was taken  
 by Duff. before the execution came to the officers  
 hands
- No 11. The jury is instructed that the execution  
 shown in evidence was a lien upon all the person-  
 al property of Patrick Gibney from and after the  
 time when said execution came to the  
 hands of the Defendant, & that no sale or  
 transfer of such property by said Gibney after  
 the execution came to the hands of the De-  
 fendant could destroy or effect such lien
- No 6. The Jury is instructed that in this case a  
 wrongful taking is not presumed but must be  
 proven
- No 8. The jury is instructed that the burden of proof  
 as to the ownership of the property is upon the Plain-  
 tiff & that if the proof is equally balanced as to  
 the ownership they will find for the Defendant  
 And the defendant then and there asked the  
 Court to give instructions Number two which



24 Instruction so asked Read as follows

The jury is instructed that a sale of personal property is not valid in any case against an execution unless the sale is followed up by an absolute and continued change of possession and that the possession must be delivered by the execution Debtor before the execution comes into the hands of the officer to execute <sup>the Court</sup> And then and there refused to give said instruction number ten asked & the Court then and there modified said instruction number ten by striking out thereupon the words "and continued" and gave the same with the said words stricken out The said instruction No ten as given with the words so stricken out read as follows.

No 10. The Jury is instructed that a sale of personal property is not valid in any case against an execution unless the sale is followed up by an absolute change of possession and that the possession must be delivered by the execution debtor before the execution comes into the hands of the officer to execute. And that the defendant then and there to the refusal of the Court to give instruction number ten as asked and to the giving of said instruction so modified as aforesaid then and there objected and excepted And the defendant then and there asked the Court to give instructions numbered nine & seven, which instructions No seven & nine read as follows

No 7. The jury is instructed that of the Defendant was an acting constable of Knox County & that as



25. Such Constable he received said execution that  
from the time he received the execution it was  
a Lien upon all the personal property of Patrick  
Gibney in said County. and that the defendant  
had the right and it was his duty as such  
Constable to levy the same on any personal  
property then owned by said Gibney in said  
County. and take the same away. and such levy &  
taking would not make a wrongful taking.

(No 9) If the jury believe from the evidence that the  
property in controversy was sold by Patrick Gibney to  
the Plaintiff. still if the jury believe that such sale  
was made to delay or hinder the collection of  
said execution debt that such sale was void as  
against said execution. And the Court  
then and there refused to give said Instruc-  
tions Number seven & nine as asked and the  
defendant then and there to the refusal  
of the Court to give said Instructions No seven  
and nine & each of them objected and ex-  
cepted

And the Court then & there modified  
and changed said Instructions Number  
seven & nine so they read as follows

No 7 as  
Given The jury is instructed that if the Defendant  
was an acting Constable of such County & that as  
such Constable he received said execution. That from  
the time he received the execution. it was a Lien  
upon all the personal property of Patrick Gibney  
in said County, & that the Defendant had the right  
and it was his duty as such Constable to  
levy the same on any personal property then  
owned by



owned by said Gibney in said County and take the same away, And such Levy & taking would not make a wrongful taking. If the sale from Gibney to Pff. was a fair and honest transaction and possession was delivered to Pff. before the execution came into debt's hands, then the property belonged to Pff. & was not subject to execution to pay Gibney's debts.

No. nine as  
Gives

If the jury believe from the evidence that the property in controversy was sold by Patrick Gibney to the Plaintiff. And if the jury believe that such sale was made to delay or hinder the collection of said execution debt that such sale was void as against said execution. Provided they further believe from the evidence that the Pff. knew of the purpose of such sale and was a party to it. And the Court gave to the jury said Instructions Number seven & nine so modified & changed and the Defendant then and there to the giving of said Instructions No. seven & nine so modified & changed objected and excepted.

And thereupon the jury retired to consider upon said case & came into Court and by their verdict found the issue for the Plaintiff and assessed his damages at one cent.

And thereupon came the Defendant & moved for a new trial in said case. Which motion and the reasons therefor are as follows



27

State of Illinois

Knox County). Knox Circuit Court April Term

A.D. 1838

John Brown

vs  
W L Riley

} And now comes the defendant  
& moves ~~the~~ for a new trial herein for the follow-  
ing reasons

1<sup>st</sup> The verdict is against the Law & evidence

2<sup>nd</sup> The verdict is against the instructions of the  
Court

3<sup>d</sup> The Instructions are calculated to mislead  
the Jury

4<sup>th</sup> The Court erred in giving the instructions asked by  
the ~~Jury~~ Plaintiff

5<sup>th</sup> The Court erred in refusing to give the instructions  
asked by the Defendant.

6. The Court erred in modifying the instructions  
asked by the defendant and giving the same so  
modified

7. The Court erred in refusing to give the in-  
structions asked by defendant as asked

8. The evidence was not sufficient to authorize a  
Verdict. Douglas & Craig Attys for  
Defendant

And the Court then and there overruled the said  
motion for a new trial and the defendant then  
waives to the decision to the decision of the Court  
in overruling said motion for a new trial objected  
& Excepted

And thereupon Judgment was



27

State of Illinois

Knox County). Knox Circuit Court April Term

A.D. 1838

John Brown

vs  
W L RileyAnd now comes the defendant  
& moves ~~the~~ for a new trial herein for the follow-  
ing reasons1<sup>st</sup> The verdict is against the Law & evidence2<sup>nd</sup> The verdict is against the instructions of the  
Court3<sup>rd</sup> The Instructions are calculated to mislead  
the jury4<sup>th</sup> The Court erred in giving the instructions asked by  
the ~~jury~~ Plaintiff5<sup>th</sup> The Court erred in refusing to give the instructions  
asked by the Defendant.6. The Court erred in modifying the instructions  
asked by the defendant and giving the same so  
modified7. The Court erred in refusing to give the in-  
structions asked by defendant as asked8. The evidence was not sufficient to authorize a  
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DefendantAnd the Court then and there overruled the said  
motion for a new trial and the defendant then  
waives to the decision to the decision of the Court  
in overruling said motion for a new trial objected  
& Excepted

And thereupon Judgment was



submitted upon the verdict to which judgment the  
defendant then and then excepted

And that the  
matter aforesaid might be made a matter  
of Record I have caused to be signed and  
sealed this Bill of exceptions

Given under my hand & Seal  
this 2<sup>nd</sup> day of July A.D. 1858

John S. Thompson Judge

On the 4<sup>th</sup> day of May A.D. 1858. during said Court  
proceedings were had herein and an order caused to be  
entered upon the records of said Court which reads in  
the words & figures following to wit:

John Brown

vs  
Laurence Riley

} Replevin

This day came again the  
jury empanelled herein on yesterday and upon  
their oaths do say "That the jury find the issues for the  
Plaintiff and assess his damages at one cent"  
Thereupon came the defendant by his attorney and  
moves the Court for a new trial herein. Whereupon  
it is ordered by the Court that the motion be  
overruled. Thereupon it is <sup>con</sup>sidered by the Court  
that Plaintiff recover of the defendant the sum  
of one cent damages together with his costs by  
him in this suit expended and may have  
execution therefor

And afterwards to wit on the same day further proceed-  
ings were had herein as follows to wit

John Brown

vs

} Replevin



Lawrence Wiley }

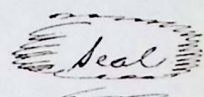
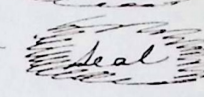
This day came the defendant  
by his attorney and excepted to the ruling of the  
court herein and prays an appeal to the  
Supreme Court. Which is allowed upon the  
defendants entering into Bond with James  
C. Mc Murtry as security in the sum of  
\$400<sup>00</sup>/<sub>100</sub>. Bond and Bill of exceptions to be filed  
in 60 days from this date hereof.

And afterward to wit on the 1<sup>st</sup> day  
of June A.D. 1838 came the defendant and  
filed his Bond herein. Which reads in the  
words & figures following to wit.

Know all men by  
these presents that we Lawrence Wiley as  
principal and James C. Mc Murtry as surety  
are held and firmly bound unto John Brown  
in the Penal sum of Four Hundred dollars  
Lawful money of the United States for the which  
payment we bind ourselves, our heirs, executors  
administrators & assigns jointly severally & firmly  
by these presents sealed with our seals and dated  
this 11<sup>th</sup> day of May A.D. 1838. Whereas a suit  
was lately pending in the Circuit <sup>Court</sup> and for the  
County of Knox & State of Illinois wherein the said  
John Brown was Plaintiff and the said  
Lawrence Wiley was defendant, and whereas  
the said John Brown recovered in said ~~case~~ suit  
a judgement against the said L. Wiley  
and whereas the said Lawrence Wiley has  
prayed an appeal obtained the allowance



of an appeal in said cause to the  
Supreme Court of the State of Illinois  
Now. Upon if the said L. W. Riley shall  
pursue his appeal duly in the Supreme  
Court. & shall pay or cause to be paid  
whatsoever judgment costs interest & damages  
shall be awarded in case said judgment  
shall be affirmed. Then this obligation  
shall be null and void & else to be and  
remain in full force and virtue

Approned by me this 1st Wm L Riley   
day of June AD 1858 J. H. M. Murty   
Clerk of the Court

And afterward to wit on the 9<sup>th</sup> day of November  
AD. 1858. further order was made herein in words  
& figures following to wit

|                |                        |
|----------------|------------------------|
| John Brown     | } Circuit Court        |
| as             |                        |
| Laurence Riley | } October Term AD 1858 |

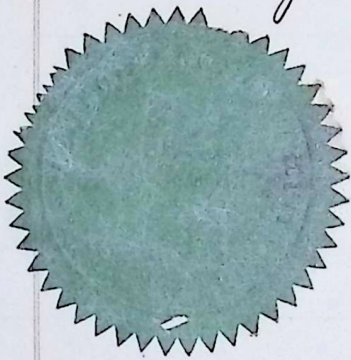
It is ordered that bills of Excep-  
tions in this cause be filed in this Court  
None pro tunc

J. S. Thompson



State of Illinois }  
Knox County } ss

I Leephias Arms Clerk of  
the Circuit Court within and for the County  
and State aforesaid do hereby certify that the foregoing  
contains a full true and complete copy of the  
Record, proceedings and papers on file in said  
Cause, as appears from the records and  
files of my Office



Given under my hand and  
the seal of said Court at my  
Office in the City of Knoxville  
this 25<sup>th</sup> day of March A.D.  
1839.

Leephias Arms Clerk



John Brown  
v  
L. W. Rely

Supreme Court April 7. 1857

And now comes the Defendant  
and assigns the following causes of error  
for which the reversal of the Judgment  
is claimed first.

1<sup>st</sup> The verdict is against the Law & the Evidence

2<sup>d</sup> The verdict is against the instructions of the  
Circuit Court

3<sup>d</sup> The instructions of the Circuit Court were  
Calculated to delude instead the Jury

4<sup>th</sup> The Court erred in giving the instructions  
asked by the Plaintiff

5<sup>th</sup> The Court erred in refusing to give the instruc-  
tions asked by the Defendant.

6<sup>th</sup> The Court erred in modifying the instructions  
asked for by Defendant & giving them as modified

7<sup>th</sup> The Court erred in refusing to give the instruc-  
tions asked by Defendant as asked

8<sup>th</sup> The evidence was not sufficient to  
authorize a recovery of the judgment

Manning Douglas & Craig  
Attys for Def<sup>t</sup>

9<sup>th</sup> The Court erred in trying said Cause  
the demand filed by plaintiff below  
to the 5th place of the Defendant  
below remaining on file ready to proceed



State of Illinois } April 16 1837  
Supreme Court }

And now comes the Appellee  
by J. G. Froch his atty & says that there is no  
error on the record & prays in said Cause  
it may be affirmed & the judgment

J. G. Froch  
for Appellee

of 1838.  
Grand Jurors

John Brown

vs  
Lawrence C. Peley

Filed April 16. 1837  
L. L. Leland  
Clerk

Paid \$8.00 paid by  
Deputy Clerk Peley