

No. 14189

Supreme Court of Illinois

Ryan et al.

vs.

Barger.

1
This was an action of debt, brought in the name of Barger, to the use of Charlotte Smith, administratrix of William Smith ~~deceased~~ against Ryan and Thomas. The declaration was upon a bond, dated the 19th of November, 1857, executed by Ryan and Thomas to Barger, Sheriff of Gallatin County, reciting that Ryan had sued a writ of replevin against William Smith to recover certain personal property, and conditioned to make return of the same if return thereon should be awarded. The declaration avers that the action of replevin was determined against Ryan, and that a return of the property was awarded.

The defendants pleaded non est factum, and sol tunc record, on which issues of fact were found. Ryan filed a plea alleging in substance, that in October, 1847, the Bank of Illinois obtained a judgment against William Smith for \$70; that the judgment remained unsatisfied and in full force and legally belonged to defendant Ryan, as surviving assignee of the Bank of Illinois, by virtue of an assignment made in conformity to the provisions of the statute; and that he would set off so much of the amount due on the judgment, as would equal the damages sustained by the breach of the condition of the bond. The Court sustained a demurrer to this plea.

The defendants then filed a notice in substance as follows; that in October, 1847, the Bank of Illinois recovered a judgment against William Smith and Henry Eddy for \$79, 53, and that Eddy departed this life before the cause of action accrued in this case; that under the provisions of the statute and by force of a deed of assignment by the Bank the right to the judgment was vested in the

defendant Ryan; that Ryan, claiming to be the owner of the property described in the replevin bond, by virtue of a purchase at a sale on an execution issued upon the judgment, replevied the same out of the possession of Smith, and executed the bond with the defendant Thomas as security, conditional for a return of the property; that the judgment remained in full force and unsatisfied, except by the sale of the property mentioned in the bond, and which sale was repudiated by Smith; and that the defendant wrote upon the trial insist on the right of Ryan to a credit for the value of the property in controversy in the replevin suit. On the trial, the court refused to admit any evidence under this notice. The issues of fact were found in favor of the plaintiff, and judgment was entered accordingly.

The plea seeks to set off judgments against the plaintiff and in favor of but one of the defendants. This is not allowable. A separate demand cannot be set off against a joint demand; nor can a joint debt be set off against a separate debt. Demands are not the subject matter of set off, unless they are mutual, and between all the parties to the action. If authority is needed in support of this proposition, it may be found in the repeated decisions of this Court. In *Gregg v James*, Mass 107, it was decided that a defendant could not set off a debt due him by one of his plaintiffs. In *Hitchley v Welch* 4 Gilman 136 a defendant was not allowed to set off

2
a demand against the plaintiff and another person not a party to the record. In *Burgin v. Balcock*, 11, Illinois, 28, the defendants were not permitted to set off a debt due from the plaintiffs to one of them. These cases are conclusive against the right of the defendants to interpose the plea. The legal title to the judgments is in Ryan, in whose name alone can an action be maintained upon them. Thomas is not a party to the judgments, and therefore cannot sue upon them, or set them up by way of set off. A party cannot avail himself of a matter as a set off, unless it is a subsisting cause of action in his favor. The notice set up substantially the same defence as the plea, and the evidence offered under it was consequently properly excluded. The judgment is affirmed.

Judgment affirmed

Ryan & Barger

opinion

great

Burger Sheriff 12240. }
vs. }
E. J. Ryan & Wm. Thomas }

The demurrer to the plea of set-off was properly sustained. The plea being bad in this

1st The bond sued on was executed by both defendants - both sued - and the judgments sought to be set off were due to Ryan alone. Which cannot be done
4 Gilman 1374138 - 11 Illinois 30 1 Chittij's Pleading 571.

2nd The judgments were due to Ryan as assignee of the Bank of Illinois - and therefore trust property. While the Judgment liability of Ryan & Thomas to the Plaintiff below is in their own right. To be 1 Chittij's Pl. 571

The decision of the Court in not permitting the defendants below to give evidence under the notice is correct

1 A defendant cannot plead specially & give evidence under a notice
Rev. Stat p. 415 sec 14.

2nd The judgments mentioned in the notice are altogether distinct from Ryan & Thomas' liability on the bond, and cannot therefore be recouped
14 Ill 424.

3^o That the notice is insufficient. It does not set up a proper ground of defence to the action

In Supreme Court, Nov. 1854.

E. J. Ryan &

W. Thomas - Appellants

vs

Jos. B. Bangs, Cts. Sheriff &
Estate of Chaulett Smith

Admrs of William Smith, Appellee

Appeal from
Gallatin

The Appellee brought an action of Debt to recover the penalty of a Replevin bond, executed by Ryan, with Thomas as security to the Sheriff of Gallatin County, in action of Replevin prosecuted by Ryan against the intestate Smith, for the recovery of personal property claimed by Ryan as survivor of Caldwell & Ryan Assignees of the Banks of Illinois.

The defendants filed a plea of non est factum & Nullus Record. The defendant Ryan filed a plea of Set off alleging that at the October Term 1847 of the Gallatin Circuit Court Judgment was obtained against the said William Smith and Henry Eddy who had departed this life, in the name of the President Directors & Co of the Banks of Illinois for \$79.53 cents Debt and \$15. cost, upon the trial of an Appeal, and at the June Term 1849 of said Court, a Judgment was obtained in favor of the said Bank against said William Smith upon the trial of an Appeal Cause for \$70. that said Judgment remains in full force, not satisfied. that by operation of Law, said Judgment stands for the use of said Ryan as survivor of Caldwell & Ryan Assignees of the Banks of Illinois, by force of an Assignment executed by

the Bank to Lewis Caldwell & Ryan on the 10th April 1845 in conformity with the provisions of the Statute &c. - out of which Judgments the Defendant proposed to set off a sufficient amount to pay the Debt he to which plea the Court sustained a Verdict.

The Defendants, Ryan & Thomas, having pleaded the General issue, filed a notice in the Cause of Special Matter to be given in evidence as a Defense to the Action, - setting out the following facts.

First; That at the October Term 1847 of the Court Judgment was obtained in favor of the Bank of Illinois against the intestate William Smith and Henry Eddy upon the trial of an Appeal Cause for \$79.53 Debt & Costs, - that before the Cause of Action accrued in this Cause the said Henry Eddy had departed this life.

Second; That at the June term 1849 of said Court Judgment was rendered in favor of the Bank of Illinois against the said William Smith upon the trial of an Appeal Cause for \$49.60 Costs.

Third; That under the provisions of the Statute and by force of a deed of Assignment executed by the Bank on the 10th April 1845 the right to said Judgments, and the power to collect the same was vested in Albert G. Caldwell & Co. by Ryan as Assignees of said Bank, their Survivors, Successors &c.

Fourth; That in June 1857 Caldwell departed this life, leaving said Ryan as his Survivor &c.

who claiming to own, and to be entitled to the possession of the property, mentioned in the condition of the bond declared on, by virtue of a purchase of the same by said Caldwell & Ryan at a sale on execution, issued on the Judgment first herein recited replevied the same out of the possession of said Smith, to do which, he executed the bond declared on with said Thomas as security, conditioned for a return of the property &c.

Fifth; That said Judgment remains in full force and unsatisfied, except by sale of the property mentioned in the conditions of the bond declared on, under which sale was repudiated by said Smith. Upon meeting the proof aforesaid the Defendants well insist upon the right of Ryan to allow credit upon the Judgment for the value of the property, upon the ground that he may rightfully recover the value of said property, and thereby prevent litigation, and promote the ends of Justice and fair dealing:

The Court sustained a demurrer to the plea, and upon the trial refused to hear the evidence under the motion, to which ~~several~~ exceptions were taken by Appellants. Judgment was entered for plaintiff, and Defendants have appealed.

The Error assigned are.
First; the Court erred in sustaining the
demurrer to the plea of Est off

Second, in excluding the said demurrer off
to prove the facts stated in the motion.

The Appellants rely upon the following
authorities upon both points.

Revised Statutes 415 Sec 14. - page 416.

Edwards vs Ince 15 Conn 453.

Stone vs Garrison 14 Ill 425.

2 Story; Equity 143 [7].

Apr 14,

By and for
Appellants

by }
} Attorney

By and for
Deft. etc.

In Supreme Court, Nov. 1854.

E. J. Ryan &
W. Thomas, Appellants

vs
Jos. B. Boyer, Sheriff ^{City} &
Mrs of Charlotte Smith
Admin of William Smith, Appellee

Appeal from
Gallatin.

The Appeller brought an action of Debt to recover the penalty of a Replevin bond, executed by Ryan with Thomas as security to the Sheriff of Gallatin County, in action of Replevin prosecuted by Ryan against the intestate Smith, for the recovery of personal property claimed by Ryan as survivor of Caldwell & Ryan Assignees of the Bank of Illinois

The defendants filed a plea of honest factum, & Nullius Record. The defendant Ryan filed a plea of Set-off alleging that at the October term 1847 of the Gallatin Circuit Court Judgment was obtained against the said William Smith and Henry Eddy who had departed this life in the name of the President Directors & Co of the Bank of Illinois for \$79.53 cents Debt and \$15. Costs upon the trial of an appeal, and at the June term 1849 of said Court, a Judgment was obtained in favor of the said Bank against said William Smith upon the trial of said appeal Cause for \$70, that said Judgment remain in full force, not satisfied &c. that by operation of Law, said

Judgment stands for the use of said Ryan as Survivor of Caldwell & Ryan Assignees of the Bank of Illinois, by force of an Assignment executed by the Bank to said Caldwell & Ryan on the 10th April 1845 in Conformity with the provisions of the Statute, - out of which Judgment the Defendant proposes to set off a sufficient amount to pay the Debt &c.

to which plea the Court sustained a Demurrer.

The Defendants Ryan & Thomas having pleaded the general issue filed a Notice in the Cause of Special Matter to be given in evidence as a Defense to the Action; - setting out the following facts.

First; That at the October Term 1847 of this Court Judgment was obtained in favor of the Bank of Illinois against the intestate William Smith and Henry Eddy upon the trial of an Appeal Cause for \$79.53 Debt, & Costs, - that before the Cause of Action accrued in this Cause the said Henry Eddy had departed this life.

Second; That at the June Term 1849 of said Court Judgment was rendered in favor of the Bank of Illinois against said William Smith upon the trial of an Appeal Cause for \$49.60 & Costs.

Third; That under the provisions of the Statute and by force of a deed of Assignment executed by the Bank on the 10th April 1845 the right to said

Judgments, and the power to collect the same was vested in Albert G. Caldwell & E. J. Ryan, as Assignees of said Bank, their Survivors, Successors &c.

Fourth; That in June 1857 Caldwell departed this life, leaving said Ryan as his Survivor, &c who claiming to own, and to be entitled to the possession of the property, mentioned in the Condition of the bond declared on, by virtue of a purchase of the same by said Caldwell & Ryan as a sale on execution, issued on the Judgment first herein recited, replevied the same out of the possession of said Smith, to do which, he executed the bond declared on with said Thomas as Security, conditioned for a return of said property &c.

Fifth; That said Judgment remains in full force and unsatisfied, except by Sale of the property mentioned in the Condition of the bond declared on, and which Sale was repudiated by said Smith, upon making the proof aforesaid. The Defendants will insist upon the right of Ryan to allow credit upon the Judgment for the value of the property, upon the ground that he may rightfully recover the value of said property, and thereby prevent litigation, and promote the ends of Justice and fair dealing.

The Court sustains a demurrer to the plea, and upon the trial refused to hear the evidence under the plea to which

exceptions was taken by Appellants.
Judgment was rendered for plff, and
defendants have appealed.

The errors assigned are.

First; the court erred in sustaining
the demurrer to the plea of set off.

Second; in excluding the evidence
offered to prove the facts stated in
the motion.

The Appellants rely upon the following
authorities upon both points.

Revised statutes 415. 416.

Edwards vs Tread 15 Conn 463

Stone vs Yarrow 14 Ill 22 425

2 Stone vs Equity 14 Ill 22

No 14

Byron & Thomas
Appellants

vs
Abstract
& Brief

Bayne and
Smith et al.

In the Gallatin Circuit Court July Term
1854, Pleas held before the Honorable Samuel
S. Marshall Judge of the 7th Judicial
Circuit in the State of Illinois, present and
presiding,

Declaration
ation
Filed
July 1854
Be it remembered that on this
6th day of July 1853 the following Declaration
was filed to wit.

State of Illinois } In the Gallatin Circuit Court
Gallatin County } October Special Term 1853.

Joseph B. Barger, who sues for
the ~~use~~ benefit of Charlotte Smith Administratrix
of William Smith decd, complains of William
Thomas and Ebenezer G. Ryan summoned &c
of a Plea that they render unto them the said Joseph
B. Barger for the use of Charlotte Smith the sum
of one hundred dollars.

For that whereas the said William Tho-
mas by the style of Wm Thomas and Ebenezer G.
Ryan by the style of E. G. Ryan heretofore to wit
on the 19th day of November 1851, at the County of
Gallatin and State of Illinois by their certain
writing obligatory sealed with their seals and
now shown to the Court, the date whereof is
the day and year aforesaid, acknowledged
themselves to be held and firmly bound unto
Joseph B. Barger Sheriff of Gallatin County
Illinois in the penal sum of one hundred dol-
lars, for the payment of which they the said William
Thomas and Ebenezer G. Ryan bind themselves, their
heirs, Executors and Administrators, jointly and
severally, firmly by these presents,
which said writing obligatory was read

Subject to a certain Condition, then underwritten
whereby after reciting to the effect following to
wit, That, Ebenezer B Ryan has sued out of the
Clerks office of the Circuit of Gallatin County
aforesaid against one William Smith for
the possession of one brown mare one bay
filly, one wheat Fan and one cow. Then if the
said Ebenezer B Ryan shall prosecute his
said suit ~~with~~ ^{to} effect and without delay
and make return of the property, if return
thereof shall be awarded and save and
keep harmless the said Joseph B Burger
Sheriff as aforesaid in replevying said pro-
perty, then this bond to be void, otherwise to
remain in full force and virtue in law,
which said bond was delivered to said
Joseph B Burger as Sheriff as aforesaid
and approved by said Burger as Sheriff
aforesaid, Nevertheless the said Jose-
ph B Burger and Charlott Smith, in fact
say that after making the said writing obliga-
tory aforesaid, To wit at the December term
of the Gallatin Circuit Court of A D 1852 said
Cause was tried by said Court, and said Court
ordered and adjudged that the said property,
^{Replevied} be returned to the said William Smith - now
deceased - the defendant in said cause, And
the said Joseph B Burger as Sheriff as afo-
resaid for the use of Charlott Smith afo-
resaid, aver and charge that the said Ebenezer
B Ryan and William Thomas, altho often requi-
sted so to do, hath not as yet returned to

the said William Smith in his lifetime or to Joseph B. Burger Sheriff as aforesaid or to Charlott Smith now the administratrix of the said William Smith decd, the said brown mare, bay filly, wheat Fan and Cow, and the said Ebenezer G. Ryan and William Thomas wholly fails and refuses to return the same or any or all of the said property aforesaid to the said Charlott Smith, Administratrix aforesaid. Contrary to the form and effect of said writing obligatory and of the said condition thereof, by reason of which said breach the said writing obligatory, became perfected and whereby an action hath accrued to the said Joseph B. Burger Sheriff as aforesaid for the benefit of Charlott Smith as aforesaid to demand and have of and from the said Ebenezer G. Ryan and William Thomas the said sum of one hundred dollars,

Yet neither the said Ebenezer G. Ryan nor the said William Thomas, nor either of them altho often requested so to do, has as yet paid the said sum of one hundred dollars above demanded or any part thereof to the said Joseph B. Burger as Sheriff aforesaid for the benefit of Charlott Smith administratrix aforesaid, but to pay the same or any part thereof have hitherto wholly neglected and refused, and still neglect and refuse so to do, to wit at &c aforesaid, to the damage of the said Plffs as aforesaid, for the benefit aforesaid of one hundred dollars, and therefore they sue &c. Obuyff 1844

Plea of set off filed 6th July 1854

Joseph B. Burger late Sheriff
of Bullitt County who does
for the use of Charlotte Smith
Administratrix of William
Smith dec'd } Debt on
Replevin Bond
against
Ebeneszer G. Ryan &
William Thomas }

and the said defendant Ryan comes
and defends &c and says, The Plaintiff
sion because he says, that on the
day of 1851, at the County aforesaid
William Smith the intestate of Charlotte
Smith was in possession of certain per-
sonal property, which the said D^{ft} claim-
ed to own, in his right as survivor
of Albert E. Caldwell & E. G. Ryan Agents
of the Bank of Illinois, and which said
Smith detained against suits &c
and thereupon the said d^{ft}, for the

(continued)

purpose of obtaining possession of said property sued out of the Clerk's office of the Circuit Court of Gallatin County aforesaid the Peoples writ of Replevin directed to the Sheriff of Gallatin County, commanding him that upon being indemnified &c he should take possession of the said personal property, to wit one Brown mare, one bay filly, one wheat Harrow and one cow, and deliver the same to said defendant Ryan, whereupon the said Ryan executed the bond declared on in this cause, with the said Thomas as security according to the Statutes in such cases made and provided - And the said defendant avers that the right of action upon said bond accrued to the said William Smith in his life time, at which time, the said William Smith was indebted to the said Ryan in his right as Supervisor of A. B. Caldwell & Co's Ryan Assignees of the Bank of Illinois at aforesaid in the sum of one hundred and thirty dollars upon and by virtue of a Judgment of the Circuit Court of Gallatin County entered on the day of October 1847, in the name of the President Directors and Company of the Bank of Illinois against the said William Smith and one Henry Eddy who had departed this life before said right of action accrued, upon the trial of an appeal cause before said Court for \$79.53 cents debt, and \$15 Cost. Also the sum of seventy dollars upon and by virtue of a Judgment of the said Circuit Court of Gallatin County aforesaid, Entered on the

day of June 1849 in the name of the
Presidents Directors and Company of the
Bank of Illinois against the said Will-
iam Smith upon the trial of an appeal cause
before said Court which said Judg-
ments remain in full force and effect, not
reversed annulled, discharged, satisfied
or made void, and the amount due there-
on exceeds the debt in the declaration mention-
ed, And which Judgments the defendants
aver by force of a deed of Assignment exe-
cuted by the said President Directors & Company
of the Bank of Illinois on the 10th day of April
1845 in Conformity with the Statutes Stand for
the use of said Ryan survivor as a person
said as the legal survivor of the said Bank
of Illinois, out of which said sums so due
upon said Judgments from the said Smith
to the said Ryan he the said Ryan is ready
and willing and hereby offers to set off and
allow to the said Charlotte Smith Administratrix
as aforesaid the full amount of the dam-
ages sustained by reason of the breaches of
the conditions of the bond declared on accor-
ding to the Statutes and this &c

W Thomas

for Deft,

And the said Plff says the matters and things
contained in this plea of set off are insuffi-
cient in law whereupon &c

Olney
founder in Deamner
Thomas.

Plea of Burger Sheriff use of
 Thomas Smith Adm^t of Smith
 filed 6th against } Debt on Bond
 July 1854 Ryan + Thomas }

And the said Thomas comes and
 defends the wrong and injury when and where
 &c and says, There is not any Record of
 the said supposed Judgment in favor
 of the said William Smith against said
 Ebenezer B Ryan of the Gallatin Circuit
 Court, in the said declaration mentioned
 remaining in said Court in manner and
 form as the said Plaintiff in declaring
 has alleged, and this he is ready to ver-
 ify &c whereupon &c

Thomas —
 Replication and record vouched
 Olney
 Joinder

Thomas —
 Burger late Sheriff use of } In Debt
 Smith Adm^t of Smith }
 against
 Ryan + Thomas }

Alam
 Nov 2
 factum
 4 Sept 5

and the said defendants come and
 defend the wrong &c and crave ower of
 the bond and condition, which is given
 and the same read as follows,

Know all men by these presents that we
 Ebenezer B Ryan and William Thomas are
 held and firmly bound unto Joseph
 B Burger Sheriff of Gallatin County

Illinois, in the penal sum of one hundred
dollars lawful money of the United States
for the payment of which will and truly
to be made we bind ourselves our heirs
Executors and administrators, jointly and
severally firmly by these presents sealed
with our seals and dated this 19th day
of November 1857. The condition of ~~the~~
above obligation is such that whereas
the above bound Ebenezer B. Ryan has sued
^{a writ of Replevin out}
out of the Clerk's office of the Circuit Court
of Gallatin County aforesaid against
one William Thomas Smith for the pos-
session of one brown mare one bay filly
one wheat fan and one cow, described in
said writ, now if the said Ryan ~~Thomas~~
shall prosecute his suit to effect and
without delay, and make return of
the property if return thereof shall be awar-
ded, and save and keep harmless the said
sheriff in replevying said property then
this obligation to be void, otherwise to
remain in full force and virtue in
law.

& By Ryan by his ^{dealt}
att'y in fact
W. Thomas.

W. Thomas ^{dealt}

Say that the said bond is not their act
and deed, and of this they put them-
selves upon the Country,

Thomas

and Plff likewise
Olney

Thursday

6th July 1854

1st Order Joseph B. Duquenois Sheriff
of Court of Gallatin County for the use
of Charlotte Smith Administratrix
of William Smith deceased

vs

Obeneyer B. Ryan and William Thomas

Debt on Replev
in Bond

On this day the said Plff by Olney his atty
filed a declaration herein, to which the defend-
ants by William Thomas appeared, waived Issuing and
service of process, and the parties agree that both
matters of ~~fact~~ law and ~~of~~ fact shall be tried by
the Court, The defendants then file a plea of set
off, to which the Plaintiff files a Demurrer, which
was joined and the questions of law arising there-
on being considered, the Demurrer is sustained,
The defendants then withdraw from the files the
said plea, and files a plea of set off in behalf
of said Ryan - a plea of Not trial record by def-
endant Thomas also a plea of Notest factum
by both defendants, The said defendants also
file a notice of special matter to be given in
evidence in the Cause under the General issue,
The Plff filed a Demurrer to the plea of set off
which was joined by defendant and upon
argument thereof the Demurrer to said plea is
sustained, The Plff joined the plea of Not
Notest factum, ~~respect~~ to the plea of Not trial Record
and defendant joined therein, whereupon
the Cause being heard, the Court find, the
Issues for the Plff, and doth thereupon consider
and adjudge that the Plff for the ~~cause~~ ^{fore} aforesaid
recover of said defendants \$100, the debt in

the Declaration mentioned to be discharged by
 the payment of \$60. The Damages sustained by
 reason of the breach of the Condition of the bond
 declared on, also the Costs herein expended,
 And on the prayer of the defendants an appeal
 is allowed from the foregoing Judgment to the
 Supreme Court, upon their or either of them
 filing an appeal bond with the Clerk within
 60 days in the penalty of \$100, with James
 Dunlap or John Jones as security Condt-
 =tioned according to law. The said ~~Defendant~~
 filed a Bill of Exceptions which is ordered
 to be made part of the Record herein.

Plea Joseph B. Burger late Sheriff
 of Gullatin County who sues for the
 filed case of Charlott Smith Adminis
 July 1854 = trustee of William Smith decd,
 against
 Ebenezer B. Ryan &
 William Thomas
 Debt on
 Replevin Bond
 And the said Defendant Ryan comes
 and defends &c and says the Plff action - because
 he says that on the day of 1851
 at the County aforesaid William Smith the
 intestate of Charlott Smith was in possession
 of certain personal property which the said
 defendant claimed to own in his right as
 survivor of Albert B. Caldwell and E. B. Ryan
 Agents of the Bank of Illinois and which
 said Smith detained against securities &c
 and thereupon the said defendant for the

Bill of exceptions

In the Gallatin circuit court
July Term 1854

Joseph W. Burger late Sheriff
suing for the use of
Smith Adm^r of Smith
against
Ryan & Thomas

Debt on
Replevin Bond,

Be it remembered that in this cause the defendants filed a notice of special matter to be given in evidence under the general issue pleaded herein in the words following to wit,

"The said Plff. is notified that on the trial of this cause the defendants will prove the following facts under the plea of non est factum,

first, that at the October Term 1847 of this court a Judgment was rendered in favor of the President Directors and Company of the Bank of Illinois, against the said William Smith and Henry Eddy upon the trial of an appeal cause for \$79,53; Debt and \$ cost. That before the cause of action accrued in this cause said Eddy had departed this life,

Second, that at the same term 1849, of this court a Judgment was rendered in favor of the President Directors and Company of the Bank of Illinois against

Said William Smith, upon the trial of an appeal cause for the sum of \$49.60 cents and of cost.

Third, That under the provisions of the statute in which cause made and provided and by force of a deed of assignment executed by the President Directors and Company of the Bank of Illinois, on the 10th day of April 1845 the right to the Judgment aforesaid and the power and duty to collect the same was vested in Albert E Caldwell and ^{Said} Ebenezer Ryan as assigns of the said Bank of Illinois then survivors, Successors &c

Fourth, That in June 1851, the said Albert E Caldwell departed this life leaving said Ryan as his survivor, who claiming to own and to be entitled to possession of the property mentioned mentioned in the conditions of the Bond declared on in this cause, by virtue of a purchase of the same by said Caldwell & Ryan at a sale on Execution in favor of the Bank of Illinois against said Smith Issued on the Judgment first herein recited, replevied the same out of the possession of said Smith, To do which he executed the Bond declared on with William Thomas as security, conditioned for a return

of said property in case a return should be required, and to indemnify and save harmless the said Joseph B. Barger, Sheriff as aforesaid in executing the writ of replevin, Sixth, That said Judgments, remain in full force, unsatisfied, except by sale of the property mentioned in the conditions of the Bond declared on and which sale was repudiated by said Smith; upon making the proof aforesaid, ~~the~~ said defendants will insist upon the right of said Ryan to allow a credit upon the Judgment aforesaid for the value of the property, upon the ground that he may rightfully recoup the value of said property, and thereby prevent litigation, and promote the ends of justice and fair dealing,

Thomas

for Dft.

And upon the trial of the cause offered to prove before the court the facts stated in said Notice, to which the Plff objected, and the court sustained the objection and refused to permit said facts to be proved, for the purpose stated

in Notice, to which decision of
the Court, in refusing to permit
said facts to be proved as aforesaid
The defendants except, and pray
that this their bill of exceptions may be
signed sealed &c which is accor-
-dingly done

J. S. Marshall *(Seal)*

Appeal
Bond

Know all men by these presents that we Ebenezer
 & Ryan William Thomas and James Dunlap are
 held and firmly bound unto Joseph B. Burger
 late Sheriff of Gallatin County Illinois suing
 for the use of Charlotte Smith Administratrix
 of the estate of William Smith decd, in the
 penal sum of two hundred dollars for the true
 payment of ~~which~~ whereof we bind ourselves
 our heirs &c jointly and severally firmly by
 these presents, sealed with our seals and date
 the 22^d day of July 1854, the condition of the
 above obligation is such, that whereas at
 the July Term 1854 of the Circuit Court of
 Gallatin County Illinois in an action of
 Debt, pending ~~at~~ ^{before} said Court in the name of the
 said Joseph B. Burger suing for the use of
 Charlotte Smith Administratrix of the estate
 of William Smith against said Ebenezer
 & Ryan and William Thomas a Judgment
 was rendered in favor of said ~~Plff~~ ^{Plff} for
 the sum of Plaintiff for the said use
 aforesaid against the said Ryan and
 Thomas for one hundred dollars debt
 to be discharged by the payment of sixty
 dollars Damages and for the costs of suit,
 from which Judgment an appeal was
 allowed to the said Ryan & Thomas to the
 Supreme Court, Now in case the said
 Ryan & Thomas shall duly prosecute
 said appeal, and shall pay the Judg-
 ment, Costs, interest and damages, in case
 the judgment shall be affirmed, then
 this obligation to be void, otherwise

Appeal
Bond

Know all men by these presents that we Ebenezer
 & Ryan William Thomas and James Danlap are
 held and firmly bound unto Joseph B. Burger
 late Sheriff of Gallatin County Illinois suing
 for the use of Charlotte Smith Administratrix
 of the estate of William Smith decd, in the
 penal sum of two hundred dollars for the true
 payment of ~~which~~ whereof we bind ourselves
 our heirs &c jointly and severally firmly by
 these presents, sealed with our seals and dated
 the 22^d day of July 1854, The Condition of the
 above obligation is such, that whereas at
 the July Term 1854 of the Circuit Court of
 Gallatin County Illinois in an action of
 Debt, pending ~~at~~ said Court in the name of the
 said Joseph B. Burger suing for the use of
 Charlotte Smith Administratrix of the estate
 of William Smith against said Ebenezer
 & Ryan and William Thomas a Judgment
 was rendered in favor of said ~~Plff~~
~~the sum of~~ Plaintiff for the said use
 aforesaid against the said Ryan and
 Thomas for one hundred dollars debt,
 to be discharged by the payment of sixty
 dollars Damages and for the costs of suit,
 from which Judgment an appeal was
 allowed to the said Ryan & Thomas to the
 Supreme Court, Now in case the said
 Ryan & Thomas shall duly prosecute
 said appeal, and shall pay the Judg-
 ment, Costs, interest and damages, in case
 the judgment shall be affirmed, then
 this obligation to be void, otherwise

to remain in full force and effect,

E. J. Ryan Secy

by his atty in fact

W. Thomas

W. Thomas Secy

James Dunlap Secy

State of Illinois }
Matteson County } S.S.

I J E Hall Clerk of the Circuit
Court of said County do Certify
that the foregoing is a true Copy
of the record and proceedings
in said Court of the before entitled
Cause (excepting the ~~xxxx~~ Replevin
Bond which is attached to the pliffs
declaration and omitted in that place
but afterwards appears in the pleading)
all of which appears from
Records & files of my office
In testimony whereof
I have hereto set my hand
and affixed the Judicial
seal of said Court at
Sharonville on this 26th
day of August 1854,

J E Hall Clerk

~~James Buchanan Clerk~~
~~James Buchanan Clerk~~
~~James Buchanan Clerk~~
to receive no fee for and effect
by J. E. Hall Clerk
Cust in Cir Court \$ 3.95
Copy of Record &c 5.00

Wherefore the said Plaintiff in Appeal
prays that the Jury, verdict aforesaid
may be reversed, set aside, annulled
and for nothing take.

Shannon Texas

9 Sept 1954.

W. M. Thomas

Att. for Deft.

Joinder in Error

Olney atty for
deft. in error

No 14

E. Z. Ryerson &

W. Thomas
Appellants

vs 2 copy
3 Respond.

Jos B Banger staff
use of

Voluntate Smith
Accounts of W. Smith.

Apparatus of
L. E. R. S.

Filed September 14th
1854.

H. D. Paetow Clerk

By N. Johnston S. J.

No 14

November 1852

E. J. Ryan and
William Thomas

v

Joseph B. Ryan, Shff,
vs. J. Smith, Shff.
Appeal from California

Opinion by

J. B. Ryan

14189

Judgment Affirmed