


No. 73i

Supreme Court of Illinois

John Adams et al

vs.

Chauncey Smith

(379)  7

Sup Court

John Adams vs

Peter Phillips & Jacob Phillips

Chamney Smith

This was an action of trespass
quare clamum perit

The Defs/plead not guilty & Adams justified under
an execution from a Justice of the peace, by virtue
of which he seized & took the Apple trees &c in
the Defs Declaration mentioned for the purpose
of paying levying the money in the execution -
To this plea Defs below demurred & the Court
sustained the demurrer & on the trial of the
issue of not guilty the Defs jury found
a verdict for Defs below for \$130 &
Judgment was given thereon; to reverse which
a writ of error has been brought to this Court.
The first error is that the Circuit Court
erred in sustaining the demurrer -

The only question presented by the demurrer
is whether on an execution from a Justice
of the peace, a Constable can enter on land
& sell fruit trees there standing & growing?

This question is easy of solution - Fruit
trees are part & parcel of the freehold
I mean in no sense be considered ^{as} goods
& chattels - How far trees growing in a
nursery might be considered goods & chattels
is not involved in the question decided by
the demurrer, for the plea does not allege
them to be trees in a nursery intended for sale.

The demurrer was therefore correctly decided.
Another error assigned is that the Court

ought to have erred in overruling the
motion for a New Trial - It has
been frequently decided by this Court
that overruling a motion for a New
trial cannot be assigned for error -
The judgment below must be affirmed
with costs - Execution issue
per Sup Court

Deems Brothers
Chancery Smiths

Lockwood

Exc^d

1828

10/10/28