

8585

No. \_\_\_\_\_

# Supreme Court of Illinois

Herod et al

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vs.

Bartley, Admr.

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71641  7

In the Gallatin Circuit Court  
begun and held at the Court  
House in Shawanutoon Illinois  
on the 5th Monday of September  
A.D. 1851. The Year

Samuel S. Marshall  
Presiding,

Thomas G. S. Herrod &  
Edward C. Colvard vs. } Replevin,  
Samuel Seaton Sr.

Plaint,

State of Illinois }  
Gallatin County }

of the September term of the Gallatin  
Circuit Court A.D. 1851. Thomas G. S.  
Herrod & Edward C. Colvard Compla-  
in of Samuel Seaton Sr. in a plea  
of wrongfully and unjustly detaining  
from them one Sorel Horn of  
the value of fifty dollars returne.  
Barish atty for Defts  
Filed 7th Aug 1851. DeHau etc.

Affidavit.

State of Illinois  
Gallatin County

This day personally appeared before  
me the undersigned Clerk of the Cir-  
cuit Court in and for the County of  
Gallatin and State of Illinois

Thomas G S Herrod & Edward C Colvard  
who being duly sworn depose and say  
that they are the owners, and lawfully  
entitled to the possession of one Sorrel  
Horse of the value of fifty dollars,  
That the said Sorrel Horse is unjustly  
and wrongfully detained by Samuel  
Sutton Senior of said County, and  
that said property has not been taken  
in for any tax assessment, or fine  
levied by virtue of any law of this  
State, nor seized under any exe-  
cution or attachment against the goods  
or Chattels of the said affiants or  
either of them liable to execution or  
attachment.

Subscribed and  
sworn to before  
me this 7th day  
of August A D 1857.  
J. Hall Clerk

Thomas G S Herrod  
Edward C Colvard

Writ of Replevin,

State of Illinois }  
Gallatin County } S.S.

The People of the State of Illinois to the  
Sheriff of said County Greeting, Thomas  
Thomas G S Herrod & Edward C Colvard  
having made plaint to the Clerk of our  
Circuit Court and filed their affada-  
-vitt that Samuel Sutton Senior wrong-  
-fully and unjustly detains from

them one Sorrel Horse belonging to them  
of the value of fifty dollars of which  
said Sorrel Horse the said Thomas  
S. Herrod & Edward C. Colvard are  
lawfully entitled to the possession,  
and that the same has not been taken  
for any tax assessment, or fine,  
levied by virtue of any law of this  
state nor seized under any exe-  
-cution or attachment against the  
goods & chattels of said Thomas S.  
S. Herrod & Edward C. Colvard or either  
of them liable to execution or attach-  
-ment, And if the said Thomas S.  
S. Herrod & Edward C. Colvard shall  
make you safe by Bond and Secu-  
-rity, you are hereby Commaneded to  
take and deliver to them the said Sor-  
-rel Horse, and to summon the said  
Samuel Seaton Senior to be and appe-  
-ar before our Circuit Court on the first  
day of the next term thereof to be con-  
-venued and holden at the Court  
House in said County on the 5th Mon-  
-day in September next to answer  
wherefore he wrongfully & unjustly  
detains the said property against  
writs and pledges,

Witness John Edgall Clerk of our  
Seal of } said Court & the Seal thereof affixed  
Court. } this 7th day of August A.D. 1857.  
J. Edgall Clerk,

Executed by taking the within described  
Sorel Horse found in the possession of  
Samuel Seaton Sr. and delivered same to  
the within named Thomas G. Herrod &  
Edward C. Colvard Sheriffs, and by re-  
ading the within as a summons to Saml  
Seaton Sr. this 7 August 1851.

Dr. B. Barger Sheriff, G.C.  
Recivd of Dr. B. Barger Sheriff of Gallatin Co  
Ill, the within described Sorel Horse this  
7th August 1851. Thomas G. Herrod.  
Edward C. Colvard.

Replevin Bond

Know all men by these presents that we  
Thomas G. Herrod, Edward C. Colvard  
are held and firmly bound  
unto Joseph B. Barger Sheriff of Gallat-  
tin County Illinois in the penal  
sum of one hundred dollars lawful  
money of the United States for the pay-  
ment of which well and truly to be  
made we bind ourselves our heirs  
executors and administrators Joint-  
ly severally and firmly by these  
presents witness our hands and seals  
this 7th day of August A.D. 1851.

The Condition of the above obligation  
is such that whereas the above bound-  
men Thomas G. Herrod & Edward  
C. Colvard have sued out a writ  
of replevin out of the Clarks office

of the Circuit Court for Gallatin County  
by aforesaid against one Samuel  
Haton Senior, for the possession of a  
Certain Sorrel Horse described in  
said writ. Now if the said Thomas G  
S. Herod & Edward C Colvard shall  
prosecute their suit to effect and with-  
out delay and make return of the  
property if return thereof shall be awa-  
rded and save and keep harmless  
the said Sheriff in replevying said pro-  
perty then this obligation to be void.

Otherwise to remain in full force and  
virtue in law, Thomas G S Herod <sup>Plff</sup>

Edward C Colvard <sup>Plff</sup>

Job Smith <sup>Plff</sup>

Filed 7th Aug 1851. D. H. Hall cler.

Declaration in Replevin.

State of Illinois

Gallatin County

September term 1851. of the Gallatin  
Circuit Court + Samuel Haton Sr, the  
defendant in this suit was summoned  
to answer Thomas G S Herod & Edward  
C Colvard plaintiffs in this suit of a  
plea wrongfully said defendant took a  
Certain Sorrel Horse of the sd plffs and  
unjustly detained the same & Colvard  
therefore the plffs aforesaid by Percy  
their attorney complain for that &  
the sd debt on the day of 1851

in the County of Gallatin and State  
of Illinois in a certain place or on a  
certain farm there known as the place  
whereon \_\_\_\_\_ lived took the said  
Horse of them the plaintiffs aforesaid of  
great value to wit of the value of  
fifty dollars and unjustly detain  
the same from them until &c to their  
damage of \$50.00. and therefore they  
sue \_\_\_\_\_ Money for Plaintiffs.  
Filed 19th Sept 1857. O'Connell,

Amended Declaration.

State of Illinois }  
Gallatin County }  
Samuel Seaton Sr. the defendant in this  
suit was summoned to answer Thomas  
G. Wood & Edward C. Colvard plaintiffs  
in this suit of a plea wherefore said  
defts wrongfully & unjustly detain  
from them the said plaintiffs one Sorrel  
Horse, the property of the plaintiffs and  
the plaintiffs aver in this amended  
declaration that the said defendant did  
on the 6th day of August 1857, wrongfu-  
lly and unjustly detain from the  
plaintiffs said Sorrel Horse, and  
failed and refused to deliver said  
Sorrel Horse to said plaintiffs altho-  
ugh often requested so to do, and  
the plaintiffs aver that they were on  
the date last aforesaid and still

are entitled to the immediate possession  
of said Sorrel Horse, still the said def-  
endant detain said Horse as aforesaid  
wrongfully & unjustly untill &c to  
the damage of the plaintiffs of \$50.00  
and therefore they sue &c,

Dovey & Freeman for Plffs  
amended declaration filed Oct 9th 1857.

D. Hall Clk.

Verdict to Declaration.

Samuel Seaton, adrs.

Thomas G. Herod &

Edward C. Colvard,

and the defendant comes and defends  
the wrong & injury &c, and says  
that the plffs declaration and the matter  
and things contained in manner & form  
as therein set forth are not sufficient in  
law and that he is ready to verify  
wherefore he prays Judgment &c.

Attest Bernard & McCallum for Secy  
filed 6th Oct, 1857. D. Hall Clk.

See as in Par. 15.

Samuel Seaton, adrs.

Herod & Colvard

} Replier

And the said defendant comes & def-  
ends the wrong & injury when &c and  
says he did not take the said goods  
& chattels in the said declaration men-  
tioned or any or either of them or any



part thereof in manner & form as the  
said peffs above thereof complained  
against him & of this the said deff<sup>t</sup> put  
himself upon the Country &c  
McCallen & Mcclernand attys.  
for deff<sup>t</sup>,  
and the peffs likewise,  
Dovey & Freeman for Peffs.

L<sup>d</sup>. Allen in Bar.

and for<sup>a</sup> further plea in this behalf the  
said deff<sup>t</sup> comes & defends the wrong & in-  
jury when &c and says that the sd peffs  
ought not to have or maintain their aforesaid  
action thereof against him because he  
says that before the commencement of this  
suit to wit on the 12th day of April 1857, sd  
horse in the peffs declaration mentioned  
was the property of one James Layton since  
decd<sup>d</sup>. that after ward to wit on the same  
day a certain Executiv<sup>n</sup> by Henry  
Noble a Justice of the Peace in and for  
the County of Mattamussetts & State of Illinois  
(on the 10th day of April 1857) in favor of  
Thomas Hubson against the sd Layton  
for the sum of \$15.35 debt & \$1.56<sup>1</sup>/<sub>2</sub> cost,  
or thereabouts was pretended to be levied  
on said horse by Harbin & McButts as  
a constable in and for said County,  
and the said deff<sup>t</sup> further says that  
after the date of said levy as aforesaid  
and before the day appointed by  
sd constable for the sale of sd horse to wit

on the 15th day of April the said horse  
then being in the possession of the sd  
deft, was bargained & sold by the sd  
Layton to the sd deft, whereby all the  
interest claim & right of the sd Layton  
in and to the sd horse became and  
was vested in the sd deft, that afterw-  
ards to wit on the 19th day of June 1853  
the sd horse still remaining in the poss-  
ession of the sd deft and never having  
been in the possession of the said Const-  
able as such & not being present at the  
sale hereafter mentioned was sold by the  
said Constable to satisfy said Exec-  
ution for the benefit of sd plffs, who  
the sd deft aver had become the ~~owners~~  
& assignees of the use and benefit of sd  
execution and the judgment, whereon the  
same had been issued as aforesaid  
and that at said last mentioned sale  
the sd plffs became the purchasers of  
sd horse at once for the sum of about  
\$25.00 whereby the sd plffs derived  
all their right to, & ownership of the  
said horse, the same being the right &  
ownership thereto alleged in said decl-  
aration, and the sd deft avers that at &  
before the sale of the sd horse as aforesaid  
he tendered to the sd Constable and to the  
sd plffs or one of them the sum of \$20.<sup>00</sup>/<sub>100</sub>  
lawfull money of the united States  
being the full amount of the principal

Principal interest & cost due & payable  
on sd execution in full satisfactory  
and dis charge thereof but that said  
Constable and the said plffs refused  
to receive the same whereupon the sd  
defendant forfeit the sd sale of the sd  
horse of which the sd Constable and  
the sd plffs or one of them had then  
notice by reason of which said sum  
is the sd debt says that the sd horse  
was the property of the sd defendant  
and not of the sd plffs at the sd  
time when &c as by the sd declaration  
is above supposed and that the sd  
debt is ready to verify, wherefore he  
prays judgment of the sd plffs, ~~to~~  
ought to have ~~been~~ or maintain their  
of said action, thereof against the  
sd debt, and he also prays a return  
of the sd horse, together with his  
cost in this behalf to be adjudged to  
him &c, McAllen & McAllan  
attys for debt,  
Gid 7th Oct, 1851. De Fall etc,

Replication to 2<sup>d</sup> Plea,

Shrod & Edward v. {  
Samuel Seaton & Co

and the plffs for replication to the  
sd debt sd 2<sup>d</sup> plea in that behalf by  
him pleaded says precludi non  
because they say that the sd horse  
said for in plffs declaration is not

the property of Ed Befford ~~and~~ but it  
on the contrary is the property of the  
Deffs as alleged in his 2<sup>d</sup> plea  
& of this he puts himself upon the  
Country wherefore &c

Dosey & Freeman atty for Deffs  
And the deff doth the like.

McCormack & McCallen atty for Deff,  
Filed 9th Oct. 1857. O'Hall etc.

Answer to 2<sup>d</sup> plea

Herod & Colvard, v. {  
Samuel Staton Sr }  
and the Deffs do Deff for replication to the  
Ed deffs 2<sup>d</sup> plea in that behalf by him  
pleaded says that the 2<sup>d</sup> plea is not  
good & sufficient in law as therein alled-  
ged & set forth & that they are ready to  
verify wherefore &c.

Dosey & Freeman for Deffs.

Doan in Remembrance

McCallen & McCormack atty for Deff,  
Filed 8th Oct 1857. O'Hall etc.

Refiled 9th Oct 1857. O'Hall etc.

Order of Court 8th October 1857.

Thomas G S Herod & {  
E. C. Colvard, v. } Replication.  
Samuel Staton Sr. }

On this day came the plaintiffs by  
Freeman his attorney, and moved the  
Court for leave to amend this declaration

which was by the Court allowed, and the defendant by Mr. Lane and his attorney asked leave to withdraw pleas, which was by the Court allowed, and the plaintiffs amended their declaration under the leave herein granted, and the defendant files his pleas to the plaintiffs amended declaration,

Order of Court 14th October 1851.

Thomas G. S. Sherrod & }  
Ed. C. Colvard v } Plaintiff  
Samuel Seaton Sr } Defendant

on this day again came the parties by their attorneys and the issues being joined & submitted to the Court and proofs being heard, It is considered by the Court that Judgment be for the plaintiffs, whereupon came the defendant and moved the Court for a new trial and in arrest of Judgment, which motion was by the Court sustained, and It is further ordered that the defendant pay the cost of this suit, and that the plaintiffs have execution therefor, and that this cause be continued.

Motion to set aside the verdict,  
Sherrod & Colvard v }  
Samuel Seaton, } Plaintiff  
Samuel Seaton the above defendant } Defendant

moves the Court to set aside the verdict in said case and to Grant him a new trial,

1<sup>st</sup> Because the verdict is contrary to law,

2<sup>nd</sup> Because said verdict is contrary to evidence,

3<sup>rd</sup> Because said defendant was misled by the opinion of the Court in said case, and is thereby taken by surprise and damaged, and Because the Court refused to allow said defendant to introduce proof in support of his plea of property in himself, in said case after he had discovered that he had been so misled by the Court as will more fully appear by the affidavit of said defendant now read to as a part of the grounds of said motion.

M. C. Leonard atty for deft.

Affidavit of deft for new trial.

Herod & Colvard v

Samuel Seaton } resp'tive

Samuel Seaton the above named defendant being first duly sworn on his oath states that, that he is advised by his counsel in the above entitled

Cause and verily believes he has a  
Good and Meritorious Defense  
in Said Cause, that he is advised  
by his Counsel and believes that  
two pleas are filed on his behalf in  
Said Cause the 1<sup>st</sup> Nonsepet, & the  
2<sup>d</sup> property in the defendant, to  
both of which pleas this Hon Court  
is referred in Commission with this  
affidavit, This defendant further  
states that on the hearing of said  
Cause by this Hon Court he was  
prepared by witnesses and their testi-  
mony then present to prove the def-  
ense set up in said 2<sup>d</sup> plea subst-  
-antially as therein shown as he veri-  
-ly believes, That on the hearing of  
Said Cause after the above named  
plaintiffs had proven the replevying  
of the Said horse in question and  
before the finding of the Court on the  
premises, this defendant understood  
the Counsel of this defendant to ask  
the Court if a return of Said horse  
could be awarded to this defend-  
-ant (according to testimony) on the  
issue joined on the plea of Non-  
-sepet, and understood the Court to  
answer affirmatively, Now this de-  
-fendant understands the Court to  
decide that no such return could  
be awarded on that issue, that

only because the Court has since found it to be an immaterial issue, but also because of the nature of the issue in law, whereby this defendant, with his <sup>expectations</sup> ~~expectations~~ were in the first place misled by the Court and that he is now taken by surprise, and is prejudiced in the premises. The defendant further states that he is informed by his Counsel and verily believes, that he also (his Counsel) understanding the Court to answer the above question as already stated, and believing that inasmuch as the plaintiffs had wholly omitted and failed to prove the capture or taking of the house in question by this defendant, that (according to the answer of the Court) the said house would be adjudged to be returned to this defendant on the said issue or the plea of House seised. (He the Counsel of this defendant) was induced rest the said Cause on the said plea of House seised, whereas if the Court had answered otherwise than as above stated, the Counsel of this defendant would not have been content to rest said Cause on said issue alone, but with the leave of the Court would have introduced all the



Proofs present as aforesaid and  
relied on by this defendant  
applicable to both of said issues,  
wherefore as the defendant is fur-  
ther informed by his Counsel, and  
as the defendant verily believes his  
Counsel was misled by the answer  
or opinion of the Court above men-  
tioned ~~by~~ and is now taken by  
surprise by the subsequent finding  
of the Court in the premises,

Samuel Seaton  
subscribed & sworn to before me  
this 16th day of October 1851.  
J. H. Mall Clerk.

Order of Court 5th August 1852.  
Sherrill & Colvard, v. }  
Samuel Seaton, } Replicin  
ordered that the foregoing cause  
be continued to the next term of this  
Court,

Order of Court ~~21st~~ 21st Decr 1852,  
Thomas G. Sherrill & }  
E. C. Colvard v } Replicin  
Samuel Seaton Sr. }  
On this day came the attor-  
ney for deft and suggest the cha-  
th of said defendant, and the app-  
ointment of Milton Bartley Esqr,  
administrator of said deceased, who

comes and enters his appearance  
to this cause, It is therefore ordered  
that this cause be defended in his  
name as such administrator  
and upon his motion the defen-  
-dant is allowed to file amended  
pleas herein, and that this cause  
be continued &c,

Defendants amended pleas.

In the Baltimore Circuit Court July Term 1852

Stilton Bartley Adm<sup>r</sup>  
of Samuel Seaton dec'd

ats

Thomas G. Howard +  
Edward C. Colvard

} Neplevin

1<sup>st</sup> And the said defendant comes  
and defends the wrong and inju-  
-ry when &c, and saith that the said  
Seaton did not detain the said horse  
in the said declaration mentioned in  
manner & form as the said plaintiffs have  
thereof above complained against him  
& of this he ~~puts~~ ~~xxxx~~ he the said defend-  
-ant puts himself upon the country &c.

McCullen & McBlennard for def<sup>t</sup>,  
and the pl<sup>ff</sup> doth the like.

Freeman & Posey atty<sup>s</sup> for pl<sup>ffs</sup>.

2<sup>nd</sup> And for further plea in this beha-  
-lf the said defendants saith action on  
Bromm he saith that the said horse in

The said Amended Declarative Mentions  
said was that the property of the said  
Plaintiffs in manner & form as above  
thereof stated & set forth, and that the  
said defendant puts himself upon  
the Country &c, and he also prays a  
return of the said horse together with his  
cost in this behalf to be adjudged to  
him &c.

McCallum & McComand for Deft,  
and the said peffs doth the like.

Furman & Dorsey,

3<sup>rd</sup> And for further plea in this behalf the  
said defendant saith adversion. Because  
he saith before the commencement of this  
suit, to wit, on the day of 1857. at  
&c. the said horse in the said declarative me-  
ntioned was the property of one James  
Gayton ~~and~~ <sup>that</sup> afterwards to wit on the 20th  
day of March of the same year one Thom-  
-as Hudson obtained a Judgment agai-  
-nst the said James Gayton & J. S. Gayton  
before Henry Muckle Esq. an acting  
and qualified Justice of the peace in &  
for the said County of Gallatin, that  
afterwards to wit on the 10th day of ap-  
-ril A.D. 1857. an execution was issued  
by the said Henry Muckle as such Justice  
of the peace as aforesaid on the said Jud-  
-gment for the sum of fifteen dollars &  
thirty five cents debt & one dollar & 50<sup>ths</sup> cents

returned  
this plea with return by deft.

cost or thereabouts, the said execution after  
wards to wit, on or about the 10th day  
of April in the said year, came to the han-  
ds of N. H. Butt a constable of said  
County, and was by him pretended  
to be levied, to wit on the 12th day of  
April in said year on the said horse in  
the said declaration mentioned as the  
property of the said Layton; but  
the said defendant saith that the said  
horse at the time when the said preten-  
ded levy was made was not pres-  
ent or in the view of or possession of  
the said Constable, and the said def-  
endant that at the date of the said pre-  
tended levy of said execution and  
before the day appointed for the sale  
of the said horse by virtue of the  
said execution to wit on the  
15th day of April in the said year the  
said horse then being in the possession  
of the said defendant was bargained  
and sold by the said James Layton to  
the said defendant for a valuable  
consideration, whereby all the right and  
claim of the said James Layton be-  
came & was vested in the said defen-  
dant, that afterwards to wit on the  
19th day of June in the said year  
the said horse never having been  
in the possession of the said N. H. Butt  
as such constable as aforesaid

and still remaining in the possession  
of the said defendant, and not being  
present or in view or the possession  
of the said H. M. Butt Constable as  
aforesaid at the time of the sale of  
the said horse when after mention-  
-ed was sold by the said H. M. Butt  
Constable as aforesaid to  
satisfy said execution, and at  
the said sale the plaintiffs bid and  
the price of the said horse at  
and for the sum of about twenty  
five dollars, whereby the said pla-  
-intiffs claimed to have the right &  
property to and in said horse, and  
which said right is the same in the said  
amended declaration mentioned,

and the said defendant further saith,  
that at and before the sale of the said horse  
by virtue of the said execution as  
aforesaid the said H. M. Butt had  
and the said plaintiffs had notice  
of the said purchase of the said horse  
by the said defendant from the said  
James Layton and he further saith  
that at and before the sale of the  
said horse, as aforesaid he forbid  
the sale thereof of which the said  
H. M. Butt & the said plaintiffs  
then had notice, by reason of wh-  
-ich said premises the said defendant  
saith that the said horse was not the

property of the said plaintiffs at &c,  
aforesaid as in the said declaration  
mentioned, But he came & so as the prop-  
erty of the said defendant at the said  
time when &c, in the said declaration  
mentioned, and this the said defendant  
is ready to verify, Wherefore he prays  
Judgment if the the said plaintiffs  
ought to have or maintain their afores-  
aid action thereof against the said  
defendant, and he also prays a set-  
tles of the said issue together with his  
cost in this behalf to be adjudged to  
him &c, McCallum & McCallum for &c

And the said pleffs for answer to depts  
3<sup>d</sup> ~~ple~~ ~~xxx~~ ~~xxx~~ - amended plea says that  
same is not sufficient in law, Because  
he says that there is a blance in said  
plea on account of which, <sup>it</sup> is left  
unmaintain according to the defendants  
own showing when the purchase was  
made of said property,

2<sup>d</sup> That said plea and the defence there-  
by sought to be set annouces to nothing  
more than what can be taken adv-  
antage of under the plea of the Gen-  
eral issue!

3<sup>d</sup> Because it does not appear from  
the facts stated in said plea the said  
deft purchased said property before  
the said execution was issued and

delivered to said officers, but on the  
contrary thereof shows that the said  
purchase was not made until after  
the said execution was delivered to said  
officers. Drey & Minge for Defts

Verdict in Deffors

McCallum & McComand atty for Deft,  
Aid 21<sup>st</sup> Decr 1852, O'Callall Clk,

Verdict to 3<sup>d</sup> plea

Herod & Colcord v.

Milton Bartley admr }

Sam. Seaton, }

and the said plaintiffs for replication to  
the defendants said 3<sup>d</sup> plea by him by him  
pleaded in their behalf on the 21<sup>st</sup> Decr 1852  
says preclusion, because he says  
the 3<sup>d</sup> plea is not good and suffici-  
ent in law, and that they are ready  
to verify wherefore &c.

Drey & Furman atty's.

Verdict in Deffors

McCallum & McComand for Deft,

Verdict to 2<sup>d</sup> & 3<sup>d</sup> pleas

Herod & Colcord v.

Milton Bartley admr }

Sam Seaton, }

Gallatin Circuit Court - and  
the said plaintiffs for replication to the  
said 2<sup>d</sup> & 3<sup>d</sup> pleas by the said defendant

Merin pleaded says preclusion. Because they say the same are not good & sufficient in law, and for Special Grounds of Demerits to the said 3<sup>d</sup> plea the plaintiffs assign, that the subject matter of the said 3<sup>d</sup> plea could be given in evidence under the General Issue Merin and also that the same subject matter is set forth in the 2<sup>d</sup> plea by the said defendant Merin pleaded, and that they are ready to verify wherefore,

Dovey & Fenner atty for pliffs.

4th Plea,

And for a further plea the defendant avers & alleges the wrong & injury when &c, and saith that the plaintiffs, ought not to have & maintain their said action against Merin, because he says the said Horse in this said declaration mentioned at the time when &c, was the property of one James Layton, and not of the said plaintiffs as by their said declaration is above supposed, which he is ready to verify, wherefore he prays Dismissal. If the said plaintiffs ought to have or maintain their said action then &c against Merin, and he also prays, a return of the said horse together with his cost in this behalf according to the force of the statute in such case made & provided to be adjudged to



Miner, McCallen & McCallen and attys.  
Graves & Jones

Furness & Pusey for Peffs  
sumner to 4th plea.

Pusey & Furness for Peffs  
Jordan & sumner.

McCallen & McCallen and atty for ~~the~~ Peffs,  
and the said Peffs for application to  
~~the~~ <sup>the</sup> defendants said 4th plea says  
procedura. Because they say the same  
is not good & sufficient in law and  
that they are ready to verify, wherefore  
&c. and for special reasons of coun-  
-sel assign that the plea of property  
in a stranger though good as a bar  
to that action, does not authorize a  
return of the property to the defendant  
and therefore the prayer in said 4th  
plea for a return is bad.

Pusey & Furness for Peffs.  
Filed 21<sup>st</sup> Nov 1852. McCallen.

Deposition of Spincy.

Deposition of G. L. Spincy taken by consent  
of parties to be read without objections on  
the trial of this case in the Gallatin cir-  
cuit Court wherein J. S. Hood & E. C.  
Holt are plaintiffs and Milton  
Bartley as administrator of Samuel Senter  
deceased is defendant an action of Neb-  
-lous.

Question by Jeff,

State whether <sup>or not</sup> you are Constable of  
said County of Gattani Illinois at the  
time the execution writs attached  
marked A, came to your hands,  
State when it came to your hands,  
Whether the execution writs attached  
marked A, is the same one, and  
whether you applied to James Layton  
defendant in that Ex: for a levy  
before said James' death and whether  
~~you~~ you saw the horse in controversy  
in said James' possession at that time,  
Describe said horse,  
and whether after said James' death  
you applied to said James' Mother  
for a levy & what she told you,

Answer,

I was Constable of ~~Box~~ Gattani  
County at the time said Execution came  
to my hands, and continued as such  
for 2 or 3 months after that time, &  
It came to my hands on Tuesday  
that I have endorsed thereon,  
The Execution marked A, is the same  
referred, I applied to James Layton  
writ therein for a levy before he died,  
I saw the horse in controversy in  
this suit in said James' possession  
at the time I applied to said James  
as aforesaid, The Horse was a

Sorrel Horse and is the same pur-  
-chased by the said Herod & Colvance  
under an Execution Sale made by  
H H M Pratt in favor of Thomas  
Hudson, I lived on said  
Horse after said James death  
and told said James mother of the  
fact, she said it was all right and  
that said James had been talking  
about paying both said debts  
with said Horse - and that  
she would come to town and see  
if she could not pay, both said  
debts, with said Sorrel Horse  
without administering on said  
James Estate,

The Execution under which said  
Pratt made said Sale was older  
than the one I had, and mine  
was in favor of Isaac Cooper,  
G M Spincy

We agree that the foregoing deposit-  
-ion may be read on the trial of  
the case mentioned in the Caption  
thereof without any objection and  
- if it be in the Competency or  
relevance of the witness therein or  
any part of it. A L Freeman one of  
the Deffs attorneys,  
Hilton Bentley Admrs

Exceptions to Depositions of Spivy,  
Hobd & Colvard, v. }  
M Bartley Admr } Deposition  
of S Seaton ad'm.

Stallon Bartley, Admr &c. diff.  
excepts to the deposition of L M Spivy  
a witness and objects to the reading of  
the said deposition as evidence upon  
the trial of this cause for the following  
reasons, viz.

First. Because the execution professedly  
attached to the said interrogatories, proffered  
-ded to the said witness, and to his deposit-  
-ion is not so attached and no return  
appears in connection therewith or the  
files of this cause.

Second. Because the recitals of the said  
witness in his deposition of his applica-  
-tion to the said James Gayton "for a boy"  
of the said execution, and of the fact that  
he had made a boy on the said horse  
and had told the said James's mother  
of the fact, and of her answer, that such  
boy was all right, and that the said  
James had been "talking" to her "about pay-  
-ing both of said debts, with said horse"  
and that she would come to town and  
see if she could not pay both of said  
debts with said horse without  
administering on said James's estate  
are irrelevant and incompetent as  
evidence.

Third, Because the recital of the said witness in his deposition that "the execution under which said Butts made said sale was older than the one" the said witness "had" is irrelevant and incompetent as evidence.

Fourth, Because interrogatories propounded to the said witness and his deposition each and both are based on the assumption that the said execution recited by the said witness in his deposition as having come to his hands is an exhibit and ~~is~~ a part of ~~the~~ <sup>the same</sup> depositions, when in fact it is not, there having been no such exhibit, wherefore the said deposition is incompetent as evidence.

Fifth, Because said deposition is vague, indefinite, uncertain, inconsistent, incompetent, and unintelligible.

McCallum & Colburn and attorneys for said

Said July 6th 1853. D. A. Hall etc.

Order of Court 7th July 1853.

Sherrill & Colvard vs. }  
Milton Bartley admr }  
of Samuel Seaton and }  
} Plaintiff

on this day came the defendant by McCallum & Colburn and his attorneys and filed their exceptions to the depositions of Lill Spirey in this cause.

Order of Court 18th July 1853.

Thomas G. Herod &  
Edward Colvard v.  
Stilton Bartley Adm<sup>r</sup>  
of Samuel Staton dec<sup>d</sup> } Replevin

This day came the said parties, and the plaintiffs file their demurrers to the pleas of no property in the plaintiffs No 2, ~ of property in the defendant No 3, ~ and of property in James Layton No 4, filed herein by the defendant, and upon argument it is considered by the Court the demurrers to the said pleas No 2, & 3, be sustained, with leave to the defendant to amend said pleas, and the demurrer to said plea No 4, is disallowed, and the defendant by leave of the Court amend his said pleas No 2 & 3, and the plaintiffs demurrer to said amended pleas and upon argument said demurrer is disallowed by the Court, and by consent of parties and with the leave of the Court said plea No 3, is withdrawn,

Demurrer to 2<sup>d</sup> Amended plea,

Herod & Colvard v.  
Stilton Bartley Adm<sup>r</sup>  
of Sam Staton dec<sup>d</sup> } Replevin

And the said plaintiffs come and

answer to defendants 2<sup>d</sup> answer  
plea and says that the said plea  
is not good and sufficient in  
law - in this that it prays for a  
return of property without alleging  
the same to be in defendant or  
any-body else, and that they are  
ready to verify, Whence &c,  
and that it amounts to the gener-  
al issue & nothing more, more  
Fruman & Doney  
founder in December

McLernan & atty for deft,  
filed 20<sup>th</sup> July 1853. P. Hall etc.

Order of Court & Judge 21 July 1853.

Thomas G. S. Wood &  
Edward C. Colvane N. }  
~~James H. H. H.~~ } Replie  
Milton Bartley adms  
of Samuel Hutton etc. }

This day came the said plain-  
tiffs and the said defendants and  
by consent and agreement of the said  
parties this cause is submitted to the  
Court for trial by the same upon the  
issues joined herein on the defendant  
to said several pleas of non tite  
ret No 1 - of no property in the plain-  
tiffs No 2 - and of property in James  
Hutton No 4 - filed herein and the  
proofs being heard the Court finds

Copy of Judgment before the Justice,

No	Parties	action	Remarks	
				12
406	Thomas Herrod	summons		18 <sup>3</sup> / <sub>4</sub>
	vs	returnable	Judgm <sup>t</sup>	25 <sup>2</sup> / <sub>4</sub>
	James Layton &	20 <sup>th</sup> March 2 <sup>o</sup> cl <sup>a</sup>	Ex	25 <sup>2</sup> / <sub>4</sub>
	vs	James Layton	Ex of Sum <sup>s</sup> April	81 <sup>1</sup> / <sub>4</sub>
10 <sup>th</sup> 185 <sup>0</sup>	Note due sum	10 <sup>th</sup> Bull <sup>s</sup>		
	26 <sup>th</sup> 185 <sup>0</sup>			

\$14.49 Ex returned Levied  
 on property sold and  
 Bought by Herrod



Justice's Minutes Judgments &c

March. In this case Judgment Bu 10  
20<sup>th</sup> is given in favour of Dum 50  
Plaintiff for the sum of ml 250  
fifteen dollars & 35 cts debt 100  
and cost of suit, Et Ex 24 75  
10<sup>th</sup> April 1851

Henry Ruckle

I transfer this judgment to E. C. Colcord  
& Herod this 16<sup>th</sup> day of June 1851  
Thomas Hudson  
Mm

Said issues in favor of the defendant  
whereupon it is considered by the  
Court that the defendant do recover of  
the plaintiffs the said property  
replevied by the plaintiffs and in  
their said declaration mentioned and  
that a writ of Retorno Habendo, be  
awarded herein. It is also consider-  
ed by the Court, that the defendant  
do recover of the plaintiffs his  
damages sustained by reason of the  
detention and use of said property  
by the plaintiffs from the time of the  
taking of the same by the plaintiffs  
untill the return thereof to the defen-  
-ant and the Court upon proof of aforesaid  
said damages at the sum of \$45.00  
together with his cost and charges  
by him in and about this defense  
expended and that he have exente-  
-on therefor &c,

Whereupon came the plaintiffs by  
Dacey & Fruman their attorneys  
and moved the Court for a new  
trial herein which motion is by  
the Court overruled,  
and thereupon the plaintiffs prays  
an appeal to the Supreme Court of  
this state which is awarded upon  
their giving bond as required by the  
Statute in such cases in the penal

sum of \$300. or within 30 days  
from this date with either Robert  
H. Richardson or J. E. Pearson as secu-  
rity,

Bill of exceptions.

Thomas W. Howard &  
Edward C. Colvard Plffs } Neplewin  
vs. Matthew Doolley Adams }  
of Samuel Seaton ad. de. deft.

Be It remembered that at the  
July term AD 1853. of the Circuit  
Court of Gallatin County Illinois this  
Cause being on trial before his Honor  
Samuel S. Marshall.

The plaintiffs offered in evidence  
a judgment in favor of Thomas  
Howard against James Layton &  
J. S. Layton in the words and figures  
following to wit

Hamilton witness for Plaintiff states  
the docket in which said Judgment  
is entered was Henry Ruckles that  
Ruckles was a Justice of the Peace  
of Gattani County, Illinois, that  
the docket was handed to witness  
as nearest Justice by Ruckles.

Plaintiff then offered in evidence  
an execution in favor of Thomas  
Hudson against James Layton  
and J. J. Layton in the words &  
figures following to wit,

State of Illinois  
Gattani County, ss

The People of the State of Illinois to  
any Constable of said County, Greeting  
You are hereby Commanced that of  
the Goods and Chattels of James Lay-  
ton and J. J. Layton in your Coun-  
ty you cause to be made the sum  
of fifteen dollars and ~~xxx~~ 35 cents  
and one dollar and 56 1/2 cents  
and which Thomas Hudson late-  
ly recovered before me in a cer-  
tain plea against the said James  
Layton and J. J. Layton and  
himself make return to me within  
seventy days from date, given  
under my hand and seal this  
10th day of April A D 1851.

Henry Ruckles J.P.

Came to hand 10th April 1851. at  
7 o'clock A.M. Butts & G.C.

April 12th 1851. levied on one Sorrel  
Horse, known as the Hudson Horse  
as the property of J. S. Layton  
Butts & G.C.

additional Levy June the 9th 1851  
of 3 yearling Calves, 14 Head of Stock  
Hogs, 2 Cows, 2 ploughs one Bed &  
stead, one Wagon House, 2 sets of  
Gears,  
Butts & G.C.

Returned satisfied in full by sale  
of one Sorrel Horse as levied on,  
and purchased by Thomas S. S.  
Hirod & Edward C. Colvard June the  
19th 1851. at \$25.  
W. H. M. Butts & G.C.

Filed July 1853. V. H. all etc.

And proved by Butts that said  
Execution came to his hands, that  
he was Courtable at the date of exe-  
cution that he levied on the Sorrel  
Horse some 5 or 6 feet from him  
and J. S. Layton was in view at  
the time, that witness allowed said  
said Layton to retain possession  
of the Horse to settle in the life.

title of Execution or produce house  
on day of Sale, That Layton  
gave no delivery bond for the  
House, That Layton died ab-  
out 15th or 16th April 1851, That  
the House lived on, though not  
present or in the possession of  
Constable Butt at Sale, was  
sold under execution to Herod  
& Orland Jeffs, That other per-  
sons at the Sale bid on the house,  
That the levy on the house was  
made first, That J. S. Layton  
gave witness levy on house,  
That after ~~several~~ Layton's death  
Samuel Seaton gave notice in writ-  
ing to try the rights of property in  
house, The notice in words &  
figures following:

J. M. Butt Constable of Gullatin  
Co. Ills, Sir, I take notice  
that the above house you have liv-  
ed on as the property of J. S.  
Layton is mine, and I will  
contest for the same, and for-  
bid the sale thereof, June 14th  
1851. Samuel Seaton,  
died 21 July 1853. D. H. Gallen.

The Plaintiff proved by James  
Madford, that the summe in

words & figures following to wit

To Samuel Seaton Senior,

Sir we hereby demand  
the immediate possession of a cart  
in saddle horse = Gelding = belonging  
to us and now in your possession  
Said horse was the property of J. D.  
Layton at the time of his death and  
was afterwards sold to us by W. H. M.  
Butt Constable of Gallatin County  
to satisfy an execution in favor of  
Thomas Meason and against the  
said J. D. Layton and James Layton  
issued from the office of Henry  
Nuckle Esq, said horse is nearly  
ten hands high and five years  
old, Mr James Bradford is auth-  
orized to receive said horse and  
bring him to us this 6th August  
A. D. 1857. Respectfully

Edward C Colvard,

Thomas G. Merid,

Executed by reading and leaving  
a copy of the same with Samu-  
el Seaton Sr, Aug the 6th 1857.

James Bradford C. S. C.

Sidd 21 July 1853. J. H. Hall & Co.

Witness Saw the horse in Seaton's lot,  
Seaton refused to deliver the horse

to witness, The Horse was the same  
that Butt sold to Perod & Colvard  
and the same that was seized  
by Barger the Sheriff and the  
Plaintiffs were owed their case,

Whereupon the defendant having  
objected that the said Judgement  
of the Justice of the Peace was not  
sufficient on its face to show  
Jurisdiction in the Magistrate  
the Court sustained said objection  
and entered Judgement for the  
defendant, To which the plain-  
tiffs by their Counsel excepted,  
and after wards moved the Court  
for a new trial, upon the  
Ground that the Judgement of  
the Court was contrary to law  
and evidence,  
which motion the Court overruled

Whereupon the plaintiffs excepted  
and pray that their Bill of excep-  
tions, may be signed sealed  
and allowed, which is done  
accordingly,

Samuel S. Marshall  
Filed 1<sup>st</sup> Aug 1853. D. Hall Clk., Seal



Appeal Bond to Supreme Court,

Know all men by these presents that we Thomas G. S. Herod, Edward C. Colvard and J. Edward Neasden are ~~held~~ held and firmly bound unto Milton Bartley administrator of Samuel Barton dec'd, in the penal sum of three hundred dollars lawful money of the United States, for the payment of which well and truly to be made we bind ourselves, our heirs, Executors and administrators, jointly severally and firmly by these presents witness our hands and seals this 20th day of August, 1853, The condition of this obligation is such that whereas the said Milton Bartley administrator aforesaid at the July term of the Gattatui Circuit Court A.D. 1853 received a judgment in said court against the said Thomas G. S. Herod, and Edward C. Colvard for the sum of forty five dollars, together with the cost of said suit from which said judgment the said Thomas G. S. Herod and Edward C. Colvard prayed & obtained an appeal to

The Supreme Court, Now if the Said  
Thomas G. S. Herod & Edward C  
Colvard shall present their  
appeal with effect and shall  
pay the said Judgement, Cost  
interest and damages in case  
Judgement shall be affirmed,  
then this obligation to be void  
otherwise to remain in full for  
ce & virtue,

Thomas G. S. Herod (Seal)  
Edward C Colvard (Seal)  
J. Edward Pearson (Seal)

Filed 20 Aug 1853.  
J. E. Hall Clerk,

State of Illinois }  
Warrick County } S.S.  
I J. E. Hall Clerk of the Cir Court  
Court for said County do hereby  
that the foregoing 42 pages con-  
tain a full, true and perfect  
copy of the record and procedi-  
ngs in the ~~xxx~~ before entitled case  
wherein Thomas G. S. Herod & Edw-  
ard C Colvard are plaintiffs &  
Milton Hattery adms of Samuel  
Haton dec'd is defendant, all of  
which appears from the record & files  
of said Court, Given under my hand  
and seal of said Cir. Court at  
Shawneetown this 3<sup>d</sup> day Sept 1853  
J. E. Hall Clerk,

Cost made by the parties since the  
Judgment & kept for cost for new  
trial

Cost made by Defts	\$54.40
Cost made by Deft	41.35
For Record by Defts	<u>13.00</u>
	\$108.75-

And the said Defts by Wm W. Winger  
their attorney comes for assigning  
Errors herein says that there is manifest  
Error in said record & pro excludings  
in this  
1<sup>st</sup> That the Court was in excluding the  
Judgment rendered by Reville

2<sup>nd</sup> In overruling motion for new trial  
and rendering judgment for Deft

3<sup>rd</sup> In giving judgment  
for Deft where as  
from the evidence he should  
have found for the Defts

4<sup>th</sup> The finding of the Court ~~was~~ against  
Law

5<sup>th</sup> The judgment of the Court is  
Contrary to the evidence

Truman Winger  
for Defts

And the said Defendant in Error, says  
there are no such Errors in the proceedings  
and payment aforesaid, as said  
Plaintiff has above alleged, Wherefore  
McHerron for  
Defts,

45  
Thomas G. S. Reed  
& Edward Cleward

vs  
Milton Bailey  
Adm of — —  
Samuel Seaton and

8585

Copy of Record

Filed Nov 15<sup>th</sup>  
1853

J. D. P. Hull  
by D. B. A. copy  
To be paid by R. S. W.

Supreme Court at Ottawa  
November Term 1852

Thomas G. Herrod &  
Edwin and Caldwell } Appell from  
as  
Mitten Party administrators } Gallatin  
of Samuel Seaton }

The plaintiffs brought their actions  
of Replevin to recover a certain horse  
out of the possession of one Samuel  
Seaton now deceased -

At the September term of the Gallatin  
Circuit Court A.D. 1851 the Cause was  
tried and verdict for plaintiffs,  
which verdict was afterwards set  
aside by the Court

At the December Term of said Gallatin  
Court, the death of said Samuel Seaton  
was suggested, and said Mitten Party  
his administrators made party defendant  
who entered his appearance, and  
at the July term of said Gallatin Circuit  
Court said Cause came on to be  
tried, the defendant pleading three  
pleas upon which issues were  
formed

1st Plea non detinet

2nd Plea no property in the Plaintiff

3rd Plea No. 4 Setting up property

in James ~~Sayton~~ Sayton

The Court was tried by the Court  
by agreement, and judgment for  
defendant, awarding a writ of  
Replevin Habundis, Also allowing  
the defendant damages for the detention  
of the property at \$45.

The plaintiffs entered their motion  
for a new trial, which motion was  
overruled by the Court, to which  
the plaintiffs excepted, and prayed  
an appeal to this Court, which  
was allowed.

The bill of exceptions in this case  
shows that the plaintiffs on the trial  
introduced in evidence a judgment  
on the debt of Ruckle against  
James Sayton and J. J. Sayton for  
the sum of \$15.35 debt & costs of  
suit in favor of Thomas Hester,\*  
and identified the debt by  
Thomas Hester, also an exhibit  
issued on said judgment, and the  
books thereon endorsed, and return  
and proved by witness Butt, that  
said execution came to his hands  
— that he was constable at the  
time, that he always had said  
execution on said bond, that  
he was some five or six feet  
from horse when he heard him

That J J Layton was on ~~him~~ the horn  
when the levy was made - that ~~the~~ witness  
left the horn in possession of said J  
J Layton to settle in the life time  
of the execution, or for one horn  
or day of sale - that he took  
no return bond - horn was not  
present or in his possession at the  
~~time~~ <sup>day</sup> of the sale - was sold under  
said execution to Herrod & Caldwell  
plaintiffs - that after process had  
at the sale J J Layton gave return  
any on horn - that after the death  
of J J Layton, Samuel Seaton deeded  
gave return notice in writing to  
say the right of property in horn  
- ~~to~~ <sup>to</sup> be returned

James Bradford proved that he  
made a demand of the horn sold  
for, for said plaintiffs in writing  
which demand is copied in the  
bill of exceptions, also that he  
saw the horn in Seaton's lot at  
the time of the demand - that  
Seaton refused to give him up  
that the horn was the same sold  
by Constable Butts to plaintiffs and  
the same taken by the Sheriff by the writ  
of Reprehension which is in  
substance all of the evidence  
introduced in said cause,

The defendant objected that the said  
judgment of the Justice of the Peace



was not sufficient upon its face to  
show jurisdiction in the Magistrate  
— the Court sustained the objection,  
and excluded the same, and  
rendered judgment as above stated  
all of which was excepted to  
by Plaintiff —

The following are the errors alleged.

- 1<sup>st</sup> That the Court erred in excluding  
the judgment rendered by Ruelle,
  - 2<sup>nd</sup> In overruling motion for new  
trial and rendering judgment for  
defendant
  - 3<sup>rd</sup> In giving judgment for the defendant  
when from the evidence he should  
have found for the Plaintiff —
  - 4<sup>th</sup> The finding of the Court is against  
law —
  - 5<sup>th</sup> The judgment of the Court is contrary  
to the evidence
- Truman H. Hays  
for Plaintiff —

State of Illinois }  
Gallatin County }

In the Gallatin circuit  
Court at October Term A D 1857

Joseph B. Barger for the use of  
Milton Bartley Administrator of  
of Samuel Seaton Deceased } Plaintiff  
v<sup>s</sup>

Thomas G. S. Herod Edward C. Colburn,  
and Job Smith } Defendants

Now on this 22<sup>nd</sup> day of October  
A D 1857 came the parties and Issue being  
joined & by agreement of the parties this <sup>cause</sup> ~~same~~  
is submitted to the Court and the proofs being  
heard and the Court being fully advised of  
the premises it is ordered and adjudged  
by the Court that the said Plaintiff have  
and recover from said Defendants the sum  
of one hundred dollars debt the amount  
of the bond declared on and that he have judg-  
=ment therefor it is further ordered by the Court  
that upon the payment of fifty dollars damages  
as also the costs of this <sup>suit</sup> ~~suit~~  
by the defendants said judgment shall be  
fully satisfied paid and discharged, <sup>and that execution issue therefor</sup> whereup-  
=on the defendants Moved the Court for a new  
trial and in arrest of Judgment herein  
which said Motion the Court being fully  
advised is by the Court overruled whereupon

The said defendants pray, and appeal  
which said Pray is by the Court Granted  
upon condition that the said defendants  
file bond in the sum of two hundred and  
fifty dollars with either Alfred Richerson  
John F Richerson or John E Bearden as  
security within thirty days

And afterwards to wit on the 11<sup>th</sup> day of  
November A D 1857 The defendants filed in  
the office of the clerk of the circuit court, of  
said County  
their appeal Bond which is in the words &  
figures following to wit;

Know all men by these presents that  
we Thomas G S Herod, Edward C Colvard,  
Job Smith and Alfred Richerson, are held  
and firmly bound unto Joseph B Burger  
Sheriff of Gallatin County Illinois for the  
use of Milton Bartley, administrator of  
Samuel Seaton Sr deceased, in the penal  
sum of Two hundred and fifty dollars,  
to the payment of which we bind ourselves  
our heirs, executors and administrators  
Jointly and severally and firmly by these  
presents - Witness our hands and seals  
this 10<sup>th</sup> day of November 1857-

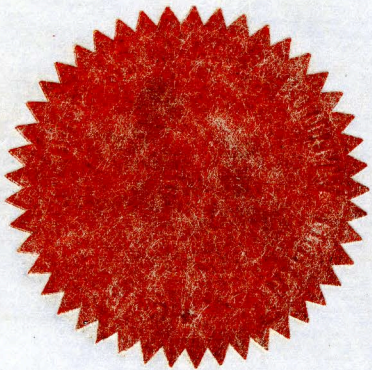
The Condition of the above

Obligation is such that whereas on the  
22<sup>nd</sup> day of October 1857 the said  
Joseph B Barger Sheriff of Gallatin County  
Illinois, for the use of Milton Bartley admin-  
-istrator of Samuel Seaton Sr deceased  
recovered a judgment in an action of debt  
in the circuit Court of Said County of  
Gallatin against the above bounden  
Thomas G S Herod Edward C Colvard and  
Job Smith for the sum of one hundred  
Dollars debt, to be satisfied by the payment  
of fifty Dollars damages, and the costs of  
suit, and whereas the said Herod, ~~and~~  
Colvard and Smith have prayed an appeal  
from the said judgment to the Supreme  
Court of the State of Illinois - Now if the  
said Herod, Colvard & Smith shall pay the  
said judgment, cost, interest and damages  
in case the said judgment shall be affirmed  
and shall duly prosecute their said appeal  
then this obligation to be void otherwise to  
remain in full force & effect -

Thos. G. S. Herod (Seal)  
E. C. Colvard (Seal)  
Job Smith (Seal)  
Alfred Richerson (Seal)

State of Illinois }  
Gallatin County } SS

I James Davenport Clerk  
of the Circuit Court of Said County do  
hereby certify that the foregoing is a true and  
correct copy of the order and judgment in  
the case of Joseph B Barger for the use of  
Milton Bartley administrator of Samuel  
Seaton deceased, against Thomas G S Herod  
Edward G Colvard and Job Smith on  
an action of Debt Rendered in the Circuit  
Court of Said County on the 22<sup>nd</sup> day of  
October 1857. And of the appeal Bond filed  
in said cause on the 11<sup>th</sup> day of November  
<sup>as appears</sup> 1857, from the Records and filed in my  
said office.



In Testimony whereof I have  
hereto set my hand and affixed  
the Judicial Seal of Said Court  
at Shannettown this 11<sup>th</sup> day of  
November A D 1859

James Davenport Clerk

Clerks fee making this Record \$1.00

James Davenport Clerk

176 20.57  
20/2  
250  
Milton Bartley - Adm'r of  
Samuel Seaton

Thomas G. S. Herod.  
Edward G. Colvard &  
Job Smith.

57

Filed Nov. 16. 1859-

A. Johnson Clerk

Entered and 10 per cent  
Deduction for delay -  
In Clerk's Office - 70  
Per Book - 352

Thomas G. S. Herod  
Edward L. Colvard  
+ Job Smith } Appellants

against  
Milton Bartley adm<sup>r</sup>.  
of Samuel Seaton, deceased } Appellee  
Appeal from Gallatin

This was an action of replevin brought by Herod and Colvard against Eaton, to recover the possession of a horse. The pleas put in issue the right of the plaintiffs to the property. The cause was heard by the Court. The plaintiffs introduced the following evidence, and then closed their case, 1. A transcript from the docket of a justice of the peace, showing a judgment in favor of Hudson against Layton, and an assignment thereof to the plaintiffs. 2. An execution issued on the judgment, which was returned satisfied by the sale of a horse to the plaintiffs. 3. The constable testified, that he levied the execution on the horse in question, and allowed Layton to retain him till the day of sale; the plaintiffs purchased the horse at the sale, but the horse was not then present, nor was he in the possession of the witness. The Court, on the motion of the defendant, excluded the judgment on the ground that the justice had no jurisdiction of the parties; and then found the issues for the defendant, and rendered judgment in his favor.

We do not deem it necessary to inquire whether the Court properly excluded the judgment. Even if it was admissible in evidence, the plaintiffs were not entitled to recover. They failed to substantiate their claim of title. The sale of the horse by the constable was illegal and void. In the sale of personal property on execution, the property itself must be present. Bidders should have an opportunity of inspecting the goods, and forming an estimate of their value. This is the only way to secure fairness and

competition at public sales. It is necessary  
to protect the rights of both debtor and  
creditor. It should also be in the power  
of the officer to deliver the property  
forthwith to the purchaser. *Linnendoll v*  
*Doe*, 14 Johnson, 232. *Sheldon v Lopez*, *ibid*,  
352. *Cresson v Stout*, 17 Johnson, 116.  
*Ainsworth v Greenlee*, 3 Murphy, 470.  
*Blanton v Morrow*, 7 Redells Eq. 47.  
The judgment is affirmed.



Herrod & Bartley

opinion

great

copied by the  
Reporter.

No. 57

1859

Harrod & others  
vs

Bartley - Adm'r. U.

Appeal from Gallatin

8585

Dismissed with 10 per cent  
damages for delay -

See Record Book "B" - Page 70 for  
final order -

Cost bill on Page 352 -