

No. 173

Supreme Court of Illinois

Chancey Smith

vs.

John Adams

(379)  7

State of Illinois
Franklin County

Pleas before the Honorable Thomas B. Howard
Judge of the Circuit Court, holden for
the Circuit aforesaid in the County
of Frankfort, on the 5th day of October
in the year of our Lord one thousand
Eight hundred & Twenty seven

That whereas the said Court, on the 11th day of October
in the year 1826, came Chauncy Smith by his counsel Henry Lee and
filed in the Clerk's Office of the Court, holden for the Circuit aforesaid
his declaration in an action of Trespass, against John C. Gore John Adams
Peter Phillips and Jacob Phillips, in the words and figures following
to-wit,

State of Illinois
Franklin County

In the Circuit Court of said County March Term 1827
Chauncy Smith complains of John C. Gore John Adams Peter Phillips
and Jacob Phillips, in and to-wit, of a plea of Trespass. For that
the said defendants on the 1st day of March 1825, at the County
aforesaid with force and arms broke and entered the close of the
said plaintiff, to-wit, lying & being in the County aforesaid, and then
and there forced and broke down the fence and gate of the said
plaintiff, of great value, (to-wit,) of the value of Ten dollars, then then
entered & being in and around the said close, and with feet and
walking Troa down, trampled upon and destroyed the Grass
herbage and ground of the said close, of great value (to-wit,) of
the value of Ten dollars, and also, then and there cut down
six and four up, down (to-wit,) four thousand apple Trees five thousand
pear Trees, five thousand peach Trees, and five thousand other
young fruit Trees, then and there growing and being in the said close

of the said plaintiff of great Value (to wit) of the Value few Hundred Doll
 -ars, and took and carried away and converted and disposed them
 -of to their own use, without the leave or license and against the
 will of the said plaintiff, and did then and then greatly encumber
 the said land and hindered and prevented the said plaintiff
 from having the use benefit and enjoyment thereof, in so large
 and ample a manner as he might & otherwise could have done
 against the peace and dignity of the people of the State of Illinois
 and to the plaintiff's damage \$500

And also for that the said defendant on the said first day of
 March in the year aforesaid at the County aforesaid with force and
 arms, then and then, seized, took and carried away, from the
 said young Fruit Trees, then and then standing and growing
 in the Nursery of him the said plaintiff, of the proper goods and
 chattels of the said plaintiff of great Value, (to wit) of the Value of
 few Hundred dollars of Lawful money of the United States, then
 and then found, and being, and converted and disposed of
 the same to their own use, and other wrongs to the said plaintiff
 then and then did to the great damage of the said plaintiff &
 against the peace and dignity of the people of the State of Illinois
 wherefore the said plaintiff saith that he is injured and hath
 sustained damage to the value of few Hundred dollars and then
 -found the fees &c

Eddy P. D.

And the plaintiff sued out of the Clerk's Office of the Court holden for
 the Circuit aforesaid two Summons against the Defendants in the words
 and figures following (to wit)
 State of Illinois
 Franklin County, ss. The people of the State of Illinois to the Sheriff
 of said County, Greeting We command you to Summon John Adams
 vs. Peter Phillips and Jacob Phillips to be and appear before the
 Judges of the Circuit Court for Franklin County aforesaid on the first day

in the year 1827. 4

came the Plaintiff by his attorney and the defendants in proper
persons, and on their motions it is ordered that the said Plaintiff be continued
until the next Term of this Court, whereupon, on motion of
the said Plaintiff by his attorney, it is considered by the Court
that the said Plaintiff recover against the said Defendants
his costs by him about his suit, in this behalf expended, and
may thereof have Execution

And at the same Court, the following ^{Common} Pleas were filed, which
are as follows to wit.

Channing Smith
vs
John Good & others
And the defendants, Peter Phillips
John Adams & Jacob
Phillips comes and defends the force and injury which he
denies and for plea says they are not. Guilty in man
-ner and a found as the Plaintiff hath alleged against them
in his said declaration, and of this they put themselves
upon the Country
J. H. H. for
Defts.

And the Plaintiff doth the
like H. Cady for P[er]f.

John C. Good & others
vs
Channing Smith.
And the said defendant, Adams denies the
force and injury which he and for
plea says he is not. Guilty in manner and a found as the
Plaintiff hath declared in his declaration against him and
of this he puts himself upon the Country
J. H. H.

and the Plaintiff doth the like
Cady for P[er]f.

The People of ~~the State of~~ Illinois (5)

Franklin County. The People of the State of Illinois to any

constable of said County. Greeting We command you that
of the goods and chattels or other effects of Chauncy Smith
in your county you cause to be made the sum of Twenty
Two dollars Eighty cents. Damages the debt, and Two dollars
Twenty seven and one half cents. Costs. which do be to Good state
incurred before me in a plea of ~~plea~~ on the said and
left, and hereof make return according to Law
Witness my hand and Seal this first day of November
1824

Peter Phillips

which ^{is} Execution after ward Court, before the return
of the said Execution, and before the same time set out,
in the plaintiffs said declaration mentioned Court, on the 9
day of November 1824. at the County and Circuit aforesaid
was delivered to the defendant. Adams do being such constable
able of the County of Franklin aforesaid to be executed under
form of Law. By virtue of which said writ, afterwards
and before the return of the said writ, on the 22
of November 1824 at the same time he peaceably and
quietly entered into the close aforesaid, and there did seized
and took in Execution the said goods and chattels of the
Plff (Court.) The aforesaid Press from Press & speak Press in
the plaintiffs declaration mentioned for the purpose of
levying the money so awarded to be paid by the said Execution
aforesaid and the said defendant, did then and there
by the said goods, levy a certain sum of money to wit the sum
of \$25. 1/2 and in so doing the said Adams being such
constable, then and there respectively and unavoidably made

as little noise and disturbance and doing as little damage
to the said Plaintiff as that occasion which on the said sup-
-posed trespass in the declaration mentioned and whereof the said
Plaintiff hath complained and of this he is ready to satisfy
I Bar and for costs

At which Court (Court) At a Court. continued and held for the
purpose of said at the Courtroom of said on the 3rd day of October
in the year 1827.

This day came the Plaintiff by his Attorney and the said Defendants
Peter Phillips Jacob Phillips and John Adams, upon whom
the process has been served in this case, by their Attorney, and
the said last named Defendants having filed their several
pleas of not guilty and the said Plaintiff has demanded
that whenever a Jury come and whenever come
a Jury (Court) John Hill John Ode Martin Bowyer Thomas
Tymon Liza Nelson Moses Landon William A Roberts Peter
W. Bowyer Achilles Collins John Harris John Plasters and
Richard Reed, who being Oathed True and sworn the
truth to speak upon the Issues found upon their Oath do
say, We of the Jury find the Defendants guilty, and
assess the Plaintiff damages to one Hundred and thirty
dollars, Whereupon on motion of the said Plaintiff by
his Attorney it is considered by the Court that the said
Plaintiff recover against the said Defendants Peter
Phillips and John Adams the aforesaid sum of
one Hundred and thirty dollars the damages assessed by
the Jury aforesaid in their said Verdict, and also his
costs by him the said Plaintiff in and about his suit in this

7. being executed, and may think had Execution and the
said defendants in mercy &c.

It is remembered that previous to the trial of this cause the
defendant Adams filed his amended special plea in the
words and figures following To wit,

John Adams
vs
Chauncy Smith.

And the defendant comes and defends
the good & Injury which he says the Plaintiff
suffered his action against, and says that he maintains
brought he says on the first day of October 1824. and
Peter Phillips a Justice in and for Franklin County State of
Illinois upon an attachment in the name of John Gore
against the Catch of the goods of Chauncy Smith in the following
words To wit. State of Illinois Franklin County County. October
The first day 1824. personally came John C Gore before me
and being sworn as the Law directs. deposed & testified that
Chauncy Smith is indebted to him in the sum of one hundred and
thirty dollars and that he is so absconded that the Court
may process of Law. cannot be served on him therefore
this to any lawful Officer hereby you are hereby commanded
to, or attach to much of the goods and chattels of said
Smith as will be of value sufficient to satisfy and pay
said Gore's lawful demands and all costs. If the stuff
be found in your possession and return the same in your
hands to that you had it before me on the 15th day of this in-
stant, and make return hereof as the Law directs. Given
under my hand this day and date above written.

Peter Phillips J.P.

On which attachment. The following Judgment. was rendered on
The 2^d day of October 1894 by the aforesaid Peter Phillips Justice of
The Peace as aforesaid in favour of John B. Gow against the aforesaid
Chauncy Smith in the following words John B. Gow against
Chauncy Smith, The said Judgment. hath been rendered
in favour of the plaintiff by virtue of an attachment for the
sum of Twenty Two dollars and Eighty Three cents.

Interest. \$1. 62¹/₂ On the 1st day of November 1894. and a writ of Execution issued by
The aforesaid Peter Phillips being such Justice of the Peace as
aforesaid in the following words and figures To wit. To

Chauncy Smith.
and the said plaintiff says that the matter of
John Adams & Co
Things in the said defendants answered special plea by him
above pleaded, an act. sufficient in Law for him. The said debt
to defeat the plaintiffs action, and this he is ready to verify
wherefore He
Eddy for Plaintiff

James W. Gardner
Jep. Warden for Defts

To which the plaintiff by his attorney demurred in Law. and
the matters of Law arising upon the said demurrer both aforesaid
special plea, being argued and now by the court. has fully
understood, It was considered by the court. That the Law was with
the plaintiff and the said demurrer was sustained to the said
plea, to which opinion of the court. The said defendants. Adams
by his attorney excepts. He

Chauncy Smith.

(9)

The Verdict in the above case against the
Pete Phillips & others. Defendants. Adams was as follows That Adams
bought some in fall of the year 1824 circa off the Apple Trees
Peach Trees and the other fruit. Trees set out in the plaintiffs
declaration as the property of said Smith, Pete Phillips
because the bread, it was also proved by the witness in the
trial that S. Adams stole out and of the enclosed of the
S. Smiths at the time he cut off said property without
laying his hands on said property or touching said property
in any way, or taking possession, or exercising any owner-
ship over said property, otherwise than the taking thereof
that that he told the same by the directions and command
of Pete Phillips and that Pete Phillips and Jacob Phillips
under pretence of said sale afterwards were seen carrying
away, and did carry away the Trees from the Nursery
Given under my hand & seal this 4th day of
October 1827. Thomas C. Mearns Seal

At which Court. Court. At a Court. continued and held for the court.
opened at the Courtroom opened at the said October Term
in the year 1827. (On a motion for a new Trial)
This day came the defendants by their attorney and moved
the court for a new Trial, for the reasons set forth in the Motion
being argued and read by the Court. has fully understood, it
is the opinion of the Court that the said Motion be granted,
and that the verdict and Judgment stand &c. To which
opinion of the Court. the S. Defendants. Except. &c.

Chauncy Smith
vs
Pete Phillips & others

The defendants moved the Court to set aside
The Verdict of the Jury and grant a new
Trial in the above cause for the following reasons (to wit)

The Verdict is contrary to Evidence which motion the Court
conceded and gave as a reason that the evidence was sufficient
to support the Verdict of the Jury, To which Opinion the
Defendants by their Counsel excepts and prays their
bill of exceptions be signed sealed and made a part of
the record.

Given under my hand & seal this 4th
day of October 1827.

Thomas C. Brown *Clk*

Plaintiff's costs recoverable
of the Defendants. \$23.50 1/4

Abstracting record
2340 words 12 1/2 p
any 72 words \$4. 6 1/4
charges 50
\$4. 50 1/4

S. M. Hubbard's *clerk*

(11)

State of Illinois
Franklin County

J. M. Hubbard Clerk of the Court.
Held for the Franklin Circuit Court, appeared as certifier to
that this and the ten foregoing pages contain a true and
and complete transcript of the record and proceedings
of a certain suit lately pending in said Court, wherein John
C. Smith is Plaintiff and Peter Phillips Jacob Phillips
and John Adams is Defendants, as now ten years in my

Office

In Testimony whereof I have hereunto subscribed
my name and affixed the seal of said
Court at Frankfort this 16th day of May
1828 and of our Independence the 52^d.

J. M. Hubbard Clerk
(11)

Cherry Street

Philadelphia

Received of
M^r [unclear]
the sum of

Mr. James [unclear]

10

Ten Dollars

1829. J. M. [unclear]

John [unclear]

the Book etc

Jan^y 20. 1829

X

28006

173

State of Illinois, }
Supreme Court, } 1

The people of the state of Illinois to the
Sheriff of Franklin County greeting: —
We command you that you cause to be
made of the goods and chattels, lands, tenements,
and real estate of Peter Philips, Jacob Philips,
and John Adams, in your bailiwick, the
sum of one hundred and thirty dollars, with
interest thereon at the rate of six per centum
per annum, from the 3^d day of October
1827, until paid, which Chauncey Smith,
lately in our Supreme Court before the chief
justice and justices thereof, at Vandavia, re-
covered against them for damages, by reason
of a certain trespass committed against the said
Chauncey, with force and arms and against our
peace in your County, and also the sum of
Twenty eight dollars costs in the circuit Court
of Franklin County, and forty one dollar
and $43\frac{3}{4}$ cents costs in the Supreme Court, and of
subsequent proceedings, whereof the said Peter,
Jacob and John are convicted, as appears
to us of record, and have you the said moneys
before us, at our clerk's office of the said Supreme
Court in Vandavia, ninety days from the
date hereof, to render to the said Chauncey
his damages and costs aforesaid, and have
you then there this writ.

Witness the Hon Wm Wilson chief Justice of our
said court & the judicial seal thereof
at Vandavia, this 8th day of Jan-
uary A.D. 1833 — J. M. Duncan clk
S. W. D.

April 6, 1833 - ~~Louisiana~~ - Also
~~the property of~~ - Also
 on E. 1/2 N. E. qr. of Sec. 26, T. 5 S. R. 4 E. and E. 1/2 S. E.
 qr. of Sec. 26 same Section &c. as the property of
 Peter Phillips - Also on

Chauncey Smith
 vs.
 Peter Phillips, Jacob
 Phillips & John Adams.
 Fi. fa. No.
 Docketed -
 Came to hand on
 the 6th of April A.D.
 1833 at 12 o'clock
 J. W. Meridian
 W. B. Duncan

| | |
|---|-----------------|
| Executing | 50 |
| Advertising | 2 1/2 |
| 16 miles Travel | 1.00 |
| Sommoning 3 appraisers & Swearing them | 1 3/4 |
| 2 miles to Somon appraisers | 12 1/2 |
| | <u>2.41 1/4</u> |
| Commission on Sale | 5.20 |
| Sommoning deer to W. Eddy | 1.50 |
| | <u>9.01 1/4</u> |
| | 15.00 |

The payment on which this execution was rendered on a
 Cause of action which accrued since the 1st of July
 1825, & property must sell for what it will bring, without
 regard to the valuation.
 This execution is entitled to a writ of \$110.00 2/3 made
 on former ex. on the 31st day of Dec. 1829

W. B. Duncan

By virtue of the within writ to me
 Directed & did proceed to offer the
 the following land ~~to~~ The East
 on the 29th of April 1833. The East
 half of the north East quarter of section
 26 in T. 5. S. 4. E. and the East half of the
 South East quarter of the same
 Section, and after having the above
 said appraised it was sold to
 Jacob Phillips Sr. for one hundred
 and sixteen dollars it being the
 highest and best bid for the premises
 herein above by direction of W. Eddy
 this 29th of April 1833 W. B. Duncan