

No. 11885

Supreme Court of Illinois

Vandervoort<sup>vs</sup>.

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vs.

Beach, et al.

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71641  7

No. 9.  
James A. Vandervoort  
vs  
John Beach

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1849

11885

State of Illinois }  
Cook County } ss

Shew before the Honorable Jesse B Thomas  
one of the Justices of the Supreme Court, and presiding  
Judge of the seventh judicial Circuit Court of the State of  
Illinois of which said Circuit the County of Cook forms  
a part, at a term thereof begun and held at Chicago in  
said County on the second Monday, being the twelfth day  
of June in the year of our Lord one thousand eight hundred  
and forty eight and of the independence of the United  
States the seventy second

Present Now Jesse B Thomas Judge  
Isaac Cook Sheriff  
Jm A Boardman State Atty

Attest Samuel Heard Clerk

James A Vandervoort }  
" " } Repliee  
John Beach }

Be it remembered that hitherto  
to wit on the twenty ninth day of March A D 1848, came the  
said James A Vandervoort and filed in the office of the  
Clerk of the Circuit Court of Cook County his certain  
affidavit, which is in words and figures as follows to wit:

" State of Illinois }  
Cook County } ss Cook County Circuit Court  
Of the June Term 1848.

James A Vandervoort being  
duly sworn, says that he is now an occupant and  
in possession of a certain lot of land situated in  
Clark street in the City of Chicago in the County of  
Cook and State of Illinois, and known as the  
St. Charles Saloon, and that he is lawfully entitled  
to the possession of a certain wooden building situated

on said lot and of which said lot and building he  
has had the possession for four months last past  
That the said building has been wrongfully taken by  
me John Beach as Deputy Sheriff of said County  
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 execution or at-  
tachment against the goods and chattels of this depo-  
nent liable to Execution or attachment, And this  
deponent further states that he believes the value of  
said building to be four hundred dollars.

Sworn and Subscribed to, James A. Vanderwoort  
before me this 29<sup>th</sup> day of  
March A D 1848.

Saml Hoard CLK,

State of Illinois }  
Cook County } ss

James Vanderwoort being sworn  
says that John Beach named in the above affidavit  
and against whom a writ of Replevin founded on  
said affidavit is about to issue, is Deputy Sheriff of  
the said County of Cook

Sworn to & subscribed this } J. A. Vanderwoort  
29<sup>th</sup> day of March 1848 }

Saml Hoard CLK,

And afterwards to wit on the same day and  
year last aforesaid there issued out of said Circuit  
Court the Peoples writ of Replevin which is in  
words and figures as follows to wit,

" State of Illinois }

County of Cook } ss. The people of the State of Illinois

To the Coroner of said County, Greeting:

Whereas James Vanderwoort plaintiff complains  
that John Beach Deputy Sheriff of said County defea-

do not unlawfully and wrongfully have taken and does detain the following described goods and chattels to wit, a certain wooden building situate in Clark street in the City of Chicago in said County and State & known as the St Charles Saloon of the value of Four hundred dollars,

Therefore we command you, That if the said plaintiff shall give you bond with good and sufficient security in double the value of the said goods and chattels as required by law to prosecute his suit in this behalf to effect and without delay, and to make return of the said goods and chattels if return thereof shall be awarded, and to save and keep you harmless in replevying said goods and chattels, you cause the said goods and chattels to be replevied and delivered to the said plaintiff without delay and also that you summon the said defendant to be and appear before the Circuit Court for said County on the first day of the next term thereof, to be holden at the City of Chicago in said County in the month of June next, to answer said plaintiff in the premises, And you have then and there this writ with an endorsement thereon in what manner you have executed, the same together with the bond which you shall have taken from the said plaintiff, as before commanded before executing this writ.

Seal of Court

Witness Samuel Hoard Clerk of our said Court, and the seal thereof at Chicago in said County the twenty ninth day of March A.D. 1848.

Sam Hoard Clerk

And attached to said Replevin writ appears the following bond to wit,

"Know all men by these presents that we James Baird, root and Charles V Dyer of the County of Cook and State of Illinois are held and firmly

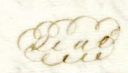
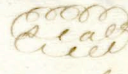
Bound unto Patrick Kelly, Coroner in and for the County of Cook and State of Illinois in the penal sum of Eight hundred dollars lawful money of the United States, for the payment of which said sum well and truly to be made to the said Isaac Cook, Sheriff aforesaid or his successors in office all and each of us do hereby bind ourselves our heirs Executors and administrators jointly and severally, Sealed with our seals and dated this 29<sup>th</sup> day of March A.D. 1848.

The condition of the above obligation is such, That whereas the said James A. Vanderroot on the twenty ninth day of March A.D. 1848, sued out of the Cook County Circuit Court a writ of Replevin against John Beach as Deputy Sheriff of said County for the recovery of the following described property to wit, a certain wooden building situate in Clarke Street in the City of Chicago, in said County and State of the value of Four hundred dollars,

Now if the said James A. Vanderroot will prosecute his suit to effect and without delay and make return of the said property, if return thereof shall be awarded and save and keep harmless the said Sheriff in replevying such property, then this obligation to be null and void otherwise to remain in full force and virtue, "the words Isaac Cook Sheriff" erased and Patrick Kelly, Coroner inserted,

Signed, Sealed and Delivered

In Presence of

J. A. Vanderroot   
Chas V. Dyer 

And on the back of said writ of Replevin, there appears the following endorsement to wit,

I have Executed the within writ by replevying the within building, and delivering it to the within Vanderroot, Also by reading the within writ

to the within named John Beach Deputy Sheriff  
this 29<sup>th</sup> day of March 1848.

J. Kelly Coroner of Cook County  
& State of Illinois

Received the within named property from J. Kelly  
Coroner Cook County, James Vandervoort,

Replevying so. service so. 2 miles 12<sup>1</sup>/<sub>2</sub> Bond 400  
Return 12<sup>1</sup>/<sub>2</sub> = \$2.25"

And afterwards to wit on the thirteenth day of  
June A.D. 1848. came the said John Beach by Isaac  
A. Arnold his attorney and files motion to dismiss this  
suit which is in the words and figures following  
to wit

John Beach Dep't Sheriff  
advs  
James Vandervoort

The debt by Arnold & Morris  
his attorney comes & moves the Court to dismiss this  
suit because the attachment is not in conformity  
with law, The affidavit is insufficient,

The Bond is insufficient,

The replevin is sued out against the Sheriff for  
property which he had taken by writ of replevin  
& was in his possession by virtue of such writ and  
for other reasons. Arnold & Morris"

And afterwards to wit on the said thirteenth  
day of June it being one of the days of the June  
term of said court A.D. 1848. the following among other  
proceedings were had to wit.

James Vandervoort  
vs  
John Beach

Replevin

This day comes the defendant  
by Arnold his attorney and moves the Court to dis-  
miss this cause for want of a plaintiff and after hearing

the arguments of Counsel on said motion the Court takes the matter under advisement."

And afterwards to wit on the twenty second day of June in the year last aforesaid and as yet of the said June term of said court the following among other proceedings were had, to wit:

James A. Vandervoort }  
as } Replied  
John Beach }

This day again come the parties by their attorneys, and thereupon it is Ordered by the Court, that the motion to dismiss heretofore entered be overruled, thereupon the defendant moves that the said plaintiff be ruled to file his declaration hereunto-morrow morning which is granted.

And afterwards to wit on the twenty third day of June in the year last aforesaid comes the said plaintiff by Ballingall & M<sup>r</sup> Derry his attorney and files his declaration herein which is in words and figures as follows to wit.

"State of Illinois }  
Cook County } vs. Cook Ct. Court June Term  
1848.

James A. Vandervoort plaintiff in this suit by M<sup>r</sup> Dougall and Ballingall his attorney complains of John Beach defendant, who was summoned to answer the said Vandervoort of a plea wherefore he unlawfully took a certain wooden building situated on a certain lot of land in Clark street in the City of Chicago, County of Cook and State of Illinois which said building is known as the St Charles Saloon the property of the said Vandervoort and unjustly detained the same against securities and pledges until &c and thereupon the said James A. Vandervoort complains.

for that the said defendant on the twenty ninth day  
of March in the year of our Lord one thousand eight  
hundred and forty eight at the County of Cook in the  
State of Illinois a certain wooden building known as  
the Saint Charles Saloon situated on a certain lot  
of land in Clarke street in the City of Chicago  
in said County, then and there wrongfully took  
which said building was then and there the property  
of the said plaintiff and of great value to wit, of  
the value of four hundred Dollars and unjustly  
detained the same against sureties and pledges  
until &c. Wherefore, the said plaintiff saith he is  
injured and hath sustained damage to the am-  
ount of Fifty Dollars.

McDougal & Ballingall

for Plff."

And, afterwards to wit on the same day and  
year last aforesaid to wit on the 23<sup>rd</sup> day of June 1848,  
came the said plaintiff and filed his certain affidavit  
for a continuance which is in words and figures as  
follows to wit

State of Illinois

Cook County } ss. Cook County Circuit Court,  
June Term A. D. 1848.

Vandervoort

vs

Beach

} Oath of Vandervoort being duly  
sworn says that he cannot safely proceed to the trial  
of this cause at the present time in consequence of  
the absence of Solomon Schutter who is a resident  
of the State of Michigan and is a material wit-  
ness for this defendant, in the above cause, defendant  
expects to prove by said Schutter that one Oliver W  
McNisow a colored man was the owner of the build-  
ing mentioned in the affidavit, and declaration



in said cause, and sold the same to the said plaintiff  
in the month of December A.D. 1847, for the sum of four  
hundred dollars. And this deponent further says  
that he believes he cannot procure the testimony of said  
witness at this time of the Court, and cannot prove the  
same facts as well by any other witness

James A. Vanderroot,

State of Illinois }  
Cook County } ss.

James A. Vanderroot being duly sworn  
says that the facts set forth in the above affidavit are true,  
Subscribed & sworn to before }  
me this 23<sup>d</sup> day of June 1848. } James A. Vanderroot,  
Sam. Hoard Clerk,

And afterwards to wit on the same day and year  
last aforesaid came the said defendant by Arnold  
his attorney and files his plea which are in  
words and figures as follows to wit,

John Beach  
vs  
James A. Vanderroot }

And the said John Beach defend  
ant by Arnold his attorney comes and defends  
the wrong and injury when &c, and says that he  
did take the goods and chattels in the said dec  
laration mentioned as he lawfully might, because  
he says that at the said time when &c to wit on  
the 29<sup>th</sup> day of March A.D. 1848, to wit at Chicago in  
said County of Cook, Isaac Cook was Sheriff of Cook  
County, and this defendant deputy sheriff of said  
County of Cook, and said defendant avers that  
therefrom to wit on the 28<sup>th</sup> day of March 1848,  
to wit at Cook County aforesaid a certain writ  
of Replevin had been duly issued from the

office of the Clerk of the Cook County Court, bearing date on the day last aforesaid in which one Jonathan W. Steele was plaintiff & the said defendant James Vandervoort and John Smith were defendants, directed to the Sheriff of said County of Cook, where in after reciting to the effect following to wit:—  
Whereas Jonathan W. Steele plaintiff complains that James Vandervoort and John Smith defendants unlawfully and wrongfully detain the following described goods and chattels to wit: the whole of one story and a half frame building formerly divided into two stores or shops and known as the St. Charles saloon being in the East Side of Clarke Street, about twenty five feet south of the alley dividing block 1<sup>st</sup> of original town of Chicago of the value of Four hundred dollars," and in which the said Sheriff was commanded that if said plaintiff shall give you bond with good and sufficient security in double the value of the said goods and chattels as required by law, to prosecute his suit in that behalf to effect and without delay and to make return of the said goods and chattels if return thereof shall be awarded, and to save and keep you harmless in repliving said goods and chattels <sup>that he cause the said goods and chattels</sup> to be replivied and delivered to the said plaintiff without delay & also that he summon the said defendant, to be and appear before the Cook Co. Court, of said County, on the first day of the next term thereof to be holden at the City of Chicago in said County on the 1<sup>st</sup> Monday of May next to answer said plaintiff in the premises and you have then and there this writ with an endorsement thereon in what manner you have executed the same, together,

with the bond which you shall have taken from the said plaintiff as before commanded before executing this writ, which said building the defect aforesaid is the same mentioned in the declaration in this case and afterwards to wit on the day and year and at the place aforesaid, the said writ came to the hands of the said defendant to be executed, and the said Jonathan Steele having given bond according to the exigency of said writ the defendant then and there by virtue of said writ of replevin to wit on the 29<sup>th</sup> day of March 1848, at Chicago in said County did take the property in the plaintiffs declaration mentioned as commanded in said writ and as he lawfully might which is the same taking in said plaintiffs declaration mentioned which the said defendant is ready to verify wherefore he pray judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against him he prays also for a return of this said goods and chattels with his costs, &c.

Arnold for Deft.

And afterwards to wit on the twenty sixth day of June A.D. 1848, came the said plaintiff by McDougall & Ballingall his attorneys and filed his demurrer to said defendants plea which is in words and figures as follows to wit:

Vandervoort

vs

Replevin

And the said Plaintiff says that the matter and things in the said plea of the said defendant, as they are therein pleaded and set forth are not sufficient in law to bar the said plaintiff from having and maintaining his said action, and this he is ready to verify

Therefore &c &c he prays judgment &c &c.

Mc Dougall & Ballingall for Plff.

And the plaintiffs say said plea is sufficient & prays judgment as therein prayed.

Arnold for Defs.

And afterwards to wit on the same day and year last aforesaid and as yet of the said June term of the said Circuit Court the following among other proceedings were had to wit.

James A Vanderrook

vs

John Beach

} Replevin

This day again came the parties by their attorneys and after argument had upon the <sup>demurrer to</sup> the defendants pleas it is Ordered that the same be overruled.

And afterwards to wit on the twenty eighth day of June in the year aforesaid and as yet of this same term the following among other proceedings were had to wit:

James A Vanderrook

vs

John Beach

} Replevin

This day again came the parties by their attorneys and after argument had herein it is Ordered by the Court that the plea as pleaded by the defendant in manner and form aforesaid and the matters and things therein contained are sufficient in law to bar the said plaintiff from having or maintaining his action against the said defendant. Therefore it is considered that the said defendant recover of the said plaintiff one cent damages and his costs herein and have return of the property replevied herein. The said plaintiff thereupon prays an appeal herein.

which is granted upon his entering into bond in the sum of Eight hundred dollars with Charles V Dyer or James Carney as his security within fifteen days from the date hereof

And afterwards to wit on the tenth day of July in the year last aforesaid came the said James Vandervoort and files his appeal bond herein which is in words and figures as follows to wit;

Know all men by these presents that we James Vandervoort, Charles V Dyer and Thomas Lonergan are held and firmly bound unto John Beach of the County of Cook and State of Illinois in the penal sum of Eight hundred dollars lawful money of the United States, for the payment of which said sum well and truly to be made we bind ourselves our heirs Executors and administrators jointly and severally firmly by these presents

Witness our hands and seals, this tenth day of July A.D. 1848.

The condition of this obligation is such, That whereas at the same term of said Court in the year of our Lord one thousand eight hundred and forty eight the said John Beach recovered a judgment against the above bounden James Vandervoort for one Cent damages and costs in a certain action of replevin then and there determined from which Judgment of the said Circuit Court the said James Vandervoort prayed an appeal to the Supreme Court of the State of Illinois which was granted upon his entering into bond in the penal sum of eight hundred dollars within fifteen days, with Charles V Dyer or James Carney as security, Now if the said James Vandervoort shall prosecute his said appeal with effect, or pay whatever Judgment interest costs and damages may be awarded against him in said Supreme Court, in case the said judgment shall be affirmed then this obliga-

tion to be void otherwise to be and remain in full  
force and effect.

Taken and entered into before  
me this 10<sup>th</sup> day of July  
1848. Saml Hoard Clk

James Alexander }  
Chas V. Dyer }  
Thomas Lomergan }  
Clk

State of Illinois }  
County of Cook } ss

I Samuel Hoard, Clerk of the  
Circuit Court in and for the County of Cook and State  
of Illinois do hereby certify the foregoing to be a full  
true and perfect transcript of the records and proceed-  
ings in said Court in the above entitled cause,

In testimony whereof I have hereunto  
set my hand and affixed the seal  
of said Court at Chicago in said County  
this 29<sup>th</sup> day of July 1848.

Saml Hoard Clk

Fees for this transcript.

\$6.50.

Supreme Court

James Vandervoort

Appeal from Circuit

John Beach

And now comes the said plaintiff  
 and says that in the record and  
 proceedings in this case there is manifest error; in this  
 to wit: The court below erred in admitting the demurrer  
 to a plea pleaded, & giving judgment in said demurrer  
 for which said error as well as for divers other errors manifest  
 on the face of the record said plaintiff prays ~~that~~ the said  
 in this case be reversed so

Wm. Bayless Pallingall  
for plaintiff

9  
Cook Co. Circuit Court

James A. Vandervoort

VERSUS

John Beach.

Terms of Record

Filed July 6, 1849.  
William C. Cook, Clerk.