

No. 11921

Supreme Court of Illinois

Ring, et al

vs.

Ramsay

71641  7

John King & al

vs

Addison Ramsey
Sheriff of New Castle

Plaintiff in Error

Defendant in Error

In Supreme Court Ill
3^d Grand Division

And now come the said plaintiffs in
Error by their Attornies Attkel Minnema
and Seely that the Records and proceedings
and in the rendition of the judgments
aforesaid there is manifest Error in
this Court

1st That the Circuit Court erred in sustaining
the demurrers ^{severally & not jointly} to the said several pleas
and amended pleas filed in said
Court by said plaintiffs in Error,

2^d In admitting the evidence of
defendant in Error which was
objected to by plaintiffs in Error,

3^d In overruling the motion of plaintiffs in
Error for judgment on said third plea
of plaintiffs in Error,

4th In refusing admission of evidence
offered by plaintiffs in Error ~~the~~
~~jury & the judge.~~

5th In overruling motion of plaintiffs in Error
for a new trial ^{motion} & a new arrest of judgments

There is no finding of the
Court below on the plea of
Sole Record, and the Court below
ought to have made judgment
not being disposed of.

In rendering judgment in favor of
defendant in Error,
Court said in rendering
The judgment is against defendants, not found, and
did not appear
Wherefore they pray that the said
judgment may be set aside reversed
and wholly for nothing returned

It Or a L. Morrison
for Plaintiffs in Error

And the def. in Error says, that in the record
& proceedings aforesaid, there is no such error
in the record & proceedings aforesaid as is above
by the Opp. in error alleged - Def. therefore prays
that the said judgment, may be in all things
affirmed do - By Peter & Henry

A Record of the Orders, Decrees, Judgments & Proceedings of the Honorable Circuit Court of Marshall County, Illinois, begun & held at the Court House, in the town of Tacon, on the fifth Monday, the twenty ninth day of October, A.D. 1849.

The Hon. S. S. Sickey, Judge of the 9th Judicial Circuit presiding. Also, of April Term A.D. 1830.

Addison Ramsey }
Sheriff of Marshall Co. Ill. }

vs.

Debt on T. Plein Bond.

Richard Vincere

John King

Aaron R. Bunnell

John Gortz &

A. D. East

On the 8th day of Aug. 1849.
The following Summons issued.

State of Illinois, ss.
Marshall County, The people of the State of Illinois,
To the Sheriff of said County, Greeting;

We Command you to summon Aaron R. Bunnell, John King, John Gortz, Kirtledge D. East & Richard Vincere, if to be found in your County, personally to be & appear before the Circuit Court of said County, on the first day of the next Term thereof, to be holden at the Court house, in Tacon, on the twenty ninth day, in the month of October next, to answer to Addison Ramsey, late Sheriff of Marshall Co. Ills. in a plea of Debt for the sum of Eight Hundred Dollars, & Damages Eight Hundred Dollars, as he saith. And have you then true this writ, and make return in what manner you execute the same. Witnesses, John Bunnell

Clerk of our said Circuit Court at Green
this eighth day of August 1849.

Seal

John Burns, Clerk,
Served the within writ by reading the same
to the within named Richard Vincene, on the
9th day of August 1849. Others named Defend-
=ants not found in my county. October the 26. 1849.
Service 30 Milage 6 1/4 Return 1 Sp. to 8 3/4

Henry S. Gosan Sheriff of M. Co.

State of Illinois }
Marshall County }

The people of the State of Illinois,
To the Sheriff of Peoria County - Greeting:

We command you to Summon against R. Bunnell, John
King, John Gentry, Pittbridge & East Richard Vincene,
if they can be found in your county, to be and appear
before the Circuit Court of said County, on the first day
of the next Term thereof, to be holden at Green in
the County of Marshall aforesaid, on the Seventy ninth
day of October next, to answer to Addison Ramsey,
late Sheriff of Marshall County, Illinois, in a plea
of Debt for the sum of Eight Hundred Dollars -
Damages Eight hundred Dollars, as he saith, and
of this writ make legal service and due return,
at the time & place aforesaid. Witness,

John Burns, Clerk of our
said Court, at Green, this
Eighth day of August 1849, the
Seal of said Court being hereunto
affixed

Seal

State of Illinois }
Peoria County }
The said Bunnell, Gentry & Vincene is not found in my County.
Service \$ 100
Milage 124
etc 124 \$ 248
the said John King & Pittbridge & East Aug 27th 1849.
William Compher Sheriff P. Co.
By C. V. Smith Deputy

State of Illinois Of the October Term
Marshall County 3 of the Circuit Court for said
County, 1847.

John King, Aaron R. Burnell, John Gorty,
Kittidige D. East & Richard Vincove, are sum-
-sioned to answer to Addison Ramsey, late
Sheriff of ^{the County of} Marshall aforesaid, in a plea that
he render to the said Addison Ramsey, the
sum of Eight Hundred dollars which they
owe to & unjustly detain from the said
Ramsey, for that whereas, heretofore, to wit:
On the eighth day of March, in the year of our
Lord eighteen hundred & forty seven, at
the County of Marshall, aforesaid, the said
Defendants by their Bond, or writing oblig-
-atory of that date, & sealed with their re-
-spective seals, and now shown to the Court
here, did acknowledge themselves to be held
& firmly bound unto the said Addison
Ramsey, so then being Sheriff of the said
County of Marshall, in the sum of eight
hundred dollars above demanded, to
be paid to the said Addison Ramsey, or his
assigns, which bond was with a condi-
-tion thereunder written, that whereas
Aaron R. Burnell, Benjamin F. Hardaway,
John King, John Gorty, Brian C. Andrews,
Casper Moore, Morris Cadwallader, Marshall
T. Griffin, Caleb Howard, Oscar F. Hunter,
David H. Deshley, William L. Sullivan, Daniel
Talmadge, have commenced an action of
Replein against Daniel McRobertson, in the
Circuit Court of Marshall County Illinois
for the wrongfully taking & wrongfully taking

retaining the following Coaches & Chaises to wit
eight Coaches & eight Chaises, lately used
in the Mail Stage business of O. Hinton & Co. of the
value of four thousand dollars. Now if the said
Aaron S. Russell, Haddock, King, Gortz, An-
-drews, Moore, Leadwallader, Giffins, Howard, Hin-
-ton, Oeshler, Sullivan, & Salnadge, the Plaintiffs,
(Plaintiffs in said Replein suit meaning,) in said
action, shall prosecute said suit to effect,
and without delay, and make return of
said property, if return thereof shall be a-
-warded, and save, and keep harmless, the
said Sheriff, in Repleying such property, then
the said bond to be void, & otherwise to remain
in full force & virtue. And the ~~plaintiff~~ plaintiff
further avers, that the action, or suit of
Replein, mentioned & referred to in the con-
-dition of said bond, was duly entered in
said Circuit Court, at the March Term thereof,
in the year of our Lord eighteen hundred and
forty seven; and such proceedings were there-
-after had in said court, that said cause was
continued from time to time, till the March
Term ^{of said court 1848} 1848. — And at said March Term 1848,
such further proceedings were had in said court
that, issue being joined by the parties on said
suit of Replein, the said issue was tried by a
jury, & a verdict was rendered in to said court
for the defendant, the said Roberts; and
thereupon it was considered by the said court,
that the said plaintiffs in Replein taking nothing
by their said writ of Replein; and it was
then and there, further ordered by the said
court, that the said plaintiffs in Replein

make return of the property in the plaint
& writ, in said writ of Replevin described, to the
said Defendant Robertson - by them Replevied - &
that a writ of Returns Habendas be awarded
therefor: And it was then & there further or-
-dered by the said Court, that the said Defendants
Robertson, recover of the Plffs. his costs & charges
by him about his defence in this behalf ex-
-pended; and have execution therefore - as by
the record in said Court remaining, will
more fully and at large appear. And the
said Addison Ramsey, for the cause that the
said Obligees of said Bond did not, & have not
paid the said sum of eight hundred dollars,
or any part thereof to the said Ramsey, or his as-
-signs, or to any person for him or them; and
that the said Plffs. in Replevin, did not prosecute
said action of Replevin to effect, & without de-
-lay; and though the said Circuit Court did
render the judgment & order the return of
the said property, as aforesaid, and the writ
of Returns Habendo was duly issued, directed
to the Sheriff of said County, commanding him
that he cause said property, so replevied as a-
-foresaid, to be returned to said Deft. Robertson,
yet the said plaintiffs in said action of Re-
-plevin, did not make return of said property
so by them Replevied, to said Robertson, or any
part thereof - And the said Obligees did not,
have not, & would not keep the said Plff. herein
Addison Ramsey, late Sheriff, as aforesaid, harm-
-less in replevying the said property.
And for further assignment of breaches, said
Plff. Addison Ramsey says that the said Plffs.

in said action of Replevin, did not make
a return of the said property, or any part
thereof, according, according to the form and
effect of the said condition of the said writing
obligatory; but have wholly, hitherto, neglected
& refused, & still wholly neglect & refuse, so
to do, whereby the said writing obligatory
became forfeited to the said Addison Ramsey,
so then being Sheriff of the said County of
Marshall aforesaid. And the same being
so forfeited, an action hath accrued thereon
to the Plff. the said Ramsey, to have & recover the
said sum of money above demanded; &
yet though requested, the said Defts. have not
paid the same, but detain it, to the damage
of the said Plff. the sum of eight hundred dol-
lars; and therefore he sues &c.

By his Cttys. Peter Ramsey,

~~State of Illinois, ss.
Marshall County, Clerk's Office Circuit Court.
I hereby certify that the foregoing is a true
copy of the Record in my office in the
above cause. Witness my hand and the
Seal of said Court, this 17th
day of June A.D. 1830.~~

~~John Burns, Clerk.~~

And on the 31st day of October A.D. 1849, the following proceedings were had in said Court touching said cause, to wit: -

Addison Ramsey }
Sheriff of Marshall County }
vs } Debt on Replevin Bond.

Richard Vincene, John King }
Aaron R. Bunnell, John Gutz }
& Pittsburg, D. East } This day comes the parties
& the Plaintiff Demurs to
the second, third, fourth, fifth, sixth & seventh Pleas
of Defendants herein; which Demurrer is sustained.

Whereupon Defendants abide by second Plea & ask
leave to amend third, fourth, fifth, sixth & seventh
pleas, which is granted; and it is ordered
that said pleas be amended by the first of January
next, & a copy furnished Plaintiff's Counsel; and
this cause is continued at the costs of the Defendants.

On the 24th of Decr. 1849 the following Pleas,
amended were filed in this office.

Addison Ramsey }
Sheriff of } Marshall County Circuit Court.
vs }
John King, et al } April Term A.D. 1850.

And said Defendants, King, East & Vincene,
by Powell & Peters*, their Attorneys, come and
defend the wrong &c., and crave eyes of the said
Bond, or writing obligatory, in said Declaration
mentioned, which is in the words & figures fol-
lowing, to wit: Know all men by these presents,
that we John King, Aaron R. Bunnell, & John
Gutz, by Holsey & Merriman his Attorney in
fact, & D. East & Richard Vincene, are held and
firmly bound unto Addison Ramsey, Sheriff of

of Marshall County Illinois, in the Penal sum
of Eight thousand Dollars, to be paid to the said
Addison Ramsey this assigns, we bind our-
selves, our heirs, executors & administrators, firmly
by these presents. Witness Our hands & seals this
5th day of March A.D. 1847. The condition of
the above obligation is such, that, whereas
Carron R. Bunnell, Benjamin F. Waddocks, John
King, John Yosty, Hiram G. Andrews, Greeny
Moore, Morris Cadwallader, Marshall Griffin,
Caleb Howard, Oscar S. Hinton, David N. Deshon,
William S. Sullivan, Oarias Salmadge, have
commenced an action of Replevin against
Daniel M. Robertson, in the Circuit Court of
Marshall County Illinois, for the wrongfully
taking & wrongfully detaining the following goods
& chattels, to wit, eight horses & eight harnesses
Of O. Hinton Esq. of the value of four thousand
Dollars. Now if the said Carron R. Bunnell, Wad-
docks, King, Yosty, Andrews, Moore, Cad-
wallader, Griffin, Howard, Hinton, Deshler,
Sullivan & Salmadge, the said Plaintiffs in said
action, shall prosecute said suit to effect without
delay, and make return of said property, if return
thereof shall be awarded; and save & keep harm-
less the said Sheriff in Replevying said property,
then this Bond to be void, otherwise to remain
in full force & virtue.

John King Seal
A. R. Bunnell Seal
John Yosty Seal
By A. C. Merriman, Justice, in fact,
Hethridge East Seal
Richard Veneer Seal

And which, being Read & heard, said Defendants say, that the said Bond, or writing obligatory is not their Deed, and of this they put themselves upon the Country &c. And Plffs. Doth the like &c.

1 And for further Plea in this behalf, said Defendants King, East & Vincere, by leave of the Court for that purpose, first had & obtained, say Actio Non, because, together with the other Defendants, they say they, together with the other of said Defendants, do not owe the said Plaintiff the said Sum of Eight hundred Dollars, or any part thereof, in manner & form as said Plaintiff has above thereof complained against them, and for this they put themselves upon the Country &c.

2 And for further plea in this behalf, said Defendants King, East and Vincere, by leave of the Court for that purpose first had and obtained, say Actio Non, because they say that there is no such record of the said supposed proceedings, Verdict & Judgment of said ^{Circuit} Court of Marshall County in the State of Illinois, in manner & form as alleged in said Declaration, and this, these Defendants pray maybe enquired of by the Court.

Addison Ramsey } Marshall Circuit Court -
John King & others } Vacation after Oct. Term
1849. Amended Pleas

3 And for a further Plea in this behalf, by leave of the Court first had & obtained, said Defendants East, King & Vincere, as to that portion of the assignment of breaches which says that the Plaintiffs

in said Replein, did not return said horses
in said Declaration mentioned, say actio non,
because they say that this suit was brought on a
Replein Bond given (if at all) by said defendants
to said plaintiff as Sheriff of the County of Marshall
to indemnify him in executing a certain writ
of Replein, issued from the Circuit Court of said
County of Marshall, in a certain cause wherein
Aaron R. Bunnell, Benjamin Haddock, John King,
John Yonty, Hiram Andrews, Emery Moore, Morris
Cadwallader, Marshall S. Griffin, Caleb Howard, Oscar
H. Hinton, David H. Deshler, William S. Sullivan & David
Salvadge were Plaintiffs & Daniel M. Robertson
was Defendant, and said Defendants further aver that
the said property in the said Bond described, was,
at the time of such Replevy, the property of the
Plaintiffs in said Replevy suit, and which was Reple-
-ied, in said Replein suit, was, at the time of such
-plevy, the property of the plaintiffs in said Re-
-plein suit; and that the merits of the case, have
not been fully determined in the trial of said
action of Replein, in which said Bond was
given, and this the said Defendants are ready
to verify, wherefore, they pray judgment &c.,
H. O. H. S. Merriman,
Attys. for Defts.

5 And for a further Plea in this behalf, said Carl
King Winslow, by leave of the Court first had & obtained,
say actio non, as to that portion of the assignment of
-plein suit did not return said property in said
Declaration mentioned, because they say that
this suit was brought on a Replein bond given
(if at all), by said Defendants to said Plaintiff as

Sheriff of said County of Marshall, to indemnify
him in executing a certain writ of Replein issued
from the Circuit Court of said County of Marshall,
wherein Aaron R. Bumell & others were Plaintiffs,
& Daniel M. Robertson was Defendant, and said
Defendants aver that the horses in said Bond
mentioned & Repleined in said suit, after the same
were repleined, & before judgment of Retains Habendo
was rendered in said cause, became deceased, &
died without the fault or negligence of said Plain-
-tiffs in said Replein suit, and purely by the
act of God. And Defendants aver as to the
remainders of said property, so Repleined, the
same was the property of said plaintiffs in said
Replein suit, at the time of such Replein, as
aforesaid, and that the merits of the case have
not been determined in the trial of the action
of Replein in which said Bond was given, and
this, said Defendants are ready to verify, where-
-fore they pray judgment &c.

~~Stricken out by Defts.~~

H. C. H. S. Merriman
Defendants' Attys

And for a further plea in this behalf, said
Defendants Carl King & Vincens, by leave of the court
for that purpose first had & obtained, say action
as to so much of said assignment of Breaches as
alleges that said plaintiffs in said Replein suit
did not return said property, because they say
that the said writing obligatory, in said Decla-
-ration mentioned, was given by said Defendants
to said plaintiff, as Sheriff of said County of
Marshall to indemnify said Sheriff in executing
a certain writ of Replein in said Bond and
Declaration described, in which said Replein

Suit Daniel M. Robertson, was Defendant, & said
Defendants Carl King Vincero, further aver that
at the time of the execution of said Replein Suit,
and at the time of the execution of said Replein
Bond, said Robertson had & held possession of said
property in said Declaration described, by virtue
of several writs of Attachment issued, one at
the suit of James Derby, one at the suit of Philip
J. Mosher, one at the suit of Charles C. Capen, one
at the suit of James R. Williamson, one at the suit
of John Haugh, one in favor of Samuel Haugh, one in
favor of Gaber Fisher, James H. Baldwin, James G.
Fisher, & William Fisher, and all against Otto
Hinton, Francis Cluggage, & Sylvester Root, con-
- posing the firm of O. Hinton & Company, which
said several writs of Attachment were issued
on the thirteenth day of February A.D. 1847, by one
George Snyder, a Justice of the peace of said County, &
delivered to said Robertson (he being then & there, a
Constable of said County) to execute, and by vir-
- tue of which said several writs of Attachment,
said Robertson, afterwards, to wit; on the day and
year last aforesaid, as such Constable, seized and
levied upon said property in said Declaration
mentioned, and at the time of the execution of said
Bond, held & retained said property to satisfy said
several attachments and costs &c., and for no other
purpose whatever. And said Defendants, Carl, King
& Vincero, further aver, that on the tenth day of
February A.D. 1847; said Hinton, Cluggage & Root, were
the owners of said property, and on that day, at
Saint Louis, that is to say - at the County of Marshall
aforesaid, said Hinton, Cluggage & Root, sold & con-
- veyed said property to plain Deffs in said Replein

Suit, except Benjamin S. Haddock, and Severett B. Stowe, and said Stowe, on the 10th day of February, A.D. 1847, sold & conveyed his interest therein to said Haddock, by means whereof, said Plaintiffs in said Replein Suit, became the owners of said property Repleved, and at the time of the levying said several writs of Attachment, were the owners of said property so Repleved as aforesaid, of all which, all of said Attaching Creditors, excepting said Denby, had notice previous to the levying said several writs of Attachment, and that the Verdict of said Replein Suit, was not, as to any of said Attaching Creditors, except said Denby, tried & determined in said Replein Suit. And this, said Defendants, Carl King & Vincene, are ready to verify - wherefore, they pray judgment &c.

W.C. H. S. Murrinan

On the 16th day of April A.D. 1830, the following, Endorsed "Amended 3rd & 6th Pleas & 8th Plea" was filed in this office.

Addison Ramsey, late 2 Marshall Circuit
 Sheriff of the County of Marshall 2 Court, April
 Term 1830.
 John King & others 3

And said Defendants, Vincene, King & Carl, for further plea in this behalf, as to the said portion of the assignment of Breach as in said Declaration, which avers that the said Defendants which avers that the said Defendants did not make return of said property &c. Actio non, except the sum of \$275

Hereinafter stated as due to James B. Denby,
because they say that the said action of Replein
described in said Declaration mentioned, was
brought & prosecuted for the recovery of the pos-
- session of the property in said Declaration men-
- tioned against Said Robertson, &
the said Defendants aver that said Robertson,
then & there, to wit, at the time of the commence-
- ment of said Replein suit, at the County of
Marshall aforesaid, being an acting Constable
of said County, had & held possession of said
property, as such Constable, by virtue of
several writs of Attachment, one of which was
in favor of James B. Denby, issued by George
Snyder, a Justice of the Peace of said County, for
the sum of \$8, 73, another in favor of Philip
J. Mosher for the sum of \$49. 64, - an other in
favor of Charles C. Capier for \$3, 88 - an other in
favor of James W. Williamson for the sum of \$10, 95
an other in favor of John Haugh for the sum of
\$70. 00 - an other in favor of Samuel Haugh for
the sum of \$70. 00, and an other in favor of Jabez
Fisher, James M. Baldwin, James E. Fisher and
William Fisher, of the firm of William Fisher & Co.
in the sum of \$20. 00, all of which several writs
of Attachment were issued by said Justice of the
Peace, and against Otho Hinton, Francis Cuyage,
and Sylvester Root, late partners under the firm
of Otho Hinton & Co. And said Defendants
further aver, that the Issues tried & determined
in said Replein suit, only determined the right
of said property, as between said plaintiffs in said
Replein suit, & said Robertson, as to his right to
retain said property to satisfy one of said attach-
-ments

as by the Recorded proceedings, in said Replevin
suit, in the said Circuit Court of Marshall Coun-
-ty, and in the Supreme Court of the State of
Illinois will more fully & at large appear,
which one was in favor of said Debby, and the
right of said property, as to all of the said At-
-taching Creditors, except said Debby, the right
of said property was not tried or determined
in said Replevin suit - and said defendant
further avers, that as to all of said Attaching
creditors of Otho Horton, except said Debby,
said Plaintiffs in said Replevin suit, were
the owners of said property in said Declaration
mentioned to wit, at the time of the levy of said
several ~~and~~ Attachments, at the County of
Marshall aforesaid, and said Robertson
then & there took & held said property law-
-fully for the purpose of satisfying said
Attachment in favor of said Debby, and
for no other purpose whatever, and this,
the said Defendants are ready to verify;
wherefore they pray Judgment of that portion
of said assignment of Breaches in the in-
-troductory part of this Plea mentioned &c.

Rwell Merriman for
Otho King, Carl & Vincens,

And said Defendants, Carl, King & Vincens,
by leave of the Court for that purpose, first
had & obtained, say, as to so much of said
assignment of Breaches as alleges that
said Defendants did not return said property,
say actio non, because they say that the

Defendants in said suit of Replevin, in said Declaration mentioned, at the time of the issuing & service of said writs of Replevin - to wit - at the County of Marshall aforesaid, claimed to hold & possess said property in said Declaration mentioned, only as a Constable of said County, under & by virtue of certain writs of Attachment issued by one George Sawyer, a Justice of the Peace of said County, issued on the 4th day of February A.D. 1847, one in favor of James B. Deuby, for the sum of \$20.75 and others in favor of Philip J. Musher for \$49.64 - another in favor of Charles C. Capin for \$23.88 - and others in favor of James H. Williamson for \$10.25 - and other in favor of John Haugh for \$70.00, and others in favor of Samuel Haugh for \$70.00 - and others in favor of Jabez Fisher, James Baldwin, James S. Fisher & William Fisher for \$20.00, and all against Otho Hinton, Francis Duggageau, Sylvester Root, late partners in trade under the firm & style of Otho Hinton & Co. And these Defendants further aver, that the said Issues found & tried, and the verdict & judgment in said Replevin suit, did not determine the right ~~of~~ to said property, or the merits of said Replevin suit, as to any except one of said plaintiffs in said several Attachments, as by the Records & proceedings in said Court, and in the Supreme Court of the said State still remaining will ~~more~~ fully & at large appear. And said Defendants further aver, that the said proceedings, Issues, verdict & judgment in said Replevin suit only determined the right of said property or the merits

of said Replein suit, against the
Plaintiffs therein, as to said James B. Derby
by virtue of his said writ of attachment,
and not as to the others of said plaintiffs
in said several attachments; and these
Defendants further aver, that at the
time ^{of their issuing} of said several writs of
Attachment, and at the time of ^{the} issuing
& service of said writ of Replein, said
Plaintiffs were the owners of, and en-
-titled to the possession of said property
in said Declaration in this, & said writ of
Replein mentioned, as against all of said
plaintiffs in said writs of Attachment,
except as to said James B. Derby, to wit,
at the County of Marshall aforesaid,
and these Defendants further aver,
that said defendants in said Re-
-plein suit, then & there, held and re-
-tained said property lawfully, only
for the purpose of satisfying the a-
-mount due said Derby in his said
writ of Attachment, and interest and
costs thereon. And these Defendants
further aver, that previous to the
Commencement of this suit & after
the said judgment in said Replein
suit, at Lewis, that is to say, at
the County of Marshall aforesaid, the
said Plaintiffs in said Replein
suit, fully paid and satisfied to
said James B. Derby, the full
amount of his said debt, interest
& costs upon which said writ of

Attachment in his favor was issued,
and under which said Defendant in
said Replein Suit detained said
property, as aforesaid, and which pay-
ment, said Debby then & there received
in full satisfaction of his said Debt,
interest & costs. And this, the said
Defendants Carl, King & Wineore, are
ready to verify, wherefore they pray
Judgment of the said supposed Breach
in the introductory part of this plea
mentioned &c.

Powell & Merriman
for Defts, Carl, King & Wineore

8- And for further plea in this behalf,
as to that portion of the assignment of
Breaches of said Writing Obligatory,
in said Declaration mentioned, and which
alleges that said Defendants in said
Replein Suit, did not return said prop-
erty &c, said King, Carl & Wineore say
actio non, because they say, that the
supposed Judgment, order or award of
the said Circuit Court of the said
County of Marshall, in said Replein
Suit, awarding a return of said prop-
erty, although made, is void and wholly
inoperative, not having been prayed
for by said Defendant in said Replein
Suit, in his plea therein - said Court
had no power or authority to render
such Judgment, or make such
order or award, as more fully

appear by the record, Pleadings, and proceedings in said Replevin suit still remaining in said Court, and this the said Defendants, Carl, King & Wincon pray may be enquired of by the Court and pray Judgment &c.

Powell Merriam
for Defts. Carl, King & Wincon.

Whereupon, the Plff's Counsel file the following Demurrer - to wit

Ramsey } Marshall et. al. April 5/30
vs } And the said plff says that
King et al } he ought not to be barred
or precluded from having & maintaining
his action aforesaid by reason of any
thing in said $\text{\textcircled{D}}$ - 4th, 5th, 6th, 7th & 8th pleas
of Defts., or either of them alleged, & says that
said pleas & each of them are & is insufficient
in the law to bar the said action, & there
is no necessity that the Plff. should reply thereto,
or to either of them, & this he is ready to
verify - wherefore &c.

Peters & Ramsey for Plff.
And for cause of Demurrer, he assigns the
following, to wit:

1 - as to said $\text{\textcircled{D}}$ plea, it does not show
what issues were joined & tried & what
proceedings were had.

2 - as to 4th plea it does not allege
or show that the horses died before trial
of the Replevin suit -

3 - All of the pleas fail to show what proceed-
ings

were had in the Replein Suit.

4th Each & all the pleas are double, al-
= leging facts inconsistent with each other,
and embracing several distinct facts,
each of which, if true, constitutes a
complete defence.

P.P.P.

Wednesday Morning April 17th A.D. 1830.

Addison Ramsey Shff.
of Marshall County
10

}
}
}

Debt on Replein Bond.

Richard Vineore John King
Aaron R. Burnell John Coates
& Kettidge D. Carl

}
}
}

This day comes the
parties by their Attorneys, and Plaintiff having
filed herein his Demurrer to the second, fourth,
fifth, sixth seventh & eight pleas, by defend-
= ants herein filed, which demurrer is sustained,
and judgment is herein entered on said de-
= murrer, whereupon issue is joined by the
parties on the first & third pleas, by defend-
= ants herein filed, submit it to the Court,
a jury being waived; and, having heard the
proofs & allegations of the parties, the Court
finds the Defendants indebted to the Plaintiff
in the sum of Eight Hundred Dollars, and
assesses Plaintiffs Damages at Three Hun-
= dred & fifty Dollars - whereupon the Defend-
= ants move in arrest of judgment & for
a new trial herein.

Friday April 19th A.D. 1830.

On this day came again the parties in
the above cause, and the motions herein
pending, in arrest of judgment & for a
new trial, are overruled by the Court
and it is considered, by the Court, that the
Plaintiff have & recover of the defendants,
the said sum of Eight Hundred Dollars,
his Debt aforesaid, and his Costs by him
herein expended, and that he have execu-
-tion therefor; to be satisfied by payment
of the said sum of Three Hundred and
Fifty Dollars, his Damages in form aforesaid,
- said aforesaid, with the costs aforesaid;
and that the Clerk make upon said
execution, the amount of said Damages
& Costs, with directions to the Sheriff to
collect the amount of said Damages &
Costs upon said execution. Whereupon
Defendants, by their Attorney, except,
and ask that their Bill of Exceptions
be allowed, signed & made matter of
Record herein, which is done.

A Record of the orders, Decrees, judgments & Proceedings of the Honorable Circuit Court of Marshall County, Illinois, begun & held at the Court house in the Town of Salem, on the third Monday, being the fifteenth day of April A.D. 1830. Hon. T. G. Dickey, Judge of the 9th Judicial Circuit Presiding.

Addison Ramsey
Sheriff of Marshall Co. Ill.

vs

Debt on Replevin Bond.

Richard Vincene

John King

Aaron R. Burnell

John Yontz &

Robert D. East

vs

Be it remembered that,

on the trial of this cause, the

Plaintiff, to maintain the

issues on his part, offered

first, to read in evidence to the Court, a Bond

which is in the words & figures following, to wit:

Know all men by these presents, that we, John

King, Aaron R. Burnell, & John Yontz, by Robert D.

Merryman, his attorney in fact, and R. D. East

& Richard Vincene, are held firmly bound unto

Addison Ramsey, Sheriff of Marshall County, Illinois,

in the penal sum of eight thousand dollars, to be

paid to the said Addison Ramsey & his assigns.

We bind ourselves, our heirs, executors & admin-
istrators jointly by these presents. Attest
our hands & seal this 8th day of March, A.D. 1827.

The condition of the above obligation is such
that whereas, Aaron R. Burnell, Benjamin F. Haddock,
John King, John Yontz, Hiram A. Andrews, Emery
More, Morris Cadwallader, Marshall S. Griffin,
Caleb Howard, Oscar F. Hinton, David W. Doshier,
William J. Sullivan, Charles Saluage, have

Commenced an action of Replevin against Daniel M. Robertson, in the Circuit Court of Marshall County, Illinois, for the wrongfully taking & wrongfully detaining the following goods and chattels, to wit, eight horses & eight hampers of O. Hinton & Co. of the value of four hundred dollars, now of the said Aaron R. Bunnell, Adversely, King, Yontz, Andrews, Moore, Caswallader, Griffin, Howard, Hinton, Disher, Sullivan & Salmagy, the said plaintiffs in said action shall prosecute said suit to effect, & without delay & make return of said property, if return thereof shall be awarded, and save & keep harmless the said Sheriff in replevying such property, then this Bond to be void, otherwise to remain in full force & virtue.

John King *Deat*
 A. R. Bunnell *Deat*
 John Yontz *Deat*
 Addison Ramsey }
 Sheriff M.C. by H. O. Merriman *Deat* in fact.
 Pittsburg, O. Carl *Deat*
 Richard Lincoln *Deat*

To the reading of which, as evidence, the defendant objected, and assigned as cause of objection, a variance between the said Bond & the Declaration in this cause, and want of proof of the due execution thereof, by John Yontz. The Court overruled the objection & permitted the said Bond to be read in evidence, to which decision of said Court, said Defendants counsel then & there excepted.

From the log book - Robert's case

The Plaintiff next offered to read in ev-
-idence the judgment of said Court ren-
-dered at the March Term thereof A.D. 1848
in the Replein cause, which is in the
words & figures following, to wit:

Caron R. Bunnell,

Benjamin H. Haddock,

John King, John Gouty,

Hiram Andrews, Emery Snow,

Morris Cadwallader

Marshall S. Tuffin

Caleb Howard Osear, Winton

David H. Dushler, William S.

Sullivan & Dorias, Saluadgo

vs

Replein.

Daniel M. Robertson

This day came the
parties by their attorneys, & issue being joined

a jury came to try the same, to wit: J. Hunter,
J. S. Hastings, Wm. Orr, William B. James, Charles Cook,

J. S. Hunter, F. M. Frisby, James Hudson, A. Overman
Joseph Brown, J. J. Roberts & A. Walker, who being

sworn well & truly to try said issue, say, we the jury
find a verdict for the Defendant. It is therefore

considered by the Court that the Plaintiffs take
nothing by their writ herein. And it is further

ordered by the Court that the Plaintiffs make
return of the property in the plaint in the said

writ described, to the Defendant herein, by them
Repleined & that a writ of Returno Habeas be

awarded therefor. Whereupon the Plaintiff move
for a new trial herein, which motion is over-

-ruled by the Court. It is further ordered by the
Court, that the Defendant recover of the Plain-

-tiffs, his costs and charges, by him about his

defence in this behalf expended; and have Execution therefor; And the Plaintiffs except to the decision of the court, in over-ruling said motions, and also, in the rendition of the judgment; and pray that their Bill of exceptions may be signed, sealed & made of record herein, which is done.

To the reading of which as evidence, the defendants Counsel objected, and the Court over-ruled the objection, and permitted said judgment to be read as evidence; to which decision of said Court, said defendants, by their Counsel then & there excepted. The Plaintiff then read in evidence, the writ of Return Habeas & the return thereon, issued in said Replein cause, which is in the words & figures following, to wit:—

State of Illinois }
Marshall County } To the Sheriff of said County—Greeting.
Whereas, Daniel W. Robertson was summoned to appear before our circuit court of the county aforesaid to answer Aaron R. Burnell, Benjamin A. Haddock, John King, John Yantz, Emery More, Morris Cadwallader, Marshall C. Kiffin, Caleb Howard, Osean F. Hinton, David W. Doshier, William S. Sullivan and David Salnadge, of a plea whereof the said Daniel W. Robertson to the goods & Chattels of them, the said Plaintiffs above named, (to wit) Eight Stage Horses & Harness for the same & one pair of Leading bars, & unjustly detains the same against oaths & pledges, as it was said, and the Sheriff of Marshall County in said State, having Repleined from the said defendant & delivered to the said Plaintiffs, the above described Horses & Harness. Whereupon such proceedings were had in our said circuit court, that the right

of the said property was adjudged to be in the
said Daniel M. Robertson, Defendant, & a return of
the property Replied, awarded to him; we therefore
command you that you do forthwith, without delay,
cause the goods & chattels aforesaid Replied, to
be returned to the said Daniel M. Robertson, to hold
to him, irrepleiabile, in form aforesaid, and make
return of this writ, with your doings herein, to the
clerk of our said Court. Witness, John Burns,
Clerk of our said Court & the seal thereof, this first
day of April 1830.

Seal
1830

John Burns, Clerk.

Return - Came to hand April 1st 1848,
at 12 O'clk. M. The within described
property as repleined, not found in my County.
May 10th 1848.

Adison Ramsey
Sheriff Marshall
County Ills.

Pres - Retn - 127

The Plaintiff then introduced John Wier as a
witness, who testified that he knew said horses,
in said Declaration, & harnesses; and said horses
were, in his opinion, worth about \$400, and
the harness, \$50 to \$60. This was all the ev-
-idence offered by the Plaintiff.

The Defendants' counsel here claimed &
moved for judgment upon the third plea,
which motion, the Court over-ruled - to which
decision of said Court, said Defendants, Coun-
-sel, then & there objected.

The Defendants then read in evidence, the
Declaration, Plea & Replication, and the instri-
-ctions of the Court to the jury in the Replein suit,
which are in the words & figures following, to wit:

Marshall County
Circuit Court
March Term 1847.

State of Illinois vs. Aaron R. Bumell, Benjamin
Marshall County vs. A. Haddock, John King, John
Yontz, Hiram C. Andrews, Emery Moore, Morris
Cudwallader, Marshall G. Griffin, Caleb Howard,
Oscar S. Hinton, David H. Doshler, William S.
Sullivan, and David Saluadge, Plaintiffs in
this suit, by H. O. Merriman, their attorney,
Complain of Daniel M. Robertson, Defendant in
this suit, being summoned &c. of a plea wherefore
he took and unjustly & wrongfully detained against
sureties & pledges until &c. the Horses, Harnesses
& Leading Bars of said Plaintiffs - For that
said Defendant, heretofore, to wit on the
fourteenth day of February, A.D. One thousand
eight hundred & forty seven, at the county of
Marshall aforesaid, wrongfully took the Horses,
Harnesses & Leading Bars - to wit - Eight Horses,
Eight Harnesses for said Horses and one pair of
leading bars, lately used by O. Hinton & Co.
in the Mail Stage business, the Property, goods &
Chattels of said Plaintiffs, of great value -
to wit - of the value of four hundred dollars -
and unjustly & wrongfully detained the
same against sureties & pledges until &c.
wherefore said Plaintiffs say that they are injured
and have sustained damages to the amount
of Three Hundred Dollars, and therefore they
Sue &c. And said Plaintiffs further
complain - For that, heretofore - to wit - on
the first day of March, A.D. 1847, at the county

of Marshall, aforesaid, said Defendant,
wrongfully detained, against sureties and
pledges, until &c. the property, goods and
Chattels & Horses to wit - eight Horses, eight
Tranapes for the same, and one pair of leading
bars, of said Plaintiffs, of great value - to wit -
of the value of Four Hundred Dollars - said
Horses, Tranapes & Leading Bars, lately used by
O. Hinton & Co. in the Mail Stage business,
wherefore said plaintiffs say that they are in-
jured & have sustained damage to a large
amount - to wit - three hundred Dollars &
therefore, they bring suit &c.

Aaron R. Burnell, &c. } H. O. Merriman
} Atty. for Plffs.

Daniel M. Robertson } Marshall Co Ct. let.
} ad. } March T, 1845
Aaron R. Burnell et al. }

And the said Deft, by Peters, Rowolton & Ramsey,
come & say that the Plffs. their action aforesaid,
ought not to have & maintain, because they say
that heretofore - to wit - on the 14th day of February
in the year of our Lord eighteen hundred & forty seven,
Otho Hinton, Francis Cluggage, & Sylvester Root,
Partners doing business under the name, style &
firm of Otho Hinton & Company, were indebted to
one Philip J. Mosier, in the sum of Forty nine dollars
& sixty four cents - to one Charles C. Paper in the
sum of Twenty three dollars & eighty eight cents -
to James H. Williamson in the sum of Ten dollars &
twenty five cents - to one John Haugh in the sum
of seventy dollars - to one Samuel Haugh in the sum
of ninety dollars - & to one James Darby in the sum

of Eighty two Dollars & Seventy five cents to
Jabez Fisher, James W. Baldwin, James S. Fisher
& William Fisher, doing business in the name of firm
of William Fisher & Co., in the sum of twenty
dollars. And being so indebted, the said
Messrs. Capin, Williamson, & John Haugh &
Samuel Haugh, & Darby & Fisher & Company,
each on the 14th day aforesaid, upon proper
affidavit filed before George Snyder, Esq. a
justice of the peace in & for said County of
Marshall, & thereupon, each of the said cred-
-itors of said Otho Hinton & Company, sued out
- from the said Snyder, justice of the peace afores-
- said, a writ of Attachment, directed to any
Constable of the said County of Marshall, which
said writs of Attachment, severally, on the day
that they were so sued out, were delivered to
the said Deft. Constable the said 14th day of February,
who then was, & ever since hath been a Constable
of said County of Marshall - whereby the said Deft.
was commanded, amongst other things, to at-
-tach the goods & chattels of the said Hinton, Cluz-
-gaze & Root, to satisfy said indebtedness of the said
of the said creditors of said Otho Hinton & Company; and
afterwards, on the said 14th day of February, the said
Deft., by virtue of said writ of Attachment, and
as such Constable, seized & took the goods & chat-
-tels in the Plaintiffs Declaration mentioned as the
property, & the same then & there being the property
of the Hinton, Cluggage & Root, & not the property of
the Plffs., to wit; at the County of Marshall
aforesaid; and afterwards, such proceedings
were had before the said Justice that judgment

was recovered against the Hinton, Buzzard
 Root, as follows, to wit: in favor of the said
 Moses, for the sum of \$49.64 - in favor of
 the said Charles L. Capin, for the sum of \$25.88,
 in favor of the said James H. Williams for the
 sum of \$10.25 - in favor of said John Waugh
 for the sum of \$70. - in favor of the said Samuel
 Waugh, for the sum of \$78.38 - in favor of said
 Fishers & Co. \$20. in favor of the said Derby for
 the sum of \$89.75 - and this the said Deft,
 is ready to verify - wherefore the said Deft
 prays judgment.

By his Attys, Peter, Knowlton & Ramsey,

Carson R. Burnell et al

vs

Circuit Court Marshall County

Daniel M. Robertson, March Term A.D. 1848.

And the said plaintiffs, by Merriman, his
 attorney came, and for replication to the said
 plea of the said Defendant by him above
 pleaded, say precludi non because they say
 that the said Goods & Chattels, in the said ac-
 curation mentioned, were, at the said time
 when &c. the property, goods and Chattels of
 them the said plaintiffs, and not the
 property of the said Otho Hinton & Co., and of
 this she put themselves upon the country.

Merriman for Plff

And the Deft likewise -

By their Attys, Peter, Knowlton & Ramsey,

The Court will instruct the jury as follows -
 1 - That on a sale of goods, where, from the
 nature of such goods, it was impossible that
 there could be an actual delivery of the whole
 of the goods so sold, that in such case the de-

= livery of a part of the goods sold, will be a sufficient delivery to pass the title to the whole of the property sold.

3 That if the jury shall believe from the evidence, that, at the time that O. Hinnton Dec. sold to the plaintiffs, the property contained in the Bill of Sale, that it was impossible that there could be an actual delivery of all the property contained in the Bill of Sale; and if the jury shall believe from the evidence, that a part of the property was delivered, that this is sufficient to pass the title to the whole, and the property was not liable to be attached as the property of O. Hinnton Dec.

3- That fraud is not to be presumed, but must be proved.

4- That in an absolute Bill of Sale, it is not necessary that there should be a clause in the Bill of Sale, where, from the nature of the transaction, it is not in the power of the parties to deliver all the property sold, that there should be a clause in the Bill of Sale, that the goods sold, should remain in the vendor; but if part of the goods sold are delivered in pursuance of the sale, that by this act of delivery of a part, the right of the whole is transferred to the vendee.

5 That by the Bill of Sale, and a delivery of a part of the property, in pursuance of the sale, that that the Plaintiffs, as such purchasers, became possessed of the whole of the property sold. and if the jury shall be-

- lieve from the evidence, that a part of the property contained in the Bill of Sale was delivered to the Plaintiffs, that, then, they became possessed of the property in suit, and the same is not liable to be attached as the property of O. Hinton & Co. And that if the jury shall believe all this from the evidence, that they will then find for the Plaintiffs.

If either of the Attachments were served before the property was taken into the actual possession of the Plaintiffs in this suit, or their agent, the property was liable to such attachment, unless the Attaching creditors know of the transfer of the property to the Plaintiffs, in which case it was not liable. Provided the transfer of the property is proved by the bills of Sale.

The Defendants counsel then produced the several writs of Attachment mentioned in said plea of said Defendant in the said Replevin suit & the return thereon, which it is agreed are as stated & recited in said plea, & which it is further agreed by the parties, need not be copied in this Bill of exceptions. The Defendants counsel also, in connection therewith, produced the Docket of George Snyder, who it was agreed, was, at the date of said Attachments, a Justice of the peace of said County of Marshall, & that the said Docket was the Docket ~~was~~ ~~the Docket~~ of said Snyder, and who issued said Attachments, and offered to read in evidence, in mitigation of damages, the judgments

rendered on said Attachments, for the purpose, as stated by Defendants Counsel, of proving that the value of the Defendant in the Replevin suit, by virtue of the said several Attachments was less than the value of said property, and to lay the foundation of evidence hereinafter stated, (which judgment, it is agreed by the parties, need not be copied in this Bill of Exceptions,) and the Plaintiffs Counsel objected to the reading of said writs of Attachments, the returns ~~thereon~~ thereon, or the said judgments, and the Court sustained said objection, & refused to permit either said writs of Attachment, returns thereon, or said judgments to be read as evidence, to which decision of said Court in sustaining said objection, and refusing to permit said evidence to be read, the defendants Counsel then & there excepted.

The Defendants then offered to prove, in mitigation of damages, that, at the time of the issuing & levy of said writs of Attachment, and at the time of issuing said writ of Replevin, said plaintiffs in the Replevin suit, were the General Owners of said property, by purchase, before that time, from Otho Hinton & Co; and that ^{at} the time of the levy of said Attachments, and each of them, said Attaching creditors, in said Plea mentioned, except one, James B. Derby, at and before the time of issuing said Attachments, had notice that said Plaintiffs in said Replevin suit, had purchased said property from Otho Hinton & Co. - to which

Evidence the Plaintiffs Counsel then and there objected, and the Court sustained said objection, and refused to permit said Defendants to prove said facts to which decision of said Court, said Defendants, by their Counsel, then and there accepted.

The Defendants then proved by O. C. Pomeroy, that he has been for 13 years agent for the stage line, and as such, he had supervision of the said horses, from safter the time the same were Repleined, up to the trial & judgment, & knew the value thereof - that said horses were, in his opinion, worth about \$310.00 - ~~and~~ the said harnesses about \$30.00.

This was all the material evidence given on the trial of this cause.

The Court found for the Plaintiff, the Penalty of said Bond - \$800.00 - and assessed the Plaintiffs damages at the sum of \$350.00. The Defendants Counsel moved the Court for a new trial, and in arrest of judgment, and by agreement of Parties, objections to all informalities in making said motions, & entering the same are waived, and to be made together.

The Defendants Counsel assigned as a reason for the motion for a new trial, that the Court erred in matter of Law, in the admission of evidence offered by the plaintiff, and refusing proper and competent evidence offered by the Defendants.

The Defendants Counsel assigned

the following reasons for the motions in
arrest of judgment.

- 1st The Declaration does not show that
any breach of the Bond had occurred,
authorizing the Suit on the Bond
described in said Declaration.
2. Said Declaration does not show any
service of the writ of Returno Habeas.
3. The Bond described in said Declaration
is not in conformity with Law, & void.
4. Said Declaration is otherwise insuffi-
-cient to support the action.
5. For other errors apparent upon the
face of the Record.

Each of which said motions, said Court
over-ruled, and rendered judgment
upon the finding of the Court.

To which decision of said Court, in over-
-ruling said motions, each of them, and
also, rendering judgment against said
Defendants, they, the Defendants, by their
counsel, excepted, and prayed the Court
to sign, seal & make of Record, this his
Bill of exceptions - which is done in
open court.

R. P. Dickey, Seal

The Declaration referred to above is as
follows - to wit -

State of Illinois, ss.
Marshall County, ss. Clerk's Office Circuit Court,
I hereby certify, that the foregoing is a
true copy of the record in the above
cause.



Witness my hand and the
Seal of said Court at
Cairo, this 20 day of
June A.D. 1838.
John Burns, Clerk.

~~84~~
~~John King et al.~~

Admission Parkway
Record 1851 & 1852
Marshall

1850

Filed June 25th 1850
N. Seland Clerk.

1190

To be paid for this

Beant D. 3.00 —

John Brown