No. 11896

Supreme Court of Illinois

Robertson, et al.

vs.

Marshall, et al.

71641 7

No. 40

D. M. Robertson et al.

vs

Co. Comrs. Marshall Co.

1849

11896

Robertson & Langer
vs.
Co. Court of Marshall Co.
use of Lockhart & Perry

Sept. Co. June T/49

And the said pltffs. in Error say, that in the record & proceedings aforesaid & in the rendition of the judgt. aforesaid, there is manifest error, in this, to wit, that the court rendered a judgt. in favor of the Pltffs. below & against the Deftts. below, whereas should judgt. should have been rendered in favor of Deftts. below & against the Pltffs. below. And for further assignment of errors the said Pltffs. in Error ~~assign~~ set down the following, viz.

1 The court erred in overruling the motion to dismiss the said suit =

2 = The court erred in admitting the said bond of the bond =

3 = The court erred in finding for the Deftts. below.

4 – The court erred in overruling the motions in arrest of judgt & for a new trial =

5 The court erred in rejecting the evidence of Gore & Brown his witnesses =

Wherefore for the errors aforesaid, the Pltffs. say that the said judgt. of the court may be reversed annulled & for nothing esteemed & they be restored to what they have lost by reason thereof = By their Attys.

Peters & Bennett =

And said deftts by Dickey come & say there is no such errors as are alleged by plaintiffs in error in the record & proceedings herein & prays that said

[11896-1]

Judgment may be affirmed

Dickey for defts in Error

Record of the orders judgments & proceedings of the Honorable Circuit Court of Marshall County State of Illinois began & held at the court house in the Town of Lacon in & for the County of Marshall & State of Illinois on the fourth Monday the twenty sixth day of October in the year of our Lord one thousand eight hundred & forty six

Present the Honorable John Dean Caton one of the Associate justices of the Supreme Court of the State of Illinois and judge of the Ninth judicial Circuit

The County Commissioners of Marshall County for the use of Samuel C Cochran and Theodore Perry
vs
Daniel M Robertson
Jordon Sawyer &
Roderick Owen

} Appeal

Be it remembered that on the Ninth day of October in the year of our Lord One thousand eight hundred & forty six Hezekiah Sleane probate justice of the peace within & for the County of Marshall & State of Illinois filed in the Clerk's Office of the Circuit Court within & for said County the Transcript of the judgment & proceedings had before him in the above entitled cause together with the papers filed in his office in said cause of which judgment the following is a copy

The County Commissioners of Marshall County Illinois Who sue for the use of Samuel C Cochran & Theodore Perry Partners under the firm of Cochran & Perry
vs
Daniel M Robertson Jordon Sawyer & Roderick Owen

} Suit brot on official bond of const for $1020.00 made by defts to the County Commissioners of Marshall County dated on the day of August A D 1843 Amount claimed to be due to pltffs $51-344 1846 August 27th Suns issued & put into the hands of const Tons same day returnable on the 1st Sept 1846 at 12 O Clock M 1846 August 26th Sub issued on pt of defts for Jonas Clisbee & given to const Tons returnable as above 1846 Sept 1st Suns returned served by reading to D M Robertson & Jordon Sawyer Roderick Owen not found &c. 1846 Sept 1st parties appear & upon the affidavit of the deft the cause is continued for the purpose of taking the deposition of Jonas Clisbee until the 21st Sept 1846 at 12 O Clock M costs to abide the event of the suit 1846 Sept 19th Subp issued on part of pltffs for Geo F. Anders on & given to F Perry 1846 Sept 21st Sub returned served by reading &c 1846 Sept 21st Subp issued on pt of defts for John C Core & given to deft 1846 Sept 21st Sub returned served by reading &c 1846 Sept 21st parties appear & by

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consent cause is continued until 25th Sept 1846 at 9 O'Clock A M at the costs of defts
1846 Sept 24 Subp issued for pltffs George F Anderson & Jacob C Gamgus in favor of pltffs
given to Thos Perry 1846 Sept 25 Sub returned by T Perry Served &c 1846 Sept 25 Sub pon
part of defts issued for Jonas L Ball William L Boyle & Abraham Wall & given to defts
1846 Sept 25 defts Sub returned Served by reading &c. 1846 Sept 25 parties appear
And after hearing the testimony adduced it is considered that the said County
Commissioners of Marshall County Illinois who sue for the use of Samuel
C Cochran & Theodore Perry partners under the firm of Cochran & Perry do recover
against the said Daniel McRobertson & Jordon Sawyer One thousand Dollars
the amount of the penalty of the said Official Bond of the said Daniel
McRobertson Constable & also their Costs which costs are taxed Six Dollars
& one & an fourth cents Execution however to be issued only for the
sum of fifty one Dollars & Ninety two cents & the costs of this Suit

Summons 18¾ Docketing 12½ Sub for deft 18¾ Streaming 13¾
Deft to affidavit 12½ entering Continuance 12½ Sub
for pltff 18¾ Sub for pltff 18¾ Sub for deft 18¾ entering
judgment 25 — 156¼
Witness fees — 250
Constable Fees — 95
S C Cochran Clerk County Comrs Court fees — 100
Transcript 25 Entering of appeal 25 — 60¼
Paid by Deft — 50

Witness Claim Geo F Anderson 50
Jacob C Gamgus 50 Jonas L Ball 50
William L Boyle 50 Abm Wall 50 — 250

Amount of Official Bond 100000
Amount found to be due 3192
Costs of this Suit 601¼
$5793¼

Transcript 25
Entering appeal 25 — 50
Paid by Deft

State of Illinois ss
Marshall County
I do hereby Certify that the foregoing transcript contains a full & perfect Statement of all the proceedings had before me in the Cause aforesaid between the parties aforesaid in the plea aforesaid Given under My hand & seal at Lacon this twenty fifth day of September One thousand Eight hundred & forty Six
H T Crane J P (Seal)

Whereupon the following writs of Injunction & notices were issued in said cause by the Clerk of the Circuit Court of Marshall County Illinois

The people of the State of Illinois ~~to the Sh~~
To the Sheriff of said Marshall County Greeting

Whereas on the twenty fifth day of September A D 1846 before Hezekiah T Crane probate Justice of the peace within & for said County of Marshall the County Commissioners of Marshall County State of Illinois suing for the use of Samuel C Cochran & Theodore Perry partners under the firm of Cochran & Perry recovered judgment against Daniel McRobertson & Jordon Sawyer for the sum of One thousand Dollars damages together with the costs of suit & that there was found to be due in favor of the said Cochran & Perry the sum of

fifty one dollars & ninety two cents from which judgment the said Samuel M Robertson has taken an appeal to the Circuit Court in & for the County of Marshall & has entered into bond with security according to the statute in such case made & provided We therefore command you that you do forthwith give notice to said justice that he is enjoined to suspend all further proceedings in relation thereto until the said Circuit Court shall otherwise order & direct & make return hereof with your endorsement hereon on or before the first day of the term of the said Court to be holden at Lacon in & for the County of Marshall on the fourth Monday of October Instant

Witness John Burns Clerk of said Court & the seal thereof at Lacon this 9th day of October in the year of our Lord One thousand Eight hundred & forty six

Seal

John Burns Clerk

on which the following endorsement — Executed the within writ by reading the same to the within named justice this 19th day of October 1846 A Ramsey Sheriff M C

The People of the State of Illinois

To the Sheriff of said Marshall County Greeting

Whereas on the Twenty fifth day of September Eighteen hundred & forty six before Hezekiah Sharon probate justice of the peace within & for the County of Marshall the County Commissioners of Marshall County for the use of Samuel McCochran & Theodore Perry partners under the firm of McCochran & Perry recovered a judgment against Samuel M Robertson & Jordon Sawyer for the sum of One thousand Dollars debt or damage together with the costs of suit & that there was found to be due in favor of the said McCochran & Perry the sum of fifty one dollars & ninety two cents from which judgment the said Samuel M Robertson has appealed to the Circuit Court in & for the County of Marshall & has entered into bond with security according to the statute in such case made & provided We therefore command you forthwith to give notice thereof to Jesse Titus Constable in whose hands an execution or other process may be in relation thereto that he is enjoined to stay & suspend all further proceedings in relation thereto until the said Circuit Court shall otherwise order & direct & make return thereof with your doings herein on or before the first day of the term of the said court to be holden at Lacon within & for the County of Marshall on the fourth Monday of October Instant Witness John Burns Clerk of our said Court & the seal thereof at Lacon this ninth day of October in the year of our Lord One thousand Eight hundred & forty six

Seal

John Burns Clerk

on which the following endorsement — Executed the within writ by reading the same to the within named Constable this 16th of October 1846 A Ramsey Sheriff M C

State of Illinois
Marshall County } The people of the State of Illinois

To the Sheriff of said County Greeting

We command you to summon Charles S Edwards Chester S Woodward & Lewis Block County Commissioners of Marshall County who sue for the use of Samuel C Cochran & Theodore Perry partners under the firm of Cochran & Perry if they be found in your County to be & appear before the judge of our Circuit Court for the County of Marshall on the fourth

Monday in the Month of October Inst to answer to an appeal obtained by Samuel M Robertson from a judgment rendered against the said Samuel M Robertson & Jordon Sawyer in favor of the said County Commissioners of Marshall County Illinois for the sum of One thousand Dollars wherein there was found to be due for the use of the said Samuel McCochran & Theodore Perry the sum of fifty one Dollars & Ninety two cents & costs of Suit before Hezekiah Sleane probate Justice of the peace of said County on the twenty fifth day of September 1846 And have you then & there this writ

Witness John Burns Clerk of said Court at the Court house this 9th day of October One thousand Eight hundred & forty Six the Seal of said Court being hereunto affixed

Seal

John Burns Clerk

On which the following endorsement — Executed the within writ by reading the same to the within named County Commissioners this 24th day of October 1846 A Ramsey Sheriff M C By S M Robertson Deputy

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 Samuel McCochran & Theodore Perry partners trading under the firm of Cochran & Perry if they be found in your County to be & appear before the Judge of our Circuit Court for the County of Marshall on the fourth Monday in the month of October Inst to answer to an appeal obtained by Samuel M Robertson from a judgment rendered against the said Samuel M Robertson & Jordon Sawyer in favor of the County Commissioners of Marshall County State of Illinois who sue for the use of Samuel McCochran & Theodore Perry for the sum of One thousand Dollars wherein there was found to be due the said Samuel McCochran & Theodore Perry the sum of fifty one Dollars & ninety two cents & costs of Suit before Hezekiah Sleane probate Justice of the peace of said County on the 25th day of September A.D. 1846 And have you then & there this writ

Witness John Burns Clerk of said Court at the Court house this 9th day of October A.D. 1846 the Seal of said Court being hereunto affixed

Seal

John Burns Clerk

On which the following endorsement — Executed the within writ by reading the same to the within named Cochran & Perry this 19th day of September 1846
Addison Ramsey
Sheriff of M C

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 Jordon Sawyer if he be found in your County to be & appear before the Judge of our Circuit Court for the County of Marshall on the fourth Monday in the month of October Instant to answer on an appeal obtained by Samuel M Robertson from a Judgment rendered against the said Samuel M Robertson & Jordon Sawyer in favor of the County Commissioners of Marshall County State of Illinois suing for the use of Samuel McCochran & Theodore Perry before Hezekiah Sleane probate Justice of the peace of said County on the 25th day of September 1846 for the sum of One thousand Dollars

wherein there was found to be due the said Cochran & Perry the sum of fifty one Dollars & Ninety two Cents & costs of suit & how you then there has issued

Seal

Witness John Burns Clerk of said Court at the Court house this 9th day of October 1846 the seal of said Court being hereunto affixed

John Burns Clerk

on which the following endorsement — Executed the within writ by reading the same to the within named Jordon Sawyer the 22d day of October 1846

A Ramsey Sheriff M C
By S M Robertson Septy

And this cause coming on to be heard on the 28th day of October A D Eighteen hundred & forty six at the term aforesaid of said Court the following motions & orders were made therein & entered of record in said cause in said Court

The County Commissioners of Marshall County for the use of Cochran & Perry
vs
Samuel M Robertson Jordon Sawyer & Roderick Owen

Appeal

Appellees

Appellants

This day came the parties by their Attorneys & the defendants move the Court to dismiss this suit for want of jurisdiction of the Court below which motion is overruled by the Court And now came again the defendants & moved the Court to dismiss this cause for the reason that the said Samuel C Cochran & Theodore Perry had failed to enter security herein for costs which motion is overruled by the Court

[11896-H]

A Record of the Orders Judgments & proceedings of the Honorable Circuit Court of Marshall County in the State of Illinois began & held at the Court house in the Town of Lacon on the fourth monday the twenty fifth day of October in the year of our Lord One thousand Eight hundred & forty seven

Present the Honorable John Dean Caton One of the associate Justices of the Supreme Court of the State of Illinois & Judge of the Tenth Judicial Circuit John Burns Clerk & Addison Ramsey Sheriff &c

The County Commissioners of Marshall County who sue for the use of Samuel McCochran & Theodore Perry
vs
Samuel M Robertson
Jordan Sawyer &
Rodenick Owen

Appeal

Be it remembered that this cause coming on the defendants moved the Court to dismiss this cause for the reason that the said Cochran & Perry Nor any one in their behalf had not given security for the costs of this said which motion the court overruled & the defendants excepted to the decision

This cause then coming on for trial the plaintiffs to maintain the action on their part offered to read in evidence a Bond in the words & figures following (To wit)

Know all men by these presents that we Samuel M Robertson Jordan Sawyer & Rodeick Owen of the County of Marshall & State of Illinois are held & firmly bound unto the county commissioners of Marshall County & their successors in office for the use of the people of the State of Illinois in the penal sum of One thousand Dollars current money of the United States which payment well & truely to be made & performed we & each of us bind ourselves our heirs Executors & administrators jointly severally & firmly by these presents Witness our hands & seals this day of August A D One thousand eight hundred & forty three

The condition of the above obligation is such that if the above bounden Samuel M Robertson who was on the first Monday the seventh day of August one thousand eight hundred & forty three duely elected a constable for the said County of Marshall in

the Lacon precinct shall well & truely discharge the duties of his said office of Constable & justly & fairly account for & pay over all monies that may come to his hands under any process or otherwise by virtue of his office then this obligation to be void otherwise to remain in full force

Signed & sealed in presence of
John Shannon

Daniel M Robertson (Seal)
Gordon Sawyer (Seal)
Roderick Owen (Seal)

State of Illinois
Marshall County

I Samuel C Cochran clerk of the County Commissioners Court of said County certify that the above is a true copy of the original Bond on file in my office

Seal

witness my hand & the seal of said Court this twenty sixth day of August A D 1846

Samuel C Cochran Clerk

To the reading of which in Evidence the defendants objected but the objection was overruled & the evidence was admitted & the defendants excepted to the decision

The plaintiffs next read in evidence the Record of a judgment recovered before Hy Crane Esq on the 19th of August 1845 in favor of Cochran against John C Gore which is in the words & figures following to wit

Samuel C Cochran & Theodore Perry partners under the Firm of Cochran & Perry
vs
John C Gore

Suit Bal on promissory Note for $42.00 made by Deft to pltffs dated Octr 11th 1844 with 12 per cent interest from date

Demand $46.31

1845 August 19th parties appear & the said John C Gore waives process & the service thereof & confesses judgment for the sum of Forty six Dollars & Thirty one cents Therefore it is considered that the said Samuel C Cochran & Theodore Perry do recover against the said John C Gore their debt aforesaid above acknowledged of Forty six Dollars & thirty one cents & their costs which costs are taxed at Thirty seven & a half cents

Docketing	12½
Ent judgt	25
J of P fees	37½
Capt & Execution	31¼
Const Ds fees on do	50
Alias fi fa	25
Const fees on do	50
Plures fi fa	25

Debt	46.31
Costs taxed	37½

1845 August 19th upon the oath of Theodore Perry fi fa issued & put into the hands of Const Robertson the same day 1845 Octr 29th fi fa returned by order of pltffs Levied &c 1845 Octr 29 alias fi fa issued & put into the hands of Const Robertson the same day 1846 Jany 6th Alias fi fa returned by order of pltffs 1846 Jany 6th Plures fi fa issued given to Const Robertson same day
1846 Sept 26th Plures fi returned no property found on which to levy

They next read in evidence an Execution in the words & figures following
To wit

State of Illinois Marshall County } The people of the State of Illinois
To any Constable of said County Greeting
We command you as oftentimes before we have commanded
you that of the Goods & Chattels of John C Gore in your County you make the sum of forty six Dollars & forty
one cents Debt & forty seven & a half cents Costs which sum is due Cochran & Theodore Perry partners under
the firm of Cochran & Perry lately recovered before me in a certain plea against the said John C Gore &
hereof make return to the within seventy days from this date Given under my hand & seal this
eighth day of January A D one thousand eight hundred & forty six
H C Crane J P J P (Seal)

On which the following endorsements } Received this writ the 8th Jany 1846
D M Robertson

Returned March 18th 1846 No property found on which to levy D M Robertson Const
It was proven that the defendant Robertson was acting as a Constable
during the time from the issuing the said first Execution till the commencement of this suit & that said third Execution was not returned by Robertson to the justice till sometime in September after the same was issued
Said last Execution was delivered to Robertson on the day of its date
The Plaintiffs then rested their case

The Defendants then read in Evidence the original Execution issued upon said justices judgment & the endorsements thereon which are in the words & figures following To wit
State of Illinois Marshall County } The people of the State of Illinois
To any Constable of said County Greeting
We command you that of the goods & Chattels of John C Gore in your County you make the sum of forty six Dollars & Ninty one cents Debt & Ninty seven & a half cents Costs which sum is due Cochran & Theodore Perry partners under the firm of Cochran & Perry lately recovered before me in a certain plea against the said John C Gore and hereof make return to me within seventy days from this date — Given under my hand & seal this Nineteenth day of August One thousand eight hundred & forty five
H C Crane J P J P (Seal)

On which the following endorsements — Received this writ on the 19th August 1845
19th Augt 1845 Levied on the undivided one third part of the stocks of wheat & the undivided one third part of 23 Acres of Corn & one Red Cow as the property of the within named Defendant John C Gore & returned by order of the Pltffs
D M Robertson Constable
Levied on personal property &c Returned by order of Pltffs Oct 29th 1845
D M Robertson Const

The defendants then read in Evidence a second Execution issued upon said justices judgment & the endorsements thereon which are in the words & figures following To wit

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State of Illinois } The people of the State of Illinois to any constable of
Marshall County } Said County Greeting

We Command you as before we have commanded you that of the goods & chattels of John C Gore in your county you make the sum of forty six Dollars & twenty one cents debt & twenty seven & an half cents costs which Samuel C Cochran & Theodore Perry Partners under the firm of Cochran & Perry lately recovered before me in a certain plea against the said John C Gore & hereof make return to me within seventy days from this date Given under my hand & seal this 29th day of October A D one thousand and Eight hundred & forty five M J Leane J P (Seal)

On which the following Endorsements — Received on this 29th August 1845 at 12 O Clock P M Daniel M Robertson Const

Returned by order of Plaintiffs January 8th 1846 D M Robertson Const

The defendants then proved by John C Gore the defendant in said execution that soon after the delivery of the first Execution Robertson requested witness to give him a delivery bond that said witness declined to do so & said he could not procure one & witness told the said Cochran & Perry that he could not give a bond and that on the last day or the last day but one of the life of the execution first issued upon said Justices judgment Robertson called upon him & told him that he must advertize & sell the property mentioned in the return for sale on said Execution if the money was not paid that witness then went with Robertson to Cochran & Perry at their Store in Lacon & that they then directed him Robertson to return the execution to the justice & not to proceed to sell the property that they also directed Robertson to get out a new Execution on the judgment the said Cochran & Perry then declaring that they wished to preserve the lien upon the property & Perry said the property was not to be sold Robertson said that as the Execution was nearly out he must sell the property unless other arrangements were made & that said Cochran & Perry said to Robertson & witness that it was their wish to have the property remain in the possession of witness & some time get out the grain & sell it to them to pay the said judgment & that they would allow as much as any body & that the grain was permitted to remain in his witnesses possession that the wheat was then in the stacks & that towards Spring the wheat was threshed out & one Elsbee hauled it to Lacon that one third of the wheat belonged to witness one third of it to Elsbee & one third of it to the owner of the land on the ground that the share of witness was about 100 Bushels that forty or fifty Bushels of this were hauled by said Elsbee for Gore to Lacon & sold by him & the residue was used by witness himself & that the price of wheat at this time was thirty eight or forty cents a Bushel that the corn was somewhat destroyed by cattle in the field & the residue used by the witness that the Cow mentioned in the return died in January & the skin was taken to Cochran & Perry that he had never been

paid for the wheat & that Elsbee kept the proceeds of it & that the corn was held on shares the same as the wheat & that witness shown if it had been well harvested & taken care of would have amounted to 200 Bushels & was worth 12½ cents pr Bushel that said corn was worth when bought on Ten or Twelve Dollars

Defendants offered to prove by this witness that from & after the time said third Execution came into the hands of the said Robertson witness was insolvent & had no property on which any Execution could be levied & that he had been since continued so the plaintiffs objected to this evidence & the court rejected it & the defendants excepted to the decision said witness also testified that it was the understanding & agreement between him & Cochran & Remy that their lien should be continued so as to prevent other creditors of witness from levying upon the property & for the purpose of enabling witness to have & keep possession thereof this arrangement was made not to take advantage of other creditors of witness except by securing & maintaining a prior lien on the property & to secure the debt without sacrificing the property

Plaintiffs also proved by Gore that the property mentioned in the return on the first Execution always remained in the possession of witness & that no actual possession whatever taken of it by Robertson & also that no delivery bond was ever given to the officer by Gore

Plaintiffs proved by Crain the justice that he wrote the return on the first Execution at the request of the officer & it was signed by the officer & that this was done on the last day of the Execution

The Defendants also read in evidence the following deposition of Jonas Elsbee in the words & figures following to wit

The County Commissioners of Marshall County for the use of Cochran & Remy
vs
Daniel M Robertson
Jordan Sawyer &
Roderick Owen

Clerks Office Circuit Court
Marshall County Illinois

Appeal
Before John Runnels Clerk of the circuit court of Marshall County Illinois

Deposition of Jonas Elsbee aged about forty five years a witness in the above entitled suit taken by John Runnels Clerk of the Circuit Court of the County of Marshall & State of Illinois on the Twentieth day of March A D 1847 at the office of the aforesaid Clerk in the County & State aforesaid in the presence & by the consent of the said plaintiffs & defendants the service of Notice & the filing of affidavit being hereby waived

Marshall County
State of Illinois

Jonas Elsbee being first duly sworn deposeth & says as follows (viz)

[11896-7]

Were you or not acquainted with the plaintiffs & defendants in the Summer of Eighteen hundred & forty five & until that time
Ans I was & am at this time

Did not you & John C Gore have an interest together in some wheat & Corn growing in a field north of Lacon formerly called the Swan field & if so what was the interest
We did — We Each had a third of the crop growing on the ground & a third went to the Owner of the ground

Was said wheat or not hauled & stacked & if so at what time was the same threshed & how many stacks were there
It was all hauled & stacked, except one days cutting probably Twenty sheaves which was threshed from the shock in July 1845 — There were four stacks one of which was threshed before the middle of August of that year I think the ballance of the stacks were threshed about the last of January or the first of February A.D. 1846
On what terms was said wheat threshed & what was done with John C Gores interest in the wheat
The threshing was paid for in Money arising from the sale of the wheat I was paid six Dollars forty eight cents out of Gores interest for his share of the seed wheat which I furnished him & a Dollar & seventy five cents for wheffletree the ballance of Gores share was delivered to him
At or before said time did you or not know of the defendant having an execution ~~against the plaintiffs~~ in favor of the plaintiffs, against John C Gore & did you or not go to see the plaintiffs to get some direction about said Gores interest & if so what did they or either of them tell you to do with it
I did not know of an Execution in the hands of the Defendant I heard Mr Perry one of the plaintiffs say in the fall previous to said time that there was an Execution in favor of said Cochran & Perry against the said Gore levied on Gores interest in the said wheat at the time the wheat was cleaned I went to see the plaintiffs I saw Mr Perry one of them I asked him if he was going to divide the wheat with me or if I should divide with said Gore he said to divide with Gore I asked if any settlement I made with Gore would be satisfactory to him he said it would this was in the plaintiffs Store I went out of the Store & said Perry followed me & said to me how is this about my settlement with Gore I told him I supposed he had an interest in the wheat & wished to know whether I should settle with him or Gore he said he did not know but that I had a demand against Gore & would take advantage of him in the settlement I told him I had nothing except for Gores share of the seed wheat & an other small account Perry said he had made an arrangement with Gore to give up the wheat to Gore & take a Cow & some Hogs but still he expected to have the wheat when brought in if we pay as much as any other person

Did or did not one of said plaintiffs inform you that said Execution was levied on said Gores property for the purpose of keeping it from some of Gores creditors & saving it for Gore if so at what time

I think not

Did you or did you not deliver Gores part of the wheat to said Gore according to the directions of said Perry

I did deliver it to him at the Stockyard & afterwards hauled it away for him at his request

What became of the Corn which was raised in the field & when was it gathered

I do not know what became of Gores share my opinion is the Landlords share was gathered in the month of October the ballance was gathered during the months of November December & January

About how much wheat was there in the three last Stacks

There were about one hundred & Seventy seven bushels I think

Have you or have you not an interest directly or indirectly in the event of the above suit

I have not

Each of the foregoing interrogatories were objected to by the plaintiffs

Did the Conversation in answer to the fifth question take place before or after the Cleaning the Wheat

It took place before & on the morning of the same day of Cleaning the Wheat

Jonas Elesbee

State of Illinois
Marshall County } I John Burns Clerk of the Circuit Court do hereby certify that the foregoing deposition was taken before me at the time & place mentioned in the caption hereof that the said witness was first duly sworn & that the same was carefully read to said witness & signed by him

Witness my hand and the seal of said Court the day aforesaid

Dated this 20th day of March 1847

(Seal)

John Burns Clerk

This was all the Evidence given at the trial

The Court found for the plaintiffs & the following judgment was rendered against the Defendants Robertson & Sawyer

The County Commissioners of Marshall County for the use of Cochran & Perry
vs
Samuel M Robertson
Jordon Sawyer and
Rodenick Owen

Appeal

This day came the plaintiffs by their Attorneys & the defendants Samuel M Robertson and Jordon Sawyer also appeared by their attorneys Rodenick Owen the other defendant herein not having been served with process in this cause and the trial of this cause is submitted to the Court without the intervention of a jury and the Court having heard the proofs & allegations of the parties & being fully advised in the premises is of Opinion that the plaintiffs recover of the defendants Samuel M Robertson & Jordon Sawyer the sum of One thousand Dollars the amount of the official Bond of the said Robertson as Constable And it further appearing to the Court that there is due the said Cochran & Perry the sum of fifty two Dollars & Seventy four Cents It is therefore considered by the Court that Execution issue herein against the said defendants Samuel M Robertson & Jordon Sawyer for the sum of fifty two Dollars & Seventy four Cents the amount found to be due the said Cochran & Perry likewise the Costs & Charges by the said plaintiffs in their behalf in their suit Expended as well in this Court as in the Court below whereupon the defendants move for a New trial & in arrest of judgment which Motions are overruled by the Court & the Defendants except to the decision & they also except to the decision of the Court finding for the plaintiffs when the decision was rendered And the defendants pray for an appeal herein to the Supreme Court of this State which is granted upon their filing with the Clerk of this Court a Bond for the sum of One hundred Dollars with Silas Ramsey Security therein within Sixty days from the adjournment of this Court conditioned as the Law directs

And the Defendants prayed that this their Bill of exceptions may be allowed Signed & Sealed by the Judge & made part of the record in this cause which is done

J D Caton (Seal)

State of Illinois } Clerks Office Circuit Court
Marshall County }

I John Burns Clerk of said Court hereby certify that the foregoing is a complete Record of all the proceedings & a true copy of the Judgment filed in the above Entitled cause by the probate justice of the peace in & for said county in the clerks office of the circuit Court of said County as appears to me of record in my office

Witness my hand & the Seal of said Court this day of A.D. 1844

John Burns
Clerk

[11896-9]

40

The County Court of Marshall
to for the use of Saml C.
Cochran & Theodore Perry
Vs
D M Robertson et al
Cts Debt Fees $ 9.50

Filed June 13. 1849
S. Leland Clk.

$1. paid on this

State of Illinois, Sct.

The people of the State of Illinois,

To the Clerk of the circuit court for the county of Marshall — Greeting:

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of Marshall county, before the Judge thereof, between The County Commissioners of Marshall County, who sue for the use of Samuel C. Cochran et al. —

plaintiff, and Daniel M. Robertson et als. —

defendant, it is said manifest error hath intervened to the injury of the aforesaid defendants — as we are informed by their complaint, and we being willing that error, if any there be, should be corrected in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the county of La Salle, on the Second Monday of June A.D. 1860 — ~~next~~, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

WITNESS, the Hon. Samuel H. Treat Chief Justice of our said Court, and the seal thereof at Ottawa, this 13th day of June in the year of our Lord one thousand eight hundred and forty-nine.

V. Leland
Clerk of the Supreme Court.

[11896-10]

40.

and. ell. Robertson stats.

v

Co. Court Marshall C. pro

Writ of Error

Filed June 21. 1849.

S. Leland Clk.

Roberts
vs
The People &c.

Cotton J did not hear the argument in this cause and gave no opinion

[11896-11]

Filed July 2d 1849