


No. 103

Supreme Court of Illinois

Augustus Collins

vs.

Abram Claggpole

(379) 7

Plea at the Courthouse in the town of Edwards,
ville before the Honorable John Reynolds
one of the Justices of the Supreme Court of
the State of Illinois on the 25th day of
March in the year of our Lord one thou-

sand eight hundred and twenty four.

Be it remembered that heretofore to wit,
on the 28th day of March 1821 Abraham

Claypole by his attorney filed in the clerk's
office of the Circuit Court of Madison
County his Declaration against Augustus Col-

lins and Susan Collins which Declara-
tion are in the words and figures follow-

ing to wit, "State of Illinois Madison Circuit
Court, April Term 1822 - Madison County vs.

Abraham Claypole Plaintiff in this suit
complains of Augustus Collins and Susan
Collins in custody vs of a plea of trespass

for that the said Defendants on the first
day of November in the year one thou-
sand eight hundred and Twenty one

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in the County aforesaid, and within the Jurisdiction of this Court, with force and Arms, broke and entered the close of the said plaintiff situate and being in the County aforesaid, and then and there made a great noise and disturbance, for a long space of time to wit, for the space of Six hours, and seized and commanded, divers persons to seize and take of the said plaintiff, divers goods and chattles to wit, Six Horses, Six Oxen Six Cows and Twenty Sheep then and there being found and of great value to wit of the value of Two hundred Dollars, and carried away the same, and converted and disposed thereof to their own use, by means of which said several premises, the said plaintiff and his family were during all the time aforesaid greatly disturbed and annoyed in the peaceable possession of the said close and the said plaintiff was during all that time ~~hindered~~ hindered and prevented from carrying on an trans-

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acting therein his lawfull and necessary
 affairs and busings, to wit, at the Township
 of L. County aforesaid, and other wrong to the
 said plaintiff then and there did against
 the peace of the people of the State aforesaid,
 and to the Damage of the said plaintiff
 of Five thousand Dollars and therefore he
 brings suit &c J. W. Smith atty for plff
 And whereas afterwards to wit, at a
 Circuit Court held on the 9th day
 of April 1822, The Defendants by
 their attorney file their plea in
 this case. And the said Defendants
 come and defend the wrong and
 injury when &c and say the plff his
 action aforesaid ought not to have and
 maintain against them because they
 say that before committing the trespass
 in the declaration supposed, to wit on

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the 10th day of November 1821 they
the said defendants recovered a Judg-
ment against the said plff and one
George Shipman for \$19 and \$154 costs
of suit before David Boone who then was
and still is a Justice of the peace for
Madison County, and which Judgment
was given for a cause of action of which
the said Justice had jurisdiction, And
Afterwards to wit on the 20th day of Nov-
1821 the said David Boone acting as
such Justice issued an execution on
said Judgment directed to any constable
of said County of Madison whereby he
was commanded that he should levy the
said sums of money of the goods & chattles
of the said George Shipman & Abraham
Claypole with legal interest thereon from
the date of said Judgment til paid, which
execution afterwards and before the return
day thereof came to the hands of one

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4c

Isaac Memahan then a constable of said County of Madison, who afterwards by virtue of said execution and with a view to levy the same upon the goods & chattles of the plaintiff and by the directions of them the said Defendants entered in and upon the close of him the said plaintiff, and there & there and before the return day of said execution he the said Isaac acting as such constable as aforesaid took and carried away 2 cows & calves, and ten sheep & one horse as the property of him the said plaintiff and in order that he might make the monies specified in said execution as he was therein commanded, and which entry and taking and carrying away as aforesaid, are the trespass complained of in the plaintiffs declaration; and as to the residue of the supposed trespass they are not

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guilty - All which they are ready to
verify wherefore sc H Stern for Defts
and whereas afterwards to wit, At a Circuit
Court held on the 12th day of the month
and year aforesaid, The plaintiff by his
attorney file his replication to the Defendants
plea - And the said plaintiff as to the
plea of the said said Defendants, by them
above pleaded, saith, that he by reason
of any thing by the said Defendants in
their said plea alledged ought not to
be barred from having and maintaining
his aforesaid action thereof against them
the said Defendants because he says that
the cause of action on which said Judge
ment was given arose before the first of
May 1821 and that there was no endorse-
ment on the said execution, in the
said plea mentioned, as is required,
in and by the Twenty seventh section
of the Act of the Legislature of the

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State of Illinois entitled "an act establishing
the State ^{Bank} of Illinois," - and that he the said
Plaintiff did on the day of and at other
times & before the said trespass was committed,
tender to the said Isaac Memahan the
constable in the said plea named, the full
Amount of the said Executions & then and there
offered to pay to the said Isaac the full
Amount thereof in Notes of the said Bank
or to replevy the same for three years, as
by law he might do, all of which the
said Isaac refused to accept permit or
suffer & whereupon the said Defendants com-
mitted the trespass, as in the declaration
is alledged, and this he is ready to verify
wherefore ~~he~~ Smith for plaintiff - And
Whereas afterwards to wit At a Court held
on the 16th day of September 1822 ordered
that this suit be continued, And whereas
afterwards to wit, At a Circuit Court held
on the 31st day of March 1823, By consent
leave is given the Defendants to plead the
general issue, and the said Defendants come

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and defend the force and injury when
 &c and say they are not guilty in manner
 & form as the said plaintiff has above in
 his declaration complained against them,
 and of this they put themselves upon the country
 & Starr for Defts and the p^lff likewise &c
 Smith. And whereas afterwards to wit
 At a Court held on the 2nd day of March
 1823. on motion leave is given the plaintiff
 to amend his replication in this cause to wit
 all of which premises the said Defts had
 notice before the Commission of the said
 trespass - and the p^lff further says that
 the Defendants after notice as a^d ordered
 & directed the said Mc Mahan not to
 receive the said paper of the State Bank
 nor to suffer the p^lff to replevy for the
 term of three years, & also the Defts further
 directed & ordered the said Mc Mahan
 to proceed and execute the said execution
 in the same manner as if the p^lff had
 not offered to pay or to replevy the Debt
 as a^d - and the cause is continued -

And whereas afterwards to wit, At a Court held on the 8th day of September 1823 Ordered that this cause be continued until the next Term. And whereas afterwards to wit At a Circuit Court held on the 25th day of March 1824; came the parties by their Attornies And thereupon came a Jury to wit William Crowder, John Robinson Christopher Preswick Charles Lindle John B. Randle George Armstrong Phoenias Kitchel, Ezra Post, Nathan Scanett William Lawless John Pickett Lopez Rengro who being sworn well and truly to try the issue joined upon their oath do say We of the jury find the Defendants guilty of the Trespass alleged in the declaration and assess the plaintiffs Damages to Ten Dollars - It is therefore considered

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by the Court that the plaintiff recover of the Defendants the sum of Ten Dollars in damages and also his costs about his suit in this behalf expended. The Defendants by their attorney move the Court to set aside the verdict and judgment in this case and grant a new trial. And whereas afterwards to wit, at a Court held on the 1st day of April 1824 the motion to set aside the verdict and judgment in this case and grant a new trial being argued and overruled. And whereas afterwards to wit, on the same day and year last aforesaid: The Defendants by their attorney filed the following Bill of Exceptions to wit, Be it remembered that on the trial of this cause it was proved that Isaac McMahan a constable of Madison County had an exe-

execution put into his hands against the
 said plaintiff & ~~another~~ ^{another} ~~one~~ & in
 favour of the debt issued upon a Judgment
 rendered by a Justice of the peace for the
 Madison County and on a cause of action ar-
 rising prior to the 1st of May 1821 that
 before the return day of the execution
 the said constable entered upon the
 premises of the plaintiff in a peaceable
 manner, and ~~to~~ ^{with} ~~take~~ ^{take} them the plaintiff offered
 to replevy the execution for three years &
 pay it in state paper, but the constable
 refused to do either alledging he did not
 think there was any law making it
 his duty to do so, that after this he he
 wrote upon the back of the execution
 that he levied upon one Cow, two calves,
 one Horse, & ten sheep, & told the plaintiff
 not remove them, made the levy upon
 them and that he must ^{not remove them} that he afterwards

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advertisised them for sale, but never did
sell them, nor did he ever remove the
property from the premises or interfere
with them in any manner whatever,
nor did he drive or attempt to drive them
from one part of the plantation to the
other, or do any thing with them except
as aforesaid, which was made by him
while on the premises, that at the time
of making the memorandum the property
was in sight & about the yard, and he
was conversing with the plff. It was
further proved that the said Constable
acted under the directions of the defts
and it is admitted that the trespass of
any is to be considered the trespass of
the defts, the Jury found a verdict for
the plaintiff for \$10 whereupon
the defts moved the Court for a new
trial on the ground that the conduct of

the constable was no trespass but the court overruled the motion to which opinion of the depts by their counsel except and pray &c John Reynolds (seal)

Costs of suit \$52, 14

State of Illinois }
Madison County } Sct

I Joseph Conway clerk of the Circuit Court in and for the aforesaid County of Madison Do certify that the foregoing transcript of record from pages 1 to 13 contains a complete history of all the proceedings had in the case of Abraham Campbell against Susan and Augustus Collins, as the same remains on file in my office.

In Testimony whereof I have hereunto set my hand and affixed the seal of the said Court at Edwardsville this 12th day of November in the year of our Lord
Joseph Conway
1824

Price of Record \$3,90
Certified to and so \$4,71



Supreme Court - 14

Aug. vs Anson Collins

Nov term 1824 -

vs
Abraham Claypole

And now at this term that is today at the
Nov term 1824 of the said Supreme Court come

the said plaintiffs in error and say that in the record and proceedings
aforesaid there is manifest error in this to wit that judgment was ren-
dered in the court below in favor of the said Claypole and against
the said plaintiffs in error whereas by the laws of the land judgment
ought to have been rendered in favor of the said plaintiffs in error and
against the said defendant in error - 2^d by there is error also in this to wit that the
writ given to the jury in the court below proved not a pass on the part of
the plaintiffs in error and so ought the court to have instructed the jury
if the court below erred in not granting a new trial as ask-
ed by the plaintiffs in error - For which errors and also for other errors

appearing in the record praying that said judgment may be reversed and the
plaintiffs pray that said judgment may be reversed and the
taken for nothing...

H. Starr for
the
error -

The clerk of the Supreme court will give a writ of
error with supersedeas in this cause upon the plaintiffs in error
giving bond with security as required by law

[Signature]

Supreme Court
Augustus Collins
vs
Anson Collins
vs
Abraham Claypole

John Law / 1824
J. M. Duncan

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STATE OF ILLINOIS, 2nd
SUPREME COURT, 5th

The People of the State of Illinois,
TO THE SHERIFF OF *Madison* COUNTY.

Because in the record and proceedings, and also in the rendition of the judgment, of a plea which was in the circuit court of *Madison* county, before the Judge thereof, between *Abraham*

Claypole plaintiff, and *Augustus Collins & Conner* defendant,

it is said that manifest error hath intervened to the injury of the said *Defendants* as we are informed by *their* complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at Vandalia, before the Judges thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said *Abraham Claypole*

that *he* be and appear before the Judges of our said Supreme Court, at the next term of said Court, to be holden at Vandalia, in said State, on the *second* Monday in *December* next, to hear the records and proceedings aforesaid, and the errors assigned, if *he* shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said *Abraham Claypole*

notice, together with this writ.

Witness *William Nelson* Chief Justice
~~James M. Thomas~~ Clerk of our said Supreme Court, and
the seal thereof, at Vandalia, this *24* day of *October*
in the year of our Lord 1845.

James Duncan clk

Executed Nov 10th 1825 In the presence of John
Doe and Richard Roe good and Lawfull
Men of my County

Richardmaster

Sheriff of M, D

Serving	50
Chels. 13	78
Returning	9
	<hr/> 137

Supreme Court
of the State of
Mississippi
vs
S. L. Taylor

To Madison

Filed Nov. 22
1825
J. W. Purman

State of Illinois Act.

THE PEOPLE OF THE STATE OF ILLINOIS

TO THE CLERK OF THE CIRCUIT COURT FOR THE COUNTY OF *Madison*

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 *Madison* county, before the Judge thereof, between *Abraham*

Claypole plaintiff
and *Augustus Collins and Anson Collins* 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 our 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 Vandalia in the county of Fayette, on the *second Monday in June* 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, *James M. Duncan*, Clerk of our said court, and the seal thereof at Vandalia, this *21st* day of *May* in the year of our Lord one thousand eight hundred and *Twenty five*

James M. Duncan

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State of Illinois vs
THE PEOPLE OF THE STATE OF ILLINOIS
 TO THE CLERK OF THE CIRCUIT COURT FOR THE COUNTY OF

DIRECTIONS TO THE CLERK OF THE CIRCUIT COURT FOR THE COUNTY OF ILLINOIS
 IN THE MATTER OF THE WRIT OF HABEAS CORPUS

Plaintiff
 Defendant

and

as we are informed by

complaint and we being willing that error (if any there be) should be corrected in due time and man-

ner 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 chambers of our Supreme Court the record and pro-

ceedings of the said circuit court, with all things touching the same, under your seal, so that we may

have the same before our Justices at the said court, in the county of [blank], on the

next day after the record and pro-

ceedings being inspected, we may cause to be done therein, to correct the error, what of right ought

to be done according to law.

Supreme Court
 J. K. Collins
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 Writ of
 Habeas Corpus
 A. Claypole Error

Filed June 13, 1895
 J. M. Duran

The defendants in
 the Court below having
 entered into bond ac-
 cordable to law and
 the Order of the Judge,
 this Writ of Error
 is made a supersedeas
 and shall be
 obeyed accordingly

J. M. Duran
 Clerk

My return to this writ of error
 appears by the record certified into
 the Supreme Court in this cause
 by J. M. Duran, the State Clerk in the
 month of [blank] last -
 Commanded [blank]
 J. M. Duran

In Supreme Court

Augustus Collins &
Amos Collins
against

Abraham Clarypoh

The writ of error issued
by or order of the Hon. Wm. Wilson chief
Justice of said court, and is to be obeyed
as such accordingly - 7 Novr 1825 -

Jas M. Duneay

Supreme Court
Augustus Collins &
Anton Collins
against

Abraham Claybrook

To the Shff of Madison
H. Starr atty
for pffs in
error

Superior

Filed Nov 22 1825
J. M. Duman
(103)

Executed Nov 20, 1825

M. Beckwith Esq MC

Debit 50

Money 98

Retaining 9

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Knows all men by these presents that we Augustus Collins
Anson Collins & Henry Starr are held and firmly bound unto Abra-
ham Claypole in the sum of one hundred and fifty dollars for the
which payment well and truly to be made we bind ourselves joint-
ly & severally and firmly by these presents sealed with our seals and
date this 18th day of January 1825. The condition of this obliga-
tion is such that whereas the above bound Augustus Collins and An-
son Collins have sued out a writ of error with Superaddes on a
Judgment rendered against them in the Madison Circuit Court
in favor of the said Abraham Claypole under at the March term
1824 of said court in a certain action of trespass for two dollars dam-
ages besides costs of suit, now if the said Augustus & Anson shall
well and truly prosecute said writ of error and pay said judgment
if the same shall be affirmed, and all costs and damages which
they or either of them may be adjudged to pay or which may be awarded
against them, and shall also do & perform all orders of court
which may be made touching said writ of error and all things
concerning it then this obligation to be void otherwise to be in
full force and virtue

Augustus Collins (seal)
Anson Collins (seal) 10
by H. Starr their Attorney
Henry Starr (seal)

Aug. Anson Collins &
Henry Stone
to
Abraham Blaylock