

8737

No. \_\_\_\_\_

Supreme Court of Illinois

Sanger Camp~~x~~ & Co.

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vs.

Arthur M. Kinkade

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71641  7



At a Term of the Circuit Court begun  
and held in and for the County of Richland  
and State of Illinois for the 1<sup>st</sup> Judicial Cir-  
cuit in said State on Monday the 18<sup>th</sup>  
day of September in the year of our Lord  
one thousand eight hundred and fifty  
four before the Honorable Justice Par-  
lan Judge &c amongst others the following  
proceedings were had to wit

Vanoy Camp & Co  
Plaintiff  
vs  
Arthur M. Kade & Replein  
Defendant

Copy of affidavit

State of Illinois  
Richland County &c

John L. Robinson  
agent for Vanoy Camp & Co being first  
duty sworn doth depose and say that  
for and by Vanoy Camp James L. Sander William  
& George Hart Stewart Henry & Clark  
William Sneedall William Kelly William  
& Gallagher William Ring and John  
Camp & Company doing business under  
the style and designation of Vanoy  
Camp & Co are the true and lawful  
owners of and are lawfully  
entitled to the possession of as he  
has good reason to know and believe  
the following described articles of prop-  
erty to wit one bay horse young of the  
year of old the right hind foot white  
one brown horse about a year old  
hind foot white one pair of oxen  
bridle colored the rear eye blind  
in the right eye which articles of prop-  
erty are now in the possession of  
Arthur M. Kade who refuses  
to surrender them and unlawfully  
detaining the same said plaintiff further  
suits that the said articles of property  
have not been taken for any tax



assessment or fine levied by virtue of  
any law of this state nor seized under  
any execution or attachment against  
the goods and chattels of the above  
named annexes or either of them liable  
to execution or attachment.

Subscribed and sworn to before me  
27<sup>th</sup> July 1854 M. R. Vrederick Clerk

Copy of writ  
State of Illinois  
Richard County & ss  
The People of the  
State of Illinois to the Sheriff of said  
County Greeting if John Collinson agent  
for Robert Wagner James Wagner William  
Wagner Hart Stewart Henry & Clark  
William Freyschul William Neff William  
H. Callagher William King & Martin  
Camp of Camps and business  
under the style and designation  
of Wagner Camp & Co shall give you  
good and sufficient security to pro-  
secute their suit to effect and without de-  
lay and make return of the following  
described goods and chattels the prop-  
erty of the said Wagner Camp & Co to wit  
and bay horse gray 7 to 10 years old  
the right hind foot white the brown  
hairs about 6 years old hind foot  
white one of a pair of Oxen Brindle  
Colored the near eye blind in the right  
eye about 12 or 13 years old which  
Arthur M. Pinkade took and impunt  
ly detains against wages and pledges  
to the said Arthur M. Pinkade shall be  
awarded and further to save and  
keep you harmless in replevy in  
said property then you are to cause  
the said goods and chattels to be re-  
plevied and delivered to the said  
Wagner Camp & Co without delay and  
return to the said Arthur M. Pinkade



to be and appear before the Circuit Court  
in and for said County on the first day  
of the next term thereof to be holden  
at the Court House in Cherry on the third  
Monday in the month of September  
next to answer the plaint of the said  
Wanger Camp & Co for taking and unjustly  
detaining the goods and chattels of a paid  
and made due return of the same to be  
taken from the said plaintiffs as of  
course to the Clerk of said Court  
together with this writ with an endorse-  
ment thereon as to the manner in which  
you may execute the same

Witness my hand & the  
Seal thereof at Cherry this 27<sup>th</sup>  
day of July 1854  
J. B. Snyder Clerk

### Endorsement of Sheriff's Return

Executed by the within by  
taking the oxen and bay horse and  
delivering into the possession of  
William W. Wagoner the said oxen are  
agreed to let the Wagoner horse stay  
in possession of Kirk & Co until Kirk  
& Co and the plaintiffs could settle  
after that time Wagoner told me to  
let said horse into my possession  
and could not find him July 26<sup>th</sup>  
1854

J. H. Purkes Sheriff  
by R. B. Harvey Depty. Clerk

### Copy of Declaration

of the 1<sup>st</sup> of September of  
the Richard C. C. & D.  
1854

State of Illinois  
Richard County J. Lorenzo P. Wanger  
James P. Wanger William C. Wanger



Hart Stewart Henry A. Clark William  
Windsdail William Kelly Kelly William  
H. Gallagher William King & Orville Camp  
partners doing business under the name  
and style of Ranger Camp & Co plain-  
tiffs. Camp plain & Co vs. Hubert  
Kade defendant & being summoned  
4c of a plea in response the said de-  
fendant unjustly retained the cattle  
and horses of the said plaintiffs against  
surety &c and therefore the said plain-  
tiffs by their attorney complain of the  
said defendant for that the said de-  
fendant on the twenty seventh day of July  
A. D. 1854 at and in the County of Rich-  
land and State of Missouri kept one  
horse from 7 to 10 years old with right  
hind part white of great value worth at  
the value of fifty dollars one gray  
horse about 6 years old hind part white  
of great value worth at the value of  
fifty dollars one pair of oxen about  
11 or 12 years old brindle colored the  
near eye blind in the right eye of  
great value worth at the value of  
fifty dollars then and there of the prop-  
erty of the said plaintiffs and they and  
there being in the possession of the said  
defendant unlawfully wrongfully and  
unjustly did detain within and the said  
plaintiffs say they are injured and have  
sustained damage to the value of fif-  
ty dollars and therefore they sue &c &c  
Endorsement on back, Filed this 9th day  
of September 1854 M. B. Snyder Clerk

Copy of Pleas  
Richland County & Circuit Court  
Sept Term 1854  
Arthur M. Kinrade  
at  
Coenyo & Sanger aty Replevin



and said defendant by Wilson and Shaw  
his atty Carus, &c when he &c for pleases  
that he did not take any of the horse and  
Bramm horse one of the of Oxen in said  
deklaration mentioned in manner and  
form as said plaintiffs name above Com  
plained against him and if this he  
put himself upon the Country &c  
Wilson & Shaw

Traversed & issue joined <sup>attys</sup> Rittbill & Harrow  
and said defendant for further plea  
Carus &c and says that the said property  
mentioned in said plaintiffs deklar  
ation at &c was the property of one  
Belamy and not the property of said  
plaintiffs and this debt is due to  
messrs Laing &c &c by a judgment  
of his said goods together with his costs  
Wilson & Shaw

Traversed & issue <sup>for att</sup> Rittbill & Harrow  
and said defendant for further plea  
says that the said property mentioned  
in said plaintiffs deklaration at &c  
was the property of the said debt & that  
the property of the said debt & that  
utterly is supposed & this is ready  
to receive & by his said debt may  
judged out in said debt & that  
have or maintain this against said  
articles thereof against him & he may  
a return of said property together  
with his charges in this behalf  
according to the statute in such case  
made & provided Wilson & Shaw

Traversed & issue Harrow & Rittbill

Copy of order



Sanger Camp & Co  
Arthur <sup>vs</sup> Kinkadee } Replevin  
Ordered that the  
defendant plead herein by Tuesday  
morning 8 o'clock

Copy of Judgment &c  
Sanger Camp & Co  
Arthur <sup>vs</sup> Kinkadee } Replevin  
Came the parties by their attorneys,  
and the defendant by his attorneys having  
filed his plea herein and issue being  
joined thereupon came a jury consisting  
John Murray, George Sanders, John Deitz,  
John Hanks, James Starr, Jacob Loss,  
John Cunningham, Joseph Brown,  
Dorau Pigg, Jacob Nelson, Peter  
Kerral and John Springer twelve  
good and lawful men who after  
being duly elected, tried and sworn  
well and duly to try and the truth  
to speak upon the issue joined  
retired to consider of their verdict  
and after some time spent therein  
returned into Court the following  
verdict, to wit: The jury find the  
oxen to belong to the plaintiff and  
the horse to the defendant and that  
said defendant was adjudged by  
the Court that the said plaintiff  
retain the oxen and that the  
said defendant have and retain  
the brazen horse the plaintiff  
having abandoned their claims  
to the said horse and that the  
plaintiff recover of the said defendant  
their costs and charges about  
their suit in this behalf expended and  
their expenses execution &c thereupon  
the plaintiff by their attorneys



move the Court for a new trial in  
this cause, which motion after  
argument is disallowed &c

Copy Bill of exceptions &c

L<sup>d</sup> Sanger & Co Contractors  
under the name and style  
of Sanger Camp & Company } Replevin  
vs }  
Arthur McKinnade

That at the September Term of the Richland  
Circuit Court A<sup>d</sup> 1834 he said & held at  
Olney in said County on the 18<sup>th</sup> Sept the  
above entitled Cause came on to be heard  
before the Hon<sup>ble</sup> Justice Garland Judge of said  
Court and a Jury the Plaintiffs having  
abandoned their claim to the Defendant  
claimed in said suit & dect<sup>d</sup> W<sup>m</sup> J  
McKinney as a witness who being of  
lawful age and first duly sworn &c  
according to law testified as follows  
I am the book keeper and clerk of  
the said plaintiffs in their office at  
Puncheon in the State of Indiana that  
on the 22 day of April 1834 I drew  
the following paper which was receiv-  
ed by James D. Barry and attested by  
myself as also the following order of ordered  
property

Received of Sanger Camp & Co  
the following property at their respective  
valuations annexed to this order  
\$50 one brown Do \$35 one pair of oxen  
\$65 the above property to be put and  
my sections of the Rail Road and used  
in the prosecution of the work thereon as  
the property of Sanger Camp & Co and for  
the use thereof I do hereby agree to pay  
the said Sanger Camp & Co such a fair  
and equitable sum of money as may be  
agreed upon hereafter by the parties



the above mentioned oxen however to be  
returned to the said J & Co should the suit  
of Granger vs Vanger Camp & Co now pending  
be decided adversely to them In testimony  
whereof witness my hand and seal this twenty  
second day of April A D 1854  
Attest James Delaney Seal  
R J McKenney

J L Munson & Co will let James Delaney  
have the old yoke of oxen and such  
horses as may be determined upon between  
you April 22<sup>d</sup> 1854  
J & Co  
per McKenney

that the bay horse described in said  
receipt had before this been the property  
of J L Munson & Co said Camp & Co  
being composed of J L Munson, Wilson,  
King & Devin Camp the two latter be-  
ing men of the firm of Vanger  
Camp & Co that the brown horse was  
held for some time prior to the ex-  
ecution of said receipt and was at the  
time the same was made the prop-  
erty of Vanger Camp & Co, the ptfs in fact  
said brown horse having since  
by his delivery to James Delaney had been  
kept and used by said ptfs in and  
about their business all the time of  
the summer that the work oxen mentioned  
were one yoke of several which said  
ptfs had claimed but were then the  
subject of suit in the Lawrence Circuit  
Court having been taken by said ptfs  
in an action of replevin and were  
then remaining in the possession of said  
ptfs that said James Delaney was a  
sub contractor on the works of the  
said ptfs in Rich and Cass Co Illinois  
mills being of lawful age and first  
sworn according to law state of



That he was the Clerk of J & Munsell & Co  
pany and delivered the Bay & brown horse  
& the Oxen as specified in the receipt  
of James Delaney to said Delaney that  
the brown horse was the property of  
Vander Camp & Co as also the Oxen  
that said brown horse had for some  
time previous to the delivery to Delaney  
been kept & used by the ptffs at  
Piney Fork in the State of Indiana  
that the Oxen were delivered to Dela-  
ny under the order of R J McKinney  
the Clerk of said ptffs

John L. Munsell being of lawful age  
& first duly sworn says that he is the part-  
ner of Wilson, Rice & Munsell Camp  
and of the style of J & Munsell & Co  
that the brown horse & Oxen in said  
receipt specified he gave in the posses-  
sion of Delaney by the work of the  
said ptffs in Pineland Camp, Mo  
that the Bay horse was the property of  
J & Munsell & Co and that in said  
firm he assumed one half interest that  
Vander Camp & Co sent him to Rich-  
land Co with instructions to procure  
a writ of Replevin for the horses & Oxen  
and that he done so he had no authority  
to do any other act in connection ther-  
ewith that the brown horse & Oxen were  
the property of ptffs and that he had  
no interest in either whatever that he  
went with the officers to execute the writ  
in this cause & that the Oxen in the writ  
of Deft<sup>a</sup> mentioned & Bay horse were  
in the possession of the Deft during the  
progress of the trial it was agreed by  
the ptffs & Deft that the brown horse  
mentioned in the affidavit & decl<sup>a</sup> in  
this cause was in the possession of the  
Deft and that the title thereto should  
be one of the issues submitted to the



The Jury witness stated that he was not the agent for negotiation of any business for Potts but that they sometimes requested him to do particular acts for them except which he had authority that he had no authority to sell or otherwise dispose of or remove the property of Potts that at the time James Delany took the horses & Oxen mentioned he received of Delany \$20. on the bay horse the property of Potts & also on the brown horse or Oxen or pretended to receive anything at the brown horse or Oxen

Robert Maxwell Dept Sheriff being sworn states that he searched the writ on this cause found the bay horse & Oxen in possession of the Dept on the farm described by witnesses as received by Delany of Potts this was all the testimony of the Potts

Dept then introduced Eg Mitchell who being sworn states that James Delany had the bay & brown horse & Oxen in ~~possession~~ <sup>employment</sup> on his work in Richland County about the 1st of April and kept the same in his possession and worked & used them until about the last of June when said Delany left this County and was not returned and where he had gone witness does not know left horses and Oxen on the work

Mr Stewart being sworn stated that he was present at the office of James & Munson & Co. on the east bank near Washington when Delany was starting to Richland with the horses bay & Brown & Oxen & that from conversation with Delany went into the office where he saw Munson standing with some money in his hand and that he was out of humor with Delany



and in reply to the question of witnesses  
as to whether he had sold the two horses  
to Delany he stated he had received \$20.  
on the horses & that he had a great  
mind to give him Delany back the  
money and not let them go this was  
all the testimony in this cause

whereupon the jury having been instructed  
by the Court they retired and re-  
turned into Court the following verdict  
that they find the property in issue  
to be in the plaintiffs

Whereupon the Plaintiffs by their atty.  
moved the Court for a new trial in  
said cause which said motion being  
overruled by the Court the pliffs then  
excepted and tendered this final bill  
of exceptions & prays that the same  
be signed & sealed & made a part  
of the record in this cause which  
is accordingly done Charles Seal

State of Illinois  
Richland County  
Under Clerk of the Circuit Court  
within and for said County hereby  
certify that the foregoing pages con-  
tain a true and correct copy of the  
copy of the judgment and proceed-  
ing in the above entitled cause  
as fully and completely as the same  
remains of record in said Court  
Our witnesses hereof I have  
hereto subscribed my  
name and affixed the  
Seal of said Circuit Court  
hereto at Quincy this 7<sup>th</sup>  
day of February 1854  
C. W. Under Clerk



Sanger Camp & Co }  
A. M. Lincoln } Error to Richmond

And now comes the

Plff by Mitchell, his Atty and says that in  
the foregoing Record and Proceedings there is  
manifest error in the following points  
1<sup>st</sup> The Circuit Court erred in refusing  
a new trial upon motion of the Plff

2<sup>d</sup> The Circuit Court erred in entering judge-  
ment upon the verdict of the jury  
as the same appears of this Court, that  
same being contrary to the law  
and evidence of the case

Joinder in Error  
Constable for Defor

A. Mitchell  
Atty for Plff

No 444

Sanger Camp

vs

Arthur M. Lincoln

Transcript

Atty for Dr. transcript  
p. 3. 35.

Filed 23: Nov 4 1854

Winney S. P. North clk

By at Colchester S. G.

error to Richmond

Richard



Heat. C.S. This was an action of replevin, brought by Sanger, Camp & Co. against Kinkeade, to recover one yoke of oxen, one bay horse, and one brown horse. The sheriff made return that he had taken the oxen and bay horse, and delivered them to the plaintiffs; and that the agent of the plaintiffs had agreed that the brown horse should remain in the possession of the defendant.

The defendant pleaded non cepit, property in himself, and property in James Delaney. The declaration and pleas included all of the property mentioned in the writ of replevin. It was that, in September, 1854, the plaintiffs abandoned their claim to the bay horse; and it was agreed by the parties, that the brown horse was in the possession of the defendant, and that the title thereto should be one of the issues submitted to the jury.

The plaintiffs introduced the following evidence. Mr. Kinney testified that he was the book keeper and clerk of the plaintiffs, and that he wrote the following instrument which was executed by Delaney: "Received of Sanger, Camp & Co. the following property, at their respective valuations annexed to this; one bay horse, \$50; one brown horse, \$35; one yoke of oxen, \$65; the above property to be placed on my sections of Ohio and Mississippi railroad, and used in the prosecution of the work thereon, as the property of Sanger, Camp & Co.; and for the use thereof, I do hereby agree to pay the said Sanger, Camp & Co. such fair and equitable sum of money, as may be agreed upon hereafter by the parties; the above

Witnessed



open, horses to be returned to the said Surge  
 Camps & Co, should the suit of Greater or  
 Surge Camps & Co be decided adversely to  
 them. Witness my hand and seal this 22<sup>nd</sup>  
 day of April, 1854. James Delany Seal.

The witness also gave the following order  
 for the property: "J. L. Munson & Co, will let  
 James Delany have the old yoke of oxen and  
 such horses as may be determined upon between  
 you. April 22<sup>nd</sup> 1854, Surge Camps & Co  
 J. L. McKenney."

The witness further testified, that the brown  
 horse was the property of the plaintiffs at the  
 date of the receipt, and had for some time  
 previously been used by them about their  
 business; the oxen were then claimed by the  
 plaintiffs and in their possession, but there  
 was a controversy between them and Greater  
 about the ownership; Delany was a sub-  
 contractor under the plaintiffs on the rail  
 road.

Mills testified, that he was the clerk of J.  
 L. Munson & Co, and delivered the oxen and  
 horses in question to Delany on the order of  
 the plaintiffs; the oxen and brown horse were  
 then the property of the plaintiffs.

J. L. Munson testified, that the bay horse was  
 the property of J. L. Munson & Co, and the oxen  
 and brown horse were the property of the plaintiffs;  
 the oxen and horses were used by Delany on the  
 rail road; the witness commenced the suit as  
 the agent of the plaintiffs, and went with the  
 sheriff to execute the writ, and the oxen and  
 bay horse were found in the possession of the  
 defendant; the witness had no authority to  
 sell



3

sell or otherwise dispose of the property of the plaintiffs; when Delany obtained the property, the witness received \$20, from him on account of the bay horse, but he received nothing on account of the brown horse and open.

The defendant introduced the following testimony. Mitchell testified, that Delany used the open and horses on the rail road, from the last of April to the first of June; he then quit the county, and left the open and lease on the work. Newton testified, that he was present when Delany received the open and horses, and went into <sup>the</sup> office of J. L. Munson & Co. Munson had some money in his hand, and seemed to be out of humor with Delany; witness asked him if he had sold the two horses to Delany, and he replied that he had received \$20, on the horses, and he had a great mind to give the money back to Delany, and not let the horses go.

The jury found that the open was the property of the plaintiffs; and that the brown horse was the property of the defendant. The Court overruled the plaintiffs' motion for a new trial, and entered judgment on the verdict.

The finding of the jury was erroneous as to the brown horse. It clearly appeared from the evidence that the horse was the property of the plaintiffs, and that they were entitled to the immediate possession thereof. Even if Munson assumed to sell the horse to Delany, the sale was made without authority from the plaintiffs, and therefore was not binding on them. The fact that the horse was not taken under the writ of

replevin



replevin, did not preclude the parties from having the question of ownership determined by this action. The pleadings embraced the case, and the parties expressly stipulated that the right of property thereto should be one of the issues submitted to the jury. This gave the court full jurisdiction of the question. A decision of this issue would as effectually settle the rights of the parties to the horse, as if he had originally been seized by the sheriff and delivered to the plaintiffs. The court should have granted a new trial.

The judgment must be reversed and the cause be remanded.



*Amiga v. Hambode*

*Opinion*

*Feat.*



~~No 44~~ 45

Singer Camp & Co  
vs

Arthur M. Hinckley

Error to Richland

Opinion by  
Treat, C.J.

Judgment reversed and  
Cause remanded.

Opinion copied & aff

No 43

November 1852

Singer Camp & Co

vs

Arthur M. Hinckley

Error to Richland

Opinion by  
Treat, C.J.

8737

Judgment Reversed  
& Cause remanded