Ridgley, Stephen vs. Schutz, George 1855 St. Louis 357/5

578/a1

horse

S+R traded horses

Bowles, William states horse of R is stolen

S traded horse to Seeley, Anthony

Seeley rec. $95 from Schutz

jdgmt for Schutz

no opinion in file

State of Missouri.
County of St. Louis. } ss

Pleas held before the Law Commissioner's Court of St. Louis County.

George Schnetz, Plaintiff.
vs
Stephen Ridgley, Defendant.

Be it remembered, that on the twenty first day of September, eighteen hundred and fifty four, was filed in the office of the Law Commissioner's Court, a certain petition, which said petition is in the words and figures following, to wit: —

„George Schnetz, Plaintiff.
„ vs
„Stephen Ridgley, Defendant.

In the Law Commissioner's Court of St. Louis, County, State of Missouri, December Term, A.D. 1854.

„ Plaintiff states that about the month of November, A.D. 1850, at the City of St. „Louis, he swapped or traded horses with the defendant; that he got in the trade (a) „certain sorrel horse from the defendant, about 15½ hands high, with light mane & „tail and then about eight years old, and valued at the sum of ninety five dollars „which horse the defendant represented himself to be the owner of. Plaintiff fur- „ther states that the defendant was not the real and true owner of said horse, as

Petition

„he held himself out; but that a certain other person, was the real and true owner „to wit: one William Bowles of Jersey County, in the State of Illinois, and that the said „horse was stolen from the said Bowles and brought to this State where defendant „obtained possession of him.

„ Plaintiff also states that he traded the said horse to one Anthony D. Seeley; „that the said Seeley recovered from plaintiff in an action for the value of the „said horse, the sum of ninety five dollars, as will more fully appear from a „transcript of judgment herewith filed and marked "Exhibit A."

„ Plaintiff further states that because of the premises, he has been damaged by the „defendant in the sum of ninety five dollars; and he therefore asks judgment for „said sum.

George Schnetz.

„George Schnetz, plaintiff makes oath & says that he believes the above petition „and matters therein as stated are true. George Schnetz."

A.

„Sworn to and subscribed before me this 16th day of August, A.D. 1854.
„ McW. Cohrin, Law Comr. By M. Williams Deputy."

Afterwards, to wit: on the same day, a writ of summons was issued against the said defendant, on said petition, which said writ with the Marshal's return thereon made, is in the words and figures following, to wit: —

Summons.

„The State of Missouri. To the Marshal of St. Louis County — Greeting:
„We command you to summon Stephen Ridgley to appear before the Law Commissioner's Court of St. Louis County, on the first day of the next term thereof, to be held at the City of St. Louis, within and for the County of St. Louis, on the first Monday of December next, then and there to answer the complaint of George Schutz, as set forth in the annexed petition, and have you then and there this writ.
„(L.) Witness John W. Cohrin, the Law Commissioner of St. Louis County, with the seal of said Court hereto affixed, at office in the City of St. Louis, this 21st day of September in the year of our Lord, one thousand eight hundred and fifty four.
„ McW. Cohrin, Law Commissioner of St. Louis County."

Marshal's Return.

„Executed this writ in the County of St. Louis, October 5th 1854, by delivering a true copy thereof with the petition to the within named defendant.
W. H. Finkelake Marshal."

Afterwards, on the respective days hereinafter mentioned, the following proceedings were had in this Cause, to wit: —

## December 8th 1854. December Term.

„Answer filed."
Which said Answer is in the words and figures following, to wit: —

„George Schutz, plff.
„ vs
„Stephen Ridgley, deft. } In the Law Commissioner's Court. St. Louis County.

„Defendant for answer to plaintiff's petition states that it is true that in the autumn of the year 1850, he traded and exchanged horses with the plaintiff and defendant further states that the horse he traded with plaintiff and delivered to him in exchange

" for the horse delivered by plaintiff to defendant was owned by him said defendant
" and that he was the real and true owner of the horse delivered to said plaintiff
" and that no other person was the real or true owner of said horse, nor was said
" Bowles the owner of said horse, nor was said horse stolen from said Bowles
Answer. " and brought to this State. This defendant says he has no knowledge or informa-
" tion on which to found a belief, that plaintiff traded said horse to one Anthony
" Seely, or that said Seely has recovered in an action from plaintiff, the value of
" said horse, the sum of ninety five dollars, or any portion of said sum. Defend-
" ant further denies that said horse was of the value of ninety five dollars,
" Defendant further says that the horse he traded and delivered to plaintiff was
" valued in said trade at the sum of forty dollars which was the value of said
" horse, so traded as aforesaid. Wherefore the defendant prays Judgment.
" Stephen Ridgely makes oath and says he believes the above Answer and the
" matters therein as stated are true. S. Ridgely
" Sworn to and subscribed before me this 7th day of December, 1854.
" Irvin G. Smith, Notary Public."

" January 3d 1855.
" By consent continued to the next term."

" February 15th 1855. February Term.
" By consent continued to the 21st day of February, 1855."

" February 21st 1855.
" By consent continued to next term."

" April 16th 1855. April Term.
" Now at this day come the parties by their attorneys, and neither party requiring a Jury
" the trial of this cause is submitted to the Court, whereupon the Court after hearing the
" evidence and not being sufficiently advised of and concerning the premises, takes time
" to advise."

" April 19th 1855.
3. " Now at this day the Court being fully advised of and concerning the premises, doth

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Judgment.

„ find for the plaintiff, and doth assess the damages sustained by said plaintiff, by reason of the premises at the „ sum of eighty dollars. Therefore, it is considered by the Court that said plaintiff re- „ cover of said defendant, the damages aforesaid by the Court assessed, also his costs „ and charges in this behalf expended and that execution issue therefor."

„ George Schutz,
„ v
„ Stephen Ridgley. } Law Court Court.

Finding

„ The court finds the facts to be in this case, that the horse, the sub- „ ject matter of this suit, was not the property of the defendant at the time of the sale „ but was the property of one William Bowles of Illinois from whom it had been „ stolen and brought to this state where the defendant obtained possession of it. That „ the said horse at the time he was sold and delivered or traded to the plaintiff „ was of the value of eighty dollars. That the plaintiff afterwards traded the horse „ to one Anthony Seely, and the said Seely traded it to one Thomas Mann, from whom „ the said Bowles again obtained the possession of it,

Law.

„ On this Statement of facts, the law is declared as follows: –

„ That there was a warranty of title implied, on the part of the defendant in the sale „ of the horse to the plaintiff – that the title having failed the plaintiff ought to re- „ cover – and that the measure of damages is the value of the horse at the time of „ the sale and delivery thereof to the plaintiff

„ Judgment to be entered for eighty dollars. John W. Robin. Law Court"

April 21st 1855.

Move for new trial

„ Now at this day comes defendant by his attorney and moves the Court to grant a „ new trial herein, and files his reasons therefor,

Move to arrest

„ Now at this day comes the defendant by his attorney and moves the Court to arrest „ the Judgment herein and files his reasons therefor"

Move for a review

„ Now at this day comes the defendant by his attorney and moves the Court to „ grant a review herein and files his reasons therefor

May 5th 1855.

"The Court having duly heard the defendants motion to grant a new trial herein
"and not being sufficiently advised thereof takes time to advise,"

"The Court having duly heard the motion of the defendant for a review herein
"and not being sufficiently advised thereof, takes time to advise."

"The Court having duly heard the defendants motion in arrest of the judgment
"herein and not being sufficiently advised thereof takes time to advise"

June 4th 1855. June Term.

mo. for new trial overruled "The Court being fully advised of and concerning defendants motion for a new trial
"herein, doth consider that said motion be and the same is overruled"

mo. for review overruled "The Court being fully advised of and concerning defendants motion for a review
"herein, doth consider that said motion be and the same is overruled",

mo. in arrest overruled, "The Court being fully advised of and concerning the defendants motion in
"arrest of the judgment herein, doth consider that said motion be and the same
"is overruled."

July 2nd 1855.

"Bill of exceptions filed by defendants attorney.

Said Bill of Exceptions is in the words and figures following, to wit: –

"Schutz
" " } Law Court Court. Feby. 1. 1855.
"Ridgley

"Be it remembered, that on the trial of this cause plaintiff introduced evidence
"tending to show, that the horse, the value of which was sued for, was stolen in
Bill exceptions "the State of Illinois, that his value at that time was from $.70 to $.100. One
"witness stated that he saw the horse at the time Ridgley sold him, that he
"had never seen him before or since, and said the horse was thin & showed
5. "marks of hard usage, that as he looked then, he should not think him.

„ worth more than $35. to $40. dollars, but he knew nothing of the qualities
„ of the horse, but merely judged from what he saw at the time of the horse's looks. This
„ was all the evidence. The Court found the following facts and declared the law upon
Bill exceptions „ the same, as follows: (finding & law See page 4.) Defendant filed a motion
„ in arrest and for a review as follows:

„ George Schutz, }
„ vs } Law Commissioner's Court.
„ Stephen Ridgly. } Dec. Term. 1854.

„ The defendant comes and moves the court for a review of the said case. The witnesses
„ William Bowles, Albert Knowles, Green, A. L. Seely, Bowman & Patterson (the
„ testimony of said witnesses being all in depositions) only testify as to the value of the
„ horse some months after defendant parted with him. Patterson in his deposition
Mo. for review. „ states that Ridgley when he traded with plaintiff, told plaintiff that the horse looked
„ badly, and had been treated badly. The witness of plaintiff (Thomas Burt) testified
„ that he knew the horse when plaintiff and defendant traded, and that the horse
„ Ridgley let plaintiff have, was not then worth more than $40. This is the testimony
„ of the case and upon the other facts as proved, the defendant moves for a review.

By Knox & Kellogg, his Attys.

„ George Schutz, pltff. }
„ vs } Law Commissioner's Court, Dec. Term. 1854.
„ Stephen Ridgley, deft. } St. Louis County.

„ The defendant comes and moves the Court in arrest of judgment in this case
„ for the following reasons.

„ 1st. The petition of plaintiff shows no cause of action.

„ 2d. Because the remedy prayed for in the petition is a remedy to which the plaintiff is not entitled.

Mo. in arrest. „ 3d. Because the suit is for a failure of title to a horse, the measure of damages — is
„ whatever is the price the horse was valued at, at the time of the sale with interest &
„ the petition does not state the valuation of the horse when the defendant swapped or exchanged
„ him with plaintiff.

„ 4th. Because there is no sufficient cause of action stated in plaintiff's petition.

„ 5th. Because the petition is in other respects informal & insufficient.

Knox & Kellogg, Attys."

„ The court overruled said motions, to which the defendant then and there at the time excepted

" and prays the Court to sign, seal and allow, this bill of exceptions, which is done.
" John W. Colvin. (seal)."

July 2nd 1855.

" Now at this day comes Richard Ridgley esq. and presents to the Court here his bond
" in accordance with the Statute in that case made + provided to the said plaintiff
Appeal granted. " in the sum of two hundred dollars, with Sanford B. Kellogg as security, which said
" bond was acknowledged by the parties thereto and approved by the Court. Whereupon, on
" motion of the defendant by his attorney, an appeal is granted from the Judgment herein
" to the Supreme Court.

" Know all men by these presents, that we Richard Ridgley as principal and Sanford
" B. Kellogg as surety are held and firmly bound unto George Schutz in the sum of
" two hundred dollars, for the payment of which, well and truly to be made, we bind our-
" selves, our heirs, executors and administrators, jointly and severally, firmly by these presents,
" sealed with our seals, and dated at St. Louis, this 13th day of June, A. D. 1855.
" The condition of the above obligation is such, that whereas Stephen Ridgley has
Bond, " appealed from the Judgment rendered against him and in favour of George Schutz in
" the Law Commissioner's Court of St. Louis County, for the sum of Eighty dollars together
" with costs. Now if the said appellant will pay all costs and damages that
" may be awarded against him occasioned by such appeal, and shall prosecute
" his appeal, and shall perform such judgment as shall be given by the Supreme
" Court, and such as the Supreme Court may direct the Law Commissioner's
" Court of the County of St. Louis to give, and if the Judgment or any part thereof
" be affirmed, that he will comply with and perform the same so far as it may
" be affirmed, and will pay all damages and costs, which may be awarded against
" him, by the Supreme Court, then this obligation to be void, otherwise to remain in
" full force and effect. R. Ridgley (seal) S. B. Kellogg. (seal).
" Law Commissioner's Court of St. Louis County,
" June Term 1855 - June 13th 1855.
" this day appeared Richard Ridgley, the principal and Sanford B. Kellogg the
" security in the foregoing bond and acknowledged to have executed the same
" for the purposes therein expressed.
7 " (L.S.) In witness whereof, I hereto set my hand and affix the seal of said Court

" at Office, in St. Louis, the day & year last aforesaid.
" Wm. W. Colvin.
" Law Commissioner.

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State of Missouri, }
County of St. Louis. } ss. I, John W. Colvin, the Law Commissioner of St. Louis County do hereby certify that the above and foregoing is a true transcript of the record and proceedings in a certain cause, lately depending in the Law Commissioner's Court of St. Louis County, between George Schutz plaintiff and Stephen Ridgley defendant, as fully and wholly as the same remains of Record in my office.

In witness whereof, I have hereto subscribed my name and affixed the seal of the Law Commissioner's Court, at office in the City of St. Louis, this 19th day of July A.D. 1855.

John W. Colvin, Law Commissioner.

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(21)

Oct T. 1855

George Schutz respondent

v.

Stephen Ridgley appellant

Transcript

Law Commissioner.
Appeal.

This appeal dismissed.

Filed 3rd October 1855
Wm S. Glazebrook
Ck.

Fee $3.40 paid by
Saml Knox Esquire

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