Regor, Albert v Owings, Joshua 1865 530/5

639/6

Van Wagoner & Hamilton
Conifort, Mantor A

Lackland, Cline, & Jamison R

Albert Regor
W. Lackland. Admin R
V

Owings, Joshua A

St Louis
Feb 61
March 65

fre spass de
bonis asportatis

Owings had execution against Regor
Seized chairs in his possession but were Regor

- Appellant responded to Res. cause of action
but R wanted more aft

- A should not be held responsible for both
Children of action

Dryden Reversed & Remanded

State of Missouri } ss
County of Saint Louis } Be it remembered that on the 6th of May 1859 there was filed in the office of the clerk of the Saint Louis Circuit Court a petition which is in the words and figures following to wit=

Albert S Regor - Plaintiff
vs
Michael S Cere and
Joshua W Owings - Deft

In the Saint Louis Circuit Court
Sept Term A D 1859
State of Missouri County of St Louis.

Petition

Plaintiff states that he is now and has been for sometime conducting the business of manufacturing Chairs in the City and County of Saint Louis and State aforesaid, and had by his industry and honest dealing acquired a good credit and standing among the business men in said City of Saint Louis in his department of business, and by his limited means and industry was enabled to acquire fair profits from his business and to earn a decent livelihood for himself and family, The defendants well knowing the premises and wholly disregarding the rights of the plaintiff, with force and arms unlawfully, and with a design to injure and harass plaintiff did on the 24th day of April A D 1859 by themselves and their agents, enter upon plaintiffs possessions against his will and take carry away and convert to their own use the following personal property, belonging to the plaintiff= to wit 12 dozen office chairs of the value of 15 Dollars per dozen 4½ dozen of small office Chairs of the value of fifteen Dollars per dozen; Nine dozen Church Chairs of the value of thirteen Dollars per dozen, whereby and by reason of which wrongful and unlawful acts of said defendants said plaintiff has=

2

lost much time and been put to great expense and has been injured in his credit, and prevented from carrying on his business and trade, and fulfilling his contracts and engagements therein, whereby he has lost his customers and been greatly ~~damaged~~ injured in his trade wherefore and by reason of the premises aforesaid he has sustained damages in the sum of six hundred Dollars and for which he prays judgment against said defendants and for his costs in this behalf expended

Cline and Samuson
atty for Plaintiffs

State of Missouri } ss.
County of Saint Louis } Albert S Regor of lawful age produced and sworn on his oath deposes and states that the matters and facts contained in the foregoing petition are true as they are therein stated

Albert S Regor

Sworn to and subscribed before me this the 6th of May A D 1859

J Reed Clk

On the filing of which petition the following Summons was issued

Petition Summons

The State of Missouri } ss
County of Saint Louis }

The Coroner of Saint Louis County. Greeting

We command you to summon, Michael Shene and Joshua W Owings to appear before the Judge of our Circuit Court on the first day of the next term thereof to be held in the City of Saint Louis within and for the County of St Louis on the Last Monday of September next. then and there to answer the complaint Albert S Regor

3

as set forth in the annexed petition, and have you then and there this writ.

Witness, Stephen Rice, Clerk of our said Court with the seal thereof hereto affixed, at office, in the City of Saint Louis, this 6th day of May in the year of our Lord Eighteen hundred and fifty nine

Seal

S Rice Clk

There is endorsed on said writ the following Sheriffs Return

Executed this writ in the County of Saint Louis on the sixteenth day of May 1859 by delivering a true copy thereof and of the petition as furnished by the Clerk to Joshua H Owings, and further executed this writ by delivering a true copy of it as furnished by the Clerk on the same day & in the County of Saint Louis to Michael Sherr

L. N. Boisliniere Coroner

St Louis Co Mo

And on the 11th of October 1859 the following answer of Defts was filed. by leave of Court

Answer of Defts

Defendants answering the petition of the plaintiff say that they no knowledge or information sufficient to form a belief whether plaintiff has been for some time conducting the business of Manufacturing chairs in the City of Saint Louis or whether by his industry and honest dealing he has acquired a good credit and standing among the business men in said City of Saint Louis in his department of business or what are or were the means of plaintiff or how much were the profits of his business, Defendants

4

state that the defendant Joshua W Owings by the judgment and consideration of the Circuit Court in and for the County of Saint Louis, did on the 25th day of October 1855 recover against Thomas Keyes, William H Wilson & Daniel C Peyrette the sum of three hundred and ninety Dollars and Eighty five cents for his debt & also his costs and charges in that behalf expended, that afterwards, and on the 25th day of April 1859 an execution upon said judgment was issued from the Clerks office of said Court directed to the Sheriff of Saint Louis County who was at that date the defendant Cere, That said execution was by said Sheriff on said 25th day of April 1859 acting under direction of said defendant Owings levied upon the property specified in the Pltffs Petition as the property of one of the defendants in said Execution to wit Thomas Keyes, That afterwards and on the 27th day of April 1859 the said plaintiff filed with the said defendant Cere Sheriff as aforesaid his Claim in writing and verified by his affidavit as is required by the Statute in such case ~~made~~ claiming said property as his own, and demanding that the same be restored to him and thereupon the said Owings plaintiff in said execution failing to give the bond provided in such case to be given the said defendant Cere Sheriff as aforesaid tendered the said property to said plaintiff who refused and still refuses to receive the same Defendants have no knowledge or information sufficient to form a belief as to the value of the said property mentioned in said petition, Defendants deny that the taking of said property specified in the petition of said plaintiff upon said Execution was wrongful or unlawful and they allege that the said property was at the time of the said levy the property of said Thomas Keyes

8

one of the Defendants in said Execution, Defendants deny that by an act of theirs, plaintiff has lost much time, or has been put to great expense, or has been injured in his credit or prevented from carrying on his business or trade or from fulfilling his contracts, or that he has lost any customers or injured in his trade, Defendants deny that by any act of theirs plaintiff has been injured in any sum whatever

Comfort and Manlier with
T. C. Reynolds for Defts

Joshua W Owings one of said Defendants for himself and his Co-defendant makes oath and says that he believes the foregoing answer, & the matters therein as stated are true

Sworn to & Subscribed this 11th day of October 1859

J W Owings

J Rice Clk

Oct 13th 1860

Pud at the September Term 1860 and on the 13th of October 1860 the following proceedings were had herein

Petition

Now come the plaintiff and the Defendant Joshua W Owings, by their respective attorneys, and the plaintiff dismisses this suit as to the Defendant Michael Shore, and also come a Jury to wit, Michael Castello, John Kenwood, George McPheeters, A Moore, William Bean, E I Glasgow, Phil Devereaux, Alton Horde, John M Taylor, Daniel Meehan, John Bernard and John Broad, twelve good and lawful men who being duly elected tried and sworn the issues herein joined, well and truly to try the trial progresses but not being finished further proceedings are laid over until Monday.

And at the same term and on the 15th day of October 1860 the following further proceedings were had herein

Petition

Now come ayain the parties, by their respective attorneys, and also the Jurors empannelled and Sworn herein, and the trial progressed and being finished the Jurors aforesaid upon their oaths aforesaid say they find for the plaintiff and assess his damages at the sum of Six hundred Dollars, It is therefore considered by the Court that the plaintiff recover of the defendant the damages aforesaid in form aforesaid as apprised and also his costs herein expended and have execution therefor

And at the same term & on the 4th December the following entry was made herein —The Defendants motion for a New Trial being heard and fully considered by the Court is overruled

And at the September Term 1860 and on the 23rd January 1861 the following further proceedings were had herein

Order for Appeal

Defendant files ~~a bill of Exceptions~~ & an affidavit Appeal, and an appeal is allowed him to the Supreme Court from the judgment herein rendered Defendant files an Appeal Bond which is approved by the Court

Bill of Exceptions

And on the 11th of January 1861 the following Bill of Exceptions was filed

Be it remembered that at the September Term 1860 and on the 13th day of October 1860 this cause came on for trial and the plaintiff dismissed this suit as to the

1

Defendant Michael S Bere and thereupon a Jury was Empannelled and sworn in the cause, The plaintiff to maintain the issue on his part introduced as a witness

T Keyes Witness

Thomas Keyes, who testified as follows —

I know the parties, The plaintiff is a chair manufacturer his place of business was in the alley between Pine and Chesnut and Second and Third Streets in Saint Louis I was painting at the time - Dont know who levied on the chairs. They were taken away by the Sheriffs Officer to the Tobacco Warehouse, Chairs taken wire 12 dozen office Chairs worth fifteen Dollars per dozen. Nine dozen French Chairs worth twelve to thirteen dollars per dozen, Four and one half dozen childs rimmed chairs worth fifteen Dollars per dozen Most of the chairs were finished, a few wanted a coat of varnish some of the office chairs lacked varnish. remainder almost all finished Two or three dozen lacked varnishing it was worth fifty cents each to varnish - I had been painting Chairs for Regor since fall of 1858 - He made chairs on wash street above seventh Chairs were levied on, on the 25th day of April 1859 and taken away next day, Owings said he would make his money out of the chairs, after the levy Fate and myself went to Owings to see him and told him the chairs did not belong to me, He said he did not would want to talk about the chairs, but if we wanted to pay the note I owed him he would talk, He said something about making a horse or loaning a saddle, Regor was not able to fill orders that he had on hand, He had not means to go on with his business and some man who was furnishing him lumber refused to let him have any more, he was making from ten to twenty five Dozen chairs per week, He had at that time of levy four or five hands working in his shop ——

On Cross Examination the witness said
Owings had a judgment against me, The place of business
on the alley between Pine and Chesnut streets was rented
by Tate & Co who allowed me to Paint chairs for Regor, I paint
as rent to Tate & Co, at the time of the levy that was my
place of business. I did all the work I could get at that
place until they would stay stop - They never did pay
stop, I did all the work I could get only, I did theirs first
I used to sell chairs that I painted and got my wages in that
way, It was not understood that I had an interest in the
chairs - I got three dollars per dozen for painting chairs, I
have sold some chairs as my chairs because they were my
chairs to extent of my wages - If I sold more than my wages
I had to account to Regor, I only know of Regor's
inability to fill orders from what other people told me
In January 1860 a fire occurred which burned out
Regor, The business he did fell short after levy, and up
to the Fire, He made eight or ten dozen chairs per
week from date of levy up to time of the fire in January 186[illegible]

M Keller Michael Keller - a witness for plaintiff testified as follows
I never saw the chairs before the levy saw them afterwards
in the Tobacco warehouse, they were not in good condition
The defendant here objected to any testimony as to the condition
of the chairs, after the offer of Deft Cerre the Sheriff to
return them to plaintiff and the plaintiffs refusal to receive
them, but the Court overruled the objection of defendant
to which action of the Court the Defendant at the
time excepted —
The witness then testified as follows.
Saw the chairs were filled up badly, may cost a dollar
or two a dozen to fix them so as to be saleable may be

9

not so much, Chairs may bring half they are worth
On Cross examination Witness testified
Did not see but one Chair broken - Dont know whether
they were scratched.

M Bond — Mathew Bond - a witness for the plaintiff testified as follows.
Dont know any thing positive about the chairs, Am
not certain, whether I ever saw the chairs, I cannot say
whether the Chairs were made by Regor, Regor
carried on more business before the levy than after
Cannot say how many hands he had after the levy ←
Cannot say whether any hands were discharged

P. Meyer — Peter Meyer - witness for plaintiff testified as follows
I worked at Regors saw Chairs put on a wagon and sent
away, guess they were sent to paint shop, Dont know
who the chairs were manufactured for, Dont know
what effect the levy had on Regors business

J. H. Crane — John H Crane - a witness for plaintiff testified as follows
I know Regor know of Chairs he had at Keyes paint shop
know of levy saw them taking away office and French chairs
I went to Owings Office with Keyes to explain, that
he was taking other mens chairs to pay Keyes debt
Owings would not listen, said if we wanted to pay the
debt he would talk about it, I know of Keyes painting
Chairs for Regar, Pate & Les & myself, Plain rimmed
Office chairs were worth, fifteen dollars per dozen
French chairs, worth twelve Dollars per dozen
Childrens rimmed chairs, worth fifteen Dollars per
dozen, Regor did not bring as many chairs there
to paint as before

10

G Brandon — George Brandon a witness for plaintiff testified as follows, I know Regor – Had given Regor an order for chairs, got the chairs afterwards, could not get them immediately, but got them afterwards

N Colligan — Nicholas Colligan a witness for plaintiff testified as follows, I know Regor, knew of the levy shortly after I was furnishing lumber to Regor & refused to send any more lumber, until I could hear more about it On Cross Examination witness testified, I have sold Regor lumber since the levy, have sold him all he asked for

J. S Wilkins — J. S Wilkins a witness for plaintiff testified as follows. Owings ordered the levy, I made it as deputy Sheriff I took the Chairs to the Tobacco warehouse, Owings said he would give bond, he did not, I selected men to appraise the Chairs they did not appraise them, I was directed not to do so. On Cross Examination – witness testified This paper shown to me is the claim made by Regor I superintended the removal, did it carefully. Have not examined the Chairs since, saw them the day I went to appraise – they seemed in as good condition as when taken, None of the Chairs were broken to my knowledge On reexamination the witness said.
The chairs had to be let down two or three floors, think they were on third floor, Had four furniture Cars, dont know how many loads, Had eight or ten hands probably three or four loads for each car, Paint on some of the chairs was not dry

H Fate — Hiram Fate – a witness for Plaintiff testified as follows

11 I now the parties & know of the levy, The chairs were up over Cranes furniture store, The shop belonged to my partner and myself - we rented of Crane, Regor painting done there at my ~~request~~ consent, The chairs taken belonged to Regor, never counted the chairs - Common office chairs were worth thirteen to fifteen dollars per dozen, French chairs worth twelve Dollars and childrens rimmed chairs were worth thirteen to fifteen dollars per dozen, The chairs were Regors, Owings said he wanted his pay He did not care who paid - I said I would not pay, This was same day of the levy, The chairs were at the time in the shop, They were afterwards removed, We told Owings - chairs were Regors before they were removed & after the levy - after the levy and before the removal a watchman was there Owings said he wanted to make his money out of the Chairs,

The plaintiff by his Counsel here asked the witness the following question.

What was the value of all the property taken under the execution of Owings against Keyes & others? The defendant objected to said question for reason that the same was incompetent & irrelevant but the Court overruled the objection to which action of the Court the plaintiff at the time Excepted The witness answered - From thirteen to fifteen or Sixteen hundred Dollars.

The plaintiff by his counsel then asked the witness the following question.

What was the ~~f~~ value of the property taken belonging to Fate and Page?

The defendant objected to said question for reason that the same was incompetent & irrelevant - but the Court overruled the objection to which action of the Court

the defendant at the time excepted,
The witness then answered as follows some twelve hundred dollars may be a little over,
The witness continued as follows:
The levy affected Regor's credit; Don't know any parties who refused to credit him - we refused to credit him a short time after. Regor dealt with us before the levy - after the levy not so much, brought not one half so much, He did not do one third as much as before, Dont know how much capital Regor had, He did a small business.
On cros examination witness said - I don't think Regor asked me to credit him after the levy, He always got what he came to purchase - Never told Regor that I would not trust him - Chairs were gradually falling in price in 1859 - Business was dull and getting duller.
The shop where the chairs were levied on, Keyes used as his place of business.

W. M. Harlow — William M Harlow a witness for plaintiff testified as follows - I know plaintiff he had done work for me — Have given him an order for work that he had on hand finishing - The paper shown me is in my hand writing. This was given in early part of Spring 1859 - Never saw the chairs - I heard of a levy some three or four weeks after this order was given. I called on Regor for the chairs - after the levy I found out the order could not be filled.

This was all the evidence on the part of the plaintiff -
The defendant to maintain the ispue on his part offered the following ~~answer~~ Evidence -

W L Greenfield — W L Greenfield a witness for the defendant testified as follows - I have seen the chairs at the Tobacco ware house Office chairs are worth fifteen Dollars

13 per dozen, Small office chairs worth ten and One half to twelve Dollars per dozen, French chairs worth ten and one half to twelve Dollars per dozen, I saw no chairs damaged - some were not finished —

On Cross examination witness said.

We rent room at the Tobacco ~~wa~~ warehouse & consider that furniture is not injured by being stored there -

The Defendant offered and reads in evidence record in case of Owings vs Keyes &c in Circuit Court

Record State of Missouri } ss.
County of Saint Louis } Be it remembered that on the 27th September 1855 there was filed in the office of the Clerk of the St Louis Circuit Court a petition which is in the words and figures following - to wit —

State of Missouri } ss In the Saint Louis Circuit
County of Saint Louis } Court - October Term 1855

Joshua W Owings - Plaintiff
against
Thomas Keyes, William
Petition K Wilson & David C Piquett - Defts } Plaintiff states that the defendant Thomas Keyes by his promissory note which is hereto annexed, dated Saint Louis July 24th - 1855 promised to pay sixty days after date to the order of the defendant William K Wilson Three hundred and Seventy five Dollars for value received, negotiable and payable, without defalcation or discount at the Bank of the State of Missouri That afterwards and on the same day the said William K Wilson assigned by endorsement and delivered said note to Keyes and Piquett, which firm was

composed of the Defendants Thomas Keyes, and David C Piquett, and said Defendant Thomas Keyes and David C Piquett by their firm name aforesaid afterwards and on the same day assigned by endorsement and delivered the said note to plaintiff who thereby became and still is the legal owner of said note - Plaintiff further states that when said note became due and payable according to its tenor and effect payment of the same was demanded at the said Bank of the State of Missouri and refused wherefore said note was duly protested for non payment and all of said defendants were immediately notified thereof - Plaintiff says that said note still remains unpaid, and for the same with interest and damages he asks judgment

Comfort and Manter
attys for Plaintiff

Joshua W Owings - Plaintiff makes oath and says that he believes the foregoing petition and the matters therein as stated are true

D W Owings

Sworn to and Subscribed
before me this 25nd day of
September 1855
William J Hammond Clk

On the filing of which petition the following Summons was issued

Summons

The State of Missouri

To the Sheriff of Saint Louis County - Greeting
We command you to Summon - Thomas Keyes
William R Wilson and David C Piquett

15 to appear before the Judge of our Circuit on the first day of the next term thereof to be held in the City of St Louis within and for the County of Saint Louis on the 4th Monday of October next then and there to answer the complaint of Joshua W Owings of Indiana as set forth in the annexed petition and have you then and

(Seal) Witness, William J Hammond, Clerk of said Court with the seal hereto affixed at office, in the City of Saint Louis this 27th day of September in the year of our Lord eighteen hundred and fifty five.

Wm J Hammond Clerk

There is endorsed on said writ the following Sheriffs Return

Sheriffs Return — Executed on the 27th day of September 1855 by delivering a copy of the writ and petition as furnished by Clerk to Thomas Hayes, William H Wilson and David C Piquett in St Louis County —

Turner Maddox Sheff
by Geo H Stevens Depty

And at the October Term 1855 and on the 25th of October 1855 the following further proceedings were had herein

Judgment by Default

Now at this day comes said plaintiff by his attorney but said defendants although duly summoned and called come not but make default wherefore on motion of said plaintiff by his attorney it is ordered by the Court that the petition of said plaintiff be taken as confessed against said defendants as confessed, and the plaintiff waiving a Jury submit this cause to the Court upon the

15 pleadings and proof and the Court having duly heard and considered the same doth find from the instrument of writing on which this action is founded that said defendants are indebted to said plaintiff in the sum of Three hundred and ninety Dollars and Eighty seven cents, It is therefore considered and adjudged by the Court that said plaintiff recover of said defendants the sum aforesaid in form aforesaid ~~It is therefore considered and adjudged by the Court that said plaintiff recover of said defendants the sum aforesaid~~ as found - and also his costs and charges herein expended and have thereof execution.

Also the Execution with Sheriffs Return on same of Owings vs Keyes &c.

Execution

The State of Missouri

To the Sheriff of the County of St Louis. Greeting

Whereas Joshua W Owings on the 25th day of October in the year of our Lord one thousand Eight hundred and fifty five - at our St Louis Circuit Court - recovered against Thomas Keyes, William K Wilson & David C Pegiett the sum of Three hundred and ninety dollars and Eighty seven cents Debt - together with Twenty dollars and twenty cents - for costs and charges in that suit expended, These are therefore to command you again that of the goods and chattels and real estate of the said Thomas Keyes, William K Wilson & David C Pegiett - you cause to be made the debt and costs and that you have the same before the Judge of said Court on the Last Monday of September next to satisfy the Debt and costs aforesaid and

16

that you certify ~~how~~ you have executed this writ.

Witness Stephen Rice Clerk of our said Court with the seal thereof hereto affixed at office in the ~~City~~ City of St Louis this 25th day of April in the year of our Lord Eighteen hundred and fifty nine

Seal

S Rice Clk C.C.

There is endorsed on said execution the following

Sheriffs Return

Sheriffs Return

To Satisfy this writ I did on the 25th day of April 1859 levy on and take by order of the plaintiff as the property of the defendant - Thomas Keyes - Seventy Seven 1/12 Dozen Aported Chairs which property was afterwards claimed by Tate and ~~Hart~~ Page, and a bond was demanded from the plaintiff which he refused or failed to give said property was thereupon released and delivered to said Claimant - I did also by order of plaintiff levy on and take 12 dozen office chairs, 4½ doz small rein chairs & 9 doz French chairs which said property was claimed by Albert S Regor and a bond was demanded of the plaintiff which he refused or failed to give - I them offered to return said property to the said Albert S Regor and he refused to receive the same - The said Chairs are now in my possession no other goods chattels or real estate found in my county belonging to the defendants whereon to levy and make the within debt and costs or any part thereof

Michael S Cere Sheff.

Also the claim of property made by Regor

To Michael S Cere, Sheriff

Regors Claim

You are hereby notified that I claim the following described personal

17

property to wit.
12 dozen office chairs 4 1/2 dozen small pine
chairs, 6 dozen French chairs being the same
property levied on by you by virtue of an execution
in favor of Joshua B Owings against Thomas
Keyes and others being No 139 to November Term 1859
of the Saint Louis Court of Common Pleas. My
interest in said property is the whole thereof
and I am in good faith the lawful owner of the
interest claimed by me in said property - the defendants
in said execution have no right or title directly or
indirectly in the interest in said property claimed
by me, and this claim is not made in collusion
with said defendants or either of them for the
purpose of vexing hindering or delaying the
plaintiff in obtaining his just rights and said
property is worth the sum of Three hundred and
Eighty two 50 Dollars

Albert S Regor

Sworn to and Subscribed
before me this 27th
day of April 1859
Charles A Mantz Clk
Saint Louis Land Court.

It was admitted by the plaintiff as follows,
That after levy made by sheriff on goods sued
for plaintiff made Claim under oath and
after such claim made defendant refused to
give bond and Sheriff then tendered the goods
sued for back to plaintiff and plaintiff refused to
receive them, this occured five or six days after
levy

18

This was all the evidence in the cause
The plaintiff then asked the Court to give to the
Jury the following Instructions

Plffs. Instructions Given

The Jury are instructed that the term malice as used in the petition does not mean ill-will on part of Owings towards Regar, but in its legal sense means wilfulness — a wrongful act done intentionally without just cause — And if the jury find that the defendant caused the Sheriff to levy upon and seize the chairs mentioned in the petition under an execution in his favor and against one Thomas Keyes, and that said chairs did & not belong to said Keyes but did belong to Regar and that Owings knew that fact, and said Owings with such knowledge caused the Sheriff to levy upon and seize said chairs under said execution and to take the same out of the possession of said Regar, then in the law said Owings is guilty of a malicious trespass and in such case the Jury should find for Plaintiff, and the measure of damages is the value of the goods at the time of the levy and the Jury may if they think fit also give interest over and above the value of the goods at the time of the seizure and may also add damages for any proximate injuries caused by such seizure and this may if they think fit also add vindictive damages

Given

If the Jury find that Deft Owings caused the Sheriff to levy upon and seize the chairs mentioned in the petition under an execution in his favor against Thomas Keyes and that he did so without malice and that the Chairs so levied upon and seized were the property of Regar and that said Chairs were levied upon and seized and taken out of the possession of Regar

19

then the jury should find for plaintiff and the measure of damages is the value of the chairs at the time of the levy to which the Jury may add interest if they think fit over and above the value of the chairs at the time of the seizure

Given

If you find that the chairs were the property of Regor and were sent by him to a place where Keyes was painting to be painted by Keyes for Regor, and that Keyes painted the chairs for Regor at a stipulated price ~~for Regor~~ per dozen, and that the Sheriff seized the Chairs while at the place at which Keyes had painted or was painting them, in the law the Chairs were in the possession of Regor & so the Jury should find.

Given

4

If ~~the~~ you find that the Chairs were levied upon and seized and taken out of the possession of Regor by the Sheriff under and execution in favor of Owings against Keyes. and that the Chairs belonged to Regor at the time of the levy and that the Chairs were taken out of the house in which they were deposited and removed to another part of the City, Then the plaintiff was not bound to receive back the property even if it were tendered to him, and his refusal to receive back the property does not affect his right in this action to recover the value thereof at the time of the levy and seizure and interest on the value thereof at the time of the seizure

The defendant objected to the giving of said instructions but the Court overruled his objections and gave said instructions to the Jury to which action of the Court the defendant at the time excepted.

The defendant then prayed the Court to give the following

20 instructions to the Jury.

Defendants Instructions Refused

The Jury are instructed that the defendant Owings is not liable in this action for any damages or injury which may have been done carelessly or negligently to said property sued for by the Sheriff Carr or any of his servants or agents—

Refused 2

If the Jury believe from the evidence that the property sued for was levied upon by the Sheriff on an execution in favor of the defendant Owings against Keyes and others that after such levy the plaintiff made to the Sheriff the claim in writing under oath which has been given in evidence claiming to be the owner of the said property and that after such claim was made the said Sheriff released the said levy and before the commencement of this suit tendered back the said property so levied upon and sued for in this action to the plaintiff and that the plaintiff refused to receive the same, then the Jury are instructed that the plaintiff cannot recover against the defendant any thing for the value of said property

Refused 3

If the Jury believe from the evidence that the property sued for was levied upon by Sheriff Carr on an execution against Thomas Keyes and others in favor of defendant Owings and that at the time of such levy the said property was in the possession of the said Thomas Keyes, and that after such levy the said plaintiff made the claim in writing which has been given in evidence claiming said property as his own and that after such claim made and before the commencement of this suit the said Sheriff released the said levy and tendered

21

the said property to the plaintiff and that plaintiff refused to receive the said property then the Jury are instructed that the plaintiff cannot recover any thing for the value of the said property but only for the actual damage done by reason of the levy

The Court refused to give to the Jury said instructions & to such refusal of the Court the defendant at the time excepted.

The Jury thereupon retired to consider of their verdict, and after being absent for some time addressed to the Court a communication & thereupon the Court ordered the Jury to be brought into Court & of his own motion gave to the Jury the following instruction

Instruction given by Court

The Jury are limited in the amount of their verdict if they find for the plaintiff to the amount of damages claimed by the petition

The Jury are limited in the amount of their verdict if they find for the plaintiff to the amount of damages claimed by the Petition which is $600

The defendant objected to the giving of said instruction but the Court overruled the objection of defendant to which action of the Court the defendant at the time excepted.

The Jury found a verdict for the plaintiff.

Afterwards and within four days the defendant filed a motion for a new trial which is in the words and figures following ~~to wit~~

Motion for New Trial

And now comes the defendant and moves the

22 Court to set aside the verdict and grant a new trial in this cause for reasons as follows.
1st Because the verdict is against law
2nd Because the verdict is against evidence and the weight of evidence
3rd Because the Court gave improper & illegal instructions to the Jury
4th Because the Court refused to give proper and legal instructions to the Jury asked for by the defendant
5th Because the Court admitted improper and illegal evidence on the part of the plaintiff.
6th Because the verdict is excessive.

Confort & Wanter
Attys for Defft.

But the Court overruled said motion to which action of the Court in overruling said motion for a new trial the defendant at the time excepted & now prays the Court that this his bill of Exceptions may be signed and made part of this record which is accordingly done

S. M. Breckinridge

(Seal)

Affdt for an appeal

Said affidavit for an appeal is as follows
Joshua D. Owings defendant in above entitled cause being duly sworn on his oath says that the appeal prayed and taken in this cause is not made for vexation or delay but because affiant believes that appellant is aggrieved by the judgment or decision of the Court

J. D. Owings

Sworn to and Subscribed this 21st day of January 1861 before me

J. Rice clk

22 Court to set aside the verdict and grant a new trial in this cause for reasons as follows.
1st Because the verdict is against law
2nd Because the verdict is against evidence and the weight of evidence
3rd Because the Court gave improper & illegal instructions to the Jury
4th Because the Court refused to give proper and legal instructions to the Jury asked for by the defendant
5th Because the Court admitted improper and illegal evidence on the part of the plaintiff.
6th Because the verdict is excessive.

Comfort & Wanton
Attys for Defft

But the Court overruled said motion to which action of the Court in overruling said motion for a new trial the defendant at the time excepted & now prays the Court that this his bill of Exceptions may be signed and made part of this record which is accordingly done

S. M. Breckinridge

(Seal)

Affdt for an appeal

Said affidavit for an appeal is as follows
Joshua H Owings defendant in above entitled cause being duly sworn on his oath says that the appeal prayed and taken in this cause is not made for vexation or delay but because affiant believes that appellant is aggrieved by the judgment or decision of the Court

J H Owings

Sworn to and Subscribed this 21st day of January 1861 before me

S Rice clk

214

State of Missouri
County of Saint Louis } ss I Stephen Rice Clerk of the Saint Louis Circuit Court within and for the County and State aforesaid certify the above and foregoing to be a true and complete transcript of the record and proceedings in the above entitled cause as fully as the same remains of record in my office. In testimony whereof I hereto set my hand and affix the seal of said Court at office in the City of Saint Louis this 28th day of January A D 1861

Stephen Rice Clerk

Index

Petition	Page	1
Summons	"	2
Answer of Defts	"	3
Bill of Exceptions	"	6
T. Keyes - witness	"	7
M Keller	"	8
M Bond	"	9
O Meyer	"	9
J. H Crane	"	9
G. Brandon — Gallegan & Wilkens & Tate		10
Harlow & Greenfield		11
Record - & Pet Sums & Return		13 & 14 & 15
Execution & Return		15 & 16
Regors Claim		16 & 17
Plffs Inst Given		18 & 19
Defts " Refused		20 & 21
Court " Given		21
Motion New Trial		22
affts for appeal & appeal Bond		22 & 23

12

~~221~~ ~~271~~ ~~[illegible]~~

~~[illegible]~~ ~~20~~ (6)

March 9. 1865

Wm H Lackland admr of

Albert S Regan
respondent.

vs

Joshua W Owings
appellant.

Transcript Supreme
Court

Filed February. 28. 1861.
Wm S. Glanville
Clk

~~Lackland~~

Comfort & Manter for
Appellant

Lackland Cline & Samson
for Appellee

Fee $8.50 Paid by
J. W. Owings [illegible]

$10.00 pd to Clerk by Mr. Owings the aplt. / apeint /

1864 March 21. Death of Respdt suggested & by leave of Court
Wm H Lackland enters his appee as admr Dp
1864 March 28th Argued & submitted
1865 April 29 Reversed & Remanded, Opn filed. Dp 316

Albert S. Regor respondent } In Supreme Court
vs
Joshua W. Owings appellant }

The appellant says that there is Error in the record in this

1st The Court overruled the motion of the appellant for a new trial

2° On the whole record it is apparent that the judgment should have been for the appellant

Comfort & Manter
for appellant

Now at this day comes the Respondent and for joinder of Errors denies that the Court below committed any error whatever at the trial of this cause or in overruling the motion of Appellant

Lacklund Colin & Sammons
attys for Resp. etc

12 + 13 — 180
4 1/2 15 — 72.60
9 1/2 13 — 117
3 69.50

Supreme Court

Albert S. Regor
Respondent

?

Joshua W. Owings
appellant

Assignment of Error

Filed 22d March 1861.
W. F. Glanville
Cl.

Albert S Regor Resp
vs
Joshua Howings
appt

IN SUPREME COURT,
TERM, 18

AND now comes the said Appellant and say, that in the record and proceedings of the Court below, in the above entitled cause, there is manifest error, and for error said Appellant assigns the following, to wit:

1. That said Court admitted improper and illegal testimony offered by Plaintiff
2. That said Court rejected proper and legal testimony offered by Defendant
3. That the Court gave to the Jury improper and illegal instructions.
4. That the Court refused to give to the Jury proper and legal instructions offered by Defendant
5. That the verdict was against the evidence.
6. That the verdict was against law.
7. That the verdict was against both law and evidence, and against the law under the evidence.
8. That the verdict was against the weight of evidence.
9. That the judgment was rendered in favor of the Plaintiff when it should have been rendered for the Defendant
10. That said Court overruled the motion for a new trial, made by Defendant

Van Wagoner & Wingate
attys for Appellant

And now come the ..... and for joinder in error say, that there is no error in the record and proceedings of said ..... in said cause, as assigned by said .....

Albert S Regan
Respdt
vs
Joshua W. Owings
Appelt

Assignment of Errors

Van Wagoner & Wingate
attys for Appelt

Filed April 9. 1863
A.W. Mead
Clk

Albert S. Rigor Respt. } In the Supreme
vs } Court of Missouri,
Joshua W. Owings Appl. } March Term 1863.

Respondents points and authorities.

Defendants objections to the testimony of Hiram Tate were properly overruled. The value of the entire property seized by Owings under his executions against Keys was legitimate and proper to show the character of the levy. The issue made by the pleadings was the malice of the transaction and hence it became important for the jury to know all of the circumstances under which the trespass was committed.

Seven Ann. L. Regt p. 50
Sedgwick M of D p. 484

In our opinion the only legal question raised by the instructions worthy of the attention of this Court is, Can the owner of goods that are seized and carried away by a trespasser, refuse to receive them back again when tendered by the wrong doer, and maintain his suit for the value? or in other words can he waive the goods and sue for and recover a money satisfaction? The instructions raise this proposition and if it can be done then there is no end in them. The local statute applicable to St Louis County passed for the benefit of Sheriffs and Marshalls does not in any wise change or modify the liability of the party who directs the Sheriff or Marshall to levy upon the prop-

erty of a third party: and hence the parties stand upon their common law rights and the defendant became liable as a trespasser to the defendant occasioned by the seizure of his goods and it was not in his power to divest himself of any part of that liability by tendering back the goods which he had caused to be unlawfully taken from the plaintiff.

Lackland Clines Jamison
Attys for the
Respondent

20

Albert S. Rigor Respt
vs
Joshua W. Owings Appt.

Respondents brief
by Attorneys
Lackland, Clines Jamison

Filed March 21. 1864
A.W. Mead
Clk

Albert S. Regor Respondent, } In the Supreme Court
vs
Joshua W. Owings Appellant. }

This action was commenced in the Circuit Court by Respondent Regor to recover from Appellant Owings six hundred dollars, damages for a trespass committed upon the personal property of said Regor by said Owings.

It appears from the Record and the evidence in the case that the Sheriff had an execution in favor of Joshua W. Owings, the said Appellant against one Thomas Keyes; and was directed by said Owings to levy upon said property of Respondent to make the debt; the property consisted of chairs belonging to Regor; Appellant Owings was informed before the removal of said chairs that they were the property of of said Regor & not of said Keyes, but would not listen to anything unless the debt were paid, and if nobody else would pay, he determined to hold the chairs responsible — By which forcible & unlawful levy upon & conversion of said property, Resp^t Regor sustained damages in the sum of $600. Regor filed his claim under the Statute, and Owings failed to give bond as required and Regor brought this suit for the value of the property and damages.

Upon the trial, when Witness Michael Heller was testifying, Defendant objected to any testimony as to the condition of the chairs after the offer of Def't Corr, the Sheriff, to return them to Pl'ff, — and Plaintiff's refusal to receive them; but the Court overruled the objection; to which the Defendant duly excepted. —

The Plaintiff's counsel asked Witness Hiram Fate: what was the value of all the property taken under the execution of Owings against Keyes & others? Defendant objected to the question, but the Court overruled the objection, to which action of the Court Def^t excepted.

Plaintiff Counsel then asked the Witness what was the value of the Property taken, belonging to Fate & Page? The Defts objected, but the Court overruled the objection, to which action of the Court Defendant excepted.

Defendant offered and read in evidence a record of the case of Owings vs Keyes & Others in the Circuit Court.

Plaintiff asked to have the following instructions given to Jury:

The Jury are instructed that the term Malice, as used in the petition does not mean ill-will on the part of Owings towards Regor, but in its legal sense means wilfulness - a wrongful act done intentionally, without just cause - and if the Jury find that the Defendant caused the Sheriff to levy upon and seize the Chairs mentioned in the petition under an execution in his favour and against one Thomas Keyes, and that said Chairs did not belong to said Keyes, but did belong to Regor, and that ~~that~~ Owings knew that fact, and said Owings with such knowledge caused the Sheriff to levy upon and seize said Chairs under said execution and to take the same out of the possession of said Regor, then in the law, said Owings is guilty of a malicious trespass and in such case the Jury should find for Plaintiff, and the measure of damages is the value of the goods at the time of the levy, and the Jury may if they think fit, also give interest over and above the value of the goods at the time of the seizure, and may also add damages for any proximate injuries caused by such seizure, and they may, if they think fit, also add vindictive damages -

If the Jury find that Deft. Owings caused the Sheriff to levy upon and seize the Chairs mentioned in

as the time excepted.

The Defendant then asked to have the following instructions given to the Jury:

The Jury are instructed that the Defendant Owings is not liable in this action for any damages or injury which may have been done carelessly or negligently to said Property sued for by the Sheriff Cerre or any of his Servants or agents.

If the Jury believe from the evidence that the property sued for was levied upon by the Sheriff on an execution in favour of the Defts Owings against Keyes & others, that after such levy the Plaintiff made to the Sheriff the Claim in writing under oath which has been given in evidence, claiming to be the owner of the said property and that after such claim was made, the said Sheriff released the said levy and before the commencement of this suit tendered back the said property so levied upon and sued for in this action to the Plaintiff, and that the Plff refused to receive the same, then the Jury are instructed that the Plaintiff cannot recover against the Deft any thing for the value of said property—

If the Jury believe from the evidence that the property sued for was levied upon by Sheriff Cerre on an execution against Thomas Keyes & others in favor of Defendant Owings, and that At the time of such levy the said property was in the possession of the said Thomas Keyes, and that after such levy the said Plaintiff made the Claim in writing which has been given in evidence, claiming said property as his own and that after such claim made and before the commencement of this suit, the said Sheriff released the said levy and tendered back the said property to the Plaintiff and that

the petition under an execution in his favour against Thomas Keyes and that he did so without malice and that the Chairs so levied upon and seized were the property of Regor and that said chairs were levied upon and seized and taken out of the possession of Regor, then the Jury should find for Plaintiff and the measure of damages is the value of the chairs at the time of the levy, to which the Jury may add interest if they think fit over and above the value of the chairs at the time of the seizure.

If you find that the chairs were the property of Regor, and were sent by him to a place where Keyes was painting, to be painted by Keyes for Regor, and that Keyes painted the Chairs for Regor at a stipulated price per dozen, and that the Sheriff seized the Chairs while at the place at which Keyes had painted or was painting them, in the law the Chairs were in the possession of Regor and so the Jury should find

If you find that the Chairs were levied upon & seized and taken out of the possession of Regor by the Sheriff, under an execution in favor of Alvings against Keyes, and that the Chairs belonged to Regor at the time of the levy and that the Chairs were taken out of the house in which they were deposited and removed to another part of the City, then the Plaintiff was not bound to receive ~~them~~ back the property, even if it were tendered to him, and his refusal to receive back the property does not affect his right in this action to recover the value thereof at the time of the levy & seizure and interest on the value thereof at the time of the seizure.

The defendant objected to the giving of said instructions, but the Court overruled the objection and gave said instructions to the Jury, to which action of the Court the Defendant

Plaintiff refused to receive the said property, then the Jury are instructed that the Plaintiff cannot recover anything for the value of the said property, but only for the actual damage done by reason of the levy.

The Court refused to give to the Jury the aforesaid instructions at the instance of the Deft. and to such refusal of the Court the Defendant at the time excepted.

The Jury thereupon retired to consider of their verdict, and after being absent for some time, addressed to the Court a communication & thereupon the Court ordered the Jury to be brought into Court and of his own motion gave to the Jury the following instructions:

The Jury are limited in the amount of their verdict, if they find for the Plaintiff, to the amount of damages claimed by the petition.

The Jury are limited in the amount of their verdict, if they find for the Plaintiff, to the amount of damages claimed by the petition, which is $600

The Deft objected to the giving of said instruction, but the Court overruled the objection of Defendant, to which action of the Court the Deft at the time excepted.

The Jury found a verdict for the Plaintiff in the Sum of $600 ——

Afterwards the Defendant filed a motion for a new trial which motion was overruled by the Court, to which action of the Court Defendant excepted and appeals to this Court.

Lackland Cline and Jamison
attys for Appellt

Albert S Rigor appelle

B

Joshua W Owing appt

Statement of Case
by Rigor

Lackland Chin & Jamison
attys for Appelle

Filed March 21. 1864
A. W. Mead
Clk

(9)

In the Missouri Supreme Court.
March Term 1864.

Albert S. Regor, Respondent.
vs.
Joshua W. Owings, Appellant.

Statement and Brief for Appellant.

This was an action of trespass brought against the Appellant and Michael S. Cerre, late Sheriff of St. Louis County, for seizing and taking goods claimed by the Respondent, and for damages to his business, etc. At the trial the suit was dismissed as to the Sheriff and a verdict was given against the Appellant for double the value of the property.

It was proven on the trial that the goods were taken by the Sheriff under the direction of the Appellant, by virtue of an execution against one Keyes, in whose possession they were at the time; that the Respondent claimed them in conformity with the statute, and the Appellant failing to give bond, the Sheriff thereupon notified the Respondent of the fact and tendered them back to him, but that he refused to receive them.

The principal question is as to the measure of compensation under such circumstances. In the instructions given for the Respondent the Court ruled that notwithstanding the goods were tendered back to him, still he was entitled to

recover their full value with interest. This we think was erroneous.

It is not necessary to question the general principle which controlled the action of the Court below, that a party whose property has been illegally taken under an execution against another person may refuse to receive it, when tendered, and insist on his right to recover its value as well as damages for the taking. The statute however introduces an additional element into the case, growing out of the claim made. It assumes that there has been a seizure of the property, and expressly authorises the Sheriff, when the execution creditor yields to the Claimant by declining to give the bond necessary to secure the enforcement of the writ, to refuse to complete the execution by selling and appropriating the proceeds to the debt. The legislature had two objects in view, the principal of which was protection to the officer, and the other was to enable any person whose property had been wrongfully levied upon, to be restored to the possession, in specie, in a summary manner, or to procure indemnity, if after claim duly made, the officer should nevertheless proceed to execute the writ. No special direction

Laws of 1855, p 464.

without trial of his right, as under the general law;

to the officer was necessary, requiring him to relinquish the levy and surrender the property. That results from the very nature and object of the proceeding. The statute supposes that as the Claimant has claimed the property he will not refuse to receive it when offered to be restored to him. After the offer to return, the custody of the law is virtually at an end. By his own act the Claimant places the property beyond the reach of the creditor. The execution, as to the property levied upon, is not merely ~~suspended~~ superseded, but is to all practical purposes countermanded by the statute, through the agency of the Claimant himself, who sets the officer in motion for that purpose. The party injured is not bound to resort to the statutory remedy; but if he does so he ought to be concluded by the necessary consequences; and is not entitled to damages arising from his own perverseness or obstinacy. The just and reasonable course in such a case is to deduct from the damages sustained the value of the property as it was when tendered, less the cost and expense of returning it.

Van Wagner

J. A. Hamilton, for Appellant

No 20.

Missouri Supreme Court.
March Term 1864.

Albert S. Regor, Resp't.
vs.
Joshua W. Owings, Appel't.

Statement and Brief
for Appellant.

Filed March 23d 1864
D. W. Mead
Clerk

Van Wagner & H. Hamilton,
Attys.

(10)

Albert S. Regor Res.

vs

Joshua H. Owings appt.

This was a suit in the nature of an action of trespass de bonis asportatis. Owings the appellant having an Execution against one Keyes caused the Sheriff of St Louis County to levy and seize thereon a lot of Chairs as the property of Keyes found in his custody but which were in fact the property of Regor the respondent. Regor made his claim in writing under the provisions of the act of the General Assembly prescribing the duties of Sheriff and Marshal in St Louis County touching the levy and sale of property claimed by third persons. Session acts 1855. p. 464. The Sheriff thereupon demanded of Owings a bond as required by the act, but Owings declining to give bond the Sheriff offered to return the property, but Regor refused to receive it, and brought this suit to recover damages as well for the value of it as for the illegal taking and was permitted to recover accordingly. The only question presented in this Court is whether under the facts as stated the value of the goods was legally the subject of recovery or an element of the respondents

damages.

The local act provides §1. "When any sheriff, Marshal, Constable or other duly authorized officers, shall levy any execution or attachment on any personal property and any person other than the defendant in such execution or attachment shall claim such property, or any interest therein, such officer may demand of the plaintiff or his agent in such execution or attachment a sufficient indemnification bond with at least two good and sufficient securities, to be approved of by such officer, and may refuse to execute such execution or attachment until such indemnification bond be given". It is further provided, § 3. "No claim made to any personal property levied on as aforesaid, shall be valid or lawful as against such officer unless such claimant or his agent shall set forth his claim in writing verified by the affidavit of such claimant or his agent, describing the property claimed and stating his interest therein and whether it is the whole or only part thereof, and stating also that he is in good faith the lawful owner of the interest claimed by him in said property; that the defendant in such execution or attachment

has no right or title directly or indirectly in the interest in said property claimed by said claimant, and that such claim is not made in collusion with said defendant for the purpose of vexing hindering or delaying the plaintiff in obtaining his just rights." The remaining sections of the act relate to the form and conditions of the bond, the proceedings which the claimant may have thereon, and to the exemption of the officer from liability for the trespass (as a consequence of the giving bond.

There is no dispute that at common law where a chattle is tortiously taken from the owner he may is not bound to receive it back against his consent but at his option he may proceed (against the tortfeasor) either for the specific property taken or for its value in damages. [illegible]

The party injured can be deprived of his choice of remedies by no act of the trespasser; but may he not by his own act deprive himself of that choice, is the question? An owner of property wrongfully seized on execution or attachment is (not obliged) [illegible] to claim under the statute. He may stand upon his common law rights and trust to his common law remedies if

he will; but if he appeal to the statute claiming its benefits he must submit to its burdens. The primary object of this local law doubtless was indemnity to the officer. But another purpose was to obtain for the owner of a chattle wrongfully seized on legal process a speedy return of his property or in default thereof ample indemnity for its loss. This was to be accomplished through a claim in writing to the levying officer duly verified by the claimant. When a claim is thus made the creditor is justified in supposing it is made in good faith, and that the choice is tendered him either to give the bond and avail himself of the property, or to decline giving it and suffer the property to be restored to the owner. If he accept the last alternative, the property as a consequence is put beyond his reach and the officer is exonerated. Upon the theory of the ~~plaintiff~~ court below this is a sacrifice for which the law makes no compensation. We think otherwise. As the respondent by preferring his claim under the statute induced the appellant to forego the advantage his levy gave him there is no hardship in holding him bound to

accept what the appellant has thus upon his demand yielded. On the other hand it would be grossly unjust to the appellant after having acquiesced in the respondent's claim and given over his advantages still to be held responsible in the same degree as if he had adopted the opposite line of action.

We think the value of the property seized in this case was not the subject of recovery and that the ~~dissatisfaction~~ Court below erred in its instructions in this regard. And for this cause the judgment is reversed & the cause remanded. Judge Ray concurring. —

John D. Dingley

Reason

vs

Owings

Opinion of Court

by Dryden

Filed April 29, 1865

A. M. Mead Clk

Reversed & Remanded

Albert S Rigor appellee
v
Joshua W Owings appellant

In the Supreme Court
March Term 1864

State of Missouri
County of St Louis ss

Now at this day Comes William H Lackland administrator of the Estate of Albert S Rigor, decd and notifies the Court of the death of said Albert S Rigor and asks the Court to be permitted to be substituted as appellee in this Cause as administrator of said Rigor deceased

Lackland Cline & Jamison attys
of Wm H Lackland Administrator of Alb S Rigor Decd

William H Lackland
Administrator of the
Estate of A S Rigor deed
Appellee
5

Joshua W Owing
appellant

Death of Rigor & Motion
for substitution of his
administrator

J C & Jamison
attys for
Appellee