26 Ind.App. 525
Appellate Court of Indiana.

VANTREESE
v.
McGEE.

April 23, 1901.

Synopsis
Appeal from circuit court, Decatur county; Francis T. Hord, Judge.

Replevin by Jacob Vantreese against Ralph McGee to recover the body of a dead dog. From a judgment for defendant, plaintiff appeals. Reversed.

West Headnotes (1)

[1] Replevin
Form and Requisites in General
Animals
Dogs

Complaint in replevin to recover body of a dead dog, alleging the wrongful taking and detention, and that the body was of value of two dollars, in that the hide was of value of one dollar, and the carcass, exclusive of hide, of value of one dollar for fertilizing purposes, held to state cause of action, under Burns' Rev.St.1894, § 1286 (Burns' Ann.St. § 3-2701), since dogs are property and ownership is not lost by death of the animal, especially if the body is of value.

3 Cases that cite this headnote

Attorneys and Law Firms

***318** Myron C. Jenkins, for appellant. H. C. Skillman, Benj. F. Bennett, and Thos. E. Davidson, for appellee.

Opinion

COMSTOCK, J.

Appellant recovered a judgment before a justice of the peace, from which appellee, who was the defendant below, appealed to the circuit court. In the trial court appellee's demurrer to an amended complaint was sustained. The complaint is in replevin, and seeks to recover the body of a dead dog. Whether it states sufficient facts to constitute a cause of action is the only question presented by this appeal. The wrongful taking and detention of the property are charged. The allegations as to the value are as follows: "That said body was, at the time of said unlawful taking and detention, and at the time of the beginning of this action, of the value of $2, in this, to wit: That the hide is of the value of $1; that the carcass, exclusive of the hide, is of the value of $1 for fertilizing purposes. That said body was not taken by any execution or other writ against the plaintiff. That said dog had long been in plaintiff's family, the members of which were very much attached to it, and desired the possession of the body of said dog, that they might give it a burial on their own farm, in accordance with the affection in which they held it as a useful house dog and pet." The action was brought under section 1286, Burns' Rev. St. 1894, which provides that, "when any personal goods are wrongfully taken or unlawfully detained from the owner or any person claiming possession thereof, * * * the owner may bring an action for the possession thereof." The courts in this and other states, in numerous decisions, have held that dogs are property. State v. Sumner, 2 Ind. 377; Harness v. State, 27 Ind. 425; Kinsman v. State, 77 Ind. 132; Sosat v. State, 2 Ind. App. 586, 28 N. E. 1017. See, also, Graham v. Smith (Ga.) 40 L. R. A. 503, and notes, where may be ***319** found collected a long list of reported cases (s. c. 28 S. E. 225). The action of replevin lies for every species of personal property, animate or inanimate. 6 Wait, Act. & Def. 128-155; Cobbey, Repl. § 69. Replevin lies for the recovery of specific personal property. The condition of the property is not material. The position of the learned counsel for appellee is "that the action will not lie after the death or destruction of a chattel." It is not claimed that the complaint is wanting in any averment necessary to make it good

with reference to property for the recovery of which the action would lie, but that the action will not lie for the possession of a dead animal. The demurrer admits the property in appellant, its value, and wrongful taking; so that, unless it is conceded that the owner of the animal loses all dominion over its remains when dead, or that he can be deprived of his right or interest therein by the unauthorized acts of another person, the complaint must be held good. It cannot be reasonably maintained that the owner of such property, by the mere fact of its death, loses title to whatever of value remains in the body. The change of form does not deprive the owner of title to, or right of possession of, property. Whenever it can be identified, replevin may be sustained. "When suit is brought for property which has undergone a change of form, the writ and proceedings should describe it in the form in which it exists at the time when the action is begun." Wells, Repl. § 222. In Harness v. State, supra, the court say: "As a matter of law, we cannot know that the dog was of no value after it was killed. At least, it is a fact that cannot be left to inference. Some animals are of as much value after they are killed as before." The value of the property claimed is not left to inference, but is duly averred. We are cited to Caldwell v. Fenwick, 2 Dana, 333, Lindsey v. Perry, 1 Ala. 203, and Burr v. Daugherty, 21 Ark. 559, in support of the ruling of the trial court. Caldwell v. Fenwick, supra, was an action in detinue for two slaves; one of them, as proved on the trial of the general issue, being dead before the institution of the suit. The court held that the action could not be maintained on account of the dead slave. In the course of the opinion the court say: "The thing sued for has to be specifically described in the writ, declaration, judgment, and execution. * * * The action is not adapted to the recovery alone of the value of the thing demanded, nor can it be maintained therefor. The alternate judgment for the value is but a mere incident to the judgment for the thing; nor can it be rightfully rendered, except where there is a judgment for the thing for which it can result as an incident or consequence. It would seem, therefore, to be an indispensable requisite that there should be a thing sued for. A demand for a dead slave does not fulfill this requirement. It is not a thing of estimation or value, such as the law requires to constitute the basis of an action." The action was instituted for no other purpose, as to the dead slave, than to recover for loss of property. The recovery was sought as though the slave were alive. Lindsey v. Perry, supra, was in detinue to recover an ox. The ox had been killed and disposed of, but there was a conflict in the testimony as to whether the sale was before or after the killing, the opinion holding that the object of the writ was to recover the article in specie. Where this is impossible at the time the action is brought, so that the object of the writ cannot be accomplished, the action will not lie. In the case at bar the specific thing was, by virtue of the writ, taken and delivered to appellant. Burr v. Daugherty, supra, cites Lindsey v. Perry, supra, and Caldwell v. Fenwick, supra, quoting liberally from the opinions in both cases. It was an action to replevin salt stored with a warehouseman. A portion of the salt had been destroyed before the commencement of the suit. The court held that replevin in the detinue could not be maintained as to the portion which had been destroyed; in other words, that the recovery must be sought in specie, and, where it did not exist, the action would not lie. The property sought to be recovered in this cause existed in tangible form at the commencement of this action. The judgment is reversed, with instructions to the trial court to overrule the demurrer to the amended complaint.

All Citations

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