4/27

No 2

May 1832

Thomas Thompson assignee of John Thompson
vs
William Cuath impleaded w/ Lott Abernethi

Cape Girardeau

Thomas Thompson assigner of John Thompson deceased
vs
William Creath

Judgement entered in the Circuit Court of Cape Girardeau

Johnson Ranney agent for said defendant William Creath being duly sworn deposeth and saith that the application made in this case for an appeal is not made for the purpose of vexation or delay but because the affiant verily believes the said defendant William Creath applicant aggrieved by the decision judgement of the said Circuit Court in this case upon which the appeal in this cause is prayed

Johnson Ranney

Filed & Sworn to the 30 September 1830 in Open court—
Hy. Sanford Clk

Creath. Impᵉ.
adm
Thompson

affidavit for
Appeal

Thomas Thompson assignee of John Thompson
Plaintiff appellee
vs
William Creath defendant appellant

} From the Circuit Court of Cape Girardeau County—

This originaly was an action of debt commenced in the Court below by Thomas Thompson against Creath on a writeing obligatory given for the sum of $158 by Creath to John Thompson—

As a defence to the action several pleas were plead, but the only defence material to be considered is contained in three several special pleas varying from each other only in form and alledge that the consideration of the said writeing obligatory was for the unlawful sale of a free woman named Dils as a slave by said John Thompson assignor to said defendant and for no other— The replications of the plaintiff deny that fact as alledged in the pleas and issues are taken thereon

The case was tried by a jury at the term of the Court who found for the plaintiff which verdict was set aside by the Court and a new trial ordered, subsequently to which at the August term 1831 the case was again tried by a jury who found again for the plaintiff the amount of writeing obligatory declared on—

The defendant moved for a new trial for the alledged cause that the verdict was against law and evidence which was by the Court overruled and the defendant howeing stated in his bill of exceptions all the testimony given on the trial of the cause excepted to the opinion of the Court— By the Statute law of 1825 page 622. but one new trial can be granted to a party where the verdict is found solely against evidence and the common law is the same see Ld 2d Vol 815- 2 Strange 692-2 Salk 649- 6 Modern 22

The Court below considered the verdict against ~~law~~ evidence and therefore prohibited by the law from granting a new trial — The only question before this Court is whether the verdict is against law and to enable them to decide that point all the testimony offered on the trial is made a matter of record - and clearly shews establishes the facts that the assignor John Thompson from 1823 inclusive if not before was a citizen of and resided in the State of Illenois with his family untill the time of his death some time subsequently to 1825 - That while so liveing in Illenois he had in his possession and service as a slave in his family a negroe woman named Dils from 1823 untill November 1825 with the exception of six or eight months - That the said John Thompson in Nov 1825 took the said negroe Dils to the County of Cape Girardeau Mo and sold her as a slave to William Creatt defendant for $300 and executed the bill of sale for her to Creatt set out in the record That a part of the consideration was paid down by Creatt and for the residue Creatt executed to Thompson the writeing obligatory for the sum of $158 which writeing is the same declared on set out in the bill of exceptions and is the remaining part of the consideration given by Creatt for the negroe Dils purchased as aforesaid of Thompson

To shew most clearly that the Court below were mistaken in supposeing the verdict a verdict against evidence it will only be necessary to see whether from all the facts proved - the evidence alone establishes the material allegations in the defendants pleas - and on this view of the subject it will be seen that the evidence alone falls far short of the issues independent of the conclusions of

law which it was the duty of the jury to draw from the facts proved— independent of the law

By the evidence alone the jury could only find that John Thompson a resident of Illinois for some years held therein as a slave a negroe named Dil, and after wards took leave to Mississippi sold her to defendant received the writing sued on as part consideration of such sale— but on applying the law to the facts proved the jury would have seen that from the facts proved the Negroe Dil was a free woman— The verdict would then have been the legal conclusions drawn from the facts proved— and finding the reverse is a verdict against law Burr 1st Vol 390 to 398— 1 T.R. 171. 2 T.R. 186 where a verdict is found against law the Court will grant a new trial Selous Practice 1st Vol 505— but when 2 Strange 1105 is where Justice is in no other way to be obtained

Ramsey for Appellant

336—

Thos Thompson & Sage
vs
William Creath appeallant

Brief of Appeallant
Ranney Ally for
Appeallant

(1)

Plaints-

Pleas and Proceedings before the circuit court for the County of Cape Girardeau in the fourth judicial circuit of the State of Missouri, of the term of April, in the year of Our Lord One thousand eight hundred and twenty Eight,

Time of filing

Be it remembered that on the twenty third day of March, in the year aforesaid, was filed in the office of the clerk of said court a declaration in a plea of debt between Thomas Thompson assignee of John Thompson plaintiff against William Cuath and Lott Abernathie defendants, which said declaration is in the following words. to wit.

Declaration

"State of Missouri, County of Cape Girardeau "in the 4th Judicial Circuit, To the April Term 1828 "Thomas Thompson assignee of John Thompson Com "plains of William Cuath and Lott Abernathie "of a plea that they render to the said plaintiff "as assignee aforesaid One hundred and fifty "eight dollars, lawful money of the United "States; for that whereas the said defendants heretofore (to wit) On the twenty ninth day of November "in the year Eighteen hundred and twenty five, at "the county and circuit aforesaid, (to wit) at the "county of Cape Girardeau, made their certain "writing obligatory sealed with their seals and "now here to the court shewn, the date whereof "is the same day and year last aforesaid, at the "county and circuit aforesaid, yet the said defend-"ants altho often requested so to do hath not as "yet paid the said - of One hundred and fifty eight "dollars above demanded or any part thereof

"to the said John Thompson before the said assign-
"ment, nor hath they paid the same or any part
"thereof to the said plaintiff since the said assign-
"ment, but to pay the same or any part thereof
"hath hitherto wholly refused and still doth refuse
"to the plaintiffs damage One hundred dollars
"and therefore he sues &c. Walkins Attory
for pltff

Proceeps

The clerk will endorse this an action of debt
let a summons go. Watkins.

Bond for Costs

"I N W Watkins of the county of Cape Girardeau
in the State of Missouri, acknowledge myself to be
indebted to William Creath and Lott Abernethie
in the sum of twenty dollars, to be levied of my
goods and Chattels lands and tenements, Witness
my hand and seal this 22d day of March 1828.
The condition of the foregoing obligation is such
that whereas Thomas Thompson a non resident
assignee of John Thompson is about Commen-
cing an action of debt against the said
Creath and Abernethie in the Circuit court
for the county of Cape Girardeau - Now if the
said Watkins shall well and truly pay all
costs which may accrue in the said suit and
which may be adjudge against the said Thomas
Thompson, to the persons entitled to the same
then this obligation to be Void, else remain
in full force and effect N.W. Watkins (Seal)"

Summons

"The State of Missouri: To the sheriff of the county of
Cape Girardeau, in said State Greeting -
You are hereby Commanded to summon the within
named William Creath and Lott Abernethy, if they
be found in your county, to be and appear before
the judge of Our Circuit, On the second Monday
of April next, at the court house in the town of
Jackson in said County of Cape Girardeau

then and there to answer the within named Thomas Thompson (who is assignee of John Thompson) of the within Complaint. And have you then there this writ

Witness Henry Sanford clerk of our said Circuit court, at Jackson, the 24th day of March, In the year of Our Lord Onethousand Eighthund and twenty Eight — H. J. Sanford Clk

Sheriffs Return — Executed the within summons on William Creath by his reading the summons and declaration and acknowledging service, this twenty ninth day of March Onethousand eight hundred and twenty Eight. John Hendricks Sheriff

The within named Lott Abernethy not found in my County. John Hendricks Shff.

Service $1.00 } $1.50
Noncste 50 }

April T. 1828 4 pleas file — Monday April 21st 1828 — 7th day of the Term.

Thomas Thompson ass. of John Thompson vs William Creath Imp. with Lott Abernethy } Debt.

E. 500 — The defendant by Johnson Ranny his attorney comes and files four pleas herein.

Oyer and 1st Plea — Thomas Thompson assignee of John Thompson vs William Creath impleaded with Lott Abernethy } In the circuit Court for the county of Cape Girardeau, in the State of Missouri, Term of April A.D. 1828. (To Wit) And now at this day comes the said defendant William Creath and defends the wrong and injury when &c and craves oyer of the said writing obligatory declared on, and it is read to him in the words and figures following. (To wit)

" Eighteen months after date, we or either of us
" promise to pay unto John Thompson One hundred
" & fifty Eight dollars, for Value Rec. Witness Our
" hands and seals this 29th November 1825.

1st Plea

" Attest Wm Creath Seal
" Royal Thompson. Lott Abernethy Seal

plea withdrawn

all of which as aforesaid being read and heard, the said defendant saith that said Plaintiff ought not to have and maintain his said action thereof against this defendant, because he says, that the said writing in the said declaration mentioned, was obtained from the said William Creath by the said John Thompson obligee, (and others in collusion with him) by fraud covin and misrepresentation, (to wit) at the said County, Wherefore he the said defendant saith that the said writing obligatory in the said declaration mentioned, was and is void in Law, and this he said defendant is ready to Verify; Wherefore he said defendant prays judgement, if he ought to be charged with said writing obligatory—

This plea withdrawn

J Kanney for Deft.

2d plea

And for further plea in this behalf, said defendant saith that the said Plaintiff ought not further to have and maintain his said action thereof against this defendant, because he saith that the said John Thompson did not on the twelth day of October, Year eighteen hundred and twenty six, at the said County of Cape Girardeau, assign the said writing obligatory to the said Thomas Thompson, in manner and form as the said plaintiff, in his said declaration hath alledged, and of this puts himself upon the Country for trial—

J Kanney for deft.

Issue to 2d plea. Non assignment

And the said plff doth the like
Watkins for plff.

3d plea

And further plea in this behalf, according to the form of the Statute in such case made and provided the said William saith that the said Plaintiff ought not to have and maintain his said action thereof against this defendant, because he says that the said John Thompson, before and at the time of the execution of said bill obligatory being in the unlawful possession of a certain

free Person of Colour, as a slave, named Dilles
proposed to the said William Creath, that in consid-
-eration that he said William would secure to him
said John, the sum of Three hundred dollars, by the
execution of said bill obligatory, with the said Lott
Abernethy as security, for the payment of said
One hundred and fifty eight dollars, and Lott settle
with him John the ballance, being One hundred
and forty two dollars, that he said John would
sell and transfer and deliver to said William
the said Dilles as a slave for life. Whereupon
the said William then and there, (to wit) on the
said twenty ninth day of November 1825 at said
county executed to the said John with said Lott
Abernethy as his security the said bill obligatory
for the payment of the said One hundred fifty
eight dollars, and further settled and fully
satisfied the said John in the said remaining
One hundred and forty two dollars mentioned.
In Consideration of which said three hundred
dollars, as aforesaid, received by said John,
from said William as aforesaid, he said John
then and there, afterwards (to wit) on the ninth
of November 1825 at said county last aforesaid,
did unlawfully sell, transfer, and deliver
to the said William, the said free Person of Colour
negro woman Dilles, as a slave for life, contrary
to the law in such case made and provided
And the said William in fact says, that the said
bill obligatory was given as aforesaid by the
said William (and the said Lott Abernethy his security
for the said unlawful consideration of the said
unlawful sale of the said free negro woman Dilles
by the said John, to the said William, as a slave
for life, and no other, and that the said obligors
William Creath and Lott Abernethy were not
indebted to the said John Thompson, in any
sum of money. And therefore the said bill oblig-
-atory was, and is void in Law - All of which
the said William is ready to verify, whereu

3rd Plea Contd. he prays he prays judgment if said plaintiff ought to have and maintain his said action thereof against said defendant.

N Canney, for Wm Creath.

Fourth Plea. "And for further plea according to the form of the statute in such case made and provided the said defendant saith that the said plaintiff ought not to have and maintain his said action thereof against him said William, because he saith, that the said John Thompson before and at the time hereinafter mentioned being unlawfully in the possession of a certain free person of colour, as a slave, named Bill, knowing her to be free, proposed to the said William Creath, that in consideration that he said William would secure to him the said John Thompson, the sum of three hundred dollars, by the execution of said bill obligatory, with Lott Abernethie as his security for the payment of said One hundred fifty eight dollars, and settle with him John the ballance, One hundred forty two dollars, in some other way, that he said John Thompson would sell transfer and deliver to said William the said Bill as a slave for life, whereupon the said William, then and there, on the said twenty ninth day of November AD 1825, at said county, with said Lott Abernethy as his security, executed to said John Thompson, the said bill obligatory for the payment of said One hundred fifty eight dollars, and further settle with and satisfy said John in the other and further sum of One hundred and forty two dollars mentioned as proposed - In consideration of which said three hundred dollars as aforesaid, received of said William by said John to his full satisfaction, the said John afterwards, (to wit) on the thirtieth day of November, AD, One thousand eight hundred and twenty five, at said county, did unlawfully

sell transfer and deliver to the said William Creath, the said free negro woman as a slave for life, then and there knowing her said Dills to be a free woman. And the said William in fact saith that the said bill obligatory was given as aforesaid by said William Creath (and his security Lott Abernethy) to the said John Thompson for the consideration of the said unlawful sale of the said free negro woman Dills as a slave as aforesaid, and no other, and that the said obligors William Creath and Lott Abernethy were not indebted to said John Thompson in any sum of money and therefore the said bill obligatory was and is void in law, all of which the said William is ready to verify, wherefore he prays judgement if said plaintiff ought to have and maintain his said action thereof against him said William Creath defendant J Ranney for Wm Creath.

E 511
Apl. 7. 1831

April 28th 1828 = 13th day of the term.

rule for depo. for pltff

"On motion of the plaintiff by his attorney, Ordered that said plaintiff be commissioned to take depositions generally, to be read in evidence, on the part of said plaintiff on the trial of this cause.

April 30th 1828. 15th day of the term –

E 518.
Issue to pleas and replications filed –

And now at this time comes the parties by their attorneys, and the plaintiff files his replication to the defendants first plea and joins issue to the defendants second plea, and files a demurrer to the third and fourth pleas of said defendant in which the defendant joins, and the defendant takes issue upon the plaintiffs replication to the defendants first plea; And this cause is continued to the next term of this Court.

Replication to 1st plea

Thompson
vs
Creath Abernethie } Debt.

And the said plaintiff

Replication to 1st plea — as to the defendants first plea above pleaded ought not to be barred and precluded from having and maintaining his aforesaid action thereof against him, because he says that the said writing in the declaration mentioned was not obtained from the said William Creath by the said John Thompson by fraud Coven and misrepresentation as is alledged in the said defendants first plea, and of this the said Plaintiff puts himself upon the Country.

Issue to replet. to 1st plea — And the defendant doth the like J Ranney fa deft } Watkins fa plaintiff

The plea of fraud withdrawn, the replication thereto not copied —

Fo 10 — Tuesday 8th day of the term August 19th 1831.
"The Parties by their attorneys come, and the court being now sufficiently advised of and concerning the demurrers to the third and fourth pleas of said defendant, intimates to the said Plaintiff that judgement on said demurrers will be given against him, Whereupon the said defendant consents that time be given to said Plaintiff until the next term to determine whether he will withdraw said demurrers and reply to said pleas; On Condition that said Cause shall be subject to trial at the next term of this Court, as if the issues in said Cause were fully made up at this term — And this Cause is Continued to the next term of this Court —

Fo 38 — Thursday the 10th day of the term — December 18th 1828.
The plaintiff by his attorney Comes and is Permitted to withdraw his demurrer to the defendants pleas and files his replications thereto —

Replication

Thompson

Cuath vs } Debt. And the said plaintiff as to the defendants first plea above plead sais he ought not to be barred and precluded from having and maintaining his aforesaid action thereof against him, because he says that the said writing in the declaration mentioned, was not obtained from the said William Cuath by the said John Thompson by Fraud Covin and misrepresentation as is alledged in said defendants first plea, And of this he the said plaintiff puts himself upon the Country Watkins for plaintiff

And the said defendant doth the like

J Ranney for deft.

And said plaintiff as to said defendants third plea by him as above pleaded sais he ought not to be barred and precluded from having and maintaining his said action thereof against him the said defendant, because he says (altho he admits that said John was in the State of Illinois in the lawful possession of the said negro woman Dills as his servant, bound to him by indenture, according to the laws of the said State of Illinois, And that the said William knowing this, did purchase of the said John his right to the services to the said Dills as secured by the said indenture) yet this plff sais he ought not to be barred and precluded from having and maintaining his said action against said defendant; because he says said John did not unlawfully sell transfer and deliver to said William the said negro Dills in manner and form as is alledged in said third plea, and of this he puts himself upon the Country - Watkins for plff

And the defendant doth the like

J Ranney for deft

Replication to 4th plea

And the said plaintiff as to the fourth plea of the said defendant as above plead says he ought not to be barred and precluded from having and maintaining his aforesaid action thereof against him because he says he was not unlawfully in the possession of a certain free person slave named Dills, knowing her to be free, nor did the Sd. Jno Thompson unlawfully sell transfer and deliver to the said William Creath the said free negro woman Dills a slave for life in manner and from as the said defendant have alledged in his fourth plea, and of this puts himself upon the country.

Watkins for plff

And the defendant doth the like,

J Manney for deft Creath.

F 40 Friday the 11th day of the Term December 19th 1828.

The defendant comes and issue is joined to the first and second plea, and the said defendant files demurrers to the plaintiffs replications to the third and fourth pleas, and this cause is continued to the next term of this Court.

F 64 Friday 14th day April Term 1829 - May 29th 1829.

April 7. 1829 The defendant by his attorney comes and withdraws his demurrer to the plaintiffs replication to the third plea of said defendant, in which issue is joined, and the plaintiff amends his replication to the fourth plea of said defendant in which the defendant joins, and on motion this cause is continued to the next term of this Court.

Augt. 7. 1829 This cause is continued to the next term of this Court.

Decr. 7. 1829 The parties by their attorneys appear, and on motion

F 96 and affidavit of the plaintiff, this cause is continued to the next term at his costs, It is thereupon consid-

Ered that the defendant recover against the Plaintiff his costs at this term in this behalf expended.

April 7. 1830 April 16th 1830 5th day

F 140 On motion and affidavit of said Plaintiff this Cause is continued to the next term of this court, at his costs.

F 153 April 26th 1830 - 13th day of the term.

The defendant by Johnson Ramney his attorney comes and on his motion, Ordered that he be Permitted to file an additional plea herein on the Payment of the costs thereof, which said additional plea is here filed. And by Consent the Plaintiff is Permitted to file his replication by the first of June next, as of this term.

Additional plea. Thomas Thompson assigne of

John Thompson } Filed April 27th 1830
Vs } Additional plea.
William Creath Impleaded
with Lott Abernethy

And for further plea in this behalf according to the form of the Statute in such case made and provided, the said William saith that he plaintiff ought not further to have and maintain his said action against him said defendant, because he saith that the said John Thompson before and at the time of the execution of said bill obligatory, being in the unlawful Possession of a certain free Person of Colour as a slave named Dills Proposed to the said William Creath, that in consideration that he said William Creath would Pay to him said John the sum of Value of three hundred dollars by the execution of

Additional plea Cont.d

said bill obligatory for the payment of said One hundred fifty eight dollars, and settle with him said John the ballance, being One hundred forty two dollars, that he said John would sell and transfer and deliver to said William the said Bills as a slave; whereupon the said William then and there (to wit) on the said twenty ninth day of November 1825 (with said Lott Abernethy as his security) at said County executed to said John the said writing obligatory, as executed for the payment of said One hundred fifty eight dollars, and settled and fully satisfied the said John in the said remaining part of said three hundred dollars, the same being One hundred forty two dollars mentioned. In Consideration of which said three hundred dollars as aforesaid received by said from said William as aforesaid, he said John afterwards (to wit) on the thirtieth of November 1825 at the county last aforesaid, by his deed of bargain and sale of that date, executed to said Heath, acknowledging therein the consideration of three hundred dollars, now here in Court shewn, did knowingly and unlawfully sell transfer and deliver to said William, the said free person of Colour, said negro woman Bill as a slave to be owned and held by said William contrary to the form of the statute in such case made and provided. And the said William in fact saith that the said writing obligatory was given as aforesaid by said William and the said Lott as his security for the said part of the unlawful consideration of said unlawful sale of said free woman

Dills, by said John to said William as aforesaid as a slave as aforesaid, and no other, and that the said obligors William Creath and Lott Abernethy were not indebted to the said John Thompson in any sum of money, and therefore the said writing obligatory was and is void in law, all of which the said William is ready to verify, wherefore he prays judgment if said plaintiff ought to have and maintain his said action thereof against said defendant,

J Manny for deft.

F 161. August 11th 1830 3d day of the term.

Augt. 7. 1830

The defendant by Geer W Davis comes and moves the court for a judgement of Nonpros against said plaintiff, for failing to file his replication to the defendants additional plea, filed on the 27th of April 1830, which said motion is by the court overruled. Whereupon said defendant moves the court to strike from the files in this case, the replication of said plaintiff to the said additional plea of said defendant, which does not appear to be filed, And the court after hearing the evidence and argument of the parties, the court doth consider and order that the plaintiff be permitted to file his said replication, on condition that if said defendant shall claim a continuance, the same shall be at the costs of said plaintiff. Whereupon the plaintiff files his said replication to the defendants additional plea, And on motion of said defendant, this cause is continued to the next term of this court at the costs of the plaintiff. It is therefore considered that the defendant recover against the plaintiff his costs and charges by him in his defence, at this term, in this suit expended;

Replication to additional plea.

And the said plaintiff as to the above plea of the defendants, says, he ought not to be barred

Replication to additional plea Cont^d

and precluded from having and maintaining his said action thereof against him s^d defendant because he says the said John Thompson did not unlawfully sell to the said William Creath, the said Negro Dills as a slave as is alledged in said defendants plea above, and of this he puts himself upon the county - Watkins for Pl^ff

Issue

And the defendant do the like -

Davis & Ramey for deft.

Decr 3. 1830 F 184

December 18th 1830 - 6th day of the term.

Debt. On motion of the defendant by his attorney this cause is continued to the next term of this court, with the assent of the plaintiff, as of on the affidavit of said defendant, at his costs.

April 7 1831 F 197

April 12th 1831 - 2^d day of the term.

And now at this day comes the Parties by their attorneys, whereupon the plaintiff requiring a trial by jury, the Sheriff returned the followind jury (to wit)

1 Peleg Freeman	7 Adeniram Seavers
2 Thomas Juden	8 John Hendricks
3 William Penny	9 Ralph Guild
4 John Martin	10 John C Webb
5 Robert Douglass	11 Thomas Roy and
6 Edwin McLane	12 Joseph Lewis twelve

good and lawful men, who being duly elected tried and sworn, to well and truly try the issues joined between the Parties herein, Whereupon by consent of the Parties, it is Ordered that the jurors of the jury aforesaid be permitted to retire until Nine O, clock to morrow morning when they are required to meet before the bar

of this court and proceed in the trial of this Cause—

April 13th 1831. 3d day of the term.

The Parties by their attorneys appear, and the jurors empanneled and sworn to try the issues between the Parties herein all come, who after retireing to consult of their Verdict say "We "of the jury find that the said writing in the "Plaintiffs declaration mentioned, was not "obtained by fraud Covin and misrepresent-"ation as is in the defendants first plea alledged, "That the said John Thompson did assign "the said writing obligatory, in the plaintiffs "declaration mentioned, in manner and "form as the said plaintiff hath in his "said declaration alledged. That the said "John Thompson did not unlawfully "sell transfer and deliver to said defend-"ant, the said negro Dills, in manner "and form as the said defendant hath "in his third plea alledged; That the said "John Thompson plaintiff did not unlaw-"fully sell transfer and deliver to the said "William Creath, the said free woman Dills, "a slave for life, in manner and form as the "said defendant hath in his fourth plea "alledged; And that the said plaintiff "did not unlawfully sell to the said William "Creath, the defendant, the said negro Dills, "as a slave as alledged in said defendants fifth "plea, and assess the Plaintiff damage "by reason of the Non Payment of the debt "in the plaintiffs declaration mentioned

"to the sum of thirty six dollars and seventy cents"

motion for new trial. Whereupon the defendant moves the court to set aside the Verdict of the jury and grant a new trial on reasons filed.

Reasons for new trial. Reasons for new trial Omitted.

F^v 206 & 7. April 20th 1831. 9th day of the Term.

On motion for new trial.

The Parties by their attorneys appear, and the court having inspected the reasons in support of said motion and hearing the argument of Counsel, doth Consider and order that the Verdict of the jury in this case be set aside, and that a new trial be granted, and that the defendant pay the costs of the former trial. Whereupon On motion of the defendant he is permitted to withdraw his plea of fraud, And this Cause is continued to the next term of this court - August Term 1831. September 23d 1831.

Plea fraud withdrawn

August Term 1831 F^v 221. The defendant by leave of the court, withdraws his plea of non assignment, And now at this day comes the Parties by their attorneys and the plaintiff requirind a trial by jury, the sheriff returns the followind jury (to wit)

1 William W Horrell	7 Jeremiah Masterson
2 Enos Hunter	8 James Russell
3 Benjamin Wright	9 John Randol
4 William Fugate	10 Darwin Harbison
5 James Erwin	11 William Sheppard and
6 William Boner	12 Henry Hitt twelve

good and lawful men, who being duly elected tried and sworn, to well and truly try the issue of this traverse, who having heard the

Evidence, Whereupon by consent of Parties, Ordered that the jurors of the jury aforesaid be permitted to retire until Eight O Clock to morrow morning, then to proceed in the trial of this cause-

Aud.e 7. 1831. September 24th 1831.

The Parties by their attorneys appear, and the jurors of that jury Empanneled and sworn to try the issues joined between the Parties being called come, who after hearing the Evidence and argument of Counsel on their Oaths do say "We of the

Verdict jury find that the said John Thompson did not unlawfully sell transfer and deliver to the said defendant, the said negro Dills, in manner and form as the said defendant hath in his third plea alledged; That the said John Thompson did not unlawfully sell transfer and deliver to the said William Creath, the said free woman Dills, a slave for life, in manner and form as the said defendant hath in his fourth plea alledged; And that the said John Thompson did not unlawfully sell to the said William Creath, the defendant, the said negro Dills, as a slave, as alledged in said defendants fifth plea, And assess the Plaintiffs damages by reason of the Non Payment of the debt in the Plaintiffs declaration mentioned; to the sum of Forty One dollars and Seven cents- It is therefore considered

Judgment signed and adjudged by the court, that the Plaintiff have and recover against said defendant William Creath, his said debt of One hundred and fifty Eight dollars, also his damages aforesaid, by the jurors aforesaid, in form

aforesaid

Judd. Cont.

aforesaid assessed to the sum of Forty One dollars and seven cents, together with his costs and charges in this behalf expended; And the said defendant in mercy &c.

Aug. T. 1831 — August Term 1831. September 26th 1831

F. 223 — "The said defendant moves the court to set aside the Verdict in this case, and grant a new trial on reasons herein filed—

Reasons for new trial — Thomas Thompson assignee of John Thompson vs William Creath } Action of debt. And the said defendant by attorney moves the court for a new trial in the above cause & assigns the following reasons.

1st. The Verdict is without evidence

2d. The Verdict is contrary to and against evidence

3d. The Verdict is contrary to Law.

4th. The Verdict is against Law.

5th. The jury have drawn wrong conclusions from the evidence. Ranny & Davis for Deft.

Aug. T. 1831 — September 29th 1831.

On motion for new trial.

The Court after inspecting the reasons and hearing the argument of counsel on said motion, do consider that the same be Overruled, When the plaintiff filed his bill of exceptions which is signed and made a part of the record in this case—

Bill ex. fil.

Bill Ex. by deft — Thomas Thompson assigne of John Thompson vs William Creath defendant } The plaintiff having opened and made a statement of his case,

read to the jury the writing obligatory declared on, which is as follows "Eighteen months after "date we or either of us promise to pay unto John "Thompson One hundred & fifty eight dollars, for "Value Recd as witness Our hands and seals "this 29th November 1825. Wm Creath Seal
"attest, Lott Abernithy Seal
"Royal Thompson,

The defendant then proceeded with his testimony and produced a deed of transfer of bargain and sale of a negro woman named Dills from John Thompson to William, and having proved the same as is hereinafter mentioned, by One of the subscribing witnesses, read said bill of sale to the jury, which bill of sale deed of transfer is as follows." Know all men by these presents that I "John Thompson in the State of Missouri, and "county of Cape Girardeau, for and in consideration "of the sum of three hundred dollars to me in hand "paid by William Creath of the State and County "aforesaid, hath this day bargained and sold "unto him the said William Creath and his heirs "One negro woman named Dils, aged about twenty-"One years, the said negro woman unto him "the said Wm Creath and his heirs the said "John Thompson and his heirs will forever "defend against the lawful claim of any person "or persons whatever, In Witness whereof I have "hereunto set my hand and seal this 30th day of "November 1825. Signed, sealed and delivered in "in presence of } Jno Thompson Seal
"Lott Abernithy }
"Royal Thompson } The said subscribing witness
"Royal Thompson for defendant testifies that

Bill Ex.
Continued

he is the subscribing witness to said deed of transfer of negro woman to defendant and also the writing obligatory declared on; That he subscribed his name to said bill of sale as such witness, by the request of said John Thompson, and also witnessed the execution of said writing obligatory declared on, as a subscribing witness at the request of Heath; that said deed was executed by said John Thompson to defendant Heath and said obligation executed by defendant to Thompson. That said writing obligatory was executed by said Heath as a part of the consideration of the three hundred dollars mentioned in said bill of sale for the sale of the said negro Wils - That the writing obligatory and bill of sale for said negro were one and the same transaction; that besides said obligation, Heath settled and paid the ballance of said three hundred dollars to John Thompson; That the bill of sale bears date a day after the obligation, for the reason that at the time the contract was made in Jackson Mo. the obligation executed and ballance for Wils paid, the negro was not present, it was therefore agreed that the negro should be delivered next day at witnesses fathers, and a bill of sale at the same time executed for her, at which time, on the next day, this witness drew said bill of sale, at his fathers, about twelve miles in the County, at which time and place the said bill of sale was executed by said John Thompson and delivered with said Wils to One Scott Abernethy who acted for the defendant Heath; That said John Thompson is the father of Plaintiff and Uncle to witness; That said John Thompson resided in the State of Illinois

That during the years 1824 and 1825 he John Thompson resided in Jackson county State of Illinois near Brownsville with his family on a farm rented by him of One John Logan, That he John Thompson was the professed owner and in possession of said negro Lilis, claiming her as a slave. That in said years 1824 or 1825 sometime he John Thompson brought said Lilis over to Missouri for the purpose of raising sixty dollars in money, and left her in pledge for the same, and after her stay in Missouri about six months, the said John Thompson paid off said borrowed money and took said Lilis back again to the State of Illinois where he resided. That the said John Thompson removed from the said farm of John Logan back again to the county of Franklin in same State of Illinois where he resided and that witness was at the residence of his said Uncle and family after said removal to Franklin county. George Butcher for the defendant proved that he was and still is a resident of the said county of Jackson, in State of Illinois, that he resided there at the same time the plaintiff and his father said John Thompson and family removed to the said county of Jackson Illinois State, and resided there with his family near Brownsville in said county last aforesaid on a farm rented by him of John Logan, for the space of two years, and raised there on said farm two crops in the years 1824 & 1825. That plaintiff his son, that plaintiff his son of said John Thompson was with him his father a part of the time, That witness saw said John Thompson in possession of a negro

Bill Ex^n Continued

woman named Dils about twenty or twenty One years of age, claiming and using her as a slave, which negro (while the said John Thompson remained on said rented land of Logan in 1824 & 1825) was in the possession and employment of said John Thompson as his slave, with him in his house, and on his said hired farm, under his immediate direction for the term of about One year and a half in said County of Jackson State of Illinois, during said years of 1824 and 1825. That during said years 1824 & 1825 the said John Thompson being in want of money offered to pledge said Dils to witness for some money he wanted to borrow from him, at which time the said negro was then in possession of said John Thompson, claimed as his slave, at his said residence, in said county of Jackson Illenois. That said Dils after remaining with her master John Thompson as aforesaid said One and a half year, in said years 1824 & 1825 was missing. That the said John Thompson from the rented farm he occupied of John Logan removed back with his family to the County of Franklin in said State of Illinois, soon after which he departed this life as witness was informed — That this witness never knew of said John Thompson having any other place of residence, except the State of Illinois since the time of his acquaintance, that this witness never knew of any other negroe woman in possession of said John Thompson or claimed by him, and that he was well acquainted with said John Thompson and his family. Emanuel Canada a witness for said defendant Creath proved that he was and is a citizen of Jackson County State of Illinois, that he resided there near the residence of the plaintiffs father in the year 1824 and 1825, that the said John Thompson with whom he is well acquainted

removed to the county of Jackson in said State of Illinois with his family and resided with his family near Brownsville in said county of Jackson in said State of Illinois on a farm rented by him of One John Logan for two years until he had raised two crops in the years 1824 & 1825 during which said years the said John Thompson had in his possession and service, on said rented farm, at his residence, a negro woman about ~~two~~ twenty or twenty One years of age named Lils, claimed by him as a slave; that during said years 1824-1825 said Lils was so in possession of said Thompson with him & family during the space of One year and a half. That some time during the latter part of the last year, said negro was missing from said State of Illinois and that John Thompson aforesaid informed witness that he had sold said negro woman Lils to William Heath in the county of Cape Girardeau State of Missouri, and that some difficulty had occurred in law by reason thereof. That sometime an execution had been levied on said negro and the said John Thompson had informed witness that said negro Lils was as free as he John Thompson and could not be subject to the same. That said John Thompson from said county of Jackson and farm of Logan moved with his family to the county of Franklin state of Illinois, and that some time after, departed this life, as the witness was informed from rumour. The witness never knew of any other residence the said John Thompson had, excepting the said State of Illinois, That during said years of 1824 & 1825, plaintiff the son of said John Thompson resided with his said father, on said rented farm, in said county of Jackson state of Illinois a part of said time. That said Lils was the only negro woman ever in possession

Bill Ex Cont.

or claimed by said John Thompson in the knowledge of witness,

John Dim a witness for the defendant proves that John Thompson, the plaintiffs father, in August 1825 came to witness in Jackson Mo and offered to sell him a negro woman as a slave, for three hundred dollars, that said John Thompson then resided in the state of Illinois and had resided there for some years, and that said negro woman resided in Illinois with him; That witness asked the advise of an attorney, and informed the said John Thompson that by his residing in the state of Illinois with his negro, she was bad property, and to purchase would be attended with danger; That subsequently, in 1824, said John Thompson again came to the witness, and offered to sell him said negro and again, in the year 1825 made the same proposal and to obviate the difficulty in consequence of said negro being a resident of the state of Illinois, said John Thompson offered to deliver said negro woman to witness on any point of the Mississippi river above the mouth of the Ohio river if he would purchase her, so that she could be taken down the river. That the name of said negro woman was Dills, and witness afterwards saw her in possession of defendant Breath as purchaser, that witness asked defendant if he was not afraid of the property; That Breath answered that Lott Abernethy had agreed at the time of the purchase to let him have another slave instead of Dills if Breath was not satisfied with her and he could not loose - That witness answered that he would find that Abernethy would not do it - That said John Thompson further told witness that said negro had never been registered or indented in said State of Illinois. Witness stated that said Dills as a slave was not worth more than three hundred dollars. George F Bollinger a witness for the defendant, testifies that in the year 1825 he was engaged in the purchase of slaves to take down the river, that one Lott Abernethy stated to him that a Mr Thompson residing in the state of Illinois had a certain negro woman to sell as a slave for three hundred dollars, and that if he Bollinger would give him ten dollars, he Abernethy would go and have her brought, he did so and Thompson came over with said negro from the state of Illinois and informed witness he brought her over from state of Illinois - She was a young woman and was willing to be sold

and taken down the river, Witness asked the advice of an attorney, and from his advise refused to have any thing to do with the negro woman. That a slave of her appearance was worth from three hundred and fifty to Eighty dollars. The defendant then read to the jury the ordinance of the Congress of the United States passed for the government of of the United States Territory north-west of the River Ohio on the 13th day of July 1787 which provides "That there shall be neither slavery nor involuntary servitude in the said territory otherwise than in the punishment of crimes whereof the party shall have been duly convicted &c. The defendant likewise read to the jury the constitution of the State of Illinois formed in the year 1818 which amongst other things provides "That there shall be neither slavery nor involuntary servitude in the said State of Illinois, otherwise than in punishment of crimes whereof the party shall have been duly convicted, provided always, that any person escaping into the same from labour or service is lawfully claimed in any one of the original States, such fugative may be lawfully claimed & conveyed to the person claiming his or her labour or services as aforesaid. The defendant likewise read to the jury the act of the Congress of the United States, passed to Enable the people of the Illinois territory to form a State Constitution and State Government and for the admission of such State into the Union, on an Equal footing with the Original States, approved April 18th 1818 - The defendant then read the resolution of the Senate and house of representatives of the United States of America in Congress assembled, declaring the admission of the State of Illinois into the union, declares the constitution of said state is republican and in conformity to the principles of the articles of compact between the Original States and the people and states in the territory north-west of the river Ohio, passed on the thirteenth day of July 1787 and which resolution was approved of on the 3d of December A.D. 1818 - And on the aforesaid proof and statement of facts, the case was submitted to the jury, who found a Verdict in favor of the plaintiff

Bill Ex. Cont.

for the amount due on said writing obligatory.
The defendant then moved to set aside the said Verdict and for a new trial to be awarded the defendant and filed his reasons which are as follows. (tot Cit)
1 The Verdict is without evidence,
2 The Verdict is contrary to and against evidence.
3 The Verdict is contrary to law.
4 The Verdict is against law.
5 The jury have drawn wrong conclusions from the Evidence. but the court Overruled the motion for a new trial and Entered a judgement for the Plaintiff on the Verdict of the jury, to which Opinion and decision of the court defendant excepts and prays this his bill of exceptions to be signed, sealed, and made a part of the record in said cause, and it is done accordingly.

John V Cook (Seal)

Augt 3. 1831. — August Term 1831. September 30th 1831.

appeal. F 231 The defendant by his counsel moves the court to grant an appeal in this case to the supreme court, and it appearing to the satisfaction of the court, that the affidavit on which said motion is founded is sufficient, It is therefore ordered that an appeal in this case be granted; Whereupon Johnson Ranney and Greer W Davis (by leave of the court) acknowledge to owe and be indebted, to the said plaintiff Thomas Thompson, in the sum of three hundred and fifty dollars, to be levied and made of their respective goods and chattels lands and tenements, to be Void on condition, that the said William Creath shall prosecute his appeal with effect, pay and satisfy the condemnation money and all costs, or otherwise abide the judgement of the supreme court —

I Henry Sanford Clerk of the said Circuit court certify the foregoing fifteen pages contain a full and perfect transcript of the plaint aforesaid between the parties therein named, as fully as the same appears of record in said Circuit court.

In Testimony whereof I have hereunto set my hand and the seal of said circuit court, at Jackson, the 30th day of December, One thousand eight hundred and thirty One.

H. Y. Sanford Clk

For this Copy
Tax 62c
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The above fees paid by I Kenney Esqr for Wm Creath
H. Y. Sanford Clk

May Term 1832

William Cuath appealant
Impleaded with Lott Abernethy
adsm & Debt
Thomas Thompson assignee of
John Thompson appellee

2

Filed December 30th 1831
Benjamin Pacon D Clerk
S.C. 4th Judl Dist

Thomas Thompson assx Appeallee
vs
William Creath Appeallant

Appeal from the Circuit Court of Cape Girardeau County - In the Supreme Court 4. Jul. District of Mo.

And now at this day comes the said William Appeal-tant by his Attorney and says that in the record and proceedings aforesaid and also in giveing the judgement aforesaid there is manifest error in this (Faidit) that by the record aforesaid it appears that the judgement aforesaid in form aforesaid given was given for the said Thomas Thompson against the said William Creath Whereas by the law of the land the said judgement aught to have been given for the said William Creath against the said Thomas Thompson - and the said William Creath pra-ys that the judgement aforesaid for the errors aforesaid and other errors in the record and proceedings aforesaid may be reversed annulled and altogether held for nothing and that he may be restored to all things which he hath lost by occasion of said judgement and amongst other errors herein assigns the following

J Ranney Attorney for Appeallant Creath

1 The verdict being against law the Court erred in not setting the same aside and granting a new trial

Sainder in Error

Watkins
for Deft

Thomas Thompson appellee
vs
Wm. Creatt Appellant

assignment of errors by
Appellant —

Filed Jany 9th 1832
Benj. A. Bacon Clk
for P. R. Garratt
Clerk S. C.
4th Dist

Everett
vs
Thompson

Supreme Court May Term
1832

Statement of the case on the part of the Defendant in Error

This was an action of Debt brought on a writing obligatory for the sum of one hundred and fifty eight dollars. There were originally five pleas, all of which were finally withdrawn except three special pleas of fraud. These three are in substance the same That Thompson the assignee of the plaintiff was unlawfully in the possession of a negro woman named Lilly in the State of Illinois who was thereby entitled to her freedom) and sold her to the defendant below, and that the writing declared on was in part consideration of the said illegal and unlawful sale. To which pleas issues were taken. Trial had and a verdict for plaintiff at April Term 1831. New trial granted, and second verdict for plaintiff at August Term 1831 Motion for new trial overruled. Bill of exceptions part of the testimony incorporated, and an appeal to this Court. The Errors assigned 1. The general error. and an special error That the verdict was against law, therefore the Court erred in not granting a new trial.

The defendant in error denies that the verdict is against law and contends that under the Statute (which see Practice at Law vol 2 page 632 Sect 41.) that Circuit Court did not err in refusing the new trial

Watkins par
Deft in error

Cruth
vs
Thompson

Deft Statement

filed 14th May 1832
F. R. Garrett Clk

Creath
vs
Thompson

Motion to correct the taxing of cost in this case in the following particulars

1. As to the 3 pleas withdrawn and the replications

2. The Demurrers & the Judgment of the Court thereon

3 Rules to take Depositions

4 The motion for Judgment of non-pros & the entry and decision of the Court thereon

Watkins for
Deft

Creath
res } motion
Thompson

filed 14th May 1832
J. R. Gamble Clk

Creatte
vs
Thompson

May Term 1832 of the
Supreme Court

Motion to dismiss this
Cause for the following reasons

1. There is no affidavit

2. The Recognizance is not in conformity with the statute

Watkins for
Appendant in error

Creath impleaded
with Abernathy
vs
Thomas
~~John~~ Thomson assignee
of J Thompson

Appeal from the
Circuit Court of Cape
Girardeau County

This was an action of debt brought on a bond by Thompson assignee of Thompson. The third, fourth, & fifth pleas were that the bond was given to secure the payment of part of a sum of money to be paid for and in consideration of a negro woman sold by Thompson the Obligee to Creath, which sale the pleas aver were unlawful, because the negro at the time of the sale was free. Upon these pleas issues were taken & found for the plaintiff. The Court granted a new trial. On the second trial the Jury found again for Thompson the plaintiff. A new trial was again moved for and the motion was overruled. The overruling of this motion is assigned for error

To ascertain whether the Circuit Court erred in refusing a new trial it will be necessary to look into the testimony

It was proved by a witness that this bond was given for a part of the consideration of a negro woman purchased by Creath of Thompson in the State of Missouri in the County of Cape Girardeau in the year 1825 in the month of November; that a bill of sale was given to Creath by Thompson for the negro; that the whole consideration was three hundred dollars. It was also proved that in the year 1824 & part of the year 1825 Thompson lived in the State of Illinois with his family and that he there held and possessed the negro as

a Slave for about the space of 18 months that Toupon
~~while~~ while living
in Illinois ~~living~~ as before Stated raised ~~at least~~ two-
crops. The defendant also gave in evidence the Ordi-
nance of the Congress of the United States for the govern-
ment of the N W Territory out of a part of which the State
of Illinois was formed which Ordinance declares that
neither Slavery nor involuntary servitude shall exist
in said Territory, & ~~He~~ also gave in evidence the consti-
tution of the State of Illinois which also forbids Slavery
and involuntary servitude existing in the State except
for crimes or persons fleeing from labor in other
States. Upon this State of facts this Court has often
declared the law to be that the negro holden as a
Slave would be free. The Jury in this case found
~~here~~ however in substance that this negro was not
free. This verdict was clearly against evidence
& ought for that reason to have been set aside
if the Court had the power to do so. The 41st section
of the act regulating practice at law (revised Code 632) says
that not more than one new trial shall be granted to
either party unless it shall appear to the Court that the
Jury erred upon a question of law" &c. In this case
one new trial has been granted to the party now asking
for it on what ground that new trial was granted does not
appear by the record nor is it now material to enquire
whether it was granted on the ground of the verdict being
contrary to law or evidence. This is the second applica-
tion for a new trial and the Court below could not grant
it if the ~~Judge~~ fact was that the Jury in the former
trial erred merely on the ground of evidence

unless in this case it should appear to the court that in this last case the Jury erred on a point of law.

We are of opinion that there was not in this case any legal chance for the Jury to err as to the evidence the evidence was as to the defence all on one side establishing the freedom of the negro & we cannot see how the Jury could on any legal principle disregard the evidence and if the Jury did disregard this evidence they surely lost sight of their legal duties as Jurors and if they did so it would be a verdict against law & evidence The Jury either did this or they misunderstood the law applicable to the case as made out by the evidence The law arising out of the evidence in this case is that the negro was free and the bond void and this should have been the verdict of the Jury on the evidence detailed in the record

The Court erred in refusing to grant a new trial the Judgment is reversed and remanded for farther proceeding

M'M'Gehee
P Walsh

Creath Opinion of the Court
vs
Thompson

Filed 15th May 1832
F. R. Gamble clk