July 1843

0117

Livestock

Robert Boyd
v
Daniel Brumley

Miller County

theft of livestock

oxen
mares
cows
etc.
} $200

Brumley then sold cattle to pay debts

July 1843

2117

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Robert Boyd
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Robert Boyd
vs.
Daniel Brumley and
John M Davis.

In the Supreme Court.
July Term 1863.
Appeal from Miller Circuit
Court.

The said plaintiff moves the Court to dismiss the above appeal and affirm the judgment of the Circuit Court for the following reasons.

1st Because the said appeal was taken in April 1862 and the said defendants have not caused a perfect transcript of the record and proceedings in the said cause to be filed in the Supreme Court or any record thereof whatever

2. Because the said defendant has not prosecuted his appeal with due diligence to a decision in the supreme court.

3.?

Because the said defendant has wholly failed to prosecute his appeal.

G C Maulsby atty for
Pltff

Robert Boyd
vs.
Samuel Brumley and
John M Davis.

Motion to affirm the
Judgment of circuit
Court & dismiss appeal

Filed aug. 17. 1843.
H. L Boon clk.

Pleas before the Honorable the Circuit Court for the County of Mills in the State of Missouri before James W. Morrow Sole and presiding Judge thereof on the fourth day of April in the year of Our Lord One thousand Eight hundred and forty two in certain matter in said Court pending wherein Robert Boyd is plaintiff and Daniel Brumley and John M. Davis are defendants.

Be it remembered that heretofore to wit on the thirtieth day of March in the year of Our Lord One thousand Eight hundred and forty one Robert Boyd filed in the office of the Clerk of the Circuit Court in and for the County of Mills, his declaration against Daniel Brumley and John M. Davis which said declaration is in the word and figures following to wit

State of Missouri } In the Mills Circuit Court
Mills County to. wit } July Term 1841.

Robert Boyd, by his attorney complains of Daniel Brumley and John M. Davis, of a plea of Trespass. for that the said defendants on the first day of January in the Year of Our Lord One thousand eight hundred and forty one at the County of Mills aforesaid with force and arms, Caught Seized led drove and carried away. One yoke of work Oxen two mares two milk cows One bull four heifers and four small Steers of the said plaintiff of great Value to wit of the Value of Two hundred dollars and then and there the said defendants kept detained drove and led away and converted the said yoke of work Oxen cows mares bull small

Steers and heifers to their own use to wit at the County of Miller aforesaid. And other wrongs to the said plaintiff then and there did against the peace of the State and to the damages of the said plaintiff of four hundred Dollars and therefore he brings his suit &c B. M. Lisle atty for plff.

upon which said declaration the said Clerk issued his writ which said writ is in the words And figures following to wit. State of Missouri County of Miller. The State of Missouri. To the Sheriff of the County of Miller Greeting you are hereby commanded to summons Daniel Brumley and John M. Davis if they be found in your County to be and appear before the Judge of the Miller Circuit Court On the first day of the next term thereof to be held in the Town of Tuscumbia in said County on the first monday after the fourth monday in July next to answer to the Complaint of Robert Boyd And do you certify to Our said Court how you execute this Writ and have you then and there the same

Witness I William P. Dixon Clerk of said Court have hereunto set my hand and affixed my private seal there being no seal of said Court as yet provided done at office in the Town of Tuscumbia this the 26th day of April 1841 William P. Dixon Clk.

upon which said writ the Sheriff of said County to whom the same was directed made the following return on the return

day thereof to wit. I J. W. Whitaker Sheriff of Miller County Mo. do hereby certify that I Served the within named Daniel Brumley with the within declaration & Writ by Reading the Same in his presence and hearing on the tenth day of May 1841. I do further certify that I served the within named John M Davis with the within declaration and Writ by Reading the Same in his hearing on the 5th day of July 1841 all done in the County of Miller and State of Missouri. J. W. Whitaker Sheriff of Miller County Mo

And afterwards to wit at A Circuit Court. Continued and held at the Town of Tuscumbia for the County aforesaid at the August Term of Said Court and on the third day of Said month of August. is the following entry to wit. Robert Boyd Against Daniel Brumley & John M. Davis Trespass. Plea filed and Continued which Said plea is in the words & figures following to wit. And the Said Daniel Brumley by his Attorney comes and defends the wrong and injury when &c and Says he is not guilty of the Said Supposed trespass in the Said declaration mentioned in manner and form as the Said plaintiff has thereof alledged against him & of this he puts himself upon the Country. B. F. Robinson Atty for Def. upon which Said plea the Said plaintiff Joined Issue in the Words and figures following to wit. And the Said plaintiff doth the like

B. M Lisle Attorney for Pltff.

And afterwards to wit at A Circuit Court
Continued and held for said County at
Jacksonville aforesaid on the 29th day of Novem
ber in the year A.D 1841. is the following
entry to wit. Robert Boyd Vs. Daniel Brumley
and John M. Davis (Trespass) And Now
at this day comes the said plaintiff by his
Attorney And the said Daniel Brumley by
his Attorney And the said John M. Davis
although Solemny called comes not but
makes default And thereupon comes a Jury
To wit David Musick Daniel Etter William
Insley Harden Williams Obj. D. Dyer John
Vaughan Andrew McCasland William Wilson
James Pierce John Davidson Ebenezer Vernon
and John McLaughlin twelve good & lawful
men who being duly elected tried and sworn
as well to try the Issue Joined herein between
the said plaintiff and the said Daniel Brum
-ley as to assess the damages by the said
plaintiff Sustained by reason of the said
trespass in the declaration mentioned com
-mitted by the said John M. Davis and
after hearing the Testimony were permitted
to Separate until tomorrow morning nine
Oclock. And afterwards to wit at the
time and place aforesaid on Tuesday the 30th
day of November 1841 is the following entry
to wit: Robert Boyd Against Daniel Brumley
and John M. Davis (Trespass). And now at
this day come the parties by their Attorneys
and also the Jury heretofore sworn in this cause
who upon their oaths do say that they find
the Issues for the plaintiff and assess his

damages to the Sum of Seventy Seven dollars and Thereupon the Said defendants by their Attorney moves the Court to Set aside the Verdict and grant them a new Trial and file their Reasons therefor: And because the Court is not Sufficently advised of and concerning the premises. And what Judgment to render on the Same day is given the parties aforesaid till the next Term of this Court to hear Judgment on the Same And this Cause is Continued until the next Term of this Court And afterwards to Wit At A Circuit Court Continued and held for Said County at the place aforesaid On monday the 4th day of April 1842 is the following Entry to Wit Robert Boyd against Daniel Brumly and John M. Davis (Trespass) And now at this day come the parties by their Attorneys and the Court Overrules the motion heretofore filed in this Cause for a new trial = Therefore It is considered by the Court that the Said plaintiff Recover against the Said defendants the Said Sum of Seventy Seven dollars the damages in manner and form aforesaid assessed together with his costs and charges by him about his Suit in this behalf expended and that he have execution therefor = And afterwards to Wit at the time and place aforesaid on Tuesday 5th April 1842 is the following entry to Wit Robert Boyd Vs Daniel Brumly and John M. Davis (Trespass) And now at this day come the Said Daniel Brumly by his Attorney and takes exceptions to the

Overruling of the motion heretofore filed by him for anew trial in this cause and prays his bill of exceptions may be signed sealed and enrolled & made apart of the Record in this Cause which is accordingly done And thereupon the said Daniel Brumley filed an affidavit and prayed an appeal to the Supreme Court which was granted And the said Daniel Brumley with William H. Wade and John Brumley Securities approved of by the Court as sufficient Acknowledged themselves indebted to the said Robert Boyd in the sum of two hundred dollars of their respective goods and chattels land and tenements to be levied Conditioned that the said Daniel Brumley shall prosecute his appeal with due diligence to a decision in the Supreme Court and that if the Judgment appealed from is affirmed or his appeal dismissed he will pay whatever of debt damages and costs have been assessed against him by the Judgment of this Court together with the Interest that shall grow due thereon and that he will otherwise perform the Judgment of this Court and that he will also pay the costs and damages that may be adjudged against him in the Supreme Court upon his appeal

Robert Boyd
vs
Daniel Brumley &
John M. Davis

Action of Trespass

Be it Remembered that on the trial of this cause the plaintiff produced Wade a Witness who proved that some day previous to the sale of the property Brumley the defendant and Davis and Boyd the plaintiff came to his witnesses house and plaintiff requested witness to join him in a delivery bond to Davis of some property that he owed Brumley a debt and could not get the money witness did so. At the day of sale witness was present Boyd bought out the property and delivered it to Davis to sell. Davis sold a yoke of Oxen two mares two & three head of Cattle. Oxen were supposed to be worth $30 or $35 One horse worth $15. the other $40. Cattle worth about $30.00 property was sold by Davis for about the sum of $54.00. It was proved that Davis was not the Constable in the Township in which Boyd resided. Parks Justice proved that Brumley had a Judgment against Boyd before him as Justice for the sum of upwards of fifty dollars including damages that some time before the property was sold Brumley the defendant procured an execution from his office against the plaintiff. It was proven by the plaintiff that after the sale that Boyds daughter living in his family advanced $10. with which she bought the old mare back there was some other money advanced for a cow

Parke A Witness proved that he issued an execution in favour of Daniel Brumley one of the defendants and against the plaintiff for the sum of about fifty dollars about the day of 1841 and delivered the said execution to the said Brumley. Parke A. Witness proves that on or about the day Brumley and John M. Davis the defendants and the plaintiff came over to his house he residing near the plaintiff and the plaintiff requested the witness to go his security to John M. Davis in a delivery bond binding said plaintiff and Witness to deliver to the said Davis in a short time thereafter One yoke Oxen Value $40 or $45 One mare worth $40 one other mare worth $15 or $20 dollars two cows and calves worth $12. each and one bull worth $6 at the house of the said plaintiff to be sold to satisfy an Execution in favour of said Brumley and against the said plaintiff. The said Witness joined on the said delivery bond and Davis advertised the said property as constable And on the day the said property was to have been delivered to said Davis being the same day for the sale according to the advertisement. The said Brumley and Davis went to the house of the said plaintiff; and the said plaintiff then and there delivered the said property up to the said Davis pursuant to the said delivery bond to be by the said Davis sold by Vertue of the said execution to satisfy the same thereupon he

proceeded to Sell the said property to the highest bidder for cash in hand in the presence of said Brumley to satisfy the said execution and the said property was sold for the sum of about $34 to divers and sundry persons who were in no wise related to the said Boyd the yoke of oxen was bought by said Brumley and by him taken home used and enjoyed. One mare was afterwards purchased by Mrs. Arnold a married daughter of the said plaintiff and residing with him, of the individual who purchased it. It was also proved that the said Davis was not Constable of the Township in which he made the sale and had no power or authority to execute process or act as Constable — The defendant proved by Mavis a Witness that none of the property was taken Out of Boyds possession except One cow & bull and the yoke of oxen. he also proved by Bilyeu that the plaintiff a short time before the property was given up to be sold told Witness that he was indebted to Brumley but he could not get the money and that he was going home and would give up property and let him sell it and make his debt that he could not sell it — which being all the evidence the Jury thereupon found a verdict against the defendant and thereupon afterwards the defendant filed his motion which said motion is in the words and figures following to wit And now at this day comes the said Brumley by his Attorney and moves the Court to set aside the Verdict of the Jury and grant a new trial in said Cause because

Said Verdict is against the evidence because the Court erred in rejecting evidence offered on part of said defendant; because the Court erred in the Instructions given the Jury; because said Verdict is against law and evidence

B. F. Robinson Atty
for Deff

To set aside the Verdict and grant him a new trial which matter was overruled by the Court to the Overruling of which the defendant excepted and prays this his bill of exceptions may be signed & made a part of the record which is done accordingly

J. W. Morrow Seal

State of Missouri
County of Miller I William P. Dixon Clerk of the Circuit Court within and for the County aforesaid do hereby certify that the foregoing is a full true and perfect copy of the proceedings had in the above Cause as stands upon the record of said Court

In Testimony Whereof I have hereunto set my hand and affixed my private seal there being no seal of said Court as yet provided done at office in the Town of Tuscumbia this the 19th day of July A D 1843

William P. Dixon Clk

(9)

Robt. Boyd
vs.
Daniel Brumley

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affirmed on motion
& Transcript.

July Term, 1843

Filed Aug. 17. 1843.
H. L. Boon clk

Box 31

Tuscumbia Miller County Mo
Sept 16th 1843

Mr H S Bow

Sir

In the Case of
Daniel Brantley vs Robert Boyd, an
Appeal taken from the Miller Circuit Court
to the Supreme Court, in making Out the
Transcript in Said cause Neglected to
endorse on Said Transcript my fee for the
Same which is Three dollars & fifty cents which
you will please endorse on the Execution
when you Issue and oblige

William P Dixon

Tuscumbia Mo
Sept. 16th 1843

Free

Wm P. Dixon Jr
Master. Tuscumbia
Mo

Mr. Hampton L. Boon
Clerk. Supre Court State of Mo
Jefferson City. Mo