21/12

George Cason, administrator of Elijah Partlow – appl't

v

William L. White – Resp't

July 1843 – #21 – Howard

White had received slaves from Partlow before his death.
(Partlow was his father-in-law) Cason sued to have them returned.

White offered Partlow's other daughter as a witness in the case. Appealed b/c witness had an interest in the slaves + the will.
Court said while witness did have interest, it was not compelling. Judgement affirmed

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Clark-Atty

The State of Missouri

To the Judge of the Circuit Court of Howard County Greeting: Whereas it hath been suggested to us by George Cason adm.r of Elijah Partlow deceased that in the record and proceedings and also in the rendition of the Judgment in a certain cause lately pending before you wherein George Cason administrator of Elijah Partlow deceased was plaintiff and William L. White was defendant in an action of Trespass on the Case manifest error hath occurred, and we being willing that such errors if any there be, should be corrected, do command you that the record and proceedings of the said Cause you send certified as fully and amply as the same now remains before you to our Supreme Court of said State to be held at the city of Boonville in the County of Cooper within and for the first Judicial district on the fourth Monday in August next, so that our Judges of our said Supreme Court on inspecting the same may proceed to do therein that which to law doth appertain and to them seem meet and proper. And have you then and there this writ.

Witness Bennett C. Clarke clerk of our said Court with the seal thereof hereto affixed at office this first day of August Eighteen hundred and forty two.

Bennett C. Clarke clerk

In Obedience to the command of the within writ I have made out & herewith transmit to the Supreme Court within & for the first Judicial district of the State of Missouri, a true full & complete transcript of all the record & proceedings had in the Howard Circuit Court, in the within entitled Cause wherein George Cason Administrator of Elijah Partlow deceased was plaintiff & William L. White was defendant.

In testimony whereof I Samuel Bynum Clerk of said Howard Circuit Court, have hereto signed my name & affixed my Official Seal at office, in said County within 8th day of August 1842. Samuel Bynum Clk

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State of Missouri, to wit:

Pleas in the Circuit Court begun & held at the town of Fayette within & for the County of Howard in the Second Judicial Circuit of said State, on the first Monday of ~~November~~ October, in the year of our Lord one thousand eight hundred and forty one, before the Honorable John D. Leland, Judge of said Court

Be it remembered that heretofore to wit, on the 21st day of August A. D. 1841, George Leason Administrator of all and singular the goods and chattels, rights and credits which were of Elijah Parklow deceased, plaintiff, by Clark his Attorney, filed in the Office of the Clerk of the Circuit Court of Howard County in the State of Missouri, his Declaration in writing in an action on the case, against William L. White, which said Declaration reads as follows to wit:

Declaration } In the Circuit Court
October Term 1841.

Howard County, to wit:

George Leason Administrator of all and singular the goods and chattels, rights and credits which were of Elijah Parklow deceased at the time of his death, who died intestate, by his attorney, complains of William L. White of a plea of trespass on the case.

For that whereas the said Elijah Parklow

in his life time to wit, on the tenth day of July eighteen hundred and forty one at the County of Howard, was lawfully possessed of his own property, of the following negro slaves to wit, Betsy a negro woman Susan a negro girl, Allen a negro boy, Henry a negro man, Rosetta a negro girl, Arthur a negro man, Charles a negro boy, and William a negro boy, of great value to wit of the value of four thousand dollars, And being so possessed thereof, he the said Elijah Partlow afterwards to wit on the tenth day of July Eighteen hundred and forty one, at the County of Howard aforesaid, and so possessed thereof, after whose death to wit on the day and year last aforesaid, at the County of Howard aforesaid, the said last mentioned negro slaves come to the possession of the said William L. White by finding, and afterwards to wit, on the fifth day of August eighteen hundred and forty one, at the County of Howard aforesaid Administration of all and singular the goods and chattles rights and credits which were of the said Elijah Partlow deceased at the time of his death in due form was granted by Nathaniel Ford clerk of the County Court of Howard County to the said Ferguson, letters of which said administration are now here shown to the Court, yet the said William L. White well knowing the said last

mentioned slaves to be the property of the said Elijah Parklow in his life time, and at the time of his death, and to belong to the said George Leason as administrator as aforesaid after the death of the said Elijah Parklow, but contriving and to defraud the said George Leason as administrator aforesaid in this behalf hath not as yet delivered the said slaves or any of them or any part thereof to the said George Leason as administrator as aforesaid, although often requested so to do, and the said William L. White afterwards and after the death of the said Elijah Parklow to wit on the said tenth day of July eighteen hundred and forty one at the County of Howard aforesaid converted and disposed of the said negro slaves to his own use.

And whereas also the said George Leason as administrator as aforesaid afterwards, and after the death of the said Elijah Parklow, to wit, on the sixth day of August eighteen hundred and forty one at the County of Howard aforesaid was possessed lawfully of divers other negro slaves for life to wit— One woman named Betsy, one girl named Susan (alias Sucky), one boy named Allen, one man named Henry, one girl named Rosetta, one man named Arthur, one boy named Charles, and one boy named William, being of great value, to wit of the value of four thousand dollars, as of his own property as administrator as aforesaid,

and being so possessed thereof, he the said George Leason afterwards to wit, on the sixth day of August eighteen hundred and forty one at the County of Howard aforesaid, casually lost the same last mentioned negro slaves out of his possession, and the same then and there came to the possession of the said William L. White by finding, yet the said William L. White well knowing the said last mentioned slaves to be the property of the said George Leason as such administrator as aforesaid, and of right to belong and appertain to him as such administrator as aforesaid, but contriving and fraudulently intending to deceive and defraud the said George Leason as administrator as aforesaid in this behalf, hath not as yet delivered the said last mentioned negro slaves, or any of them to the said George Leason (although often requested so to do) and has hitherto wholly neglected so to do and still neglects so to do, And afterwards to wit on the said sixth day of August eighteen hundred forty one at the County of Howard aforesaid the said William L. White converted and disposed of the said last mentioned negro slaves to his own use, to the damage of the said George Leason as administrator as aforesaid, of four thousand dollars, and therefore he brings his suit. And the said George Leason brings here into Court

5.

the letters of administration granted by Nathaniel Ford clerk of the County Court of Howard County in the State of Missouri on the fifth day of August eighteen hundred and forty one in due form of law, which give sufficient evidence to the Court here of the grant of administration to the said George Mason as aforesaid, the date whereof is the day and year last aforesaid.

Clark atty for Plff

On the back of which said Declaration is the following indorsement to wit—

Indorsement } Howard Circuit Court, George Mason Admr. &c. vs William G. White, Mar.

To the Clerk of Howard Circuit. This is an action of Trespass on the case. Damages $4000. Issue a summons. Clark atty.

And afterwards to wit, on the same day and date of the filing the said above Declaration, our said Clerk of the Howard Circuit Court, issued and annexed thereto a writ of summons. Which said writ is in the following words & figures, to wit—

State of Missouri }
County of Howard } The State of Missouri, To the Sheriff of the County of Howard: Greeting.

We command you to summon William G. White that he be and appear before the Judge of our Circuit Court, at the next term of our said Court to be held at the town of Fayette, within and for

the County of Howard on the first Monday of October next, then and there to answer unto George Gason, administrator of all and singular the goods and chattles, rights and credits which were of Elijah Parkins deceased at the time of his death who died intestate, of a plea of trespass on the case. To the damage of the said plaintiff as is said, of four thousand dollars. And have you then and there this writ. Witness Gray Bynum clerk of our said Court, at Office, in said County, on the twenty first day of August A.D. 1841.

Gray Bynum clk
By S. Bynum D.C.

And afterwards to wit, at the said October term of our said Court, and on the first Monday of said Month, Lewis Cregler Esqr. Sheriff of Howard County to whom the said Declaration and writ above mentioned, were delivered to be executed, returned the same with his return indorsed upon said writ as follows to wit-

Shff's return

I executed this writ by reading the within declaration & summons to William L. White in Howard County, on the 30th day of August 1841.

L. Cregler Shff H.C.

And afterwards to wit, on the fifth day of the said month at the said October term —

"The said Defendant by his attorney files his plea of not guilty to the Plaintiffs declaration"

7.

Which said plea reads as follows—

October Term 1841

William L. White
ads
Geo. Carson Admr.

Plea of N.G. of Deft.

And the said Defendant by his attorney comes and defends the wrong and injury when &c. and says that he is not guilty of the grievances above laid to his charge or any or either of them or any part thereof in manner and form as the said plaintiff hath above thereof complained against him and of this he puts himself upon the Country &c

Davis Atty for Deft.

And afterwards, to wit, on the 20th day of October at the said October Term, 1841—

issue joined, &c.

"The Plaintiff by his attorney joins issue to the plea of the Defendant, and thereupon this cause is ordered to be continued."

And afterwards to wit, at the February Term, 1842 of the said Howard Circuit Court and on the 8th day of February—

"The said Plaintiff by his attorney files his Motion & reasons & moves the Court to suppress the Depositions of Joseph A. Street & Lewis Robtaille taken on part of the Defendant & filed herein on the 11th day of January A.D. 1842"

Which said Motion & reasons read as follows to wit:

~~Geo. Carson Admr.~~
~~vs~~

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George Mason Admr &c.
vs
Wm L. White

And the said plaintiff by his Attorney moves the Court to suppress the Depositions of Joseph H Street and Lewis Roblaille taken by the above named defendant, and filed in this cause on the 11th day of January 1842, for the following reasons, (viz)

1st That was no sufficient notice of the time and place of taking the same served upon the plaintiff

2nd The same was not taken in pursuance of any notice given the plaintiff.

3rd It does not appear that the Deponents subscribed their names to said depositions in the presence of the Officer before whom they were taken.

4th The same are not certified and authenticated as the law directs.

Mclark atty for Pltff

The said Plaintiff moves the Court to suppress the reading of so much of the Depositions of Joseph H. Street and Lewis Roblaille taken by the Deft and filed in this cause as are within brackets, marked 1 in each deposition

Clark atty.

And afterwards to wit on the 17th day of the said Month of February at the aforesaid Term 1842

Defts Exceptions to Depos of W. White & Susan Howell

"The said Defendant by his Attorney files his exceptions to the depositions of Jno R. White & Susan Howell filed

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on part of the Plaintiff in this cause."

Which said Exceptions read as follows, to wit.

Howard Circuit Court. February Term 1842

Wm L White
ads ⅔ In Trover
George Cason - admr &c.

And the said Defendant now here moves the Court to suppress the reading of the Deposition of John R. White filed by Plaintiff in the above cause - Because 1st The same was taken without any notice, or any good & legal notice having been served upon him said Defendant prior to the taking thereof. 2d The same was taken not pursuant to any notice of the time & place of taking the same. 3rd Because the witness was not sworn to testify in the cause in the manner prescribed by law. 4th Because the same and every part thereof is irrelevant to the matters in issue in the suit. And because he the said White is & was at the time he deposed as a witness interested in the event of the suit. And the said Defendant objects to the reading of all the several parts of said Deposition included within brackets & marked thus "[ ]"

And the said Defendant moves the Court to suppress the Deposition of Susan Howell taken & filed in said cause on the 8th day of Feby 1842 - for the following reasons - 1st Because the same was taken by Plaintiff without any notice of the time & place of taking thereof having been served or given the Defendant prior to the taking thereof. 2nd Because the same was not taken pursuant to any good or

sufficient notice of the time & place of taking the same - 3d Because the same is irrelevant to the matters involved in the issues between the parties - And he moves to suppress all the several parts of this Deposition included in Brackets marked thus [ ] -

Davis & Hayden
Attys for Deft.

And afterwards to wit on the 19th day of the said Month of February in the year afonsaid -

Defts. Depos Suppressed ~~overruled~~

"Come the parties afonsaid by their respective attorneys, whereupon all & singular the premises upon the motion of the said plaintiff to suppress the depositions taken on part of the Defendant & filed in this cause, being seen & heard & by the Court here fully understood, it is considered that the same be sustained, & the said depositions are suppressed."

And afterwards to wit, on the same day and date last afonsaid -

Defts Mo to suppress Plffs Depos - overruled

"Come the parties afonsaid by their respective attorneys, whereupon all & singular the premises upon the motion of the said defendants to suppress the depositions taken on part of the Plaintiff & filed in this cause being seen and heard and by the court here fully understood, it is considered that the same be overruled"

And afterwards to wit, on the same day & date

last afonsaid—

"By Consent of Parties by their attorneys this cause is ordered to be continued til the next Term of this Court, & the said parties file their agreement in said Cause"

Which said agreement filed as afonsaid, reads as follows—

agreement

Howard Circuit Court, February Term 1842
George Cason Admr &c.
agt ⁊ In Trover
Wm L. White.

Same
vs ⁊ In Trover
James Partlow

Same vs Martha Ann Partlow— Trover

Same vs Wm L. White— apempsit—

The undersigned Counsel for the Parties in the above causes respectively, agree that Depositions of Witnesses may be taken by the parties in any one of the above causes, & when so taken that the same may be read as well in the causes in which the same are not taken as in the one in which the same may be taken; saving and reserving all exceptions to the competency & relevancy of the proof to the issues made between the parties— And that the Depositions of John R. White & Susan Howell already taken in the case of Trover against said William L. White may be read in the other causes subject

to the reservations & exceptions above stated.

John B. Clark

Hayden & Davis for Defts

And afterwards to wit, on the 14th day of June at the June Term of our said Court in the year 1842.-

Appearance

"Come the parties aforesaid by their respective attorneys, & thereupon also came a Jury, to wit:- William Hanna, Lewis Slaughter, John [illegible]

Jury Sworn

John Bradley, B. F. Jeter, James Shepherd, Wade M. Jackson, John Proctor, Thomas Howard, Thomas Burrip, Laban Sebree, Robert Percival & Samuel Bentley, twelve good & lawful men who being duly elected tried & sworn well & truly to try the issue joined between the parties aforesaid, whereupon the said George Eason (administrator of all and singular the goods & chattels rights & credits which were of Elijah Partlow deceased who died intestate at the time of his death)

Nonsuit

being solemnly called comes not, nor doth he further prosecute his action aforesaid against the said William L. White- It is therefore considered by the court here that the said George Eason administrator as aforesaid take nothing by his said writ- And it is further considered by the court here that the said William L. White recover against the said George Eason (Administrator as aforesaid) his costs & charges by him about his defence in that behalf laid out & expended, & that he have thereof execution."

And afterwards to wit on the same day & date-

Mo. reasons filed to set aside nonsuit Mo. overruled

"The said Plaintiff by his attorney files his Motion & reasons, & moves the Court to set aside the nonsuit entered in this cause, & grant him a new trial herein which Motion being seen & by the Court here fully understood it is considered that the same be overruled"

Motion

Which said Motion & reasons read as follows to wit:—

George Leason Admr. &c.
vs
William L. White

"The said Plaintiff moves the Court to set aside the nonsuit in this cause and grant him a new trial, for the following reasons— 1st Because the Court improperly permitted the Defendant to introduce and examine as a witness Martha Ann Parlow. and because the Court allowed the Defendant to give illegal evidence to the Jury— and Because the Court permitted the defendants to read to the Jury the Deed from Elijah Parlow to the deft. and others.

Clark & Herndon
for Plff.

And afterwards to wit on the same day and year last aforesaid—

Bill of Excep. filed —

"The said Plaintiff by his attorney presents to the Court his Bill of Exceptions which is signed & sealed & ordered to be made part of the record."

Which said Bill of Exceptions reads as follows, to wit:

14.

Bill of Exceptions

George Cason Admr. agt. In Trover William L. White

Circuit Court June Term 1842.

Be it remembered that upon the trial of the above cause it was admitted by the Defendant that the Plaintiff was the administrator of the Estate of Elijah Partlow deceased duly qualified to act as such. It was also admitted by Defendant that the said Elijah Partlow in his life time was the owner & possessor of the negroes in the Declaration mentioned down to the twenty seventh day of ~~Apr~~ April in the year 1841,- And thereupon the Plaintiff introduced evidence conducing to shew that the deceased in his life time continued to possess the negroes and exercise acts of ownership over them down to the time of his death- and also evidence conducing to shew that after the death of said Elijah and after he the said Cason had administered upon the Estate of said decedent, that he the said Cason as administrator aforesaid & prior to the commencement of this suit, demanded the possession of the negroes aforesaid, and that upon the demand being so made of him the said Defendant refused to deliver to the Plaintiff the negroes Betsy, Susan Allen- he the said White claiming them to be his under Deeds of Gift, which he alleged had been made of the last mentioned slaves to his wife, Mary E., daughter of said Elijah- And evidence conducing to shew that at the time of the demand the defendant did

not claim the other negroes mentioned in the declaration - And evidence conducing to shew that the said other negroes were not in his said Wife's possession but that they, viz - Negroes Henry Rosetta, or Rose, negroes were in the possession of Martha A. Partlow, and the daughter of the deed aged about 19 - and that the remainder of the negroes, viz - Negroes Arthur Billy or William & Charles were in the possession of James Partlow a son of said deceased aged 18 years.

And thereupon the Plaintiff closed his evidence in chief.

Whereupon the Defendant introduced and offered to read to the Jury the following Deed of Gift -

Republic of Texas }
County of Sabine } Know all men by these presents that I Elijah Partlow of the County of Sabine & Republic above written, have on this the 27th day of April & year of our Lord one thousand eight hundred & forty one, for and in consideration of the love and affection I bear to my three Children Martha Ann Partlow, James Partlow and Mary E. White & for & in consideration of the sum of one dollar to me in hand paid, the receipt whereof I hereby acknowledge, granted, bargained & sold & by these presents doth grant, bargain & sell to my daughter Martha as aforesaid, certain Negroes as follows, to wit - My servant boy Henry aged 22 years, also my servant girl Rhody aged 39 years - also my servant girl Rose aged 7 years, also my servant girl Harriet aged

one year. Also to my son James as aforesaid, certain Negroes as follows, to wit— My servant boy Arthur aged 36 years, also my servant boy Billy aged 4 years, also my servant girl Lucy aged 21 years, also my servant boy Charles aged 6 years— Also unto my Daughter Mary E. White as aforesaid, certain Negroes as follows to wit— My servant girl Betsy aged 25 years Also my servant girl Susan aged 8 years Also my servant boy Allen aged 6 years, and I hereby bind myself, my heirs, executors administrators & assigns unto my Daughter Martha Ann, and unto my son James, & unto my Daughter Mary E. White, their heirs, administrators, executors & assigns forever to warrant & defend the title to the said Negroes to my Daughter Martha Ann, James, & Mary E. White as aforesaid against the claims or claims of all & every person or persons whomsoever claiming or to claim the same

In testimony of all which I have hereunto set my hand & affixed my seal this the day and year of our Lord above written.

Signed, sealed, & delivered in presence of
Wm L. White
Thos. Moore

Elijah Partlow (Seal)

& proposed to prove the execution thereof by first showing that the attesting witnesses thereto were William L. White the Defendant, and who was admitted to be the husband of Mary E. White in the same Deed mentioned— And

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also by proving that the other attesting Witness Thomas Moon, was a resident of Texas, & not within this State — And thereupon Defendant offered as a witness the said Martha Ann Partlow, named in the Deed, to prove the hand-writing of the attesting Witnesses together with the hand writing of the said Elijah Partlow, and offered to prove by her also, that the said Elijah signed, acknowledged and sealed the Deed in the Republic of Texas County of Sabine, in the presence of the subscribing Witnesses, on the 27th day of April in the year 1841, and that he the said Elijah requested the said White and Moon the subscribing witnesses, to subscribe their names thereto as attesting witnesses, And also proposed to prove the execution of the Deed by proving the same facts by James Partlow, a Grantee named in the Deed, after first reading in evidence to the Court the following proceedings with the verdict & judgment in favour of the said James at the suit of the Plaintiff as said administrator for the recovery of negroes therein mentioned, being part of the negroes named in the Deed —

On the 21st August 1841, the following Declaration was filed in the Clerk's office of Howard Cir. Court — to wit —

Proceedings in Case of Geo. Cason vs Jos. M. Partlow

In the Circuit Court, October Term 1841.
Howard County to wit —

George Cason Administrator of all and singular the goods and chattels rights and credits which were of Elijah Partlow deceased at the time of his death, who died intestate by his attorney complains of

James M. Partlow of a plea of trespass on the case.

For that whereas the said Elijah Partlow in his life time to wit, on the tenth day of July eighteen hundred and forty one at the County of Howard was lawfully possessed of his own property of the following negro slaves to wit – Arthur a negro man, Charles a negro boy and William a negro boy of great value to wit – of the value of two thousand dollars, and being so possessed thereof, he the said Elijah Partlow afterwards to wit on the tenth day of July eighteen hundred and forty one, at the County of Howard aforesaid died so possessed thereof, after whose death to wit on the day and year last aforesaid at the County of Howard aforesaid the said last mentioned negro slaves come to the possession of the said James M. Partlow by finding, and afterwards to wit on the fifth day of August eighteen hundred and forty one at the County of Howard aforesaid administration of all and singular the goods and chattels rights and credits which were of the said Elijah Partlow deceased at the time of his death in due form was granted by Nathaniel Ford, Clerk of the County Court of Howard County to the said George Gaston, letters of which said administration are now here shown to the Court. Yet the said James M. Partlow well knowing the said last mentioned slaves to be the property of the said Elijah Partlow in his life time, and at the time of

his death and to belong to the said George Cason as administrator as aforesaid after the death of the said Elijah Partlow, but contriving to defraud the said George Cason as administrator aforesaid in this behalf, hath not as yet delivered the said slave, or any of them or any part thereof to the said George Cason as administrator as aforesaid (although often requested so to do) And the said James M. Partlow afterwards and after the death of the said Elijah Partlow, to wit, on the said tenth day of July Eighteen hundred and forty one at the County aforesaid, ~~converted~~ converted and disposed of the said Negro slave to his own use.

And whereas also the said George Cason as administrator as aforesaid afterwards and after the death of the said Elijah Partlow, to wit, on the sixth day of August eighteen hundred and forty one, at the County aforesaid was possessed lawfully of divers other negro slaves for life, to wit: One man named Arthur one negro boy named Charles and one negro boy named William, being of great value to wit. of the value of two thousand dollars as of his own property as administrator as aforesaid, and being so possessed thereof he the said George Cason afterwards to wit on the day of August eighteen hundred and forty one at the County of Howard aforesaid, casually lost the same last mentioned negro slaves out of his possession and the same then and there came to the possession of the said James M. Partlow by finding. Yet the said James M. Partlow well knowing

the said last mentioned slaves to be the property of the said George Leason as such administrator as aforesaid, but contriving and fraudulently intending to deceive and defraud the said George Leason as administrator as aforesaid in this behalf, hath not as yet delivered the said last mentioned negro slaves or any of them to the said George Leason (although often requested so to do) and has hitherto wholly neglected so to do, and still neglects so to do, And afterwards to wit on the said fifth day of August eighteen hundred and forty one at the County of Howard aforesaid the said James M. Parlow converted and disposed of the said last mentioned negro slaves to his own use, To the damage of the said George Leason as administrator as aforesaid of two thousand dollars, and therefore he brings his suit.

And the said George Leason brings here into Court the letters of administration granted by Nathaniel Fore Clerk of the County Court of Howard County in the State of Missouri on the fifth day of August eighteen hundred and forty one in due form of law, which give sufficient evidence to the Court here of the grant of administration to the said George Leason as aforesaid, the date whereof is the day and year last aforesaid.

Clark atty for
Pltff

On the back of which Declaration appears the following Indorsement to wit—

Howard Circuit Court— George Leason, Adm de. vs James M. Parlow— Narr.— To the Clerk

of Howard Circuit Court. This is an action of trespass on the case. Damages $ 2000.- Issue a Summons. Clark, atty.

And afterwards to wit, on the same day and date of the filing of the said Declaration our said Clerk of the Howard Circuit Court, issued the following writ of summons & annexed thereto - to wit -

State of Missouri }
County of Howard } The State of Missouri, To the Sheriff of the County of Howard; Greeting. - We command you to summon James W. Partlow that he be and appear before the Judge of our Circuit Court, at the next term of our said Court to be held at the town of Fayette, within and for the County of Howard on the first Monday of October next, then and there to answer unto George Leason Administrator of all and singular the goods and chattels rights and credits which were of Elisah Partlow deceased, at the time of his death, who died intestate, of a plea of trespass on the case, to the damage of the said Plaintiff as is said, of two thousand dollars. And have you then and there this writ

(L. S.) Witness Gray Bynum Clerk of our said Court, at office, in said County, on the 21st of August A. D. 1841.

Gray Bynum Clk
By S. Bynum D.C.

And afterwards to wit on the said first Monday of October 1841, being the first day of the said October Term of the said Court, our said Sheriff, to wit Lewis Cryler Esqr. Sheriff of Howard County, returned

into the office of the said Clerk the said Declaration & summons, with his return thereon indorsed, as follows-

I executed this writ by reading the within declaration and summons to James M. Parklow in Howard County, on the 30th day of August 1841.

L. Leigler Shff H.C

And afterwards to wit, at the said October Term of our said Court, and on the 6th day of October 1841-

"On motion James M. Gordon is appointed Guardian adlitem for the defendant James M. Parklow, who is an infant under the age of twenty one years"

And afterwards to wit, on the seventh day of said Month, in the year last aforesaid-

"The said James M Parklow by James M Gordon his Guardian adlitem, files his plea of not Guilty to the Plaintiffs Declaration"

Which said plea reads as follows to wit

James M. Parklow by
James M. Gordon his guardian adlitem
ads
George Eason Admr &c.

And the said defendant by his guardian ad litem appointed by the Court for that purpose comes and defends the wrong and injury when &c. and says that he the said defendant is not guilty of the said

several grievances above laid to his charge or any or either of them in manner and form as the said plaintiff hath above thereof complained against him, and of this he puts himself upon the Country, &c.

Jas. M. Gordon
Guardian ad litem

And afterwards to wit, on the 20th day of said Month in the year aforesaid

"Jury joined by Plaintiff to defend and plea, and cause continued till next Term of this Court."

And afterwards to wit, at the February Term of said Court in the year 1842. and on the 19th day of said Month of February—

"By consent of the parties by their attorneys this cause is ordered to be continued till the September of this Court, and the said parties by their said attorneys, file their agreement in said cause"

Which said agreement reads as follows—
Howard Circuit Court, February Term 1842
George Leasor - admr. &c. agt. Wm L. White - In Trover—
Same vs James Partlow - In Trover—
Same vs Martha Ann Partlow - Trover
Same vs Wm L. White - assumpsit.

"The undersigned Counsel for the Parties in the above causes respectively, agree that Depositions of Witnesses may be taken by the parties in any one of the above causes, & when so taken that

the same may be read as well in the causes in which the same are not taken as in the one in which the same may be taken, saving and reserving all exceptions to the competency & relevancy of the proof to the issues made between the parties - And that the depositions of John R. White & Susan Howell already taken in the case of Tower against said William L. White may be read in the other causes subject to the reservations & exceptions above stated.

John B. Clark
Hayden & Davis for Defts

And afterwards to wit, at the June Term of our said Court in the year afonsaid - and on the 13th day of said Month -

Jury & verdict

"Came the parties afonsaid by their respective attorneys, & thereupon also came a Jury to wit - Wm Hanna, Lewis Slaughter, Jno Brady, B. F. Jeter, James Shepherd, Wade M. Jackson, John Proctor, Thos Howard, Thomas Burriss, Laban Sebree Robert Percival & Samuel Bentley, twelve good & lawful men, who being duly elected, tried & sworn well & truly to try the issue joined between the parties afonsaid upon their oath afonsaid say that the said Defendant is not guilty of the said several grievances above laid to his charge or any or either of them in manner and form as the said plaintiff hath above thereof complained against him.

And afterwards to wit, on the 14th day of the said Month of June at the same term -

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Mo. for New Trial overruled & Judgment

"The said Plaintiff by his attorney files his Motion & reasons & moves the Court to set aside the verdict of the Jury & grant him a new trial in this cause, which Motion being seen & heard & by the Court here fully understood it is considered that the same be overruled. It is therefore considered by the Court here that the said George Leason administrator of all & singular the goods & chattels rights, credits & effects which were of Elijah Partlow deceased, who died intestate, at the time of his death, take nothing by his said writ. And it is further considered by the Court here that the said James M. Partlow recover against the said George Leason admr. as aforesaid, his costs & charges by him about his defence in that behalf laid out & expended, & that he have thereof execution."

Mo. for new trial

Which said motion for a new trial above mentioned, reads as follows—

George Leason Admr.
vs
James M. Partlow

"The said plaintiff moves the Court to set aside the verdict in this cause and grant him a new trial, for the following reasons—
1st The Court allowed the defendant to give illegal evidence.
2nd The Court erred in allowing the deed from Elijah Partlow to the deft. & others wasin evidence.
3rd The Court gave improper instructions asked by Defts, and in refusing those asked by the Plaintiff— 4- The verdict is against law & evidence and also against the instructions of the Court.
Clark & Hendon for Plff

It was admitted by the parties that the negroes mentioned in the Declaration in the said suit against James Partlow was claimed by James as his own by grant under said Deed from his said Ancestor Elijah, and that he said James was in the possession of them at the time the suit was brought against him by said Administrator. And thereupon the plaintiff objected to the admission of said Martha and James or either of them, as witnesses to prove the execution of the Deed as being interested and incompetent to testify in that behalf, but the Court overruled the objection, & permitted each & both of the witnesses to testify. Whereupon they each and both testified that their said Father, said Elijah died on the 27th day of April in Sabine County in the Republic of Texas, sign, seal and acknowledge said Deed, and at the same time requested the said William L. White & the said Thomas Moon to subscribe their names as witnesses to the Deed and which was then and there done by said White & Moon in the presence of said Elijah and in the presence of the witnesses Martha Ann & James Partlow, & that the Deed was then and there delivered by said Elijah to the Witness. Martha Ann, witness, also proved that said Moon still resided in Texas, & that the handwriting of said Moon, White & Elijah to the Deed was the proper hand writing of each. Which was all the evidence offered or given of the Execution of the Deed, by the Defendant, & upon this proof ~~Defendant~~ Plaintiff objected to the reading of the Deed to the Jury

but the court overruled the objection, and permitted the Defendant to read the same to the Jury, to which opinion of the Court the plaintiff excepted, & which Deed is in the following words & figures:

E. Partlow to Deed Gift M. A. Partlow & others

Republic of Texas
County of Sabine

Know all men by these presents that I Elijah Partlow of the County of Sabine & Republic above written, have on this the 27th day of April & Year of our Lord one thousand eight hundred & forty one, for and in consideration of the love and affection I bear to my three Children Martha Ann Partlow, James Partlow and Mary E. White & for & in consideration of the sum of one dollar to me in hand paid, the receipt whereof I hereby acknowledge, granted, bargained & sold & by these presents doth grant, bargain & sell to my Daughter Martha as aforesaid certain negroes as follows to wit— My servant boy Henry aged 22 years, also my servant girl Rhody aged 39 years also my servant girl Rose aged 7 years, also my servant girl Harriet aged one year. Also unto my Son James as aforesaid certain negroes as follows to wit: My servant boy Arthur aged 36 years also my servant boy Billy aged 4 years, also my servant girl Lucy aged 21 years, also my servant boy Charles aged 6 years; also unto my Daughter Mary E. White as aforesaid certain negroes as follows to wit— My servant girl Betsy aged 25 years, also my servant girl Susan aged 8 years, also my servant boy Allen aged 6 years, and I hereby bind myself, my heirs, executors, administrators

& assigns ~~unto my daughter Martha~~ unto my daughter Martha Ann, and unto my son James, & unto my daughter Mary E. White their heirs, Administrators, executors & assigns forever to warrant & defend the title to the said Negroes to my daughter Martha Ann, James, & Mary E. White as aforesaid, against the claim or claims of all & every person or persons whomsoever claiming or to claim the same.

In testimony of all which I have hereunto set my hand & affixed my seal this the day and year of our Lord above written

Elijah Parrlow (Seal)

signed, sealed & delivered
in the presence of
Wm L. White
Thos. Moore

And thereupon the Defendant introduced said Martha Ann and said James Parrlow as witnesses who testified & gave evidence to the Jury conducing to shew that the negroes donated to each and every the grantees named in the Deed were delivered by said Elijah to the Grantees respectively to whom they were given when the Deed was made, & that each continued to exercise acts of ownership over his & her respective negroes to given down to the time of the commencement of this suit—

Whereupon the evidence being closed pro on both sides of the cause, the Plaintiff moved to take a non suit, with leave to move to set it

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aside - which was granted him - & a non suit taken accordingly -

Whereupon afterwards the plaintiff moved the Court to set aside the non suit in this cause in these words:

George Cason Admr &c.
vs
William L. White -

The said Plaintiff moves the Court to set aside the non suit in this cause and grant him a new trial for the following reasons - 1st Because the court improperly permitted the Defendant to introduce and examine as a Witness Martha Ann Partlow - and because the Court allowed the defendant to give illegal evidence to the Jury - and Because the Court permitted the Defendants to read to the Jury the Deed from Elijah Partlow to the defts. and others.

Clark & Herndon
for Plff.

Which motion was overruled by the Court and the opinion of the Court in overruling the same excepted to by Plaintiff - And the Plaintiff now here prays the Court to allow sign, seal and make his said several exceptions a part of the record in the cause, which is done here accordingly.

Jno D. Leland (Seal)

State of Missouri } Sct.
County of Howard } I Sarshel Bynum Clerk of the Circuit Court within & for the County of Howard aforesaid, do hereby certify the within & foregoing twenty nine pages to be a full, true & perfect transcript of all the record and proceedings of our said Circuit Court, in the above entitled cause wherein George Leason, administrator of all and singular the goods & chattels, rights & credits which were of Elijah Parklow deceased at the time of his death, who died intestate, was plaintiff, and William L. White was defendant, filed in said cause, as fully and amply as the same now remains of record in my said Office.

In witness whereof I have hereunto set my hand & affixed the seal of said Court, at Office in said County, on the 8th day of August A.D. 1842.

Sarshel Bynum Clk
By E. Bynum D.C.

Clerks fees for copying 6750. words & figures at 10 cts pr. 100 words — $6.75
Certificate & seal — 50
$6.25

(21) 1259 62

Geo. Cason Admr.
vs } Transcript
Wm. L. White

1259"

Filed 12th August 1842
Bennett C. Clark
CMC

July 1843

121
July, 1843

Supreme Court
August Term 1842

George Mason Admr &c
vs
William L White

And the said plaintiff in Error Comes here into Court and says that it appears by the record and proceedings aforesaid as well as in the giving the Judgment aforesaid, Manifest error hath been Committed in this to wit, that the Circuit Court permitted one Martha Ann Partlow, and one James Partlow to be sworn & examined as witnesses for the defendant to prove the execution of the deed of gift from Elijah Partlow to said Martha Ann Partlow & others for the negros in question when by the law of the land both the said James and Martha Ann were incompetent and should not have been allowed to testify—

There is also Error in this to wit that the Court permitted the defendants to read in evidence to the Jury the deed from Elijah Partlow to Martha Ann Partlow & others when the same should have been rejected—

There is also Error in this to wit that the Court permitted the said Martha Ann Partlow to testify to the Jury as a witness on the part of the defendant when by law, she should have been rejected

There is also error in this to wit that the Court refused to set aside the non-

suit in this Cause and grant the plantiff a new trial. ~~[illegible]~~ For which said several errors, and other errors in the record appearing the said plantiff prays that the Judgment of the Circuit Court may be reversed

Clark atty for
Pltff —

George Cason Dun
vs Error
William L White

filed 23th August 1842
Bleleslie clk

William L. White
ads } On appeal
Geo. Cason }

And the said appellee by his attorney comes now and says that in the record and proceedings aforesaid and in the rendition of the judgment aforesaid there is no error and the said appellee now prays the Court here that the record and proceedings aforesaid and the judgment aforesaid may in all things be affirmed

Hayden & Davis
Attys for
appellee.

Wm L Whilo
ads

Geo. Cason Admr.
&c.
Joinder in error

filed 29th August 1842
Bennett C Clark
Clk

Larson admr. of Partlow v. White

Appeal from Cir. Ct. of Howard Co.:

This was an action of trover brought by plaintiff to recover the possession of certain slaves mentioned in the declaration.

Upon the trial, the Defendant offered in evidence a deed from one Elijah Partlow, ~~convey~~ purporting to convey certain slaves, to Mary E White, his daughter, wife of defendant, & also certain other slaves to two other children, Martha Ann Partlow and James Partlow, which deed was signed by said Elijah Partlow & attested by W. L. White & Thomas Moore. ~~The Defendant offered to prove that one of the subscribing witnesses was namely, W. L. White,~~ The defendant being himself one of the subscribing witnesses, offered to prove & did prove that the other witness Moore lived in Texas, & then offered to prove the execution of the deed by Martha Ann Partlow, one of the donees in the same deed. To this objections were made, but the court admitted said Martha Ann to be examined, & this is the only error assigned.

A party possessing a community of interest in the subject matter, is nevertheless competent, unless the record of the judgment would be evidence for or against him. 2. Stark. Ev. 781. Thus one seaman may be a witness for another, in any suit respecting the same voyage, for although interested in the question, he is not interested in the event of the suit. Hoyt v. Wildfire 3 John. R. 518. As the verdict in the present case would be ~~no evid~~ inadmissible, either for or against the witness, the being neither a party or privy, we are of opinion that the Circuit Court properly admitted the evidence.

Judgt. affirmed.

I concur
G. Tompkins
W. Scott

57.

Cason admr.

v.

White

Opinion

Napton

filed Sept 4. 1843
H. L. Boon clk

23. feet every.

2 / 24 feet every -

lightning Rod - 12. feet high.

July Term Sup. Court
1843

William L White
ads
George Cason Admr. of Partlow.

This is an action of trover and conversion, commenced by Geo. Cason as Admr. of the estate of Elisha Partlow Decd. against White for certain slaves, mentioned in the declaration. The suit was in the Circuit Court of the County of Howard. The defendant filed his plea of not guilty. And upon the trial of the cause the plaintiff suffered a non suit, moved the Court to set the same aside, which being overruled he has brought the cause here by writ of error.

It appears from the evidence in the cause that the defendant, in his defence was permitted to introduce as witnesses Martha Ann Partlow and James M Partlow both of whom were andandoners of other slaves in the same deed of conveyance the execution of which they were offered to prove ~~the execution of~~ in this cause.

The witnesses were not incompetent the subscribing witness being out of the United States.

The fact that the witnesses are donees of certain negroes in the same deed of gift is no objection to their competency they having no interest in the slaves sued for in this

controversy. See Phillips on Evidence 1 Vol page 45 & 46 Cowen & Phillips Edition 2 Vol. page 86. note 84 of same work.

also see Starkie on evidence 2 Vol. page 744 — 747. Title "Interested witness"

The record of this cause could not be used in evidence for or against the witness See 3 John Cases, 82. 5 John 256.

The subscribing witness was not within the State or United States, proof of his hand writing was therefore properly rec'd See 1 Vol Phillips on Evidence page 473.

Wm L White
ads &c

Geo. Cason Admr.

Defts. Brief
Davis.

Filed 4. Sept. 1843.
H. L. Boon clk

George Cason Admr of Elijah Partlow plaintiff
vs In Trover in the Howard Circuit Court
William L White defendant

To Peyton R Hayden attorney of Record for the defendant in the above Cause Take notice that I have taken a writ of Error from the Supreme Court at Boonville in the above Cause

George Cason by
I B Clark his atty

July 28th 1842

I Certify that I Served the within notice by delivering to Peyton R. Hayden a true Copy of the Same in Cooper County on the 3rd day of August 1842

Fee 50 cts James Hill Sheriff

Sheriff of Cooper County
Boonville
Missouri

filed 4. Sept 1843.
H. L. Born clk

Supreme Court
July Term 1843

George Mason Admr of Elijah Partlow
vs
William L. White } Appeal from the Howard Cir Ct

This is an action of Trover brought by the appellant as administrator of ~~Elijah Partlow against the~~ Appellee, to recover damages for the Trover and Conversion of certain negroes belonging to the Estate of the appellants intestate.

It was admitted upon the trial that the plaintiff was the admr of Elijah Partlow deceased. That the deceased had in his life time been the owner and possessor of the slaves in question down to the 27th of April 1841. The appellant then gave evidence tending to prove that the deceased had the slaves in controversy in his possession and exercised control over them until his death, and that after the death of the intestate the appellant claimed the slaves of the appellee. The appellant here closed his evidence. The appellee then offered a deed of gift to his wife, and her sister Martha Ann Partlow and James Partlow for purposes to have been executed in Texas by the ~~Est~~ intestate, conveying to the appellee's wife the negroes in question, and also conveying several other slaves to the said Martha Ann and James Partlow. And offered to prove the execution of the said deed of gift by the said Martha Ann Partlow. The appellant objected to the introduction of the said Martha Ann as a witness but his objection was overruled and she was sworn

and testified as a witness for the appellee in proving the execution of the deed and also give evidence to the Jury in the Cause on the part of the appellee

The appellee give some other evidence to the Jury not necessary here to notice, upon this state of Case the appellant suffered a non suit, and ~~after the verdict of the~~ moved to set the same aside for the reason that the Court had allowed the appellee to give improper evidence to the Court and Jury which ~~was refused~~ motion was refused the appellant excepted and has brought the case to this Court by appeal

The only question made by the bill of exception in this Case is as to the Correctness of the ~~[illegible]~~ Judgment of the Circuit Court in allowing one of the donees in the deed, Martha Ann Partlow, to give evidence in the Cause on the part of the appellee

The appellant Contends that the witness being a party to the deed and Claiming under the same deed was interested and therefore Could not legally testify for the purpose of establishing the deed under which she herself Claimed, and to which she was a party. 2nd Starkie Ex. 748-9 and notes and authorities there cited

Supreme Court

George Cason Adm
Appellant
vs
William L White

Appellants Brief

Clark Atty

Qrd Starker Ev 748 & 9

Filed 4. Sept 1843.
H. L. Boon CCR

STATE OF MISSOURI-----Sct. The State of Missouri----To the Sheriff of the County of Howard —— in said State-----**GREETING:**

Whereas, William L White ——— on the fourth —— day of September — in the year eighteen hundred and forty=three at our Supreme Court for the State of Missouri aforesaid, before our Judges of said Court, recovered against George Cason administrator of Elijah Partlow decd the sum of Ten dollars and eighty three cents for his costs and charges by him expended in a certain suit wherein the said George Cason adm. &c was plaintiff in error ——— ———, and the said William L. White was defendant in error ———, which to the said defendant —— were adjudged, as appears to us of record:==

Therefore, we command you, that of the goods and chattels, ~~lands and tenements~~ of the said Elijah Partlow decd at the time of his death ——— in your bailiwick, you cause to be made the aforesaid costs and that you have the same before the Judges of our said Supreme Court, on the Second Monday in January next, to render unto the said William L. White ——— the costs aforesaid: and that you certify to our said Judges, how you execute this writ, and have you then there this writ.

Witness, Hampton L. Boon, Clerk of our said Supreme Court, at office, in the City of Jefferson the fourteenth day of November — in the year of our Lord one thousand eight hundred and forty=three. With his private seal, having no seal of office yet provided. ——

H. L. Boon.

I Return this execution Satisfied
December 4th 1843
L. Carigland Sheriff.
H. C.

9.

Supreme Court.
Jany Term 1844

Wm. L. White
vs } Exon
George Cason admr. &c

Costs

S. Bynum	7.25
H. L. Boon	3.58
This Exon pd.	1.00
	$ 11.83