25/2

Jan 1844 #5

Morris Parker
vs
James Croplin et al
Howard County

} theft of cattle, livestock

Widows
Woman

Zacharias Hanks dies
Widow (not officially admin)
raised the 9 children + paid debts
of estate.
After children grown, widow
remarried. Children claimed part
of estate of father. Stole cattle
as compensation.

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 February in the year of our Lord, one thousand eight hundred and forty two, before the Honorable John D. Leland, Judge of said Court.

Be it remembered that heretofore to wit, on the 4th day of January A.D. 1842. the following Transcripts and papers ~~were filed~~ in a cause lately pending in the Circuit Court of Cooper County, the venue whereof was changed to the Circuit Court of Howard County, and filed in the Office of the Clerk of the Circuit Court of said County of Howard, in which cause Morris Baker is plaintiff & James Keroplin & others are defendants, which said Transcripts & papers read as follows, to wit:

Transcript of proceedings in Saline County

State of Missouri
County of Saline } To wit.

Be it remembered that on the third Monday in March, in the year of our Lord eighteen hundred and forty one, Morris Baker by his attorney filed in

the Circuit Court of Saline County aforesaid his petition and affidavit for a change of venue, together with the order made by the Judge of said Court in Vacation, which said petition, affidavit and order are in the words and figures following to wit-

In the Saline Circuit

Morris Baker, Plaintiff
Against
James Croplin, David Hanks, Wm Hanks, Thomson J. Whitson, Wm Winkler and James Thrailkill, Defendants } Trespass

The said plaintiff applies to the Judge of the Saline Circuit Court for a change of venue in the above named cause, and alleges that he has just cause to believe that he cannot receive a fair trial in the case in Saline County, for the reasons that the defendants have an undue influence over the inhabitants of the County of Saline, and that the inhabitants of said County of Saline are prejudiced against the plaintiff, and the plaintiff prays for a change of venue for the trial of the case, and makes oath that the facts herein set forth in the petition are true

Morris Baker

Howard County, to wit.

Subscribed & sworn to by Morris Baker on this 29th December 1840.

William Taylor J.P.

Saline Circuit Court.

Morris Baker, Plaintiff
against } Trespass
Jas Croplin & others, defendants

On this thirteenth day of March 1841. upon due notice of the application to the Defendants, came the Plaintiff with his petition and affidavit within, & at the place in said notice named, & made application in presence of the Defendants, by their attorney, and prayed a change of venue of the cause above mentioned now pending in the Saline Circuit Court, upon the hearing of the same, I hereby direct, that said cause be removed by change of venue, for trial to the Cooper circuit Court, and that the Clerk of said Saline circuit court proceed accordingly.

Given under my hand as Judge of the first Judicial circuit the date of on said.

William Scott, Judge of the circuit Court within and for the County of Saline in the State of Missouri.

And also on the same day and year, in the said cause was filed a notice in the words & figures following to wit

Morris Baker In the Saline Circuit Court
vs.
Jas. Croplin, David Hanks } Action of Trespass
Wm Hanks, Thompson J. Whitson }
Wm Winker & Jas Thrailkill, Defendants

To Peyton R. Hayden Esqr.

Sir — You are hereby notified as the Attorney of the above named Defendants, that I shall apply to the Judge of the first Judicial Circuit, at the Court house in Boonville, on Saturday next, for a change of venue, in the above case, now pending in the Circuit Court for the County of Saline.

Your most humble & obsequious servant.

Morris Baker, by his attorneys Todd & Bay

March 9th 1841,

The following is a copy of the Declaration filed in this cause on the first day of February A.D. 1840,

Declaration — State of Missouri } In Saline Circuit Court
County of Saline } March Term 1840,

Morris Baker plaintiff complains of James Croplin, David Hanks William Hanks, James Thrailkill, Thompson J. Whitson and William Winker Defendants

of a plea of trespass, For that the said Defendants on the 27th day of August one thousand eight hundred and thirty nine, at the County of Saline afonsaid, with force and arms, seized, took & drove away certain goods and chattles of the said plaintiff, to wit two Oxen, four Cows, four Calves, two Stars, four heifers and one hundred and four hogs of him the said plaintiff of great value, to wit, of the value of one thousand dollars, then then found and being and converted and disposed of the same to their own use, and other wrongs to the said plaintiff then and then did, to the damage of the said plaintiff of one thousand dollars, whereon he brings suit.

Todd & Bay attys
for Pltff

And afterwards to wit, on the eighth day of February A.D. eighteen hundred & forty a Summons was issued in this Cause in the words and figures following, to wit-

Summons } The State of Missouri- To the Sheriff of Saline County; Greeting. You are hereby commanded to summon James Croplin, David Hanks, William Hanks, James Thrail Kill, Thompson J. Whitson and William Winker, that they be and appear before the Judge of our Saline Circuit Court in Arrow Rock on the third Monday in March

next, then and there to answer unto Morris Baker in an action of trespass, to the damage of the said plaintiff (as is said) of one thousand dollars, and hereinfail not and have you then there this writ.

Witness John A. Trigg clerk of said court, with the seal of said Court affixed, at office, the eighth day of February, in the year of our Lord eighteen hundred and forty.

(L.S.)

Jno. A. Trigg clerk

Upon which said summons the Sheriff of Saline County made the following return to wit— "I D.S. Wilson Sheriff of Saline do hereby certify that I executed the within writ and declaration on the within named persons James Threadkill 11th day of Feby, Williams Winker on 11 day of Feby 1840, Thompson J. Wilson on the 17th day Feby 1840, James Heroplin on the 18th day of Feby 184 & Wm Hanks on the 22d day of Feby 1840, by reading the same to them in their presence and hearing in Saline County, State of Mo.

Sheff's Return

Sheff's fees $6.00

D.S. Wilson Sheff
of Saline County

And afterwards to wit on the 20th day of March in the year of our Lord eighteen hundred and forty, an order was made and entered of record in this cause in the words and figures following to wit—

Morris Baker Plaintiff
vs. } Trespass
James Croplen & others, defendants

Mo. for security for Costs —

This day appeard the parties aforesaid by their attorneys and the said Defendants moved the Court to rule the plaintiff to give Security for costs, and the said plaintiff moved the Court to continue the motion of the said defendant, and the motion of the said plaintiff comeing on to be heard, the same was overruled, And the motion of the said defendants, also comeing on to be heard the same was sustained, And it is ordered that the said plaintiff give security for costs, at least 15 days before the next Term of this Court.

Order for security for Costs —

And afterwards to wit, on the same day & year last aforesaid, an order was made in this cause in the words and figures following, to wit.

Morris Baker Plaintiff
vs. } Trespass
James Croplen & others, defendants

Plea filed Cause cont'd

This day appeard the parties aforesaid, and the said Defendants filed herein their plea. And it is ordered that this cause be continued until the next Term of this Court,

The plea filed in this cause is in the following words and figures, to wit—

Plea - James Croplin, David Hanks, W. Hanks, T. J. Whitson, Jas. Thrailkill William Winker ads } In Trespass } Saline Circuit Court, March Term 1840.

Morris Baker

And the said Defendants by Hayden & McNutt their attorneys, come and defend the force & injury, when &c, say that they are not guilty of the several supposed trespasses & grievances or any or either of them or any part thereof in manner & form as the said plaintiff hath above thereof in his said declaration complained against them the said defendants, and of this they put themselves upon their country.

Hayden & McNutt Attorneys for defts.

And afterwards to wit on the 21st day of April A.D. 1840, the Bond of Morris Baker for costs, was filed in this cause in the words & figures following to wit—

Bond for Costs — "Know all men by these presents that we, Morris Baker as principal, and John M. Baker as his security

Bonds for Costs 21st April, 1840

are held and firmly bound unto James Leroplin, Thompson J. Whitson, William Winkler, David Hanks, William Hanks & James Thrailkill, and all whom it may concern, in the sum of one hundred and fifty dollars, for the payment of which we bind ourselves our heirs &c. severally and jointly firmly by these presents, Signed and Sealed the 21st day of April 1840.

The condition of the above obligation is such that if the above bound Morris Baker who has commenced suit against the above named James Leroplin and others, shall well and truly pay and satisfy all costs which has or may accrue in the said suit upon the final termination thereof, then this bond to be void, else to remain in full force & virtue, Witness our hands the day & year aforesaid.

Attest
Mort. Trigg.

Morris Baker (seal)
John N. Baker (seal)

And afterwards to wit on the 24th day of July A.D. 1840, an order was made and entered of record in this cause in the words and figures following, to wit.

Morris Baker, Plaintiff
against
James Leroplin & others, defendants

Appearance } Now at this day appeared the parties aforesaid by their attorneys, and thereupon came a jury to wit- Rice Wood, John W. Stean, G. W. Furse, W. P. Roper, W. A. Bagby, Solomon Houk, Wm McGilton, E. W. Scott Jas A. Norvell, & H. Fizer, twelve good and lawful men, who being duly elected, tried and sworn the truth to say of and concerning the issue joined herein upon their oaths do say that the said defendants are not guilty in manner and form as in the said plaintiffs declaration is alleged against them, Therefore it is considered by the court that the said defendants be discharged and go hence without day, and that they recover against the said plaintiff their costs by them about their said defence in this behalf laid out and expended.

Jury sworn }

Verdict.

The motion to dismiss filed in this cause is in the words and figures following to wit-

Mo. to dismiss- The defendants move the Court to dismiss the above cause from the files of this Court because said plaintiff hath failed to give good & sufficient security for the costs of the suit, as required by the order and rule of this Court at the last term hereof, And because the security given by said Baker, viz- John Baker who became bound in the bond for

for costs is an itinerant person, and without any real estate or other property sufficient to make the payment of costs sure, certain or at least probable, and the bond therefore is insufficient.

McNutt & Hayden for deft.

And afterwards to wit, on the same day and year last aforesaid, a motion was filed in this cause in the words and figures following to wit.

Mo. for New trial } Morris Baker, Plff. against D. Hanks, Croplin & others, defendants }

The Plff moves for a new trial on these grounds.

1. The Jury found against evidence.
2. The Jury found against law.

Todd & Bay for Plff

And afterwards to wit, on the said 25th day of July A.D. 1840, an order was made and entered of record in this cause in the words and figures following, to wit.

Morris Baker Plaintiff vs. James Croplin & others, defendants } Trespass

This day appeard the parties aforesaid by their attorneys, and the said plaintiff by his attorney, filed his motion for a new trial, and by consent of parties the said motion is continued

until the next Term of this Court.

And afterwards to wit on the 17th day of November A.D. 1840, an order was made and entered of record in this cause in the words & figures following to wit.

Mo. for new trial Sustd } Morris Baker Plaintiff
against } Trespass
James Croplin & others, defendants

This day appeard the parties aforesaid by their Attorneys, and the motion of the said plaintiff filed in this cause at the last Term of this Court for a new trial, coming on to heard, the same is sustained, and a new trial is granted, And on motion of the said defendants it is ordered that the said

Order for Security for costs } Plaintiff give security for costs at least fifteen days before the next Term of this Court.

And afterwards to wit, on the 14th day of February in the year of our Lord eighteen hundred and forty one, the Bond of said Morris Baker for costs was filed in this cause, in the words and figures following to wit.

Bond for costs } Know all men by these presents that we Morris Baker as principal and John Baker as his security, are held and firmly bound unto James Croplin

Thompson Whitson, William Hanks, William Winkler, James Thrailkill and Davis Hanks in the sum of two hundred dollars for the payment of which well & truly to be made we bind ourselves our heirs, Executors and Administrators severally & jointly firmly by these presents, signed & sealed this 14th day of February A. D. 1841.

The condition of the above obligation is such that if the above bound Morris Baker shall well and truly pay and satisfy, all costs and charges which has or shall or may be adjudged against him in a certain action pending in the Circuit Court of Sabine County, against the above named defendants & others in favour of the said Morris Baker, then this Bond to be void, otherwise to remain in full force & virtue.

Witness our hands and seals the the day and year aforesaid.

Morris Baker (Seal)
John N. Baker (Seal)

Note — Be the said Morris Baker, also in addition to the above, and to secure the payment of the costs aforesaid, gives up and files with the Clerk, a certain Note on Elcas Wilhite & Calvin Baker, bearing date this day for the sum of one hundred dollars and payable on the 15th July next

Morris Baker

And afterwards to wit on the 16th day of March A. D. 1841 an order was made and entered of record in this cause in the words and figures following to wit—

Morris Baker Plaintiff
vs. } Trespass
Jas. Loroplin & others, Defendants

This day appeared the said defendants by their attorneys, and filed their Motion to rescind the order for change of venue in this cause and to dismiss the Plaintiff's suit

Which said motion is in the words & figures following, to wit—

Morris Baker
vs. } March Term 1841.
J. Hanks & others

In this cause the Defendants move the Court to rescind the order for change of venue granted on the application of the Plaintiff and further ask the Court to dismiss said cause, for the reason that no security for for costs has been filed, as required by an order made at the last Term of this Court.

Hayden & McNutt
for Defts.

State of Missouri } To wit.
County of Saline }

I John A. Trigg Clerk of the Circuit Court within and for the County aforesaid, do hereby certify that the foregoing 13 Pages contains a full, true & perfect transcript of the records & proceedings in the above entitled cause of Morris Baker vs. James Coroplin & others.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court this 12th day of April A.D. 1841.

(L.S.)

Jno. A. Trigg Clk

Transcript of Record & proceedings in Cooper County →

State of Missouri } Sct.
County of Cooper }

Be it remembered at a Circuit Court opened, begun and held at the Court House in the City of Boonville within and for the County of Cooper and State aforesaid, on the tenth day of July in the year of our Lord eighteen hundred and forty one, the following entry was made upon the records of said Court in the cause therein pending wherein Morris Baker was Plaintiff and James Coroplin, David Hanks, William Hanks, James Throckmorton

Thompson J. Whitson, and William Winkler were Defendants, in an action of Trespass - To wit -

"The said Defendants files their motion to dismiss this cause, and the said plaintiff files his motion to strike from the record of the Court a motion of the said defendants, purporting to be filed in the Saline Circuit Court on the 16th March 1841, to dismiss this suit for want of security for costs, which said motions being argued were overruled by the Court."

Afterwards to wit on the tenth day of July 1841, at a circuit Court opened, begun and held in the City of Boonville in the County and State aforesaid, the following entry was made upon the records in the above cause, to wit -

"On Motion of the said Defendant, it is ordered that this cause be continued until the next Term of this Court."

Afterwards, to wit on the sixth day of November in the year aforesaid, at a circuit Court opened, begun and held in the City, County and State aforesaid the following entry was made upon the records of said Court in the above cause to wit -

"Now at this day came here into Court

the said parties by their attorneys, and the Hon. the Judge of this Court having been Counsel in this cause, it is therefore ordered by the Court here, that this cause be certified to the Circuit Court of Howard County in the second judicial circuit of this State.

State of Missouri } Sct.
County of Cooper } I Bennett C. Clark Clerk of the Circuit Court within and for the County and State aforesaid do hereby certify that the above and foregoing is a true and perfect copy of the Cause wherein Morris Baker is plaintiff and James Croplin, David Hanks, William Hanks, James Thrailkill Thomas J. Whetson and William Winkler are Defendants.

And I further certify that I herewith transmit all the papers filed in the aforesaid cause.

(L. S.) In testimony whereof I hereunto set my hand and affix the seal of said Court, at office, on the twentieth day of December 1841.

Bennett C. Clark

Which motions mentioned above in the Transcript from the Cooper Circuit Court, read as follows, to wit—

Crosslin & others
ads }
Morris Baker.

The Defendants move the Court to dismiss the above cause from the files of this Court— Because the plaintiff did not give Bond & has not given good and sufficient Bond and Security for the costs of the suit as required by the order of the Court, Nor has he given the same within the time prescribed & required by the order— Because no Bond with security for the costs was given by Pltff until since the last Term of the Court— And because the Principal & Security in the Bond filed, are insolvent and not able to pay the Costs.

Mo. & reasons of Deft to dismiss suit ~~in Saline Court~~

Hayden atty for
defts

Cooper Circuit July Term
1841.

Morris Baker plt
vs.
James Crosslin & others defts }

The said Plt moves the Court to strike from the records of the Court a motion purporting to be filed in the Saline Circuit Court on 16 March 1841, to dismiss this suit for want of Security of Costs— because

mo & reasons of plt. for dissing suit ~~in Saline~~

the said Court had no jurisdiction of the said Cause at the time of filing said Motion.

Bay & Todd p.q.

And afterwards to wit, on the 25th day of February, at the said February Term of our Circuit Court, in the year 1842—

Jury } "Come the parties aforesaid by their respective attorneys, & thereupon also came a Jury, to wit. Patrick Burrill, Joseph Thompson, Watson F. Birch, Benjamin Edwards, Robert Lynch, C.H. Gruss, Richard Basye, Wade N. Jackson, A. G. Davis, Corbin J. Strut, Thomas W. Perry & J. G. Dunnberry, twelve good & lawful men, who being duly elected, tried & sworn well & truly to try the issue joined between the parties aforesaid, whereupon by consent of the parties, the jurors aforesaid, are permitted to seperate til tomorrow morning 9 Oclock."

And afterwards to wit, on the 26th day of the said Month in the year aforesaid—

Verdict & Judgment } "Come again the parties aforesaid by their respective attorneys, & the Jurors aforesaid having heard all the testimony

produced in the cause upon their oaths aforesaid, say they find that the said defendants James Croplin, David Hanks, & William Hanks are guilty of the several supposed ~~trespass~~ trespasses & grievances & each & every of them in manner & form as the said plaintiff hath above thereof in his said declaration complained against them the said defendants, & they assess the damages of the said plaintiff by him sustained by reason of the premises to the sum of four hundred dollars, and the jurors aforesaid further find that the said defendants Thompson J. Whitson, William Winkler & James Trimble are not guilty of the several supposed trespasses & grievances, or any or either of them, or any part thereof in manner & form as the said plaintiff hath above thereof in his said declaration complained against them the said defendants.

It is therefore considered by the court here that the said Morris Baker recover against the said James Croplin David Banks & William Hanks the said sum of four hundred dollars the damages aforesaid, in form aforesaid

by the Jurors aforesaid assessed, together with his costs and charges by him about his suit in this behalf laid out & expended, and that he have thereof execution.

And it is further considered by the Court that the said Morris Baker take nothing by his said writ against the said defendants Thompson J. Whitson, William Winkler & James Thrailkill, & that they the said Thompson J. Whitson, William Winkler & James Thrailkill recover against the said Morris Baker their costs & charges by them about their defence in this behalf laid out & expended, & that they have thereof Execution."

And afterwards to wit, on the 28th day of the said Month, in the year aforesaid:-

Mo. to set aside verdict & for new trial filed —

"The said defendants James Croplin David Hanks and William Hanks by their attorney file their motion & reasons, & move the Court to set aside the verdict of the Jury and grant them a new trial herein - which motion being sun & heard & by the Court here fully understood, it is considered that the same be overruled"

Which said Motion & reasons above referred to, read as follows:

Motion

"Hanks & Hanks & Croplin
ads
Morris Baker

And the said defendants David & William Hanks and James Crosslin come now [redacted] at this day and move the Court here to set aside the verdict of the Jury & grant them a new trial for the reasons following to wit:

1st Because the verdict is against law and evidence.

2nd Because the same is not warranted by the evidence in the cause.

3rd Because the Court refused to give the instructions prayed for by defendants.

4th Because the Court misinstructed the Jury.

5th Because the instructions given to the Jury by the Court were against law.

Hayden atty for Defts.

And afterwards to wit on the 28th day of the said Month of February in the year aforesaid—

appeal prayed

"Come the ~~plaintiff~~ defendants aforesaid & pray an appeal to the Supreme Court & file the affidavit of James Crosslin & David Hanks, two of the above named defendants, whereupon all & singular the premises upon said affidavit aforesaid being seen & heard & by the Court here fully understood, it is considered that the appeal be allowed, & it is further ordered that the

appeal allowed

clerk of this Court certify the same accordingly

Recognizance } And thereupon the said James Croplin and David Hanks as principals, and Carroll W. Ish & Thompson J. Whitson as their securities, present here in Court, jointly & severally acknowledge themselves indebted to the said Morris Baker in the sum of eight hundred dollars to be levied of their respective goods & chattels, lands & tenements, but to be void on condition that the said James Croplin, David Hanks & William Hanks shall prosecute their appeal with due diligence to a decision in the Supreme Court, and that if the Judgment appealed from is affirmed or their appeal dismissed, they will pay whatever of damages and costs that have been adjudged against them by the judgment of the Circuit Court, and that they will also pay all the costs that may be adjudged against them in the Supreme Court upon this appeal— And it is thereupon ordered by the Court that said appeal operate as a Stay upon the execution of the judgment of this Court."

Affidavit for appeal } Which said affidavit was as follows, to wit:

David Hanks, William Hanks and
James Croplin
vs
Morris Baker—

Mot affidavit for appeal

And the above named defendants come now and pray an appeal in this cause to the Supreme Court and the said David Hanks and the said James Croplin being sworn do say that this appeal is not made of vexation or ~~delay~~ delay, but because the affiants believe that the appellants are agrieved by the judgment or decision of the Court

David Hanks
Jas. Croplin

Subscribed & sworn to in open Court this 28th day of Feb. 1842.

Marshal Bynum Clk

And afterwards to wit on the 1st day of March at the said February Term of our said Court in the year aforesaid.

"The said defendants by their attorney present to the Court their Bill of Exceptions which is signed and sealed & ordered to be made part of the record"

Which said Bill of Exception is in the word and figures following, to wit:

Bill of Exceptions

David Hanks et al
ads
Morris Baker

Be it remembered that on the trial of this cause the plaintiff introduced Carroll Ish as a witness who testified that in August 1839, the witness

was requested by David & William Hanks to assist them in getting up the property at Morris Bakers, which David Hanks claimed as administrator of his father Zacharias ~~Hanks~~ Hanks - that on the day he had been requested by them to attend, he went to the place appointed when James Thrailkill lived, one of the defendants, When he got there, Several were present. And the defendant Croplin he found there, or he might have went with this witness - he does not recollect certainly about it - when there - it was proposed by some one of the company that they should go to Bakers, and get the hogs - that the witness on arriving at Thrailkills found some hogs about sixty he supposes in a pen, which had been collected of the hogs, a yoke of oxen and some cattle, and knew the cattle & oxen to be of the stock of cattle David Hanks had informed him he intended to take from Bakers house - The Witness David & Wm Hanks & deft. Croplin went on to Bakers about 1/4 or 1/2 mile off from Thrailkills - the two Hanks commenced calling the hogs near the house - and they collected some 7 to 10 hogs. witness & Croplin passed on near Bakers house and Baker was sitting there, they went on to Jesse Hanks Cabin a few steps further on - and Croplin enquired for Jesse Hanks who

was not at home, the plaintiff Baker came from his house round to Jesse Hanks and a good deal of conversation took place between Baker & Croplin - among other, Baker said to Croplin that he was assisting the boys to do what was not fair - he said Croplin was aiding & assisting the boys to strip the old woman their mother of her property - that he was intermeddling with the property - that Croplin was not acting honest or honorable - Croplin in answer denied he was intermeddling and had not taken any of the property Croplin denied he had come to raise any difficulty - Baker said that they had better not take the property, or that they would be sorry for it - or some such words - a quarrel ensued, Croplin made at Baker to strike him, a fight ensued and was closed - the defendant Winkler came up during this quarrel with a small brother, got down the parties were all together when the hogs were collected, and all the persons present went off with the hogs, one of the Hanks in front calling the hogs, the other persons, viz Croplin, the other Hank, and Winkler following after the hogs He did not notice particularly who assisted in driving the hogs, they were unruly & hard to drive, and thinks it probable they all assisted - the boys most of them got

away as they went along & he thinks none of them were got in the pen, the parties did not look for any other property - The Witness was present at the sale and he heard Baker the Plaintiff forbid the sale, and say he would sue all concerned in taking & selling the property and all who bought - the sale took place in August a few days after at Thrailkeld's house, the Defendant Whitson Hanks cried the sale, and was present when the sale was forbid by Baker - Morris Baker the Plaintiff had, the Witness thinks, in the winter before, married the widow of the deceased Hanks, the mother of the two Hanks the defendants, and lived with her as her husband in the house where she resided before the marriage and when she had had the Cattle and hogs mentioned before, in her possession, that he has known the plaintiff after marriage to use the Oxen - the witness does not know who brought the Cattle & hogs to Thrailkeld - That shortly after the Bakers marriage the defendants David & Widiam Hanks who had before lived & made their home with their mother, left the place and went to live elsewhere - David was of age & Wm Hanks was under age, but was nearly of age - before the marriage there were Jesse, David, & Wm Hanks, one or two others generally was with their mother the others frequently worked out on hire -

The impression of the witness was that Coffelin went along to Bakers to assist in driving the hogs to Thrailkeld, altho he said at Jesse Hanks house that he wanted to see him and when then his way back home was to go by Thrailkeld. The Cattle & hogs were all sold at the sale, and the hogs at large were also sold, it was sold by David Hanks as administrator of his fathers estate.

Nave

Plaintiff then introduced George Nave who testified that he knew old man Hanks, that he died some 8 or 12 years since. Knew nothing of the property, he thinks Thompson J. Whitson cried the sale — And that plaintiff Baker forbid the sale saying publickly he would sue all who sold or bought of that property — that plaintiff married Mrs Hanks the mother of defendants David and William Hanks, about the year 1838 — That at the time of the marriage she was living at same place where plaintiff lived at the time of the sale of the property.

On cross examination stated that at the time of the death of old man Hanks he was the owner of a small stock of hogs and cattle. that he died up in the big bottom about 1831 —

Wm Ish Plaintiff then called Wm Ish as a witness who testified that he was acquainted with Norris Baker and his wife - thinks they were married the year before the sale of the property.

Pea Plaintiff then called as a witness Jesse Pea who testified that old Wm Stanks died about Nov 1831, that at the time of his death he had two cows and calves, one young steer a yearling, and from fifteen to twenty hogs, that afterwards, the next winter, the family used such of the hogs as were fit for pork, and killed one of the cows for beef, that at the time of the sale of the property by David Stanks there were about fifteen head of the cattle, including one yoke of Oxen, and some where about one hundred head of the hogs - that the Oxen were worth about the sum of 80 dollars, and sold at the sale at a years credit for $ 87½ - there were two yearling steers sold & were worth 10 or 12 dollars each from cows & calves were worth $ 15 each - about from others were worth 6 or 7 $ each - but one a heifer sold for $15, about 50 large hogs 40 of them fit to kill that must fall, worth 1.50 to $2 each - sows & litters worth 3 to 4 $ each smaller hogs & shoats worth 75 cents to $1 each. Old Wm Stanks lives near witness about ½ a mile when he died, was very poor and in debt - owed as much

as his property was worth— When she mar-
ried the plaintiff Baker she lived near
Wilmington, and had the above property in pos-
session which was sold afterwards by David
Hanks as administrator of his father
he felt had been married little than a
year before the sale, and was living with
his wife at the same place he married
& was in possession of the property after
the marriage, the old lady Hanks always
claimed the property before her marriage
and she and her husband the plaintiff
claimed it after their marriage. Old Mrs
Hanks left nine Children, who lived with
their Mother & was raised by her until her
Marriage with Baker— Jesse the eldest
was 19 when his father died. David some
16, Wm, Younger. & so on down to the youngest
Whilst the boys were with their Mother
she let them work out occasionally for little
pieces of property, their Clothing & Money,
& provisions for the family— Jesse left his
Mothers after she married Baker, Married
& went to housekeeping— David left also &
took off some stock of Cattle and hogs
he owned as his own, And William also
left though not of age until shortly after—
& he took his stock, which he sold to this Wit-
ness, After old Mans death widow remained
2 years in the bottom at the place the old
Man died at— Moved out some miles off

& lived 3 or 4 years, and came back to her old place some two years before she married the plaintiff - at the time of her marriage William was living at home, the other boys out at work somewhere, made their Mother's their home, always returning when their time was out when working. Cross examd by Deft. says he does not know that the property sold came from the stock the old man had when he died, and does not know of the widow purchasing any any cattle or hogs, the cow killed after old mans death had no calves, its calf run away & was lost. The place the widow & children lived on was Wm Smiths, the boys Jesse & Wm Hanks rented it - they got their Mothers approbation when they traded, or hired out. Old lady was very industrious. The witness stated that by their Mother's consent the yearling steer was traded off soon after Mr Hanks sen death for two calves - and these calves made the pair of Oxen sold at the sale - that the defendant Thrailkeld was present at the sale at his house.

McMahan } Plaintiff then called Mr McMahan who testified that the witness, about the first of August 1839 in old Jefferson in Saline ~~County~~, had a conversation with James Croslin the defendant about the administration of the Estate, that he had heard had been just taken out

witness told Croplin that it had been much talked about in the neighbourhood, and they thought it was dangerous to go on with it, and take the property from their mother, Croplin said that he was determined the administration should go on and if they needed money to fee lawyers, he would let them have it. Witness told him that Baker would sue he replied there was no danger of his suing, he would not be there

And here the plaintiff closed his evidence in Chief —

J. Ish

And Defts then called Jacob Ish who testified that the year before old man Hanks died, he witness was the Assessor of Saline County, that the old man that year gave in two Cows as his taxable property — Witness also saw some hogs about there, but does not know how many

Tennell

Defts then swore Hugh Tennel who testified that at the time the old man Hanks died he had two cows and colves and from 15 to 20 head of hogs, there were four breeding sows and the others smaller ones, that witness has known Mrs Baker ever since the old man Hanks died, but never knew of her purchasing either hogs or cattle up to the time she married Baker the Plaintiff, Witness also stated that Mrs Hanks had paid some of the debts of old man Hanks

after his death, that there was no administration on his estate til the same was granted to Defr David Hanks - that the property left by Old Man Hanks at the time of his death was all gone except one old white cow, that the oxen were raised by old lady of two calves traded for, by swapping the yearling steer after old man's death - She took up a stray cow about 1835 & was never claimed by the owner she had calves - these oxen, cow & increase were sold at the sale, and he knew of no other stock of cattle or hogs procured by the widow after the old man's death - That the old man on his death bed told him he owned about $70, that he was leaving his family destitute, as his property would not pay his debts & support them - the witness says his property left at his death was not worth the $70 - he knows the old lady by selling pork that winter & with the boys work afterwards, that a debt was paid by her to Crosslin of the old man's, of 32 or 33 dollars. (Compton)

J. Hanks Defts then called Jesse Hanks, who testified that when his father died in 1831 he left nine children, himself the eldest, that he had at the time of his death two cows and calves, one or two yearlings, and between 15 & 30 head of hogs, that all the property taken and sold by David his brother was the natural increase of the stock on hand

at the time of the death of his father except one old white cow which was still alive of the old stock left on hand at the death of his father. the yoke of Oxen which he had gotten from Esq. Ish in exchange for a stag left on hand when his father died. that he had swapped for the Oxen when they were young, and that they had been raised at his Mothers, and also one stray cow, which had been posted by his mother, and the increase from her, how many he did not know — he does not remember the killing of one cow for beef.

Defts then offered and read in evidence the letters of administration to David Hanks, one of the defendants, on his fathers Estate, granted by the Clerk of the County Court of Saline County, in the words and figures following:

Letters of Admn

The Clerk of Saline County Court.

To all whom it may concern —

Know ye — That Zachariah Hanks having died intestate (as is suggested) and David Hanks having entered into bond with good and sufficient security as is believed, and in all respects complied with the law of the State of Missouri in such cases made & provided — Now therefore, in consideration of the premises, I have by virtue of the authority in me by law vested, have & by these presents do constitute and appoint the said David Hanks Administrator

of all and singular the goods & chattels, rights and Credits, lands & tenements of him the said Zachariah Hanks dec'd And do by these presents authorize and empower him the said David Hanks to ask, demand & receive all manner of debts, dues & demands due or to become due or to become due unto him the said Zachariah Hanks at the time of his death. And lastly I do hereby appoint the said David Hanks Administrator of all and singular the goods & chattels, rights & credits, lands & tenements of him the said Zachariah Hanks deceased according to Law.

In witness whereof I have hereunto set my hand and affixed the seal of said Court, the 20th day of July in the year of our Lord eighteen hundred & thirty nine.

(L.S.)

Jno A. Trigg Clerk

Recorded in Book A. page 26, the 20th day of July A.D. 1839, before being delivered to Administrator.

Jno A. Trigg Clk

Defts then proved by Jacob Ish that after the death of the old man Hanks, David Hanks then a minor, hired himself to witness for a year, that witness paid him same in Cloathing, some in bacon and Corn and also assumed and paid a debt to one Compton of thirty dollars due by

old Man Hanks at the time of his death the hiring was with the mothers approbation

Smith Defts. also proved by John Smith that Mrs Baker before her Marriage with Baker swore before a Justice that she had given her sons general liberty to contract and do for themselves before they were of age

Plff The Plaintiff proved by Jacob Pea, that the old lady Hanks paid the funeral expenses of her husband after his death, and paid witness a debt of $4. the old man owed him— he proved the taking up by the old lady in 1835 a stray Cow & owning it & her increase at the sale by her Const of its being sold with increase, how many he does not know.

And this was all the evidence given in the cause— Defendants then moved the Court to give to the jury the following instructions—

Defts Instrns M. Baker vs D. Hanks et al

Defts. move the Court to instruct the jury. that in case they find that the property sued for was taken and sold as the property of the Estate of Hanks decd. by an administrator, and that the property taken and sold was the increase (Natural) of the stock on hand at the time of his death, that then the administrator had a legal

right to the property, and was not a trespasser by taking the property and selling it.

2. That by law no person can acquire a right to the effects of a decd. person who dies intestate except by administration, except as excepted by the Statutes of this State in favour of families.

3. That if in this case the jury believe from the evidence that the wife of plaintiff had taken into her possession the property of her former husband without any grant of administration, and that that property and its natural increase is the property now sued for, and that the trespass complained of was the taking the same by a lawful administrator as the property of the deceased, and selling the same as such that then and in that case the defendant David Hanks the administrator was not guilty of a trespass, and in this action the jury ought to find for defendant.

That if Mrs Baker took the personal property of her deceased husband into the possession after his death, and he died intestate, she by such act acquired no right in said property as against a lawful administrator of her deed husband Hanks and that the natural increase of said cows and hogs also belongs in law to the administrator to be administered according to law.

That if Mrs Baker is found by the jury from the evidence to have been the wife of Hanks at the time of his death, and he died intestate, and she took the Cattle and hogs of her dead husband into possession and used them as her own, that then in that case she has acquired no legal right either to the Cattle and hogs or the natural increase of the same to taken into possession as against a lawful administrator of Decd., and that the plaintiff Baker by his marriage with her acquired no more right to said Cattle and hogs than his wife had before marriage, and that they ought to find for the defendant David Hanks in this action

But the Plaintiff objected and the Court refused to give to the jury any of said instructions - Plaintiff then moved the following instructions which was objected to by the Defts:

Plff's Ins. That the jury in this case may find all or any of the Defendants guilty accordingly as they shall be satisfied from the evidence of the guilt of the Defendants respectively.

That in Trespass all are principals & if one person actually commits the trespass & others aid, assist or advise the committing of the trespass, the persons so aiding

assisting or advising are equally guilty with the person actually committing the mischief.

That in this action the jury may give damages over the value of the property by way of smart money if they think proper.

But the Court overruled the objections and permitted them read to the jury. After the jury had retired to their room to consider of their verdict, and not agreeing they returned into Court, and one of the jury then enquired whether the widow of Mr. Hanks was on the death of her husband entitled by law to take as her property any stock on hand and property when it was not worth the sum of more than one hundred & fifty dollars, and if so whether she would be entitled to the increase after his death whether there was administration or not. The Court answered that he thought she would, but that no instruction had been asked for on that point, and they would decide that matter for themselves. There was no objection on either side as to what the Court not being in writing - but objected to the matter stated by the Court as being in law incorrect, and when the jury returned into Court not having written their verdict, one of the jury stated that the request of a portion of the jury he would state that the verdict

was found upon the opinion lastly expressed by the Court.

And after the Jury returned a verdict the Defendants, found guilty Hanks, Hanks & Crosplin, Move the court to set aside the verdict for a new trial in the words and figures following:

Mo. & reasons to set aside verdict &c

Hanks, Hanks & Crosplin
ads
Morris Baker

And the said defendants David & William Hanks and James Crosplin Come now at this day and Move the Court here to set aside the verdict of the Jury and grant them a new trial for the reasons following to wit:

1st Because the verdict is against law and evidence.

2nd Because the same is not warranted by the evidence in the cause.

3rd Because the Court refused to give the instructions prayed for by defendants.

4th Because the Court misinstructed the Jury.

5th Because the instructions given to the Jury by the Court were against law.

Hayden atty
for Defts.

But the Court overruled said Motion and refused to grant a new trial, to which

said Court in refusing to give the instructions ~~[illegible]~~ asked by Defts, and giving those asked by plaintiffs, and also afterwards by the jury, and in overruling the Motion for a new trial, the Defts Hanks & Hanks and Croplin except and pray the Court here to sign, seal and make this their bill of Exceptions a part of the record in the cause, which is done accordingly.

Jno D. Leland (Seal)

State of Missouri } Set.
County of Howard }

I Sarshel Bynum Clerk of the Circuit Court within and for the County of Howard aforesaid do hereby certify the ~~above~~ within and foregoing forty one pages to be a true, full & complete transcript of all the record and proceedings of our said Circuit Court in the above entitled cause, wherein Morris Baker was Plaintiff and J. Croplin and others were defendants, filed in said Cause, as fully & amply as the same now remains of record in my office.

In testimony whereof I have hereunto signed my name & affixed the Seal of said Court, at Office, in said County, on the 18th day of July A.D. 1842.

Sarshel Bynum clk
By C. Bynum D.C.

4 5 ~~29~~

Morris Baker
vs Transcript
Jas. Crosslin et al.

Filed 12th August 1842
Bennett C. Clark
Clk

Clks fees for copying 11660 words
of figures ——— $11.66
Certificate & Seal ——— 50
$12.16

Supreme Court,
August Term 1842.

James Crosslin and others,
Agt & Upon Appeal.
Morris Baker –

And now on this day comes the ~~Defendant~~ Appellants by their attorney and say that in the Record and proceedings aforesaid, as well as in the rendering the Judgement aforesaid there is manifest error – for that by the said record and proceedings it appears that the Circuit Court rendered a Judgement for the plaintiff, whereas by the law of the land the Judgement should have been rendered for the Defendants – in this therefore the Circuit Court manifestly Erred –

1st The Circuit Court Erred also in this to wit: for that it appears from said record that the said Circuit Court ~~permitted the plaintiff~~ refused to give ~~and~~ all and every the instructions asked for Defendants –

2d Because the Circuit Court misinstructed the Jury as to the law of the case.

3d Because the Court gave to the Jury at the instance of the plaintiffs ~~gave to the Jury~~ improper & illegal instructions –

4th Because the Circuit Court after the Jury retired from ~~[illegible]~~ the Bar to consider of their verdict, misinstructed the Jury as to the law of the case, and that too at a time when the parties by the rules and practice of the Court had no right or power to ask Counter-instructions –

5th Because the Circuit Court refused to set aside the verdict and Grant a new trial to the Defendants upon their said Motion therefor – For

which said several Errors and other Errors apparent in the cause the appellants now here pray that the said Judgement may be annulled, reversed, set aside and wholly held for nought. &c.

J. R. Hayden atty
for appellants

Griffin and others
agt { Appeal
Errors assigned
Morris Baker
filed 22nd August 1842
Bennett C. Clark clk

Baker
vs
Croslin et al } Appeal from the Circuit Court of Howard County

This is an ~~ac~~ action of Trespass commenced by Morris Baker against James ~~Croslin~~, David Hanks ~~and~~ William Hanks and others in the Circuit Court of Saline County. From this court the suit was transferred to Howard Circuit Court: there a judgment was obtained against the defendants from which they appeal to this court.

In the year 1838 Baker the appellee married the widow of one Zachariah Hanks, who had died in November 1831 in Saline county leaving nine children who lived with their mother and were raised by her until she intermarried with the plaintiff. The eldest was nineteen years old at the death of his father. When the deceased Hanks was on his death bed, he told one of the witnesses of the defendant, that he owed about Seventy dollars, and that he was leaving his family destitute, as his property would not pay his debts and support them. This witness says that the property left by Hanks at his death was not worth the Seventy dollars, that "he knows the old lady by selling pork that winter and with the boys work afterwards paid a debt of the old mans of $32 or 33 to Croslin

Another witness of the Defendants proved that one of the minor children with the consent of his mother hired himself to this witness for a year, that he the witness paid this minor

some in clothing, some in Bacon;" and also
"apaid and paid to one Compton a debt of thirty dollars
left by the old man Hanks at the time of his
death. It was also proved that the widow
paid the funeral expenses of her deceased
husband, and that she paid to one of the witness
four dollars which the deceased in his life time
owed to the witness. On the 20th day of July in
the year 1839 David Hanks one of the sons of
the deceased took out letters of administration
on the estate of his deceased father. This was done
nearly eight years after the death of the father.
One of the sons of the deceased, Jesse Hanks called by the
defendants states that when his father died in 1831
he left nine children namely the eldest, that
his father had at the time of his death, two cows
and calves, one or two yearlings, and between
15 and thirty head of hogs
After David Hanks as aforesaid had taken out
letters of administration he, and the other de-
fendants went to the house of the plaintiff
Baker and forcibly took and carried away
some cattle found there; and the last mentioned
witness states that all the stock taken and sold by Da-
vid Hanks his Brother "was the natural in-
crease of the stock on hand at the time of the
death of his father with some trifling exceptions
of a stray cow left on hand at the death of his father
one yoke of oxen which he had he had gotten in
exchange for a stray left by his father

There was some contradictory testimony as to the origin of the stock. Some of the testimony went ~~went~~ ~~not~~ to prove that a part of the cattle be taken away by the administrator was the increase of cows purchased by the widow. But it is not material to the present purpose whether it were or not.

A witness called by the defense plaintiff represents the quantity of hogs left by the deceased was somewhat less than the son of the deceased above mentioned called by the defendant stated it to be ~~to testify~~; and further said that the family, the winter after the death of its head, used such of the hogs as were fit for pork and made beef of one cow, and that at the time of the sale of the property by David Hanks, under the letters of administration, ~~there were about at the time of the sale of the propesty by David Hanks there~~

There were about sixteen head of cattle, including one yoke of oxen, and about one hundred head of the hogs. Some of the children appear to have been supplied with cattle when they left their mother. The plaintiff had been married and in possession of the stock more than a year before it was taken by the administrator David Hanks.

On this evidence the defendants moved the court to instruct the jury 1st That in case they find the property sued for was taken and sold as the property of Hanks deceased by an administrator and that the property taken and sold was the natural increase of the stock on hand at the time of his death, that then the administrator had a legal right to the property, and was not a trespasser by taking the property and selling it.

2nd. That by law no person can acquire a right to the effects of a deceased person, who dies intestate, except by administration, except as excepted by the Statutes of this State in favor of families

3rd. That if in this case the jury believe from the evidence, that if the wife of the plaintiff had taken into her possession property of her former husband without any grant of administration, and That that property and its natural increase is the property now sued for, and that the trespass complained of was the taking of the same, by a lawful administrator as the property of the deceased, and selling the same as such, that in such case the

There was some contradictory testimony as to the origin of the stock. Some of the testimony went ~~went~~ to prove that a part of the cattle be taken away by the administrator was the increase of cows purchased by the widow. But it is not material to the present purpose whether it were or not.

A witness called by the defense plaintiff represents the quantity of hogs left by the deceased was somewhat less than the son of the deceased above mentioned called by the defendant ~~he testified~~ stated it to be; and further said that the family, the winter after the death of its head, used such of the hogs as were fit for pork and made beef of one cow, and that at the time of the sale of the property by David Hanks, under the letters of administration, ~~there were about at the time of the sale of the property by David Hanks~~ there were about sixteen head of cattle, including one yoke of oxen, and about one hundred head of the hogs. Some of the children appear to have been supplied with cattle when they left their mother. The plaintiff had been married and in possession of the stock more than a year before it was taken by the administrator David Hanks.

The defendant David Hanks, the administrator, was not guilty of a trespass, and in this action the jury ought not to find for the defendants

4th That if Mrs Baker took the personal property of her deceased husband into her possession after his death, and he died intestate, she by such act acquired no right in such property as against a lawful administrator of her deceased husband Hanks, and that the natural increase of said cows and hogs also belongs in law to the administrator to be administered according to law

5th That if Mrs Baker is found by the jury from the evidence to have been the wife Hanks at the time of his death, and he died intestate, and she took the cattle and hogs of her deceased husband into her possession, and used them as her own, that in such case she has acquired no legal right either to the cattle and hogs, or to their natural increase so taken into possession as against a lawful administrator of the deceased; and that the plaintiff Baker by his intermarriage with her, acquires no more right to the cattle and hogs, than the wife had before such marriage, and that they ought to find for the defendant David Hanks in this action

The plaintiff objected to the giving of these instructions to the jury and this objection was sustained by the court

The plaintiff then moved the court to give them

following instructions which were objected to by the defendant

1st That the jury may in this cau find all or any of the defendants guilty accordingly as as they shall be satisfied from the evidence of the guilt of defendants respectively

2nd That in trespas all are principals, and if one person actually commits the trespas and others aid, assist or advise the committing of the trespas, the persons, so aiding assisting or advising are equally guilty with the person actually committing the trespas

3rd That in this action the jury may give damages over the value of the property by way of smart money, if they think proper

The court overruled the defendants objections to these instructions and permitted them to be read to the jury *

* The jury found a verdict for the plaintiff Hanks and the court rendered a judgment thereon, a new trial was moved for and the motion overruled

The plaintiffs in Error defendants below contend

1st That the property taken and sold by them, if belonging to the estate of the deceased Hanks, was properly sold as against the plaintiff, and that whether it belonged to that estate was a question of fact for the jury to find

2nd That the court erred in not giving all and every of the instructions to the jury which were prayed for by the defendants now plaintiffs in Error.

3 That the court erred in giving the opinion which it gave the jury upon their return into court after having retired from the bar. — — — It appears on the bill

of Exceptions that, on the occasion referred to in this third Instruction, one of the jury enquired whether the widow of Mr Hanks was on the death of her husband entitled by law to keep as her property any stock on hand and property when it was not worth more than the sum of one hundred dollars, and if so, whether she would be entitled to the increase after his death, whether there was administration or not; and that the judge of the court answered that he thought she would, but that no instruction had been asked on that point, and they would decide the matter for themselves.

4th, point of plaintiffs in error. That the court erred in not setting aside the verdict and granting a new trial

Nothing is more true than that on the death of Hanks the property left by him would have belonged to the administrator had any person taken out letters: And by the law in force when Hanks died the widow had the preference ~~[illegible]~~ among the Representatives of the deceased to take out letters of administration See digest of 1825 p 93 Section 4 of the act Concerning Executors and administrators. The same preference was given to her by the ~~act of act~~ fifth section of the act Respecting executors and administrators article 2 of the digest of the year 1834 — The widow then would have been inexcuseable if the estate ~~had~~ left by her husband had been amply sufficient to pay the debts and to furnish subsitence to the family, had she appropriated to her own use any of the property belonging to the estate except what is expressly allowed to her by the act over and above her jointure or dower, to wit, her

own and her husbands wearing apparel, her cards, wheels, looms and other implements of industry, spun yarn, cloth &c made in the family for their own use, all meat, bread vegetables groceries, and other provisions for the subsistence of the family, beds, bedding &c.

The law allows her also ~~allowed her~~ to take such property goods wares and furniture not to exceed the appraised value of $150 which shall be deducted from her dower in the personal estate of the deceased, if any remain to her after the payment of the just debts of the deceased; and the property so delivered to the widow, it is declared, shall in no case be liable to the debts of the deceased.* ~~This~~ The stock of cattle and hogs left by the deceased might have been selected by her had there been an administrator, and in such case those articles of property would not have been liable to ~~taken by the to the debts~~ to the debts of the deceased as aforesaid. But what is the condition of this estate as it appears from the evidence spread on the Record? Hugh Tunnille a witness of the defendants in the suit below, states about the same amount of ~~property~~ stock, to have been left by the deceased at the time of his death, as was stated by Jesse Hawks a son of the deceased above mentioned, except that Tunnille said there were from 15 to 20 hogs and that Jesse Hawks said there betwixt 15 and thirty hogs. Both of these witnesses concur in stating that all the property left by the deceased was gone before the administrator took the property, sold, and &c, except one cow. Tunnille, whose testimony has been ~~reported~~ already partly stated, says that the deceased told him on his death bed, that he was leaving his family destitute

* See digest of 1824 - Section 30. p. 103
also digest of 1835 - Section 27-8-9 of Stat. 2
page 48

(+ These words are copied literally from the record.)

that he owed about seventy dollars, and his property would not pay his debts & support them. The witness adds "All the property left at his death was not worth the seventy dollars — he knows the old lady by selling pork that winter & with the boys' work afterwards, that* a debt was paid by her to Crosslin of 32 or 33 dollars." A marginal note in the record puts Compton for Crosslin. In another place it is in evidence that she paid Compton thirty dollars, paid another person four dollars and defrayed the expences of her husbands interment. These several sums of money must amount to at least $46 if we even admit that the debt stated to have been paid to Crosslin and Compton are the same. Let it be recollected that if the next of kin refuse or neglect to administer then the law throws open the door to any person whom the court or Clerk in vacation shall consider most suitable. There were Creditors. None applied for a very obvious reason. The widow would have claimed all the property if any had been left after paying the expences of administration. For nearly eight years no letters were taken out. During this time the widow had the choice to take out letters of administration and consume the property of the estate in defraying ~~expe~~ the necessary expences of the administration before she could get her statutory allowance in due form of law, or to obey the calls of nature, more imperious than the commands of the law, & appropriate the property of the estate to the support of herself and the children of the deceased. The law allows her to retain of the personal property of the deceased to the appraised value of $150. It is proved by a witness of the plaintiffs in Error that

all the property left by the deceased was not worth the seventy dollars which he ~~adm~~ declared on his death bed he owed. It is proved also that of this sum of ~~at least~~ seventy dollars the widow paid at least $44. No creditor or other person would administer in order to let the widow have her allowance under the statute. If she had administered herself most of the small pittance left by her husband would have been consumed by the expenses; and by the 13th section of the 6th article of the act concerning administrations + it is provided that "If upon the return of the inventory and appraisement it appear to the court that there is not more than that to which the widow is by law entitled without being subject to the payment of debts &c the county court may make an order in its discretion that such estate be delivered to the widow".

There can be no doubt but the instructions asked by the plaintiffs in Error state the law correctly; but this case is peculiar. This woman made herself Executrix de son tort per force. In her it was a meritorious act: no creditor would administer, the children were too young; she took possession of the property, less in amount than the law would have ~~allowed~~ given her; she paid the debts of the deceased, and fed and clothed her infant children. The case is one sui generis. and had the instructions prayed by the plaintiffs in Error been given a jury would still have been justifiable in finding as they did. Nobody else would have taken charge of this property as this woman did. If she had not appropriated it, all of it would have been lost to the creditors and

+ digest of 1835

now eight years after the death of her husband when she has paid the debts fed & clothed the children an administrator comes to sweep from her the proper created, as it were, by her good management

the widow and children of the deceand.* Had there been any fraud or concealment of the property proved, the case would have been altered. But as it appears on the record, all ~~appears~~ is fair and the witnesses of the plaintiffs in error testify most strongly in favor of the conduct of the widow of the deceand. For one year, it appears in evidence, the plaintiff below, defendant in Error had been married to this widow and in the full possession of this property. and the services of the widow, now the wife of the defendant in Error, over and above her payment of the debts of the deceand are worth much more than the property was when she took it into her care: That there is any increase of the stock of cattle and hogs is owing to her diligence. If letters of administration, it is repeated, had been taken out immediately after the death of Hanks all the property would have been less than the law would have allowed to her. It would be more than *

We are of opinion thus that the ~~sub~~ judgment of of the Circuit court ought to be affirmed and it is accordingly affirmed

George Tompkins

We concur

W. Scott

H. B. Napton

* unjust then after eight years to come with letters of administration and sweep from her this property so increased by her labor when too with that property she has paid the debts and fed the children

* Add

Baker vs Brookins et al

Opinion

Jany term 1844

Tompkins

filed July 5. 1844

H. L. Boon clk

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

Whereas, Morris Baker

on the fifth day of February in the year eighteen hundred and forty=four at our Supreme Court for the State of Missouri aforesaid, before our Judges of said Court, recovered against James Croslin, David Hanks & William Hanks — the sum of Sixteen dollars & sixty nine Cents — for his costs and charges by him expended in a certain suit wherein the said James Croslin & others were appellants

, and the said Morris Baker was appellee

, which to the said Morris Baker — were adjudged, as appears to us of record:==

Therefore, we command you, that of the goods and chattels, lands and tenements of the said James Croslin, David Hanks — and William Hanks — 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 first Monday in July next, to render unto the said Morris Baker

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 tenth day of May — in the year of our Lord one thousand eight hundred and forty=four.

H. L. Boon.

19.

Supreme Court
July term 1844

Morris Baker
vs Exon
James Craslin & Others

Costs
H L Boon $4.53
This writ 1.00
Sarshal Bynam 12.16
$17.69

17.69
1.00
$18.69

This Execution is returned satisfied
June 29. 1844
B. Firth S.S.C.
by W. Firth Dt

356.80
74.34
18.76
$449.90
1.00
$450.90

and that the trespass complained of was the taking of the same by a lawful administrator as the property of the deceased and selling the same as such, that then and in that case the defendant David Hanks was not guilty of a trespass, and in this action the jury ought to find for the defendants

That if Mrs Baker took the personal property of her deceased husband into possession after his death, and he died intestate, she by such act acquired no right in said property as against a lawful administrator of her dec? husband Hanks; and that the natural increase of said cows and hogs also belongs in law to the administrator to be administered according to law.

That if Mrs Baker is found by the Jury from the evidence to have been the wife of Hanks at the time of his death and he died intestate, and she took the cattle and hogs of her dec? husband into possession and used them as her own, that then in that case she has acquired no legal title right either to the cattle and hogs and the natural increase of the same so taken into possession as against a lawful administrator of dec? and that the plaintiff Baker by his marriage with her acquired no more right to said cattle and hogs than his wife had before marriage and that they ought to find for defendant David Hanks in this action.

The plaintiffs instructions given by the Court were these -

1. That the Jury in this case may find all or any of the defendants guilty according as they shall be satisfied from the evidence of the guilt of the defendants respectively.

2 That in trespass all are principals, and if one person actually commits the trespass & others aid assist or advise the committing of the trespass, the persons so aiding assisting or advising

are equally guilty with the person actually committing the trespass.
3. That in this action the Jury may give damages over the value of the property by way of smart money if they think proper.

After the Jury had retired and before verdict, they in Court, asked the Judge whether the widow of Hanks was on the death of her husband entitled by law to keep as her property any stock on hand and property when it was not worth more than one hundred & fifty dollars, and if so, whether she would be entitled to the increase after his death whether there was administration or not: the Judge verbally said that he thought she would, but that no instruction had been asked on that point, and they would decide that matter for themselves. And the Jury on giving their verdict, said their verdict was found upon the opinion lastly expressed by the Court. No objection was made by either party at the time to the manner in which the Judge answered the question of the Jury: but defts objected to the correctness of the law, and took no exception to the mode of giving the opinion.

The appellee insists upon the following points to sustain the Judgment in the Court below.

1. The 1. 3. 5th instructions of defts. were properly refused, for a person even having legal right to property is not justified in taking possession of property, to commit a trespass, with force

2. The 2. 3. 4th instruction were properly refused, because they contains an abstract proposition, and too general in terms; and the title of the defendants not involved; And because time and possession will give right to personal property without administration when possession is under color of legal title 3. Bacon Ab. 21. note

3d. The weight of evidence was for the plaintiff - and the verdict was for the right party.
4. The plaintiffs instructions were right.
5. The defendants did not except, altho objecting to a previously expressed verbal opinion of the Court
6. The Statute of 1824, gave the widow, a right to $150 worth of property; she retained under that right and is entitled to the increase.
7. The administration was taken under color to deprive the plaintiff of his property, and should not justify a trespass, in taking Selling estate, secured to the widow by law, the administrator having power only to appraise the original stock, and take the widows receipt for it.

Baker appee
v Z Brief
Crosslin & als. appts

Authorities
Mo digest 1824-5
Toller 228 & note
3 Bacon 21. & note
6 Litt. . . 81.

Todd & Leonard
appellee

In the Supreme Court,
August Term 1842.

James Crosslin and others, Appellants

agt & In Trespass.

Morris Baker — Appellee

Baker, the appellee sued the appellants, James Crosslin, David Hanks and William Hanks, with others in February 1840, in the Saline Circuit Court, in action of Trespass for taking & carry away the personal property of the plaintiff, consisting of hogs and cattle — To which the Defendants pleaded not guilty and upon this issue at the July Term 1840, of said Court the jury upon the trial of the cause found a verdict for Defendants — Whereupon the plaintiff filed his motion for a new trial of the Cause, which motion at the November Term following was sustained & a new trial granted by the Court —

Afterwards the Cause was by charge of venue at the instance of the plaintiff, removed from the Saline Circuit Court, to the Cooper Circuit Court — And before the trial of the Cause, and at the November Term 1842 of the Cooper Circuit Court, the Judge of the Court ordered the Cause to be Certified to the Howard Circuit Court, upon the alledged Ground that he the

Judge had been of Counsel in the Case - Whereupon afterwards at the February Term last of the Howard Circuit Court, the Cause Came on to be tried: And thereupon the plaintiff introduced Evidence Condueing to shew that in or about the month of august 1839, the Defendant, David Banks, as the administrator of the Estate of Zachariah Banks, his Father, (dec'd) took into his possession the propty aforesaid, and as such administrator sold the same during said month of August at public Auction - And Evidence Condueing to shew that the other defendants aided and abetted him said David at his request, as such administrator to collect, take into possession & to sell the propety as aforesaid - And Evidence Condueing to shew that the plaintiff some time in the fall of the year 1838, had intermarried with the mother the said David Banks and mother of the said other Defendants, Banks, mentioned in the declaration And Evidence Condueing to shew that the the mother of the said David Banks, &c, had been a Widow of the said Zachariah Banks deceased from the time of his death which took place some time in the month of November 1831, down to the time of her said intermarriage with the plaintiff as aforesaid - And Evidence Condueing to shew that the property taken and sold by the said David as administrator had been and was in the possession of said Widow and her family of

Children, Some nine in Number, Who were the Children of the deceased Hanks - And Evidence Conducing to shew that the said Widow had claimed the property as hers before her intermarriage with the Plaintiff, and that the Plaintiff by virtue of his said intermarriage had claimed the property as his, and Evidence Conducing to shew that he had exercised some acts of ownership ~~over~~ over ~~the same~~ some of the property & that he forbid the said David as said Administrator from taking & selling the same, threatening that he, Plaintiff, would sue the purchasers as well as all others who had any thing to do with the sale thereof - And evidence Conducing to shew that the property was worth at the time of the sale some four hundred Dollars - And thereupon the Plaintiff closed his evidence in Chief -

Whereupon the Defendants introduced Evidence Conducing to shew that the property so taken and sold was the natural increase of the Cattle and hogs which belonged to the said Zachariah Hanks deceased at the time of his death, and which had been raised by the infant sons of the deceased, said David Hanks and others, and by their said Mother during her said Widowhood, who had continued to live together as one family. And Evidence Conducing to shew that the property was not worth four hundred Dollars nor any such sum at the time it was taken and sold - And Evidence Conducing

to shew that in July 1839 letters of administration were duly granted upon the estate of the said Zachariah Banks, deceased, by the proper authority of Saline County where the deceased died — And Evidence tending to shew that the property was taken and sold as before stated, by the said David as said Adm'r, & that the other defendants were only assistants in Gathering together the property for the purpose of having it sold by the Adm'r. And here the Evidence Closed on both sides, whereupon the Defendant moved the Court to instruct the Jury that in case they find the property taken and sued for was taken and sold as the property of the Estate of said Zachariah deceased, by an administrator of his estate, and that said property was the natural increase of the stock on hand of the dec'd at the time of his death, that then the administrator had a right to the property and was not a trespasser by taking the property and selling it.

2? That by law no person can acquire a right to the Effects of a dec'd person who dies intestate, except by administration, except as excepted by the Statutes of this State in favor of Families.

3? That if in this case the Jury believe from the Evidence that the wife of the Plaintiff had taken into her possession the property of the former husband without any

2/

Grant of administration, and that that property and its natural increase is the property now sued for, And that the trespass Complained of was the taking the Same ~~[illegible]~~ by a lawful administrator as the property of the deceased, And the selling the Same as such, that then & in that Case the Defendant David Banks, the administrator was not Guilty of a Trespass, and that in this action the Jury ought to find for Defendant -

4th - That if ~~Wm~~ Mrs. A Baker took the personal property of her deceased husband into her possession after the death of said deceased, & that the deceased died intestate, She by such act acquired no right in said Property as against a lawful administrator of her deceased husband, Banks, And that the natural increase of said Cows and hogs also belongs in law to the ~~Lawful~~ administrator to be administered according to law.

5 That if Mrs Baker is found by the Jury from the Evidence to have been the Wife of Banks at the time of his death, and that he died intestate, and that She took the Cattle and hogs of her deceased Husband into possession and used them as her own, that then

in that case she has acquired no legal right either to the Cattle & hogs, or to the natural increase of the same, so taken into possession, as against the a lawful administrator of the deceased; and that the Plaintiff baker by his marriage with her, acquired no more right to said Cattle and hogs than his wife had before marriage, and that they ought to find for the Defend.t David Hanks in this action—

But the Plaintiff objected and the Court refused to give to the Jury any of said instructions—

Pl.ff's Instructions

The Plaintiff then moved the Court to give to the Jury ~~among other~~ several instructions which were given, but as no material error is complained of as to the giving the same they are not noticed at present.

After the Jury retired from the Bar to consider of their verdict, and not having agreed therein, they returned into Court and enquired of the Court whether the Widow of Hanks at the time of the death of her said husband was entitled by law to keep as her property, any stock on hand and property when it was not worth more than the sum of $150; and if so, whether she would be entitled to the increase after his death, whether there was administration

or not - The Court answered the enquiry that he thought she would, but that no instruction had been asked for on that point, and they would decide that matter for themselves - There was no objection to what the Court thus stated to the Jury on account of its not being stated by the Court in writing, but Defendant did object to the matter thus stated by the Court as being in law incorrect; and when the Jury returned into Court, not having written their Verdict, one of the Jury stated that at the request of a portion of the Jury he would state that the ~~Opin~~ Verdict of the Jury was found upon the Opinion last expressed by the Court - Whereupon the Jury found a verdict for Plaintiff against the defendants James Cowpling David & William Hanks and assessed the plff Damages to the sum of $400. & found the other Defendants not Guilty -

Whereupon the Defendants ~~found~~ moved the Court for a new trial - Because the verdict was against law & Evidence - Because the Court refused to give the instructions prayed for by Defts - Because the Court misinstructed the Jury - And because the instructions given to the Jury were against law - Which motion the Court overruled - And thereupon the Defendants excepted to the several Opinions of

Court, ruled against them, & the Cause is brought here upon appeal, when Errors are assigned Calling in question the said General Opinion of the Court -

The Defendants will insist in their Argument of the Cause upon the follow-ing points -

1st That the property taken and held by Defendants, if the property of the estate of the deceased Banks, was properly held as against the Plff - And that whether the same were of the Estate of the deceased Banks, was a question for the decision of the Jury -

2d - That the Court erred in ~~Giving~~ not giving all and every the instruc-tions to the Jury which were prayed for by Defendants.

3d That the Court erred in giving the Opinion which it gave to the Jury upon their return into Court, after having retired from the Bar to consider of their Verdict -

4th That the Court erred in not setting aside the verdict & refusing a new trial to the Defendants -

Crosslin & others

agt { Hayden's
Brief of Ap-
pellants -

Morris Baker

Hayden's Brief -

See Statutes - Digest
1825 - 1 vol: 102.
Section 30 -
See Digest 1835 - 148.
Sections 27. 28 [illegible] -
30 -

Aug.t Term 1842. Supreme Court.

James Crosslin & others appellants
by appeal from Howard
Morris Baker appellee

appellees brief.

Zachariah Hanks died in November 1831 in Saline County, leaving as his estate two cows & calves, and a stock of hogs of 15 or 20 - his whole estate being personal not worth $70: and indebted more than the property was worth - he left a widow and nine children all under age: she reared them up in widowhood, with the assistance of their labor, and as they came of age received from her a small advance of stock and three or four of the children left her with their advances about the years 1838 and 1839 - that no administration was taken out on the estate succeeding the intestates death - the widow paid the funeral expences, and paid intestates debts during her widowhood. The widow Hanks in the year 1838 married the appellee Baker and from that time they lived together, the appellee Baker being in possession of the property of the widow acquired by the marriage. In July 1839 the eldest son of Mr. Baker administered upon the estate of Zachariah Hanks deceased, and claiming, as the goods of the intestate, oxen, cows, calves and hogs in the possession of the appellee, and which were of the widows stock at the marriage with appellee under the claim of administration, with the other defendants in the original suit took forcibly out of appellees possession the whole of said stock and sold the same at public sale, altho forbidden by appellee at the sale -

For this trespass the plaintiff sued, the general issue plead, a trial had in Saline County, a new trial granted, the cause removed by change of venue to Cooper County and from thence to Howard County where at the February term 1842, upon a trial, a verdict

was rendered and judgment thereon for the plaintiff against the defendant Croplin, David & William Hanks for four hundred dollars and costs and acquitted the defendants Whitson Winkler and Thrailkeld The defendants Croplin & the two Hank's's moved for a new trial, which was refused, they prayed an appeal, and two of the defendants Croplin & David Hanks entered into the recognizance, and the cause is by appeal in this court.

The matters reserved by the appellants as cause of reversal are preserved in a bill of exceptions - and are these -

1 That the Court did not grant the defendants conviction, a new trial; the reasons therefor assigned being. 1 the verdict was against law & evidence
2 the verdict is not warranted by the evidence
3. for refusing the defendants instructions 3 & 4 &
5. because the Court gave for plaintiffs instructions contrary to law.

The defendants instructions asked & refused were these
1. That in case the Jury find that the property sued for was taken and sold as the property of the estate of Hanks dec'd by an administrator, and that the property taken and sold was the increase (natural) of the stock on hand at the time of his death, that then the administrator had a legal title right to the property and was not a trespasser by taking the property and selling it.
2 That by law no person can acquire a right to the effects of a deceased person who dies intestate except by administration except as excepted by the statutes of this state in favor of families.
3 That if in this case the Jury believe from the evidence that the wife of plaintiff had taken into her possession the property of her former husband without any grant of administration, and that that property and its natural increase is now sued for.

Supreme Court aug.t Term 1842

James Coffin & others appellants
by appeal from
Morris Baker appellee Howard.

and now at this day comes the appellee and moves the court to dismiss the appeal taken in this cause for the following reasons.

1. That it appears from the record that the defendants in the suit below, have not joined in the taking of the appeal.
2. That the defendants in the Court below have not executed such recognizance as the law requires.
3. That there is no appeal taken from the Judgment of the Circuit Court

Todd. Leonard pap.

Croplin & al apts
v Zmo to dismiss
appeal.
M. Baker appee

filed 24th August 1842
B C Clark clk