56/7

MARCH 1847 #46

WILSON PRIMM et al
VS
DUKE RANSOM
ST. LOUIS COUNTY
} Debt/Attachment

Ransom had attachment against Richard Warren, but assigned it to Primm et al. Primm et al did not receive all money due to them.

No 1 — State of Missouri County of St Louis ss Be it Remembered that here:tofore to wit, at a Term of the Circuit Court of the City of St Louis within and for the County of St Louis, begun and held on the third Monday of November A. D. 1845, the following proceedings were had in said Court to wit, in the case of Duke Ransom vs Richard Warren. —

Mo. to set off Executions filed 2nd February A. D. 1846. —

"Duke Ransom vs Richard Warren. The said Duke Ransom the said plaintiff by his Attorney this day files a motion for an order on William Milburn Sheriff of the County of St Louis, to apply the execution (as far as it will extend) now in his hands in favor of the said Duke Ransom vs Richard Warren to the satisfaction of the execution in his hands in favor of Richard Warren vs Duke Ransom & his security." — — — — — — — — — —

which motion is in the words and figures following viz

Motion to set off Executions "In the St Louis Circuit Court November Term 1845 Duke Ransom vs Richard Warren, Wilson Primm et al The said Duke Ransom the above named plaintiff comes and moves the Court for an order on William Milburn Sheriff of the County of St Louis to apply the execution (as far as it will extend) now in his hands in favor of the said Duke Ransom vs Richard Warren to the satis:faction of the execution in his hands in favor of Rich:ard Warren vs Duke Ransom and his security.

Duke Ransom By S. Knox his Atty

p 83 B 17 And on the 7th day of February A. D. 1846, the following further proceedings were had in this cause viz —

Affdts of Taylor & Brown fil "Duke Ransom vs Richard Warren. The Defendant by his Attorney this day files the Affidavits of George R Taylor and James Brown in opposition to the motion to set off executions filed herein." — — — — — — — — — — — — — —

Which Affidavits are in the words and figures following viz

No. 2
Affdt of G
R. Taylor

"Saint Louis County to wit. Be it Remembered that on this Seventh day of February eighteen hundred and forty six, personally appeared in Open Court, George R. Taylor and being duly Sworn on his oath, says, That on the twenty fifth day of October eighteen hundred and forty five one Richard Warren executed and delivered to this Affiant the deed of assignment of a certain Judgment rendered in his favor in the St Louis Court of Common Pleas at the September Term 1845 and Against Duke Ranson which said Deed is marked exhibit No. 1 and filed herewith and prayed to be taken as a part of this Affidavit that said assignment or deed was made to Wilson Primm and this Affiant in good faith and for a sufficient consideration to wit: to pay and secure the sum of thirty five or forty Dollars due and owing said Primm and this Affiant as said Warrens Attorneys for services rendered said Warren in and about his business — that so soon as said deed was executed and delivered as aforesaid, this Affiant as the Agent of said Primm Taylor and Brown immediately gave Notice to William Milburn Esq. Sheriff of the County aforesaid; that the Judgment aforesaid has been assigned as aforesaid and filed said deed of assignment with the Clerk of said Court on the Sixth day of November 1845 and caused said Clerk to issue an execution on said Judgment, the time of issuing the same fully appearing in said Execution —, that at the time of the assignment aforesaid, it was the understanding between this Affiant and said Warren, that after the money should have been made on the execution to issue as aforesaid, this Affiant was to deduct the Amount due and owing Messrs. Primm & Taylor as aforesaid and the balance was to be paid to said Brown.

Sworn to & Subscribed before me this
7 July 1846 Jno Ruland Clk

G. R. Taylor

p. 3—

Exhibit No 1 referred to in foregoing Affidav't. ——————————

"Judgment in the St Louis court of common Pleas. Sep. Term 1845. Richard Warren vs Duke Ransom. Know all men by these presents, that I the above named Richard Warren, for and in consideration of my indebtedness to Messrs Primm & Taylor and James B. Brown and in full liquidation of such indebtedness, do hereby assign, transfer and set-over unto them the said Primm & Taylor and James B. Brown the above entitled Judgment obtained for me in said court and against the said Duke Ransom, as well all monies and profits made or to be made thereon by virtue of an execution issuing on the same.

And for the purposes of realizing the money so recorded in said Judgment, I hereby empower and authorize the said Primm & Taylor in my name, to take such measures as in law shall to them seem proper for the immediate making of the money.

Witness my Hand and Seal, this Sixteenth day of October Eighteen hundred and forty-five

Richard Warren Seal

Affd't of Jas. Brown "Saint Louis County, to wit,

Be it Remembered that on this Seventh day of February Eighteen hundred and forty-six, personally appeared in open court James Brown and being duly sworn on his oath, says, that on the twenty-fifth day of October eighteen hundred and forty-five one Richard Warren transferred assigned and set over unto this affiant and Wilson Primm & George R. Taylor all his interest, title, claim, and demand of, in, and to a certain Judgment recorded in the St Louis court of common Pleas, at the September Term thereof in his favour and against one Duke Ransom, which said transfer and assignment was made to this affiant in

p 4 mo good faith and for a valuable consideration, the same being made to become and pay the rent due and owing and at said time accruing to this Affiant from said Warren on account of the occupancy by said Warren of this Affiants house — That said Assignment and transfer was made to Wilson Primm, George R. Taylor and this Affiant, with the understanding, that some thirty-five or forty Dollars was due and owing said Primm & Taylor for services rendered said Warren in and about the business of said Warren and that the balance remaining was to be paid this Affiant, which said Assignment or transfer is evidenced by deed dated the 28th day of October 1845 and executed by said Warren and herewith made an Exhibit marked No 1 Sworn to Subscribed before me this
7th day of February 1846 John Ruland Clerk Jas. Brown."
And on the same day and year last aforesaid a motion of Primm Taylor & Brown resisting the motion of Ransom &c, was filed in the words and figures following viz.

Mo. of Primm et al to set aside motion &c

"Circuit Court Nov. Term 1845 In the matter of Duke Ransom vs Richard Warren et ab Now at this time comes Wilson Primm, George R. Taylor, and James Brown Assignees of said Warren of the matter in question by their Attorney, and with the leave of the Court resist the motion of the said Ransom made in this case and protest against the said motion being sustained by the Court, for the reason that the monies demanded in said Execution issuing from the St Louis Court of Common Pleas in favor of said Warren and against said Ransom as well the Judgment in said Court, upon which said Execution issued, has been lawfully and in good faith Assigned to said Primm Taylor and Brown, before the said Ransom became entitled to the sum Specified in his said Execution issuing out of this Court and

p. 5 — against said Warren's claims. ——————

—————— And because the monies and demands of said Warren in and to the said judgment and execution were bona fide transferred and assigned, before the execution in favour of said Ransom, came into the hands of the said Sheriff — And in support of said motion, they pray the Court to take as part and parcel of this motion, the Affidavit of George R. Taylor and James Brown herewith filed as well the Deed of Assignment marked Exhibit No. 1.

Primm & Taylor Atts for dft."

And on the 12th day of February A. D. 1846, the following further proceedings were had in this cause viz

Order of Court "Duke Ransom vs Richard Warren. Now at this day comes again the parties aforesaid by their respective Attornies and the Court being now sufficiently advised of and concerning the motion of the said Duke Ransom for an order on William Milburn Sheriff of the County of St Louis to apply the execution as far as it will extend now in his hands in favor of the said Duke Ransom vs Richard Warren to the satisfaction of the execution in his hands in favor of Richard Warren against Duke Ransom and his security, doth order and adjudge that the said Sheriff do apply said execution in favor of Duke Ransom against Richard Warren to the satisfaction of the execution in his hands in favor of Richard Warren against Duke Ransom so far the same will extend. ——————

And on the 21st day of February A. D 1846 the following motion to vacate order was filed to wit:

Mo. to vacate Order "Cir Court Nov. Term 1845 Duke Ransom vs Richard Warren et al. And now at this time comes the said Primm Taylor & Brown and moves the Court to set aside and vacate the order heretofore made in this case

p. 6 for the reason that said order was most improvidently granted and is not in conformity with the laws of the land

Primm & Taylor pr. d.

And on the 23rd day of February A. D. 1846, the following further proceedings were had in said cause viz.

Mo. to set aside overruled "And now comes the said Primm & Taylor and Brown and file a motion to set aside the and vacate the order heretofore made in this cause ordering the Sheriff of St Louis County to set off the executions in this case, which motion being submitted to the Court and being seen heard and fully understood, It is ordered that the same be overruled and the said parties file a Bill of Exceptions herein. ————————

Which Bill of Exceptions is in the words and figures following to wit: - - - - - - - - - - - - - - - - -

Bill of Exceptions "Cir Court Nov Term 1845. Duke Ransom vs Richard Warren et al. Be it remembered, that on the second day of February 1846, Duke Ransom filed his motion in said ~~[illegible]~~ Court to set off executions in above entitled case, which motion is in the words and figures following (said motion will be found set out on page No 1) that afterwards with the leave of the Court, Wilson Primm, George R. Taylor and James B. Brown assignees of the Judgment hereinafter recited and amount in the execution in favor of said Warren hereinafter mentioned filed their motion resisting the motion so made by said Ransom, which is in the words &c following viz (which motion is set out on page No 4) and in support of their said motion showed that on the 3rd day of October 1845 in the St Louis Court of Common Pleas, Richard Warren obtained a Judgment against Duke Ransom in the amount of $111.00 Dollars, that on the 16th of same month said Warren transferred and assigned to Wilson Primm, George

p. 7 — R. Taylor and James B. Brown, for a valuable consider-
-ation and in good faith said judgment and the monies
that might be realized thereon, which said assignment was
by deed filed with the Clerk of said Court and is in
the words and figures following: (which Deed of Assign-
-ment is set out on page No. 3) that on the 16th day
of November of same year, said assignees caused the Clerk
of said Court to issue an execution on said judgment,
which was so done and endorsed on the back thereof,
that the same was assigned to said Primm et al,
that said Execution came into the Sheriffs hands on
same day and personal Notice was given him of such
assignment.

That on the second day of February 1845 the said
Duke Ransom obtained Judgment before one John Colvin
a Justice of the peace against said Warren in the sum
of $50, and that an execution was issued and returned
"nulla bona" and a transcript of said last mentioned
Judgment filed in the Office of the Clerk of the St Louis
Circuit Court on the 25th day of December 1845, and
an execution issued on the same, which came into the
hands of the Sheriff on the same day, which said
first recited Execution is in the words and figures fol-
-lowing, to wit:

Execut.n from Common Pleas — "The State of Missouri To the Sheriff of the County of
St Louis. Whereas Richard Warren on the 3d day of October
in the year of our Lord one thousand eight hundred and
forty-five at our St Louis Court of Common Pleas, hath
recovered against Duke Ransom and Franklin Rabory
the sum of one hundred and Eleven Dollars for debt
together with twenty-eight dollars and seventy one cents
for his costs and charges in that suit expended. These
are therefore to command you, that of the goods and chattels
and real Estate of the said Duke Ransom & Franklin

Raborg, you cause to be made the debt and costs and that you have the same before the Judge of said Court, on the first Monday of February next, to satisfy the debt damages and costs aforesaid, and that you certify how you execute this writ.

Seal Witness Nathaniel Paschall, Clerk of the said Court, at St Louis, this 13th day of November eighteen hundred and forty-five.

N. Paschall Clerk, by C. C. P.

Shff Endorsement "Received 13th November 1845.

William Milburn Shriff."

Bill of Excep Continued words and figures following."

Execut'n from Cir Court "County of St Louis set The State of Missouri To the Sheriff of the County of St Louis Greeting Whereas Duke Random, on the fifteenth day of February eighteen hundred and forty-five before John W. Colvin Esquire, a Justice of the peace for the County of St Louis recovered against Richard Warren the sum of forty-two Dollars and forty cents for his debt and also his costs and charges in that behalf expended, and whereas upon the execution issued by said Justice upon said Judgment, the Constable of St Louis Township, to whom the same was directed, made return "No goods or chattels found whereon to levy and make this debt and costs or any part thereof." - All of which appears to us of from a Transcript from the docket of said Justice certified up and filed according to the Statute in such case made and provided, in the Office of the Clerk of the Circuit Court of said County, on this day. We do therefore command you, that of the goods and chattels lands and tenements of the said Richard Warren in your bailiwick, you cause to be made the aforesaid debt and costs, that you have the same before the Judge of our

p. 9 said Court, on the third Monday of April next, to render to the said Duke Ransom the debt and costs aforesaid And that you certify to our said Judge how you exe:cute this writ; and have you then there this writ.

Seal Witness John Ruland Clerk of our said Court At St Louis, the nineteenth day of December in the year of our Lord one thousand eight hundred and forty-five.

Jno. Ruland Clerk, C. C.

Stiffs Endorsement Received 20th December 1845

William Milburn Sheriff"

Bill of Excepns. Continued "And this being all the Evidence in support of either motion, the Court allowed the motion of said Ransom And directed the Sheriff to set-off said executions, to which order and direction the said assignees excepted And afterwards filed their motion to set aside and va:cate said order, which said last mentioned motion is in the words and figures following. (which motion will be found on page No. 5) which being seen and ~~heard~~ understood by the Court was overruled, to the overruling of which said motion, the said assignees excepted, all of which not being of record in said cause is so made by the Court signing and sealing this their Bill of Exceptions which is accordingly done this 24th day of February 1846.

John M. Krum Seal

The above Bill of exceptions is correct

S. Knox

Mr. Knox has exd. this Bill and is satisfied that the same is correct.

Resp.

Hon. Judge Krum Feby 24. 1846 Primm & Taylor

And on the 28th day of February A. D. 1846 the following further proceedings were had in this cause to wit: .....

Appeal "Duke Ransom vs Richard Warren. Now at this day

p. 10. come Wilson Primm, George R. Taylor and James B. Brown Assignees of the said Richard Warren and parties interested and file the Affidavit of George R. Taylor and pray an appeal from the Judgment herein rendered to the Supreme Court, which is granted them accordingly, whereupon the said Wilson Primm and George R. Taylor as principals and Miron Leslie and Charles C. Whittlesey as securities acknowledge themselves severally to be indebted unto Duke Ranson in the sum of One hundred Dollars to be void if the appellants will prosecute the appeal now taken with due diligence to a decision in the Supreme Court and that if the Judgment appealed from is affirmed or the appeal dismissed, the appellants will pay whatever of costs have been recovered against said Appellants by the Judgment of the Circuit Court, and pay all costs that may be adjudged against said Appellants in the Supreme Court upon this appeal, otherwise to remain in full force and effect."

Which Affidavit is in the words and figures following viz

Affdt for Appeal

"Duke Ranson
vs
Richard Warren — Wilson Primm, George R. Taylor and James B. Brown Assignees and parties interested

St. Louis Circuit Court
Nov. Term 1845

St. Louis County to wit,

Be it Remembered that on this 28th day of February eighteen hundred and forty six, personally appeared before the St Louis Circuit Court, George R. Taylor, one of the Assignees and parties interested in the above entitled cause, and being duly sworn on his oath, says, that this Affiant for himself Wilson Primm and James B. Brown pray the Court to grant them an Appeal in the above entitled cause to the Supreme Court, that such Appeal is not prayed

p. 11 — or made for the purposes of vexation or delay, but because this Affiant as one of the parties interested for himself and said Primm & Brown believes that they are aggrieved by the Judgment and decision of the Court in the premises.

Sworn to & subscribed before me this 28th Feby 1846 Jno Ruland Clk G. R. Taylor.

State of Missouri County of St Louis ss I. John Ruland Clerk of the St Louis Circuit Court within and for the County aforesaid, Certify that the foregoing is a full, true and complete Transcript of the record and proceedings in the case of "Duke Ransom vs Richard Warren et al as fully as the same remains of record and on file in my Office.

In testimony whereof I have here: to set my hand and affixed the seal of said Court, at Office in the City of St Louis this third day of March A. D. 1846

JNo Ruland Clk.

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Motion to set off executions	1
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21

(46.)

Wilson Primm, Geo R. Taylor and Jas. B. Brown Assignees of Richard Warren Appellants

vs

Duke Ransom Appellee

Transcript on Appeal to Supreme Court.

Primm & Taylor for appellants
Samuel Knox for appellees.

Filed March 7. 1846.
H. L. Boon clk.

Transcript $4.25 fr. G. Taylor

Ex.

Wilson Primm et al
Appellants.
v.
Duke Ranjom
Appellee.

Sup: Court.
March Term
1846.

And now come the said appellants, and say, that in the record of the proceedings, and the allowing of the motion of the appellee, and the giving of judgment below there is error in this, to wit,

That the Court erred in allowing the motion of said appellee, and in directing the sheriff to set off the executions as prayed.

That the Court erred in not vacating the order allowing said motion.

And that there are many other errors and imperfections in said record &c.

Wherefore the said appellants pray that said judgment and order be set aside and they restored to what they have lost &c

Primm & Taylor
for appt.

Suf: Court.
March Term 1846

Wilson Primm et al
v.
Duke Ranjom.

Asst. of Errors.

Filed March 26. 1846
H. L Boon clk

Primm & Taylor
for Affts.

Wilson Primm et al } appellants.
v. } Sup: Court
Duke Rayner } appellee. Mon: T. 1846.

And now comes the said appellee and says, that there is no Error in the Record and proceedings of the Court below as the said appellants hath alone suffered, and prays that the order and judgment of said Court be affirmed &c—

Sam: Tucker
atto for appellee.

Suf: Court.
October Term: Term 1846

Wilson Primm et al

v.

Duke Runyon.

joinder in Error.

Filed March 26. 1846
H. L. Boon Clk

Sam: Knox
atty for aff[ts].

Primm Taylor & Brown
vs
Duke Ransom

Appeal from the St. Louis circuit Court.

In Feby 1845 Ransom the appellee obtained a judgment in a Justices court against Richard Warren. A transcript of the judgment being afterwards filed in the Circuit Court, in December following an execution issued thereon and was placed in the hands of the Sheriff. On the 3rd Oct. 1845 Warren recovered in the Court of Common Pleas a judgment against Ransom the appellee which was assigned on the 16th of the month to the appellants, who caused execution to issue thereon on the 16th Nov. following. The appellee was seasonably notified of the assignment to the appellants. On the 12 Feby 1846 both of the executions being in the hands of the Sheriff, ~~the Circuit Court directed the Sheriff~~, the Circuit Court directed him to set off one against the other without regard to the interests of the appellants (the assignees of the first execution) from which they appealed to this Court.

The question in the case arises under the 2nd subdivision or clause of the 10th sec. of the act respecting set off. The Sheriff being authorized by a preceding section to set off executions against the same parties, that subdivision prohibited it where the sum due on the first execution had been lawfully & in good faith assigned to another, before the creditor in the second execution had become entitled to the sum due thereon. The word "thereon" at the end of the subdivision evidently refers to the sum due on the first execution, and the appellee could not have been entitled to it until his execu

was placed in the hands of the Sheriff, and as at that time it had been lawfully and in good faith assigned away to others under the law he was not entitled to it. Judge Naylor concurring the judgment will be reversed

W. Scott

6.

Primm & al

vs

D. Ransom

Opinion

Scott

Filed May 10. 1847.
H. L. Boon clk

Duke Ransom
as
Richard Warren

In the Supreme Court of the State of Mo
March Term 1846

In the Month of February eighteen hundred and forty five Duke Ransom the above named plaintiff obtained a judgment before a Justice of the Peace of the County of St Louis on which an execution was immediately issued returnable in sixty days according to the Statute. The Constable returned the execution on the return day endorsed as "no goods and chattels &c." In the Month of October eighteen hundred and forty five Richard Warren the above named defendant obtained a judgment against the above named plaintiff Duke Ransom in the St Louis Court of Common Pleas, which judgment was assigned to Primm, Taylor & Primm by an instrument of writing bearing date November 1845. In the Month of December of the same year, Ransom filed his transcript in the Office of the Clerk of the St Louis Circuit Court and caused an execution to issue against said Warren. The Sheriff of St Louis County having executions in both of the above named cases, the said Duke Ransom moved the Judge of the St Louis Circuit Court for an order on the Sheriff to apply the execution as far as it would extend to the satisfaction of the other execution. The Court sustained the motion and made the order and the said Richard Warren prays an appeal to the Supreme Court of the State of Missouri.

The plaintiff Duke Ransom relies upon the following points to sustain the decision of the St Louis Circuit Court.

1st The Statutes of the State of Mo. requires the Sheriff to set off one execution against another in cases like the present See Rev. Statute of 1845 ~~pages~~ Title Set Off. pages 1006-7.

Without the Statute above referred to the Circuit Court had the authority to order the Sheriff to set off the said Executions. See 1. Cowen page 206. Cooper v Rigelow & Lewis 8 Cowen 126 Ewen vs Terry. 8. Mass 451. Makepeace vs Coates.

S Shaw Pepp Atty.

21.

In the Supreme Court
March Term 1846

Duke Ransom
as
Richard Warren

Statement of facts and
points of Plaintiff

S Shore
Pltffs Atty.

Wilson Primm, Geo: R. Taylor
and James B. Brown
Appellants.

v.

Duke Ramsom
Appellee.

Sup: Court
Mar: Term 1846

This is an appeal brought from the St. Louis Circuit Court, and arises from certain proceedings had in that Court and is in all its particulars as follows:=

On the 3rd day of October 1845- one Richard Walker obtained judgment in the St. Louis Court of Common Pleas against the appellee in the sum of $112.00 — That on the 16th: of said Month the said Walker transfered and set-over all his interest in said judgment (and constituted the appellants his attorneys in fact) to said appellants; that said appellants immediately gave notice to the Sheriff and the appellee of such assignment; which said assignment was by deed and for a valuable consideration and in good faith; all of which appears in the Bill of exceptions; that the said appellants on the 14th: of November of same year caused an execution to issue on said judgment and the fact of said assignment to be endorsed by the clerk of the Court on the back thereof; which said execution came into the hands of the Sheriff on the 16th: of the same month.

That on the 12th: of February 1845- the appellee obtained a judgment against the said Richard Walker before a justice of the peace and the execution issuing thereon was returned "nulla bona"; that on the 25th: day of December

1845. The said appellee filed in the office of the clerk of the Circuit Court a transcript of said judgment and caused an execution to issue thereon against the defendant Walker; and all of this was six weeks after the judgment first above recited had been obtained and execution issued, and the same assigned to the appellants.

The appellee appealed in the Circuit Court and filed his motion under the Statute of Set-off, to off-set the said executions, which being seen and understood by the Court, was sustained and the Sheriff directed so to do; to which said action of the Court the appellants excepted, and afterwards filed their motion to vacate said order so as aforesaid made, which was overruled by the Court to which ruling the appellants excepted, and prayed an appeal.

The appellants rely on the following points and authorities to reverse the judgment of said Court.

1— The question submitted to the Court below was strictly within its jurisdiction, and the decision one from which an appeal lies to this Court. Wise v. Darby 9 Vol: Mo: Rep. page 131.

2— The only question in this case, is the construction of the second division of the tenth section of the Statute Entitled Set-off Rev: Co: 1845 p.a: 1006 — When was the money due on the second execution?

3- That the money in the second Execution was not "due thereon" until the same was in fact issued and delivered to the Officer; and if such be the meaning of said language, then the Court erred because the money in the first Execution was bona fide assigned before the second Execution issued!

Primm & Taylor for appt.

Sup: Court.

Mar: Term 1846

Wilson Primm et, al
appellants

v.

Duke Rayson
appellee.

Brief for appellants.

Primm & Taylor
atts for appts.

Wilson Primm, George R Taylor, & I. B. Brown
vs
Duke Ransom .....

In the Supreme Court
On appeal from the Circuit Court of Saint Louis Co.

Judgment Reversed at costs of Ransom.

Fee Bill of costs in the Supreme Court
H. L. Boon, Clerk,

Docketing case 50. app 20. continuance 25 ...	95
Error & Joinder 90. arg't 25. Sub 25 ..	1.40
Trial & Judg't 1.00. entering opinion 25 ...	1.25
filing papers 40. certified mandate 75	1.15
	$ 4.75
Plaintiffs for Transcript	4.25
	$ 9.00

Attest,
Commission $9.18
H. L. Boon, Clk.

To. Louis T. Labeaume Esq.
Sheriff of St. Louis Co.
Missouri.

Wilson Primm, et. al
vs
Fee Bill
Duke Ransom

Cost.

H. L. Boon	4.75
W. Primm, et. al	4 25
	$9.00

Ransom 15
Burnt $915

To St. Louis County
(22)