64/13

Oct. 1847, #48
St. Louis Perpetual
Insurance County
vs.
James Ford
St. Louis County

Damages – Trespass

Ford sued St. Louis Perp. Ins. Co. to recover money earned from the sale of his Steamboat Indo, sold at sheriff's execution to pay the debt of the previous owner

The St Louis Perpetual Ins. Company
appellant
v
James Ford, use of E. P. Rogers
appellee

Appeal from St Louis
Criminal Court

And the St Louis Perpetual Insurance Company, the appellant comes now here into the Supreme Court, and says that in the record & proceedings aforesaid, and also in the rendition of the said judgment there is manifest error in this to wit.

1. That the judgment of the said Criminal Court was was rendered & given for the favor of the said Ford the appellee, against the said Company, the appellant, whereas, by law, the said Court ought to have given judgment for the favor of the said appellant against the said appellee.

2. That the said Court overruled the motion of the appellant defendant to set aside & vacate the finding & determination & judgment of the Court, upon the case agreed, and the assessment of damages, as the same was moved by the appellant, whereas according to law, & for the reason assigned by the appellant, the same ought to have been set aside.

All which the said appellant is ready to verify wherefore, for the errors aforesaid & other errors apparent in the said record, the said appellant prays that the said judgment may be reversed, annulled & for naught held, and that the said appellant may be restored to

by atty.
Crumbaugh & Bates

And the said James Ford says that in the said record and proceedings there is no error wherefore prays that said judgment be affirmed

by his atty
R. W. Field

Stoms Perpl. Ins: Co
appelt.

v

Ford, use of Rogers
appelt.

= Errors assigned

Filed March 17. 1847
H. L. Boon clk

= Gamble & Bates attys.

p. 1. State of Missouri, County of St Louis } ss. Be it remembered that heretofore to wit on the nineteenth day of March A.D. eighteen hundred and forty-five, there was filed in the Office of the Clerk of the St Louis Circuit Court, within and for the County aforesaid, a Declaration in the words and figures following to wit:

Declaration "In Saint Louis Circuit Court, April Term 1845. Saint Louis ss. James Ford who sues to the use of Emery P. Rogers by R. M. Field his Attorney complains of the Saint Louis Perpetual Insurance Company in a plea of trespass, for that heretofore to wit on the 15th day of June A. D. 1844 at Saint Louis the Defendant with force and arms seized took and carried away a certain Steamboat called the Inda, whereof the plaintiff was possessed as of his own proper goods of great value to wit of the value of Eight thousand Dollars, & kept & detained said Steamboat out of the hands and possession of the Defendant for a long space of time to wit, twenty days, and then and there required and obliged the plaintiff in order to obtain possession of said boat to pay to the Defendant a large sum of money to wit fifteen hundred dollars to secure to the Defendant the further payment of a large sum to wit fifteen hundred Dollars by certain written securities then & there made ~~made~~ and delivered to the Defendant; and other wrongs to the plaintiff then & there did against the peace.

And also for that the Defendant heretofore to wit on the same 15th day of June with force and arms at Saint Louis seized took, and carried away a certain other Steam Boat called the Inda, belonging to the plaintiff of great value to wit of the value of Eight thousand Dollars & then & there converted & disposed of the same to the use of said Defendant & other wrongs to the plaintiff then & there did, against the peace.

All which is to the damage of the plaintiff Two

p. 2 — thousand Dollars, wherefore he brings suit &c

R. M. Field

On which the Clerk issued a Summons as follows; to wit:

Summons — County of St Louis fct. The State of Missouri. To the Sheriff of St Louis County — Greeting; We command you to summon the St Louis Perpetual Insurance Company that they be and appear before the Judge of our Circuit Court, on the first day of the next term thereof to be held at the City of St Louis within and for the County of St Louis on the third Monday of April next then and there to answer unto James Ford to use of Emery P. Rogers of a plea of trespass to the damage of said Plaintiff two thousand Dollars. And have you then there this writ.

(Seal) Witness John Ruland Clerk of our said Court, with the seal thereof hereto affixed at Office, in the City of St Louis, this nineteenth day of March in the year of our Lord eighteen hundred and forty five.

John Ruland Clerk

On which the Clerk made his return as follows viz:

Return — "Executed this writ in the County of St Louis on the 18th day of March 1845 by offering to read it and the declaration to John B. Camden, President of the St Louis Perpetual Insurance Company which he refused to hear

William Milburn Sheriff

By N. C. Osburn Deputy

And on the 22nd day of April A. D. 1845, the following Plea was filed to wit:

Plea — "No 118 April T. 45 St Louis Circ Court. James Ford to the use of Emery P. Rogers vs The St Louis Perpt Ins. Co. And the said Defendant comes & defends the force & injury when &c and for plea says, that it is not guilty of the wrongs & grievances above laid to his charge nor any of them, in manner & form as the said plaintiff has above in declaring alleged, and of this he puts itself upon the Country by Atty

Gamble & Bates

page 3 And on the 9th day of January A. D. 1846 an agreed case was filed in the words and figures following viz:

Agreed Case "In the St Louis Circuit Court. James Ford who sues to the use of Emery P. Rogers vs The St Louis Perpetual Insurance Office Company. The parties to the above entitled suit agree to the following statement of facts

On the 10th day of January 1844 the St Louis Perpetual Insurance Company sued out a Warrant in due form of law, from the Office of the Clerk of the St Louis Court of Common Pleas against the Steam Boat Inda on a demand against said boat, amounting to $850. being the amount then due on a bill of Exchange, drawn & accepted on behalf of said boat for money advanced by the plaintiff to said boat for the purpose of paying the wages of hands on said boat & for necessary supplies for the boat: Under which Warrant the Sheriff of St Louis County seized said boat and its tackle apparel and furniture on the 2d day of February 1844 and kept the same in his possession until the 22d day of March 1844, when the same was by the Sheriff released & discharged from custody under that writ on taking a bond according to the Statute executed by William Alter as principal and Samuel Manning and Daniel Merill as Securities.

Afterwards on the 13th 14th and 15th days of June 1844 several Creditors of the Steam boat Inda sued out warrants in due form of law from Justice Carr and Justice Thomas of St Louis Township, against said Steam Boat upon their several claims, being liens against said Boat, in the first class, amounting in all to $3044.65 upon their several Warrants, the Constable of St Louis Township seized the said boat and upon the return of the warrants, judgments were thereupon in due form of law rendered in favor of the several Creditors against the

said boat for the amount of their respective claims, a-
mounting in the aggregate to the sum above mention-
ed exclusive of costs — orders of sale on these seve-
ral Judgments were regularly issued and put into
the hands of the Constable of St Louis Township to
be executed: on the _____ day of June 1844
the said Constable duly advertised the said boat
to be sold under the said Warrants on the 27th day
of June 1844 and on the last mentioned day sold
the said boat to Thomas Webster under said adverties-
ment for the sum of $2475.00, he being the high-
est bidder and delivered the said Boat to said
Webster, a short time afterwards the said Webster
transferred and delivered the said boat to Ford
the plantiff who employed the same in navigation
until she was seized by the Sheriff as hereinafter
stated.

And afterwards at the September Term of said
Court of Common Pleas 1844, on the 25th day of
September 1844, the said Perpetual Insurance Com-
pany in their action aforesaid the same being un-
defended recovered judgment in due form of law
against the Defendant said Steam Boat Inda,
and the said Allen, Manning and Merill the prin-
cipal and the securities in said bond for $780.
debt and $110.17 damages and costs $331.56 — and
on the order of said Court that said Steam Boat
Inda together with her tackle apparel and furni-
ture be sold by the Sheriff according to law to pay
and satisfy the said Judgment. Under this order
of sale the Sheriff of St Louis County, by the di-
rection of John B. Camden the President of said
Insurance Company on 23 October 1844 seized said
Boat the same being found in possession of said
Ford, for the purpose of being sold to satisfy said

p. 5 — This payment was made on the 12th November 1866

Judgment & in obedience to said Order of Court. and the Sheriff detained the same in his possession for that purpose only, for several days and until said Ford by arrangement with said Camden procured the release thereof by procuring the said Conway P. Rogers to pay to the said Sheriff the debt damages and costs for which he had levyed and was about to sell said boat amounting in all including Sheriffs costs on said order of sale to $1292.36 It is admitted by the parties to this suit that said Rogers paid said sum of money under protest, that the said Steam Boat was by reason of the sale by the Constable as afore said not justly chargeable therewith — and under an agreement that such payment was not to be taken as any admission or waiver of right or title on the part of the plaintiff, if otherwise he would have a right to recover.

If on the foregoing statement, the plaintiff is entitled to recover Judgment shall be given for the plaintiff for his damages to be assessed by the Court on the foregoing statement (it being further agreed that the Steamboat Inda was of much greater value than the money paid as above) If the plaintiff is not entitled to recover then judgment of nonsuit shall be rendered against the plaintiff, with leave to either party to except and take the case to the Supreme Court.

R. M. Field for Plaintiff
Gamble & Bates for Deft.

And on the same day and year last aforesaid, the following proceedings were had in said cause to wit:

Judgment "James Ford to use of Conway P. Rogers vs The St Louis Perpetual Insurance Company. Trespass. This day came the parties by their Attorneys and neither party requiring a Jury submit this cause to the Court on an agreed

p. 6 case statement of facts filed herein filed and the Court being fully advised on the premises doth find that the Defendant is guilty in manner and form as the plaintiff hath complained against him and doth assess the damages of the plaintiff by reason of the premises at the ~~sum~~ Fourteen hundred and sixty Dollars and thirty six cents. Therefore it is considered that the said plaintiff recover of the said Defendant his damages aforesaid, in form aforesaid assessed and also his costs herein expended and have thereof execution."

And on the 18th day of January A.D. 1847 a Bill of Exceptions was filed in the words and figures following:

Bill of Except.ns Ford who sues to use of Rogers vs The St Louis Perpetual Ins. Co. Be it remembered that at the trial of this cause, the parties thereto submitted the same to the Court, to be tried & determined by the Court upon a statement of the case agreed & made in writing by the parties and which statement is in the words & figures following (which agreed case will be found set out on page No 3.) And thereupon after argument of Counsel on both sides upon the case so made & submitted, the Court did determine & adjudge that the Defendant was guilty of the trespasses in the Declaration alleged, in manner & form as by the plaintiff alleged; and assessed the damage sustained by reason thereof to the sum of $ to which determination & judgment of the Court the Defendant did then & there except.

And thereupon the Defendant moved the Court to set aside & vacate the said determination & judgment of the Court & the said assessment of damages, because upon the facts stated in said agreed case, the Defendant was by law not guilty of any trespass against the plaintiff & not liable to any damages. But the Court overrules said motion, to which

p 7 the Defendant excepts. And the Defendant tenders this bill of Exceptions & prays that ~~court~~ the same may be signed &c which done accordingly.

John M. Krum.

And on the 23rd day of January A. D. 1847, an affida:vit for an appeal was filed as follows to wit:

Affidavit "Ford to the use of Rogers vs The St Louis Perpetual Insurance Company. John B. Camden President and Agent of the Defendant, being duly sworn upon his oath says, that the appeal made by the Defendant from the Judgment of this Court in this cause, is not made for vexation or delay, but because this Affiant believes that the Appellant is aggrieved by the Judgment of this Court.

John B. Camden.

And on the day and year last aforesaid the following further proceedings were had in said cause viz

Appeal granted & "James Ford to use of E. P. Rogers vs St Louis Per:petual Insurance Company. This day comes the De:fendant by her Attorney and files the Affidavit of John B. Camden and agent of the Defendant and moves the Court to grant an Appeal to the Supreme Court from the Judgment herein rendered, which is by the Court here granted. And thereupon the said John B. Camden as Principal and William M Tompkins and Giles F Filley as securities severally acknowledge themselves indebted unto James Ford to the use of Emma P. Rogers in the sum of two thousand Dollars, to be void if the Appellant will prosecute the appeal now taken with due diligence to a decision in the Supreme Court and if the Judgment appealed from is ~~dismissed~~ affirmed or the appeal dismissed, the Appellant wile pay what:ever of damages and costs have been recovered against said Appellant, by the Judgment of the Circuit Court and pay all costs and damages that may be adjudged against

said Appellant in the Supreme Court upon the appeal otherwise to remain in full force and effect.

State of Missouri } ss
County of St Louis

I, John Ruland, Clerk of the St Louis Circuit Court, within and for the County aforesaid Certify the foregoing to be a full true and complete Transcript of the Record and proceedings in the Case of "James Ford to use of Emery P. Rogers vs St Louis Perpetual Insurance Company" as fully as same now remains of record and on file in my Office.

In testimony whereof I have hereto set my hand and affixed the seal of said Court, at Office, in the City of St Louis this third day of January A. D. 1847

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~~35.~~ 2 ~~108~~

48.

St Louis Perpetual Ins^ce Company Appellant

vs

James Ford to use of Emery P. Rogers Apellee

Transcript to Supreme Court

Transcript for E S Bates

Filed March 17. 1847.
H. L. Boon clk

Ex^d Fee $3.00

St. Louis Perpetual Insurance Company
vs.
James Ford

Appeal from the St. Louis Circuit Court.

It becomes necessary in this case to determine the question whether the bonding of the boat was a discharge of the lien by virtue of which she was seized at the ~~instance~~ suit of the appellant. But for the giving of the bond, the boat would have been held in the custody of the officer seizing her. While in that situation there would be little or no occasion for contracting debt on her account. When she is freed from arrest and employed in navigation, the want of supplies is daily recurring and the policy of the law in allowing debt of a certain class to be liens, is subserved, by discharging the liens for which a boat has once been seized. The considerations which influenced the law maker in giving liens for certain debts in Marine navigation influenced our Legislature in allowing liens on boats. Bottomry bonds are evidences of debt contracted by the master in a foreign port for obtaining necessary supplies, where the owner has no resources or credit. The lien of the last bottomry bond is preferred to that created by one of a previous date. Steam boats like sea-vessels "were made to ~~float~~ plow the waters and not to rot by the wall", and to effect this end the laws make them subject to liens. A boat may have contracted debts to a large amount & after being seized for those debts, to permit her again to be employed in navigation subject to their lien would be the means of deceiving those who might be willing to give her credit, if the fact was unknown

and if known would disable her from obtaining it.

The condition of a bond given for the purpose of releasing a boat detained for debt, is, that the obligors, shall satisfy the amount which shall be adjudged to be owing & due to the plaintiff together with costs. There is nothing said about the return or delivery of the boat. If it was intended that the boat should be sold for the debts for which she had been seized, there would have been a stipulation for ~~her~~ returning her to ~~answer~~ satisfy the judgment of the Court. When a boat is not bonded judgment is given that she be sold to satisfy the debt for which she was seized; if she is still liable to be sold after being bonded, should not the same judgment be rendered, notwithstanding the liability of the sureties? The case of Evans vs King 7 Mo Rep 411 in which it was held that the giving of a bond for the forthcoming of property seized under an attachment is not a discharge of the lien created by a levy of the attachment, is not an authority in support of the position, that the giving of a bond under the act concerning boats & vessels is not a discharge of the lien on the boat. The principal ground of the decision in the case of Evans vs King was, that a mode was prescribed by ~~the attach~~ the ~~ment~~ law regulating attachments for their dispolution, and the manner of affecting this being expressly pointed out, it would be unwarrantable to infer that effect from a bond under another provision of the law divined for a different purpose.

If the liens were discharged, the judgment ~~was erroneous~~ which condemned the boat to be sold was erroneous, and the appellant stands

in the position of one whose debt has been paid by the property of another: Under such circumstances, an action for money had & received would lie to recover the amount received. The action however is in form trespass. We cannot perceive the principle on which a party to the record can be made liable in trespass for an erroneous judgment or award of execution emanating from a court of record having jurisdiction of the subject matter. This is not the case of taking the property of one to satisfy the execution of another. The identical property sold in this case, was condemned by the court to sale & process issued for that purpose. The owner of the boat being no party to the proceeding, he could not reverse the judgment on appeal or writ of error. He might no doubt have by application to the court ~~he~~ arrested the execution of the process. By the parties to a record only, an erroneous judgment may be reversed. Irregular process of a court of general jurisdiction will justify an officer or party until it is set aside on motion. Barker vs Braham & Norwood 3 Will 368.

The action is in form trespass and not guilty is the only plea in the case. The justification was not admissible under that plea. The judgment therefore must be affirmed. This course is calculated to do justice between the parties. The plaintiff is entitled to recover the value of his property sold, and as the objection to his recovery, is the misconception of the form of his remedy, there is no hardship in holding the defendant to a strict compliance with the forms of pleading

The other judges concurring the judgment will be affirmed

W. Scott

8.

St. Louis Perpetual
Insurance Company

vs

Ford

Opinion

Scott

Filed April 12. 1848.
H. L. Boon Clk

St. Louis Perpetual Insurance Company
vs
James Ford, to the use of Emery P. Rogers

In the Supreme Court. — On appeal to the St Louis Circuit Court.

Judgment affirmed, at the costs of the Perpetual Insurance Company.

Fee Bill.

H. L. Boon's Costs

Docketing case 50. app 20. contin 25	95
Error & Joinder 90. argt & submis 50. Trial 50	1.90
Judg't 50. entering opinion filed 25	75
filing papers 40. Certified jud't ~~opin~~ 75	1.15
Copy of Transcript for Gamble & Bates	3.00
	$ 7.75
Commission	15
	7.90

Attest.

H. L. Boon, Clerk

To. Louis. T. Labeaume Esq'
Sheriff of Saint Louis County
Missouri

James Ford, use of &c
vs Fee Bill
St. Louis Per. Ins. Co.

Wm. M. Tompkins & Giles
F. Filley, securities in the
appeal bond.

Costs.

H. L. Boon ..	$7.75
Commission	15
	$7.90

Satisfied may 31 1849
Louis T Labeaume Sheff

To. Saint Louis County.
~~72~~ 25

The St. Louis Perpl. Ins: Co. appellants.
v.
James Ford — use of Rogers, appellee.

Supreme Court, Oct: 1847.

Appeal from St. Louis Circuit Court.

This is an action of trespass with force and arms, brought by Ford against the Perpetual Insurance company, for taking from the plaintiff a certain steam boat called The Inda — Plea not guilty.

The parties submitted the issue to the Court, upon an agreed case, in writing, and, therefore, the Court found the issue, & gave judgment for the plaintiff. The Deft moved the Court to set aside the finding. The Court overruled the motion, and the defendant appeals.

The facts are these: On the 10th of January 1844, The St. Louis Perpetual Ins. co. sued out a warrant, in the St. Louis Circuit Court, against the S. B. Inda, for $850, due on a bill of Exchange, drawn & accepted on behalf of said boat, for money advanced by said Company to said Boat for the purpose of paying the wages of hands on said boat, & for necessary supplies for the boat. Under this warrant, the Sheriff seized the boat, & kept it for some time, when it was bonded & discharged from custody under that writ.

Afterwards, on the 13th 14 & 15th of June 1844, several creditors (about 100) of the S. B. Inda, sued the boat, before Justices of Peace, by warrants in due form of law, upon claims, being liens of the first class, amounting in the aggregate to about $3044. Upon these warrants, the Constable seized the boat, and upon return of the warrants, judgments were entered against the boat, and orders of sale issued; and under these orders of sale, the Constable sold the boat to one Webster, who transferred it to Ford, the plaintiff.

Afterwards, on the 25th of September 1844, in said Circuit Court, in the said suit of the Perpetual Ins. Co: v. S. B. Inda, judgment was rendered against said Boat, and the securities in the bond, for $780 debt, and $110.17, damages and $331.56 Costs. And an order of sale was made and issued, whereby the Sheriff was commanded to sell said S. B. Inda, her tackle apparel & furniture, to pay said judgment.

Under this order of sale, the Sheriff of St. Louis County as directed by John B. Camden Prest. of said Company, on 23d. October 1844, seized said boat, then being found in possession of Ford, for the purpose of being sold to satisfy said judgment, & in obedience to said order of Court, detained the same in his possession, for that purpose only, for several days, and until said Ford procured the amount of the judgment & costs to be paid $1292.36, and the boat released. The money was paid under protest.

Points submitted by the appellant.

R.C. of 1835 p. 108 §§ 5–10 and act. 1839 sep: acts p. 13 §. 2.

1. The S. B. Inda was bound by the seizure under the warrant ads. the Perpl. Ins: Co: The bonding of her out of custody of the Sheriff did not discharge the lien on the debt.

R.C. of '35 p 103 §. 10 — 4 mo. R. 413. Evans v. King.

2. The service of the warrant fixed the power of the Court over the boat; and the boat was, from that moment, appropriated by law, to the payment of the debt, as soon as ascertained; and when the debt was ascertained by judgment, the order of sale was, as a matter of course, prescribed by statute.

3. The order of sale being issued, the sheriff had no discretion, but was bound to obey it, with or without the prompting of the plaintiff. (a)

(a) 1. Mo R. 134 - 4. Mo R. 1 - 3 Ib: 37 - 8 — 9 Mo: R. 41.

8 Am: Com Law 48-9, and my cases there stated.

9 Com: R. 141

12. Wend R. 96

4. Under our boat law, the suit is brought and the final order of sale is made, without any reference to the ownership or possession of the boat. And so, the officer in charge of the warrant, or the order of sale, has nothing to do with the question of ownership or possession. He has nothing to do with persons, but is required by the writ, to seize a specified thing and dispose of it in a particular way.

5. The warrant issued by the Justices of Peace, however regular & right, & however regularly prosecuted to judgment & sale, could not operate to divest the Circuit Court of power over the boat, nor take from the plaintiff in that Court the benefits of his lien, actually attached, & in process of enforcement.

6. But the proceedings on the justices warrants were irregular & wrong - and under this head:-

1. The boat law prescribes the writ to be issued & the manner of serving it - viz: by actual seizure: And when seized on one writ, it can not be seized on another.

2. If seized & sold by the Constable, it must of course be subject to the power of the Circuit Court, and the prior lien actually attached.

7. But, conclusively, the Circuit Court, having jurisdiction of the cause, and having issued:

the order of sale, neither the plaintiff nor the Sheriff can be guilty of trespass in obeying that order.

10. Mo. R. 151. Ivy v Barnhartt.

and 9. Conn: R. 141.

=

Some cases cited in answer to Mr Fields brief

= 4 Mo R. 2. a plea of justification must admit the trespass, — that is, the fact of taking & the property of pltff:

Here we deny the trespass — both the taking & the property of pltff.

= 7. Mo R. 138. Dameron v Wittram & al:

" " 176. Carrifax v Chapman. He who commands or assents to a trespass, is "Equally liable to the action with those who actually commit it." And here the sheriff, who seized the boat, committed no trespass —

= As to liability of Corporations — Angel & Ames on Cor: 331. &c

1. Caine's Rep: Herrick v Manly — opinion of the court at page 257 — to shew that a party is not guilty of trespass, by commanding another to do the act, when the agent does it in fact, not in consequence of the command, but by paramount authority

St. Louis Pape Ins: Co. v Ford, use of Rogers appellee

= R. C. of 1835 p. 103. N. 5. 10.
Act 1839 p. 13. N. 2
6. Mo R. 413.
1. Mo R. 134
4. Mo R. 1—3
Ib: 37—8
8. Am: Com: Law 48—9
2. Ld: Raym. 1072
10. Mo R. 151.

Appellant's Brief
Gamble & Rates
Octo: 47

The Atlantic Perpetual Ins: Co.
Appellant
v
James Ford - use of Rogers
Appellee

Supreme Court Oct: T. 1847

Appeal from Atlantic
Circuit Court

This is an action of trespass with force & arms, brought by Ford against the Perpetual Insurance Company for taking from the plaintiff a certain steam boat called the Inda. Plea not guilty. The parties submitted the issue to the Court upon an agreed case in writing, and the Court found the issue & gave judgment for the plaintiff. The defendant moved for a new trial, which motion was overruled, and the defendant appealed.

On the 10th of January, 1844, the Atlantic Perpt. Ins: Co. sued out a warrant in the Atlantic Circuit Court, in due form of law, against the steam boat Inda, for $850, due on a bill of exchange drawn & accepted on behalf of said boat, for money advanced by said Company to said Boat, for the purpose of paying the wages of hands on said boat, & for necessary supplies for the boat. Under this warrant the sheriff seized the boat, & kept it for some time when it was bonded & discharged from custody under that writ. Afterwards - on the 13. 14. & 15th of June 1844, several creditors (about 100) of the S. B. Inda, sued the boat before Justices of the Peace by warrants in due form of law, upon claims being liens of the first class, amounting in the aggregate to about $3044. Upon these warrants the Constable seized the boat and upon return of the warrants, judgments were entered against the boat, and orders of sale issued; and under the orders of sale the Constable sold the boat to one Webster,

who transferred it to Ford, the plaintiff.

Afterwards on the 25th of Sept: 1844, in said Circuit Court, in the said suit of the Perpd. Ins: Co. v The S. B. Inda, judgment was rendered against the boat & the boudsmen, for $780 debt & $110.17 damages, and $331.56 Costs. And an order of sale was made & issued whereby the sheriff was commanded to sell the said S. B. Inda, her tackle apparel & furniture, to pay said judgment.

Under this order, and with the directions of John B. Camden, President of said Company, the Sheriff of St Louis County, on the 23d of October 1844, seized said Boat, then being in possession of Ford, for the purpose of being sold to satisfy said judgment, and in obedience to said order of Court detained the same in his possession for that purpose only, for several days, and until said Ford procured the amount of said judgment & costs – $1292.36 – to be paid, & the boat released. The money was paid under protest.

Attys. for Appellant –
Gamble & Bates

St Louis Perpl. Ins: Co
appellant
v
Ford, mer of Rogers
appellee

Statement.

James Ford to the use
of Emory F. Rogers
vs
St Louis Perpetual Ins. Co

} Appeal from St Louis Circuit Court

This was an action of Trespass brought by Ford against the Perpetual Insurance Co for seizing the Steamboat Inda. The 1st Count states the seizure of the boat & detention of the same until the plaintiff paid a large sum viz $1500. to regain possession. The 2d Count is general de bonis asportatis. The defendant pleaded the General issue. The parties submitted the issue to the Court under an agreed statement of facts.

The facts agreed are in substance as follows:- On 10th January 1844 the Perp.l Ins. Co sued out a warrant against the Steamboat Inda on a Bill of exchange drawn and accepted on behalf of the boat for money advanced to pay wages of hands and to furnish supplies amounting to $850. returnable to St Louis Court of Common Pleas. Under this warrant the Sheriff seized the Boat & detained it in custody until 22d March 1844 when the boat was released and a bond with security given according to the statute. Afterwards on the 13th, 14th, & 15th days of June 1844, several creditors of the Steamboat Inda sued out warrants in due form of law from Justice Carr & Justice Thomas against said steamboat on their several demands amounting in all to $3044.65; under these warrants the Constable seized the boat and upon the return of the warrants judgments were rendered in favour of these several creditors, orders of sale were issued and the steamboat was sold for the sum of $2475.00 to Thomas Webster - all these last mentioned claims were liens of the first class. The boat was delivered to Webster who shortly afterwards transferred & delivered it to Ford the plaintiff. The boat was employed in navigation by Ford until it was again seized by the Sheriff as afterwards stated. On the 25th Day of September 1844, the Perpetual Insurance Company recovered judgment against the Steamboat Inda in their frementioned action also against the principal and sureties in the bond for $780. debt, $110.17 damages & $331.56 costs. An order of sale issued and on the 23d day of October 1844, the Sheriff by direction of J.B. Camden President of the Perpetual Insurance Company seized the steamboat out of the possession of Ford the plaintiff

On 12th November 1844, Ford and Camden entered into an arrangement by which Ford procured Emery Rogers to pay the debts costs due the Perpetual Ins. Co. amounting to $1292.36. The payment was made under protest that the steamboat was not chargeable with the debt and under an agreement that it should not be taken as any admission adverse to the plaintiff. It was further agreed that the steamboat was worth much more than the money paid.

Upon the foregoing statement the Court below found the issue in favour of the plaintiff and assessed the damages at the amount of money paid and interest. The defendant moved for a new trial which was overruled. Defendant saved exceptions to the judgement of the Court & the refusal of the new trial.

R. McField in support of the judgement below insists:—

I. The plaintiff obtained a perfect title by sale under the warrants, being on liens in the first class.

By the act of 1841, in force at the time of the sale, the liens had precedence of all other claims, and had priority among themselves according to the order of enumeration. Pamph. Acts, 1841 p. 18.

II. The seizure of the boat under the process in favour of the defendants was wrongful:—

1. Because the claim under a bill of exchange drawn by an officer of the boat was no lien at all.

2. At most it could only be a lien in the 3d class, and could not justify a seizure of the boat after it had been already sold under liens in the first class.

3. Even were the defendant's lien to be regarded as of the first class, still the boat had been regularly sold under liens of equal dignity, and no previous liens could be asserted against the purchaser.

On this head the counsel for appellee refers to his brief in the case of Kilbourn vs Gillman filed at this term of the Court.

III. The prior institution of the defendant's suit gave it no preference:-

1. The defendant's lien being of an inferior rank must at all times yield to those under which the plaintiff purchased.

2. The lien of the defendant's process was discharged by the giving of the bond:-

In this respect the case is plainly distinguishable from an attachment:-

a. The bond under the boat law is conditioned <u>to pay the debt & costs</u>:- Rev. Laws, 1835. p. 103

But in attachment cases the bond is conditioned to <u>return the property</u>:- Id. p. 78.

b. Under the boat law, on giving bond the boat is to be <u>discharged</u> Id. p. 103

But in attachment cases the debtor is allowed to <u>retain possession</u> Id. 78

It may be added that a construction continuing the lien of process against a boat after it had been discharged under bond would be inconvenient & mischievous.

3. But if the lien of the process continued after giving bond, yet it was clearly gone, after forfeiture and judgement rendered against the sureties. This has been expressly adjudged in attachment cases, on the principle that the lien of the process is merged in the judgement.

Lusk v Ramsay - 3 Munford's Va. Rep. 417
Malone v Abbott - 3 Humphr. Tenn. Rep. 532
2 Tuck. Com. 365, 366 -

IV. The defendants are liable in this action for the seizure of the boat:-

1. As being parties to illegal process:-

Parsons v Lloyd - 3 Wils. Rep. 341
Barker v Braham et al. Id. 368

2. Because their head office expressly commanded the seizure:-

1 Cow. Rep. 513 - 4 Cow. Rep. 645
9 Paige's Chancery Rep. 496

V. The defence being a justification under process was not admissible under the general issue.

1 Chit. Pleud. 538 et seq. Lewis cited.

VI. The damages were correctly assessed by the Court:-

In the 1st Counts the payment of the money is expressly alleged as special damages.

Besides, on general principles, the measure of damages in trespass where the property or any part of it has been returned, is the value taken minus the value returned, and in the present case the value returned, was the value taken minus the money paid to obtain the return.

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3 Manfred 417
3 Humph. Rep. 532
3 Wilson Rep 368
1 Corr. Rep. 513
4 Corr. Rep. 645
9 Paige Ch. Rep. 496 -
2 Tuck. Com. 365