75/6

Oct. 1848, #7
John B. Higdon
vs.
Samuel Conway
St. Louis County
} Attachment

Higdon sued Conway, sheriff, for taking a slave for an execution

State of Missouri }
County of St Louis } ss Be it remembered that here-before to wit on the twenty ninth day of March in the year of our Lord. Eighteen hundred and forty seven there was filed in the office of the Clerk of the Circuit Court a Declaration in the words and figures following to wit.

Declaration State of Missouri } Saint Louis Circuit
County of Saint Louis } ss. Court April Term 1847
John B. Heydon by Carroll & Gibson his attorneys Complain of Samuel Conway of a plea of trespass. For that whereas the said Samuel Conway on the February in the year of our Lord eighteen hundred and forty seven at the County aforesaid with force and arms seized and took certain Negro girl of the said John B. Heydon. named Eliza of great value. to wit of the value of Five hundred dollars and carried away the same. and converted & disposed thereof to his own use. thereby dispossessing the plaintiff of the use thereof. and other wrongs to the said plaintiff then & there did. against the peace of the said State. and to the damage of the plaintiff of One thousand dollars. and therefore he brings his suit &c. Carroll & Gibson. attys for Plaintiff

writ County of St Louis. ss. The State of Missouri
To the Sheriff of St Louis County Greeting, we command you To Summon Samuel Conway. if he be found in your County that he 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 & for the County of St Louis, on the third monday of april next then and there to answer unto John B

2/ Heydon of a plea of Trespass to the damage of said plantiff One Thousand dollars. and have you then there this writ (Seal). Witness. John Ruland Clerk of our said Court with the Seal thereof here= to affixed at office in the City of St Louis. this 29th day of March in the year of our Lord Eighteen hundred and forty Seven.

Jno. Ruland Clerk

Plea Filed June 7th 1847

John B. Heydon vs Samuel Conway } St Louis Circuit Court April Term 1847

And the said Samuel Conway Comes and defends the wrong & injury when &c. and says that he is not guilty of the wrong & trespass above laid to his charge. and of this he puts himself upon the Country. by attys. Gamble & Bates.

Plea Filed

John B. Heydon vs Samuel Conway } In St Louis Circuit Court June. 7. 1847. April. Term 1847 Plea filed

John B. Heydon vs Samuel Conway } Trespass. In St Louis Circuit Court November Term 1847. Thursday January 27. 1848 -

Judgement by Default

This day come the parties by their attorneys. and come also a Jury to wit. David Shephard F. W. Engel. Alexis Warner. Benjamin F. Watkins James C Wright. Cornelius Demarest. Samuel Black David C Musick. Thomas J Arnold. John S Watson Wilson Henley. and Joshua W. Owens. twelve good and lawful men. who were duly elected tried and Sworn the truth to speak upon the issue joined between the parties and thereupon the plaintiff being demanded comes not but makes default nor doth he further-

Sheriffs Return

I hereby wave service of the process in this cause and agree to enter my appearance to said action. Sam. Conway

March 29. 1847.

3 prosecute this Suit but voluntarily submits to a Judgement of nonsuit herein with leave to move to set the same aside. It is therefore considered that the said defendant go hence without day and recover of the plaintiff his Costs in this behalf and have them = of execution.

motion for New Trial

Filed Jan.y 28. 1848

J.B. Higdon
vs
Sam.l Conway

The plaintiff moves the Court to set aside the Nonsuit and grant a new trial for the following reasons.

1. Because the Court erred in refusing to admit legal and competent testimony on his behalf of an important character.

2. Because the Court refused to admit testimony tending to show a fraud in obtaining the Judgement upon which the execution purported to issue in virtue of which the defendant acted.

3. Because the opinion of the Court was against Law

Chas Carroll. for plaintiff

Jan. 28. 1848.

John B. Higdon
vs
Samuel Conway

In St Louis Circuit Court
November Term. 1847.
Friday January 28. 1848

motion for new Trial Filed

Plaintiff by Attorney files his motion to set aside the ~~motion~~ nonsuit herein

John B. Higdon
vs
Samuel Conway

Saturday Jan.y 29. 1848

motion overruled & Bill of exception Filed

On hearing of the motion of the plaintiff to set aside the nonsuit. the said motion is by the Court overruled. Thereupon plaintiff files his bill of exceptions.

Bill of Exceptions

J B. Higdon
vs
Saml. Conway

In the Saint Louis Circuit Court
November Term 1848

Be it remembered that at the trial of the above entitled Cause, the plaintiff to support the issue upon his part introduced Chas Eby who testified that he knew the negro girl in the declaration mentioned, that she was the property of the plaintiff and was in his possession when seized and taken by the defendant, that said negro was taken by the defendant as Sheriff of St Louis County, under and by vertue of a writ of fieri facias from the Court of Common Pleas in favour of I C Clark & Co against the plaintiff and said Eby, that said negro was was about fourteen years of age now, being about thirteen when thus as aforesaid taken, that he thinks she was worth between four hundred and five hundred dollars, that after the levy by the Sheriff said plaintiff gave a forthcoming bond and on or before the day of sale paid the money demanded under said supposed writ with a protest against its legality, here the plaintiff rested

The Defendant then introduced the said writ of fieri facias under which said Conway acted in taking said negro, and said writ was regular & fair on its face, here the defendant rested.

The Plaintiff then offered to prove by legal and sufficient testimony that there was no progement upon which said writ was issued or could have issued & that hence said writ was illegal & utterly void to which the defendant objected, and which objection the Court sustained & excluded said testimony entirely, to which sustaining & exclusion the plaintiff duly excepted. There was no further

testimony whereupon the plaintiff took a nonsuit with leave to move to set aside the same which motion was made and reasons given as follows

J B Hegdon
vs
Saml. Conway } The plaintiff moves the Court to set aside the Non suit and grant a new trial for the following reasons. viz

1 Because the Court erred in refusing to admit legal & competent testimony on his behalf of an important Character

2d Because the Court refused to admit testimony tending to show a fraud in obtaining the judgement upon which the execution purported to issue in virtue of which the defendant acted.

3d Because the opinion of the Court was against Law.

Chas C. Carroll. for pltff

Jan. 28. 1848-

which motion the Court overruled to which overruling the plaintiff excepted and prayed the Court to sign & seal this his bill of exceptions. which is accordingly done this 29 day of January A.D. 1848.

A Hamilton (Seal)

State of Missouri }ss
County of St Louis }. I John Ryland Clerk of the Circuit Court within & for the County aforesaid Certify the foregoing to be a full and correct Transcript of the Record and proceedings in the Case of J B Hegdon vs Saml Conway as the same remains in my office. In Testimony whereof I hereto set my hand & affix the Seal of said Court at office in St Louis this 15th day of February A.D. 1848.

J. C. Ryland Clerk

Index.

Declaration page 1
Sheriffs. Return " 2
Plea " 2
" Filed & Judgem by Default " 2
Motion for New trial " 3
" " Filed " 3
Motion to overrule & Bill of Exception filed 3

John. B. Higdon
vs } Transcript
Samuel Conway

$1.75.

Carroll
Atty

THE STATE OF MISSOURI, ss.

The State of Missouri, To the Judge of the Saint Louis County Circuit Court in said State, **GREETING:**

Whereas, In the record and proceedings in a certain cause lately pending in the Saint Louis Circuit Court

wherein John B. Hogden was plaintiff and Samuel Conway was Defendant

in an action of trespass manifest error hath intervened, to the great damage of the said Plaintiff as by his complaint, we are informed.

NOW, we being willing that the error, if any there be, should be corrected, and full and speedy justice done to the parties aforesaid, in that behalf, COMMAND YOU, that you send to us, certified under your seal, the record and proceedings in the cause aforesaid, as fully as the same remain of record before you in said Court, so that we may have them before us at our Supreme Court, to be begun and held at the City of Jefferson, in the county of Cole, in said State, on the Third Monday in March next, so that our Judges of our Supreme Court, on inspecting the record and proceedings aforesaid, may cause to be further done therein, for correcting the error, what of right and according to law ought to be done.

Witness, HAMPTON L. BOON, Clerk of our said Supreme Court, at office, in the City of Jefferson, the first day of March, in the year of our Lord one thousand eight hundred and forty-Eight

H. L. Boon

SEAL OF THE SUPREME COURT OF MISSOURI

$1.50.

Writs of Error (7.) 20

John B. Higdon
pl. e.

vs

Samuel Conway
dft

Porter v. Goodman
1 Cow. 413
1 Mon. 7

Files March 11. 1848.
H. L. Boon Clk

$D. 25/100 Pindley Higdon

State of Missouri, ss.
County of St Louis } In obedience to the within writ I herewith furnish a Complete Transcript of the Record and proceedings in the Case within Mentioned

In Testimony Whereof I John Ruland Clerk of said Court hereto set my hand and affix the seal of said Court at office in the City of St Louis this first day of March Eighteen hundred and forty Eight

Jno Ruland Clk

John B Higdon } In Supreme Court
vs
Samuel Conway } March Term 1848.

In this case the plaintiff in Error John B Higdon comes and assigns for Error the following to wit.

1. The Court erred in excluding legal and competent testimony, viz testimony tending to show that there was no judgment upon which to issue the Fieri Facias under which the defendant in Error proceeded in this case, and took the property of Plaintiff in Error

2. The Court erred in refusing a new trial for the reasons set forth in the motion of the plaintiff in Error filed in this suit.

Chas. C. Carroll
Attorney for plaintiff in Error

John B. Higdon
Plaintiff in Error

"

Samuel Conway
Defendant in Error

Assignment of
Error.

Filed Oct. 16. 1848.
H. L. Bonn, Clk

John B. Higdon } Supreme Court Octo: T. 48
v } Fr: St Louis Court Court
Samuel Conway }

Higdon brought his action of trespass against Conway (Sheriff of St Louis County) for the taking of a slave. The sheriff in taking the slave, acted under a fi: fa: in favor of Carter Jal v Higdon Jone Eli. The writ is regular on its face, and the slave belonged to the deft in Exon: - Higdon. At the trial, Higdon, in order to defeat the sheriff's defence, offered to prove that there was no judgment to warrant the issuing of the Execution - that is that the Clerk had mistaken the name Carter for the true name of the pltff in the judgment -
The sheriff objected; insisting that his defence consisted in the Execution, & not the judgment - And the Court sustained the objection & ruled out all such testimony. Higdon took a nonsuit, and moved to set it aside; which motion was overruled, and he brings the case here by writ of error.

And so, the only question is whether or no, the Exon: alone, without the judgt: is a defence for the sheriff - We insist that it is.

The sheriff is protected in executing all process regular on its face, and eminating from a Court having legal jurisdiction of the subject.
1. Mo. Rep. 134. Brown v Henderson - 4 Mo R. 1-3 Burton v Sweany - Ib: 37-8. Mitchell v Gregg - 9. Conn: R. 141. Watson v Watson - 12. Wend R. 96 16. Wend: 562. Earl v Camp.
But even in cases where a sheriff might be liable for an abuse of his powers, still Trespass will not lay agst him for a wrong done under regular process -
9. Conn: R. Supra - 10 Mo R. 151. Ivy v Bernhartt.

If the Exon: were indeed irregular, by the Clerk mis taking the name Carter, for the true pltff: it was Higdon's business to move to quash it, for that irregularity (and then the judgt Pltff: might have his counter motion, to amend it) He could not take advantage of the irregularity in a collateral way, even against a private person, not a party to that record — Much less a sheriff.

9 Mo R. 722. Reed v Austin — Ib: 784. Callahan v Griswold — and see 8. Mo R. Hill v Paul

for deft Gamble & Baty

John B. Higdon
v
Saml Conway

= Deft Mint
Gamble & Baty

John B Higdon
vs
Samuel Conway

Error to St Louis Circuit Court.

Brief of Plaintiff in Error.

The only question in this case is. will an execution confessedly without any judgment to support it, justify an officer who seizes and sells property in virtue of it.-

I concede the authorities go to the extent of saying, that if an execution is found on its face, and the Court be a competent Court to try the cause, a simple exhibition of his writ, without any thing offered to rebut it on the other side is conclusive for his defence. But there is no case on record which is known to me, or within the reach of my investigation, which will go so far as to justify an officer in taking property, under a writ, that is an absolute nullity.-

In the case now at Bar, the so called writ was a mere blank piece of paper. That it had the form of a writ, and was called by that name is hardly sufficient to make it a writ. This so called writ recites a falsehood. it recites or undertakes to recite, a judgment which never was rendered, and which has no existence except in the imagination of the man who wrote it. This was admitted at the trial and the Bill of Exceptions shows the fact to be so. Can it be, that a paper confessedly without any legal existence, utterly and absolutely void, can it be that such a paper will warrant the seizure and sale of property of a man against whom no judgment has been rendered, who has never

any notice, who was never called into Court to answer the case, and no means of de=fence against it whatever? Can this be law? Can there be any such sanctity attaching to the mere forms of the law as entirely to subvert its substantial aims and ends?.- In law names are not things It could be said with as much propriety, that a child came into the world without any mother, as to say that an execution can exist for any purpose, that has no judgment to support it. The very idea is absurd.-

I am told by the learned Counsel on the other side, that public policy requires that ministerial officers shall be sustained, in all cases, where they act in good faith and where the precept is fair, and regular on its face.-; that Sheriffs are not expected to be lawyers, and are not required to ex=amine and see whether any judgment in the case has been rendered? But does public policy require, that the substance of the law shall be sacrificed to its mere shadow? Does it require, that a mans property shall be seized, and sold at public auction, with=out "due course of law."? without a summons, without a judgment? Does it require that public officers shall be sustained at the ex=pense of the dearest rights of the people at large? Is government, and is law only constituted for public officers, are there no rights but their rights?

If the doctrine contended for by the

Counsel for defendant in Error be found, behold the power of a Clerk! By his fiat, any man's property at any moment may be taken, without a single minutes warning, and in a few days put up at public outcry and sold for a song! And the man who executes his decrees, is justified in the eyes of the law, because the forms of the law are preserved, and the whole is done, under the color of the law, and under the shadow of her sacred name! Can the imagination of men picture the mischief, the confusion, the foul and monstrous outrages, that would follow in the train of such a doctrine as this? If it be true, the Constitution is no shield, Courts of Justice are useless inventions got up like a Theatre, or a Puppet show to amuse the people, and the Clerk is the centre and source of power. - If it be true, it is not the spirit of the law that arms the officer in his proceedings, and sanctifies his acts, but the orders of a man, himself a creature of the law. - the mere pen and ink of the Court, who from oversight, whim caprice or design may take it into his head to issue mandates which the law itself pronounces null and void. In this particular case no evil design is pretended. I am sure there was none. But if the doctrine be sound what on earth is to prevent a Clerk from exercising the power which it confers to the worst purposes? Absolutely nothing.

I submit therefore, that the Circuit Judge erred in ruling such a defence good, and in refusing a new trial in the case. No

authorities are cited, because no such cases as this ever occurred in the world before. All which is respectfully submitted.

Chas. C. Carroll
Atty for Plaintiff in Error

20.

John B. Higdon
vs
Samuel Conway

Brief of Plaintiff in Error

John B. Nigdon
vs.
Samuel Conway

Error from the St Louis circuit court

John B Nigdon brought his action of trespass in the St Louis circuit court against Samuel Conway, late sheriff of St Louis county, for the taking of a slave. Conway in taking the slave acted under a fi fa in favor of Carter et al vs Nigdon and one Charles Ely. The slave was the property of Nigdon. The fi fa is regular on its face.

At the trial, Nigdon, in order to defeat the sheriffs defence, set up under the writ, offered to prove that there was no judgment to warrant the issuing of the execution — that is, that the clerk of the court from which the writ emanated, had mistaken the name of Carter for the true name of the plaintiff in the judgment. The sheriff objected; insisting that his defence consisted in the execution, and not the judgment; and the court sustained the objection and ruled out all such evidence. Nigdon took a nonsuit, and moved to set it aside; which motion was overruled, and he brings the case here by writ of error.

The only question presented for our consideration, arises on the action of the circuit court in excluding the testimony, offered by the plaintiff, to prove that there was no such judgment of record, in the circuit court, as that set out in the writ. We had supposed, that the question here presented, was well settled, by the numerous decisions of the courts of this country, on that subject. The several cases referred to by the defendants counsel, tend manifestly to establish the principle that a sheriff is not charged with the duty of going behind a writ in his hands, regular on its face, to ascertain whether

the court rendered its judgment in accordance with the law and the evidence; or whether the clerk entered the judgment in conformity to the decision of the court; or whether the execution on the judgment, followed the judgment thus entered; but it is sufficient for him, that the execution is regular on its face, and emanates from a court having jurisdiction of the subject. To require more than this of a sheriff, would be to require him to supervise, at his peril, the judgments of the court and the acts of the clerk; a power, which the wisdom of the law certainly never intended to vest him with.

There is a case in 1 Cowen 413, more directly in point. The judgment was upon a bond and warrant of Attorney; and, in issuing the fi fa the attorney for the plaintiff had, by mistake, omitted the name of Addison Porter, and it was by a like mistake, tested at the City of Utica, instead of the Academy of Utica. The fi fa had been levied, and trespass brought by the defendant, on the ground that such levy was under an execution irregular and void. The court, on motion, permitted the writ to be amended & so defeated the action of trespass.

Another case is reported in 1 Monroe 7 of this character: A judgment was obtained by the plaintiffs in error, on which a fi fa issued, and on its return, a venditioni exponas, which was returned with a delivery bond forfeited. On this bond, a fi fa issued. The venditioni, bond, and subsequent execution, were all quashed, on motion of the defendants in error, because the ~~defend~~ plaintiffs were misnamed in the venditioni. In every other part of the record, as well as the delivery bond, the plaintiffs are rightly named, the "Presidents, Directors and Company of the Bank of Kentucky." In the venditioni, they are styled the "President, Directors and Company of the Centre Bank of Kentucky." A motion was made and overruled, before the motion to

quash was decided, to strike the word "Centre", out of the venditioni. The Court held that it was error in the Circuit Court to quash the writ; that the motion to amend should have been sustained.

This case should never have found its way into the Courts of the Country. The party bringing the action, against the Sheriff had a judgment against him, upon which execution was issued, and the Sheriff, ignorant of the error committed by the clerk in issuing the writ, levied it upon the debtors property, when he satisfied the writ by the payment of the money to the Sheriff, who doubtless paid over the money to the ~~right~~ plaintiff in the judgment, by which means the judgment is satisfied; and then the defendant, turns round, and brings his action against the ~~officer~~ Sheriff, for a clerical error committed by the Clerk of the Court. What injury has he sustained at the hands of the Sheriff; certainly none. If a right of action existed against any one, it was against the Clerk who committed the error; but pecuniarily the party sustained no injury. His feelings may have been somewhat hurt by having his property executed; but for this the Courts of the Country can afford him no redress. Had there however been any apprehension, that the money would not, when collected, been properly applied to the payment of the judgment, the defendants in the writ might have sought the remedy afforded by the statute, and had the writ quashed.

For the foregoing reasons we are of opinion that the judgment of the Circuit Court ought to be affirmed and the other judges concurring the judgment is affirmed

L. A. McBride

Migdon

vs

Conway

Opinion

McBride

Filed Jany 10. 1849
H. L. Boon clk.

John B Higdon vs Samuel Conway.

In the Supreme Court – On Writ of error to the St. Louis Circuit Court.

Judgment affirmed at Higdon's costs.

Fee Bill

H. L. Boon's costs.

Writ of error 1.50. Docketing case 50. app 20	2.20
Errors & Joinder 90. arg't & subm's 50	1.40
Trial & Judg't 100. entering opinion filed 25	1.25
filing papers 40. order ex'on 25 . . .	.65
Certified judgment	.75
	$ 6.25

Attest,

H. L. Boon, clerk.

To. Louis. T. Labeaume Esq.
Sheriff of St. Louis County,
Missouri

Samuel Conway
vs Ty Fee Bill
John B. Higdon L

Clk Board of Delegates
11 com alley

Carroll, atty.

Paid

Costs.
H. L. Boon ... $ 6.25

Satisfied May 28 1849
Louis F Labeaume
Shff

To. St. Louis County.
24