Cook, Grove, vs. Callaway, Flanders April 1825 Montgomery County 91/22

April 1825
Flanders & Callaway
vs
Grove Cook & Co.
Removing Lumber

Grove Cook
vs
Flanders Callaway

In Error, in the Supreme Court
2nd Judicial Destrict

And the said Grove Cook comes here into the Supreme Court for the Second Judicial Destrict aforesaid, by his Attorney, and says that in the record & proceedings aforesaid & also in giving the Judgment aforesaid, there is manifest error in this, to wit, that by the record aforesaid it appears that the Judgment aforesaid in form aforesaid given was given for the said Flanders Callaway against the said Grove Cook, whereas by the law of the land the said Judgment ought to have been given for the said Grove Cook against the said Flanders Callaway. There is also Error in this, to wit, that the declaration or Complaint aforesaid & the matters therein contained are not sufficient in law for the said Flanders Callaway to have or maintain his aforesaid action thereof against the said Grove Cook. There is also error in this that the cause of action in the said Complaint or declaration mentioned does not appear to have been within the Jurisdiction of the Justice of the peace before whom the action aforesaid was brought. There is no venue laid in said declaration; The action is brought for Certain alledged Trespasses, & it does not appear that any

Trespass was committed by the said Grove Cook, nor is any Trespass alledged in said declaration. The action is brought for Cutting and Carrying away Certain timber & Trees, and it is not alledged in said declaration, how many Trees, of what value, or of what kind; And the said Grove Cook prays that the Judgment aforesaid, for the Errors aforesaid, and other errors in the record & proceedings aforesaid, may be reversed, annulled & altogether for naught held, and that he may be restored to all things which he hath lost by occasion of the said Judgment.

R. W. Wells
for pltff. in Error

Grove Cook
vs
Flanders Callaway
Assignment of Errors.

Filed 27th February 1825

State of Missouri } 2nd Judicial District
County of St. Charles } } The State of Missouri to the Judge of the Circuit Court of the County of Montgomery — — — — — — — — — — — — — — — — — — Greeting

Whereas, it hath been suggested to us, that in the record and proceedings, and also in the rendition of the judgment in a certain suit lately pending before you wherein Grove Cook impleaded with John Young was plaintiff and Flanders Callaway was defendant manifest Error hath Occurred; and we being willing that such errors if any there be should be corrected: Do Command You, that the records and proceedings of the said suit, you send certified as fully and amply, as the same now remain before you, to our Supreme Court of said State, to be held within and for the second Judicial District, at the Court House in the Town of St. Charles, on the fourth Monday in April next, so that our said Judges of our said Supreme Court, on inspecting the same may proceed to do therein that which to Law, doth appertain; And have You then there this writ —

Witness William Christy jr. Clerk of our said Supreme Court, with his Official seal affixed at St. Charles this fifth day of March, Eighteen hundred and twenty five, and of the Independence of Missouri the fifth —

Wm Christy Jr.

Grove Cook

vs Writ of Error

to Montgomery County

Flanders Callaway

Wells Atty

The papers required to be certified to the Supreme Court of the 2nd. Judicial district by the within writ are herewith sent up and Certified April 1st. 1825.

Jacob L. Sharp Clk

1

State of Missouri } Be it remembered that on the 12th
County of Montgomery } ss. day of February 1824 Flanders Calloway filed his de
-claration in Trespass against Grove Cook and John
Young with Hugh McDermed a Justice of the peace
of the County aforesaid and Township of Charette
as follows to wit. "12th February 1824"

"Flanders Calloway Complains } That Grove
"to Justice McDermed for this } Cook and Doctor
"John Young did in this present month or some short
"time previous thereto Commit a Trespass on his pro
"-perty to wit that the said Grove Cook did cut a
"Considerable quantity of valuable timber on his
"land and split the same into fence Rails and
"that the said Rails has been since removed off from
"his the said Callaways land by the said Grove Cook
"and perhaps others on to the land of the said
"Doctor John Young after the said Young and Cook
"aforesaid well knew and was notified that
"the timber aforesaid did belong to the said Calla
"-way and that the timber or rails aforesaid is and
"has been appropriated to the use of the said Doctor
"John Young to the damage of the said Flanders
"Calloway forty Dollars and therefore he sues.
(Signed)
Flanders Calloway"

Whereupon a Summons was Served by the said
Hugh McDermed in the words and figures following
to wit. "To the Constable of Charette Township in the
"County of Montgomery & State of Missouri Greeting
"Summons Doctor John Young and Grove Cook
"to appear before One Hugh McDermed a Justice
"of the peace for the Township aforesaid at any

"dwelling House on the first Saturday in March
"next between the hours of ten in the forenoon and
"three of the Clock in the afternoon of said day
"to answer Flanders Calloway in an action of
"trespass and damage as doth appear from a de
"=claration filed with me, Given under my hand
"this 12th. day of February 1824—

(Signed) Hugh McDermed J.P."

On which Summons the return of the Constable appears as follows to wit: "Executed the within Summons on the within named Doctor John Young and "Grove Cook on the 21st. day of February 1824 by "reading the same to them in Charrette Township Mont "=gomery County. Signed William James D.C."

And on the return day of said Summons the following proceedings were had before the Justice which appears from the transcript of his Docket, to wit.

"An action of Trespass brought to "recover Damage Flanders Cal "=laway vs Grove Cook and Doctor "John Young—

6th. of March 1824 This day the Summons in this cause was returned

"Executed by the proper officer and the parties "all being present some by agency and some per "=sonally and the following Motions were made to "dismiss the action on the following grounds to wit "first that the Compltts declaration was informal and "insufficient in that it did not charge a trespass "against John Young and also in other respect second "that the Summons did not agree with the declara "tion and third that a joint action of trespass could "not be maintained. And fourth the defendant John

"Young moved to be tried seperate all of which motions
"was over ruled by the Justice without assigning
"his reasons - And thereupon Came a Jury to wit
" James Pennington, John Carter, Micajah Ousley, Ben
"-jamin Porter, William Hancock Reuben Rider
"six good and lawful men of this Township who
"after being duly sworn to try the matters in dispute
"between the said plaintiff and defendants retur
"ned their verdict in the following words, "we of
"the Jury find the defendants not guilty." Thereupon
"it is the opinion of the Justice that the Compt. Flanders
"Callaway take nothing for his suit and that
"the Defendants have Judgment for the Costs about
"the suit in their behalf Expended and that they have
"Execution therefor according to Law.
" Costs of suit Justices fees $2.86¾ cts Const. fees $4.10 cts
" Jurors fees James Pennington 50 cts. John Carter 49 cts.
" Micajah Ousley 31 cts. Benjamin Porter 49 William
" Hancock $1.45 cts. Reuben Rider 31 cts. Total Jurors
" fees $3-55 cts. Witnesses allowance Charles M. Clain $1.45 cts
" Walter L. James 97 cts. Stephen Pettus 67 cts. John Pettus 67 cts
" Woodberry Massee $1.15 cts. total Witnesses $4.91 cts. on
" which Judgment a new trial was applied for by
" the Compt.s agent John Jones on the eighth instant
" and granted upon Condition that the Cost of suit
" should await the final trial which is to take
" place at the house of the Justice on the first sa
"-tuday in April next on the defts. have proper
" notice of the same.

" 3 of April 1824 on the application of Doctor
" John Young and Grove Cook for a rule to take the

"deposition of Woodberry Draper who they say is about
"to leave this State before the next trial day of an
"action between them and Flanders Callaway to be read
"as evidence in the suit now depending before me
"wherein the said Flanders Callaway is Compltt in
"an action of Trespass and John Young and Grove
"Cook is dependents It is ordered that the said Doctor
"John Young and Grove Cook have leave to take the
"deposition of the said Wood berry Draper in the
"town of St. Charles in the County of St. Charles on the
"seventeath day of this present Month between the
"hours of ten in the forenoon and three of the Clock
"in the afternoon of said day before Rudolph Peck
"Esquire to be read as evidence in the above
"mentioned action on due notice being given
"to the Compltt Flanders Callaway of the time and
"place of taking the same And that the said De
"fendants have a copy of this order."

"3rd April 1824 an action of Trespass
"brought to recover damage Flanders
"Callaway vs Grove Cook & Doctor
"John Young ——— } On this day the new trial granted the eighth of March last Came to Issue

"And the defendants moved that the Compltt had no
"right to his new trial on the ground of the in
"sufficiency of his notice for the new trial which
"motion being Considered and sustained by
"the Justice the Compltt is therefore Considered to be
"barred of his right to a new trial as aforesaid
"and it is the opinion of the Justice that the former
"Judgment of the 8th of March last be affirmed
"and the defendants immediately prayed Execution

"for the costs, and from which Judgment affirmed
"as aforesaid the Complt. by his agent John Jones
"applied for a new trial on the grounds because
"he said as yet he the said Complt. had not had
"any new trial and could not be barred by the
"Statute and also as no execution had yet issued
"and for other reasons filed with the Justice which
"motion being sustained by the Justice a new tri
"=al is therefore granted to the Complt. by his paying
"the costs of the intended new trial in which he
"was barred as aforesaid the costs of the trial
"of the sixth of March to await the final Issue
"this new trial being applied for by the Complainants
"agent in term time, and in the presence of the par
"=ties and set for hearing at the house of the Justice
"on the first Saturday of May next Costs adjudged
"to be paid by the Complt. Callaway Justices fees $1.85 cts
"Const. fees $3.60 Witness allowance Charles McClain $1.45 cts
"Andrew Coghran $1.21 cts Walter T. James 97 cts. Stephen
"Pitters 67 cts. John Pitters 67 cts. Woodberry Massey $1.15 An
"=drew McWilliams $1.15 total costs $12.72 3/4 this Cost is
"settled by the Complt. agent John Jones.

"On action of trespass brought to
"recover damage Flanders Callaway
"as Doctor John Young & Grove Cook
} 1 of May 1824 On this day the new

"trial granted in this case on the third day of
"April last came to Issue and the defendants by
"their agents moved to dismiss the action on the seve
"ral grounds following to wit first because of the
"insufficiency of the notice given them of the
"time and place of this present new trial and
"after due consideration of the said Motion the

"same was over ruled by the Justice for Reasons
"because this new trial which was granted on the
"third of April last was applied for in due time
"and granted by the Justice and the time and
"place of trial then and there set in the parties
"presence as appears of Record which in the
"opinion of the Justice supercedes the necessity
"of any further notice – A motion was then made
"by the defendants agent to dismiss the action be
"cause the Original Summons in this case was
"not Readed with the word Mipouni which Mo
"=tion was over ruled by the Justice – The defendants
"by their agent William Owens then moved to dismiss
"the action because the Jurors who were summon
"ed for the trayal of the action were named in
"the Venire Facias Issued by the Justice to authorize
"the Constable of the Township to summons the
"said Jury to the time and place of trayal of
"the said action which motion was overruled
"by the Justice as a motion made in the face of
"a statute Contrary thereto. Whereupon a call was
"made for the Jury named in the venire and
"some of them failed to appear and others had
"lawful excuses to exempt them from serving
"for which cause a Jury of twelve men could
"not be then and there had for the trial of the said
"action, Whereupon one of the Defendants Grove
"Cook John Young not being then present agreed
"with the Complt.s agent to a Jury of six men then
"and there present for the trial of the said action
"of the following names to wit John Trimble, John,

"Marshal, David Howard, John Butler, James
"Hutton, Jesse Summers who after being duly sworn
"to try the matters in dispute between the said plaintiff
"and Defendants returned their verdict in the
"following words "We of the Jury find for the com
"=plaintiff the sum of six Dollars in Damages
"It is therefore opinion of the Justice that the com
"plaintiff Flanders Calloway have Judgment for
"the above sum of six Dollars and also his costs
"about the suit in his behalf expended, except
"the costs of the mis trial on the third of April last
"that has been adjudged for him the said Flan
"=ders Calloway to pay as appears of record
"and that he have Execution therefor accor
"=ding to law, fees as follows Justices fees $2.39 cts.
"Const. fees $3.40 Jurors fees John Trimble 67 cts. John
"Marshal 49 cts. David Howard 55 cts. John Butler
"67 cts. James Hutton 43 cents Jesse Summers 37 cts. total
"Jury costs $3.18 cts. Witness allowance John Petters 55 cts.
"Stephen Petters 55 cts. Woodberry Rapier 25 cts. Andrew
"Cochran $1.21 cts Martin T. James 85 cents James
"Barnes $1.15 cts. Frazer Ward $1.15 cts. Total Witness
"allowance $5.71 cts."

"Charrette Township County of Montgomery
"and State of Missouri 7th. of July 1844 I Hugh
"McDermed a Justice of the peace for the
"Township aforesaid do certify that the above
"and foregoing is a true transcript of my
"records. (Signed) Hugh McDermed J.P.

And on the twenty fourth day of May in the year eighteen hundred & twenty four the said John Young and Grove Cook made application to the Clerk of the Circuit Court in & for the aforesaid County of Montgomery for a writ of Certiorari directed to the said Hugh McDermed returnable to the July Term of the Circuit Court aforesaid requiring him to send up the Record and proceedings had before him in the aforesaid action between Flandus Callaway and Grove Cook and John Young which said writ issued as follows to wit

"County of Montgomery ss.

"The State of Missouri

"To Hugh McDermed Esqr a "Justice of the peace within & for the County of "Montgomery Greeting - Whereas lately before "you Flandus Callaway obtained a Judgment "against John Young & Grove Cook for the sum "of six Dollars or thereabout and we being "willing for certain reasons, that the proceedings "had before you in that cause should be "certified to us do command you that the "whole proceedings had before you in that "plaint Consisting of the original precept "the Complaint a copy of the Judgment and "Execution if any be issued you send certifi"=ed in as full a manner as the same now "remain before you unto our Circuit Court to "be holden at the Court house in Lewiston on the "second Monday in July next to the end that our

"said Court may proceed to do the parties afore
"said what of right ought to be done"

Witness Jacob L. Sharp Clerk of our said Court at Lewiston this twenty fourth day of May in the year of Our Lord one thousand eight hundred and twenty four. (Signed)

Jacob L. Sharp Clk.

And at the July Term of the Circuit Court aforesaid in the year eighteen hundred and twenty four being the return Term of the aforesaid Writ of Cu=tiorari The Justice returned said writ with the papers & records therein required to be certified And the following proceedings were had in the said Court at the said July Term 1824 in the aforesaid Cause to wit.

"John Young & Grove Cook } Assignment of
vs
" Flandus Callaway } Errors filed

" Same
vs } on Cutiorari
" Same

"The said John Young and Grove
"Cook by their Attorney this day filed in Count
"reasons for setting aside and reversing the Judg=
"=ment given by the Justice of the peace in this
"behalf And the parties being heard by Counsel
"and said reasons being duly Considered and
"understood it is adjudged by the Court that the Judg=
"=ment of the Justice of the peace aforesaid is irre=
"=gular and that it be reversed, annulled, set aside
"and taken for nought And that the said John Young
"and Grove Cook recover against the said Flan=
"=dus Callaway their Costs about their Cutiorari in
"this behalf expended And that they have thereof

" Execution, And it further appearing to the satisfac
" = tion of the Court that there is no cause of Complaint
" against the said John Young it is therefore Conside
" red and adjudged by the Court that the said John
" Young go thereof without day and that the said
" John Young recover his costs by him expended
" in and about his defence before the Justice of the
" peace in that behalf ~~expended~~ and that he have
" thereof his Execution And that there be a trial De no
" = vo between the said Calloway and said Cook.

" Glandus Calloway
" Grove Cook } Trial De no vo.

" This day Came as well the
" said Glandus Calloway by his Attorney as the said
" Grove Cook by his Attorney And neither party requiring
" a Jury the Court proceeded to enquire into the
" facts And the said parties being heard by their
" Attorneys It is Considered by the Court that the
" said Grove Cook is guilty of the trespass in the
" plaintiffs Declaration mentioned and assess the
" plaintiffs Damages by reason thereof to the sum
" of two Dollars and fifty Cents; Whereupon it is
" considered by the Court that the plaintiff re
" cover against the defendant the said sum
" of two Dollars and fifty Cents his Damages a
" = foresaid in form aforesaid by the Court ad
" = judged And his Costs about his suit before the
" Justice of the peace aforesaid in that behalf
" Expended and that he have thereof his Execution.

" Same
" Same } On motion of the Defendant by his Atto
" = rney for reasons stated to Arrest the Judge
" = ment, the same being heard and due ~~consi~~

"consideration being thereon had It is considered
"by the Court that the said reasons are insufficient
"to arrest the Judgment and that the Motion be
"over ruled. —

"To which said Judgments of the Court the
said Grove Cook by his attorney filed a bill
of Exceptions as follows to wit. —

"Blandus Calloway } Montgomery Circuit
"vs } Court July Term 1824
"Grove Cook Impleaded } Certiorari to Justice McDermid
"with John Young } }

"Be it remembered that when this Cause
"was transmitted by the Justice in Compliance
"with the Certiorari into this Court the said Grove
"Cook moved the Court to set aside the judgment
"of the Justice And assigned the following reasons
"therefor" "The said Cook and Young come and
"move the Court to set aside the proceedings had
"before said Justice for the following reasons to wit
"1st. Because it is stated in the plaintiffs Complaint
"that said Cook and Young committed a trespass
"on the property of the plaintiff to wit that Cook
"did Cut a considerable quantity of timber
"on plaintiffs land and split the same into fence
"rails, that said rails were afterwards hauled from
"the land of the said Calloway by said Cook &
"others, without Charging young of having committed
"any trespass whatever 2nd because the Justice would
"not try said Young seperately after requesting to be
"tried seperately in said action 3rd because the said
"Justice had no right to grant a new trial in said
"cause - such new trial was erroneous. 4th because
"said Calloway did not give said defendants notice

"of the time and place of said new trial and that
"the said Justice granted said new trial after he
"had decided that the plaintiff had not given due
"notice of said trial. 5th. because the Justice in his
"venire directed the Constable what Jurors to summon
"by name 6th. because the Original Summons of the
"Justice did not run in the name of the State of Mission
"=ri as it ought to have done. 7th. Because the trespass
"is not laid to have been committed in the County of
"Montgomery where suit was brought. 8th the Com
"=plaint & the Injury Complained of are insufficient
"the Cause of action is too indefinately & defectively
"stated." — "The Court set aside the proceedings as to
"said Cook & ordered a trial of the Cause between
"said Callaway & Cook de novo — To this new tri
"=al the said Cook objected — 1st because there
"was no trespass alledged to have been Committed
"by said Cook in the said Callaways Complaint
"before the Justice — 2nd the said Complaint is in
"=sufficient, uncertain and defective — 3rd the
"Trespass or Cause of action is not alledged to
"have been Committed in the County of Montgomery
"or within the Jurisdiction of the said Justice
"4th. The Justice had no right to grant a new tri
"=al in this case — Which objections & causes
"assigned were over ruled by the Court & the Cause
"went on to trial De novo — And the Court sitting
"as a Jury (neither party requiring a Jury) found
"for the plaintiff against said Cook and assessed
"his damage to two Dollars & fifty cents — Thereupon
"the said Cook moved the Court in arrest of Judg
=ment

" And assigned the foregoing & last above mentioned
" reasons or causes (No 1st 2nd 3rd 4th) in this bill assigned
" for not proceeding with the trial denied as sufficient
" to arrest said judgment — Which Motion & causes were
" over ruled by the Court & a judgment pronounced
" in favour of said Calloway against said Cook
" All which Opinions & Judgments are accepted
" to by said Cook — which by the Court are allowed
" signed, sealed & made a part of the record in
" this cause —

(Signed)

N. B. Tucker Clk

State of Mississippi }
County of Montgomery } ss. I Jacob L. Sharp
Clerk of the Circuit Court within & for the County
aforesaid Certify the foregoing to be a correct
transcript of the record & proceeding in a
suit determined in our said Circuit Court
at the last July Term thereof wherein Flanders
Calloway was plaintiff and Grove Cook in
-pleaded with Seth Young were defendants — I
do further Certify that said transcript is made
out in obedience to a Writ of Error issued from
the Clerk of the Supreme Court of the 2nd Judicial
district dated 17th. March 1825 which
writ is herewith sent up. Witness my
hand with my seal of office affixed
at Lewiston this 18th. day of April
A. D. 1825.

Jacob L. Sharp Clk

Oct 1825

Flanders (10)
Callaway
vs
Grove Cook & C

Transcript

Clerks fees
Transcript $3.03
Certificate — 1.50
$3.53

[illegible]

Filed 6th April 1825

State of Missouri

In the Supreme Court of said State for the Second Judicial District

~~The~~ State of Missouri
vs
Grove Cook

On indictment for an assault and Battery —

Take notice that I have sued out on the part of the plaintiff in the above suit a writ of Error in the above case returnable to the next term of the said Supreme Court on the fourth monday of April in the year of eighteen hundred and twenty five — Dated April 11th 1825

Rufus Easton
Atty General

To the abovenamed defendant and Robert W. Wells Esqr his attorney of Record

Served the above notice on Robert W Wells in the Town of St Charles on the 15th of April 1825 by reading the same to him and giving him a Copy of the original

Henry L Mills Shff
By J. B. Read his Depy

Shffs fees 50cts

Supreme Court
April Term 1825
The State of Missouri
vs
Stone
Grove Cook

Filed 27th of April 1825

Cook
vs
Calloway } In Error

In this cause, having received notice of the writ of Error, I acknowledge the same, and join in Error and submit the same to the Court, Mr. Wells of Counsel for the plff. in Error, agreeing not to make an argument.

Flanders Calloway

Cook
v.
Calloway

25th October. 1825 —

Grove Cook
vs
Flandus Callaway

3

In Error

And the said Grove Cook the plaintiff in Error, comes here into the Supreme Court for the second Judicial District, by his attorney and says, that in the record & proceedings aforesaid and also in giving the judgment aforesaid, there is manifest Error, ~~that~~ this to wit, that the declaration or complaint, aforesaid and the matters therein contained are not sufficient in law for the said Flandus Callaway to have or maintain his aforesaid action thereof against him the said Grove Cook - There is also Error in this, to wit, that by the record aforesaid it appears, that the judgment aforesaid, in form aforesaid given, was given for the said Flandus Callaway against the said Grove Cook, whereas by the law of the land the said judgment ought to have been given for the said Grove Cook against the said Flandus Callaway. And the said Grove Cook prays that the judgment aforesaid, for the Errors aforesaid, and other errors in the record & proceedings aforesaid appearing, may be reversed, annulled and altogether for naught held, and that he may be restored to all things which he hath lost by occasion of the said judgment &c.

R. N. Wells. Atty for plff in Er.

Grove Coots 3 In
vs
Flanders Calloway } Error

Assignment of Errors.

filed 26th October 1825
Wm Christy Jr. C.S.C.

Groom Cook
vs
Flanders Callaway

On Writ of Error from the Judgment of the Circuit Court for the County of Montgomery.

This is an action of trespass commenced by the defendant in error against the plaintiff in error, before Hugh McDermid a Justice of the peace for the County of Montgomery. After various irregular proceedings, a Judgment was obtained before the Justice by the defendant error for the sum of six dollars. The cause was taken by Certiorari to the Circuit Court - the proceedings then set aside for irregularity, & Judgment rendered for the sum of two dollars & fifty cents, to reverse which, this Writ of error is prosecuted. The single question ~~presented~~ for the consideration of this court is, whether the circuit court erred in deciding upon the merits of the complaint made before the Justice of the peace instead of dismissing the suit.

The declaration or complaint presented by Callaway to the Justice, charges "that the said Groom Cook did cut a considerable quantity of valuable timber on his land" &c without setting out his land by metes & bounds, naming it, or shewing or averring in any way, that the land was situate in the County of Montgomery or within the Jurisdiction of the Justice. This was sustained in

order to give the Justice Jurisdiction, & the Circuit Court ought not to have tried the cause upon its merits de novo. Let the Judgment be therefore reversed with costs.

Mathias McGirk
George Tompkins
Rwash
Judges

Cook 20
Opinion
Callaway

Filed 27th October 1825
Wm Christy Jr. C. S. C.

Grove Cook } Statement of the points relyed
Co } upon for reversing the judgment
Flanders Callaway } in this Cause. &c. &c.

This was an action brought before a Justice of the peace for certain alledged Trespasses upon land, in cutting & carrying away timber & trees. The action was brought by Flanders Callaway against Grove Cook & John Young & judgment rendered against them both before the Justice. The defendants brought up the Cause by a writ of Certiorari, to the Circuit Court of Montgomery County, where Young was acquitted & judgment rendered against Cook, and afterwards a writ of Error was brought by Cook to bring the cause into this Court. And makes the following points, viz

1st It does not appear from the complaint, that the Trespass was committed within the jurisdiction of the Justice, which we hold to be necessary all inferior or limited Jurisdictions must show expressly that the cause was within their jurisdictions, or it would not appear they had any right to meddle with the Matter. Powers vs. The People 4 Johns. Rep. 292. 1 Washington's Rep. 81. Thornton vs Smith. 2 Bac. Abrt. 105, Title Courts, D. §. 4. And they cannot enlarge their jurisdiction by implication, if their proceedings are not according to the course of the common law. 1 Johns. Ca. 20

2nd But it does not appear from the declaration to have been a Trespass; nothing appearing which shews that any force or violence was used, which is necessary. Com. dig. Pleader, 3. M. 7. 1 Chitty 375: The tem-

but it may have been taken by license

3d — It does not sufficiently appear that the land was Callaways — It says, his land; having reference to the antecedent, Cook.

4th It does not appear how much Timber was taken, nor of what kind, nor of what value — this is necessary, Com. dig. Pleader. C. 21. & particularly Phillips vs Stile, 1 Day's Rep. 315 — because

1st The defendant may wish to justify; & how can he do it?

2nd There is a necessity for some rule of damages.

3rd — The property becomes vested in the defendant by the taking & the recovery for it by the plaintiff & How must then & what was it the plaintiff sued for? & How could the defendant bring trover, or other action for the property then vested in him?

4th The defendant may wish to plead in bar of another action, & cannot do so when the matter is so defectively alledged.

The hold that although form may not be regarded in proceedings before justices, yet Substance must be regarded. and the matters above alleged are substance, and were good upon the motion to dismiss before the justice (in nature of a demurrer) & upon the motion in arrest of judgment before the Circuit Court.

R. N. Bells
for plff. in Error.

Cook vs Callaway

Statement of points for Supreme Court

Rufus Easton appellant
vs
George Collier, appellee

Appeal from W Charles Circuit Court

And now at this day came again the parties aforesaid by their respective attorneys whereupon as well the record and proceedings aforesaid, and the judgment thereupon given as the matters above ~~assigned~~ for error assigned, being seen and heard and by the court here fully understood, and mature deliberation being thereupon had for that it appears to the court here, that in the rendition of the judgment aforesaid there is manifest error in this that the circuit Court, upon the & the verdict in form aforesaid found for the said appellee, rendered judgment for him the said appellee, whereas by the by the law of the land the said court, notwithstanding the said verdict ought to have rendered judgment in favour of the said appellant for the debt in the declaration mentioned, together with his damages occasioned by the detention of said debt with costs, Therefore it is considered by the court that the judgment aforesaid in form aforesaid, rendered, for the error aforesaid and others in the record and proceedings aforesaid appearing, be reversed annulled and altogether for nought held Vexatious; and the court proceeding to render such judgment as the said Circuit court ought to have rendered in this behalf, It is further considered that the said Rufus Easton do recover against the said George

Collier the sum of 1803 dollars 85 cents
for his debt aforesaid ~~together with~~ and the
further sum of 613 dollars, & thirty cents
for his damages by him sustained by reason
the delaeney said debt, together with his
costs & charges by him ~~laid out & expended~~
~~as well in the prosecution of his said suit as~~ in the said circuit Court
~~in the prosecu~~ as well about his said suit in
the said circuit court as about his appeal
aforesaid laid out & expended — and that
he have there of his execution.

Easton } Judgt.
vs }
Collier }

Agreed form —

October Term 1826.
in the Supreme
Court — Vind. L.
D.

Supreme Court of the Second Judicial District

State } In error
vs
Grove Cook } State of case
writ of error not yet returned

It is an Indictment for an assault and battery commited in the County of Montgomery. The Caption of the Indictment states as follows - "State of Missouri ~~of Missouri~~ In the Circuit Court of Montgomery County of the term of &c." "Montgomery County ss." is stated in the margin of the Indictment, no other County is named in the whole record and the ~~whole~~ offence is laid to have been commited at "the County aforesaid" and for this cause the Indictment was quashed and so stated in the bill of exceptions to the opinion of the Court

Points relied on

I rely upon the case of Rex vs Kelderby 1 Round, 308 and Serjt Williams Note 1 and Authorities there cited that the Indictment is good

Rufus Easton
Atty General

State —
v
G. Cook —