Glascock, Stephen; v. Rand, William J 1851 Marion 181/2

Draper, Zachariah G. Ballthrope, Lewis W.;

(13) Shields, George W.

Debt

Aff'd Cir awarded R balance of $1250 note plus 212 damages $1462

Contract; Land

(10) 8

Oct. T. 1850

Stephen Glascock et al,

v

William J. Rand

App. Marion Cir. Ct.

Filed Octo. 4. 1850
W. B. Starke, Clerk

[4]

Appeal from Marion Circuit Court

5758

Stephen Glascock et al appellants
vs
William L. Rand appellee
} Debt

Pratt & Reid attys for appts

Glover & Campbell
Thos L. Anderson
S. Buckner
} attys for appee

page 1. William J. Rand vs Stephen Glascock. et al.

State of Missouri } In the Circuit Court
County of Marion ss. }

Be it Remembered that heretofore towit on the 13th day of June 1849 there was filed in the office of the Clerk of our said Court a Petition in debt in the words and figures following towit =

State of Missouri } Marion Circuit Court
County of Marion } August Term 1849.

Petition

To the Marion Circuit Court.

William J. Rand plaintiff States that he is the legal owner of a note against the defendants Stephen Glascock, Zachariah G. Draper alias Z. G. Draper, Lewis W. Bullthrope alias L. W. Bullthrop and George W. Shields alias G. W. Shields to the following effect =

$1250. Hannibal May 22nd 1847.

Two years after date for value Recd we or either of us promise to pay William J. Rand agent or order twelve hundred and fifty Dollars with six per cent interest on the same per annum from date till paid negotiable and payable without defalca= =tion or discount. Witness our hands the day above written

Stephen Glascock
Z. G. Draper
Jameson Samuel
L. W. Bullthrope
G. W. Shields

Yet the debt Remains unpaid therefore he demands Judgment for his debt and damages for the detention thereof together with costs.

Stanton Buckner
Glover & Campbell
for Plffs

Filed June 13th 1849

Tho. E. Thompson. Clk

And on the said 13th day of June 1849 there was issued from the office of the Clerk of our said Court a writ of Summons in the words and figures following, to wit=

Writ. State of Missouri
County of Marion ss. } The State of Missouri—

To the Sheriff of Marion County Greeting= We command you to Summon Stephen Glascock Zachariah G. Draper alias Z. G. Draper, Lewis W. Ballthrope alias L. W. Ballthrope and George W. Shields alias G. W. Shields that they be and appear in our Circuit Court at the Court house in the town of Palmyra within and for said County on the first Monday in August next, then and there before the Judge of our said Court to an=swer William J. Rand of a plea of debt by Petition, of which the annexed foregoing writ=ing is a copy and this you shall in no wise omit and have you then there this writ— Witness my hand as Clerk of our said Court and the seal thereof— Done at office in Palmyra at the County aforesaid on the 13th day of June A.D. 1849.

Tho. E. Thompson. Clerk

(On which said writ is the following return)

Shffs Return. Executed the within Summons and declaration by leaving a copy of the same with a white member of the family of the within named Lewis W. Balthrope the 16th day of July A.D. 1849 ~~and~~ by ~~offering to~~ reading the same to the within named

3. Stephen Glascock 22d day of June A.D. 1849 and by offering to read the same to the within named Zachariah G. Draper & George W. Shields 22d day of June A.D. 1849. all done in Marion County Missouri the days and dates above written

Shffs fee $4.00 } B. B. King. Shff. Marion County Missouri
By his Deputy D. F. Jackson

And afterwards towit on the 20th day of November 1849 at a Circuit Court continued and held at the Court house in the town of Palmyra being during the August adjourned term 1849 of the Circuit Court for Marion County in the State of Missouri before the Honorable Cary Wells judge of said Court the following amongst other proceedings were had towit.

William J. Rand Plff
vs } Pet in debt.
Stephen Glascock, et al Deftts

At this day comes the defendants by their attorney and file their plea of the general issue herein-

(Which said plea is in the words and figures following)

Stephen Glascock. et al
Defts } Marion Cir. Court
ads
Plea Wm. J. Rand

Defts Glascock, Draper. Shields & Balthrope come and defend the demand of the plaintiff

Pratt & Reed
Attys for Defts

Filed Nov. 20th 1849
Tho. E. Thompson. clk

And afterwards towit on the 8th day of December 1849 at the Court house in the town of Palmyra being

the said August adjourned term 1849 of said Circuit Court the following amongst other proceedings were had. towit= (7-225) (6)

William J. Rand Pltff
vs
Stephen Glascock, Zachariah G. Draper, Lewis W. Balthrope and George W. Shields Defts. } Pet in Debt.

Cont^d. at Defts costs

At this day come the parties by their attornies and thereupon on the affidavit of Stephen Glascock this cause is continued till the next term of this court at the cost of the said defendants-

And afterwards towit on the 19th day of March 1850 at a Circuit Court continued and held at the Court house in the town of Palmyra being during the March term 1850 of the Circuit Court for Marion County in the State of Missouri before the Honorable Carty Wells Judge of said Court the following amongst other proceedings were had, towit= (7-228)

William J. Rand Pltff
vs
Stephen Glascock, etal Defts. } Pet in debt-

At this day comes the de=fendant Stephen Glascock and files his affida=vit for a continuance herein.

And afterwards towit on the 23rd day of March 1850 at the Court house in the town of Palmyra during said March term 1850 of said Circuit Court the following amongst other proceedings were had, towit= (7-308)

William J. Rand Pltff
vs } Pet in debt

5. Stephen Glascock, Zachariah G. Draper
Lewis N. Bulthrope and George N. Shields } Defts.

~~Judgt.~~

Mot. for continuance overruled.

At this day come the parties by their attornies and thereupon the defendants motion for a continuance herein being seen and con= =sidered is overruled by the court and neither party requiring a jury this cause is submitted to the court sitting as a jury upon the issue to the defendants plea herein, and thereupon the court sitting as a jury finds the issue aforesaid in favor of the plaintiff and that the defendants are in= =debted to the plaintiff in the sum of twelve hundred and fifty Dollars the amount of the note herein and that the plaintiff has sustained damages by reason of the detention of said debt to the sum of two hundred and twelve Dollars and fifty cents - It is therefore considered by the

Judgt.

court that the said plaintiff do have and re= =cover against the said defendants the said sum of twelve hundred and fifty Dollars for his debt aforesaid as also the further sum of two hundred and twelve Dollars and fifty cents for his damages for the detention of said debt together with his costs about his suit herein expended and that he may have thereof his writ of execution -

Mot. for new trial overruled

and thereupon the said defendants file their motion to set aside the verdict and judgment and grant a new trial herein which motion being seen is overruled by the court and there= =upon the said defendant Stephen Glascock makes his affidavit and prays an appeal to the Supreme Court of the State of Missouri and files his bond in the penalty of two thousand dollars with Abraham Curts and Theophilus Stone as

6

Appeal bond approved

Appeal granted

securities which said bond being seen is approved by the court and an appeal granted to the Su=
=preme Court of the State of Missouri - and the Clerk of this court is ordered to make out a full and complete transcript of the record and pro=
=ceedings herein as had in this court in rela=
=tion to this cause, together with all the original papers filed in this cause and properly forming a part of the record thereof and that he transmit the same under the seal of this court to the Clerk of the said Supreme Court for the said State of Missouri to the end that this cause may be therein finally determined. and thereupon the defendants file their bill of exceptions herein which is received signed and sealed by the court and made part of the record herein --

(Which said affidavit for an appeal is in the words and figures following to wit)

Copy aff't. for Appeal

Wm. J. Rand
vs
Stephen Glascock et al

Marion Cir. Court
March term 1850

Stephen Glascock prays an appeal in this cause and states that this appeal is not made for vexation or delay but because that the affiant believes that he is aggrieved by the judgment of the court.

Subscribed and sworn to before me this 23rd March 1850.

Stephen Glascock

Tho. E. Thompson. clk

Which said bill of exceptions is in the words and figures following to wit=

William J. Rand

Marion Cir. Court

7

vs

Stephen Glascock. etal } March Term A.D. 1850.

Bill of Exceptions

Be it Remembered that on this 23rd day of March 1850 this cause coming on to be heard defendant moved for a continuance upon the following affidavit-

Wm. J. Reid
vs
Stephen Glascock } Marion Circuit Court-

Copy of aff't. for continuance.

Stephen Glascock states that the above note was given in conjunction with three others in part consideration of the interest of Brigham' heirs in land and lots in Hannibal for which interest he gave 1500 dollars in cash and four notes for 1250 dollars each- two of the notes he has paid- the legal title to the land and lots purchased is in the three heirs of Brigham- but one of whom was of age at the time of purchase as respondent has been informed and believes- deponent is anxious to obtain a title for said land that will place him out of further trouble as to that title- that deponent in February last wrote to William Brigham to Frankfort Kentucky if he was of age to send a deed of the property- deponent further expected to prove by the family record the ages of the children of William Brigham, but learned that Mrs. Brigham had removed from Virginia and learned from Mr. Fugua for the first time that she had the family record with her in Frankfort Ky. and that William was there, and deponent has had various letters written to ascertain as to the ages of the children, and by whom it could be legally proved, but has been unable

8 – to ascertain the testimony until he received a letter from Joel Richmond an attorney employed by deponent and E. G. Draper, the latter part of Febry, too late to obtain the testimony for this court. deponent says he wishes to prove that on the day of the deed signed by Lavinia V. Brooks to wit the 16th day of June A.D. 1847, she was not twenty one years of age and consequently not bound by it – Second that William A. Brigham if of age has made no deed, and that one third of the title remains in him – and that proof of the family record, now as deponent is informed in the possession of Mrs. Brigham will establish it – deponent has no doubt he will be able to prove the above facts by the next term of this court – that this application is not made for delay but that he obtain his rights, and obtain his deeds, before payment of the money

Subscribed and sworn to before me this the 18th day of March 1850 } Stephen Glascock

Thos. E. Thompson, clk

Marion Circuit Court

which motion was by the court overruled to which deft excepted and thereupon the cause was tried and a verdict for the plaintiff whereupon deft filed his motion for a new trial as follows

Copy mot for new trial

William J. Rand vs Stephen Glascock et al } Marion Cir. Court.

Deft moves the court to set aside verdict in this cause and grant

9-

him a new trial - Because the court erred in refusing to grant a continuance of the trial upon affidavit filed

Pratt & Redd

Attys for Defts.

to which opinion deft excepts and prays this his bill of exceptions be signed sealed and filed and made a part of the record

Carty Wells (Seal)

Filed 23rd March 1850.

Tho. E. Thompson. Clk

Costs -

	plffs costs #	cts	defts costs #	cts	Total costs #	cts
Barnabas B. King. Sheriff fees	4	20		10	4	30
Tho. E. Thompson. Clerk fees	3	50	4	15		
" " for this transcript & Certificate (Costs for transcript p.d by S. Glascock $2.70)			2	70	10	35
	7	70	6	95		
Fourteen Dollars and Sixty five cents	-	-	-	-	$14	65

State of Missouri } I Thomas E. Thompson Clerk of the
County of Marion ss. } Circuit Court in and for the County of Marion aforesaid certify that the foregoing pages contain a full true and complete transcript of the record and proceedings had in said Court in relation to the cause therein mentioned, together with all the papers filed in said cause and properly forming a part of the record thereof - as fully and completely as the same remains of record and on file in my said office - In witness whereof I hereto set my hand and affix the seal of said Court - Done at office at Palmyra in the County aforesaid this 20th day of June A. D. 1850.

Tho E Thompson Clk

Index.

INDEX.

[2]

Petition	page 1.
Writ.	" 2.
Sheriffs Return on writ.	" 2.
Defendants plea	" 3.
Continued at Defendants costs	" 4.
Motion for continuance overruled	" 5.
Judgment - for plaintiff	" 5.
Motion for new trial overruled	" 5.
Appeal bond approved	" 6.
Appeal Granted	" 6.
Copy of affidavit for appeal	" 6.
Bill of Exceptions	" 7.
Copy of affidavit for continuance	" 7.
Copy of Motion for New Trial	" 8.

Oct. T. 1850 11

William J. Rand

vs (13)

Stephen Glascock

apt

App. Marin Cir. Ct.

Filed 4. Octo. 1850

W. B. Starke, Clerk

14

Appeal

5758 William J. Rand vs Stephen Glascock } From Marion Circuit Court

Pratt & Reed attys for Glascock, appellant

Glenn & Campbell, Thos L. Anderson, Stanton Buckner } attys for Rand. appellee.

page 1 William J. Rand vs Stephen Glascock, et al.

State of Missouri } In the Circuit Court
County of Marion } ss

Be it Remembered that heretofore towit on the 13th day of June 1849 there was filed in the office of the Clerk of our said Court a Petition in debt in the words and figures following towit=

Petition State of Missouri } Marion Circuit Court
County of Marion } ss August Term A.D. 1849.

To the Marion Circuit Court.

William J. Rand plaintiff States that he is the legal owner of a note against the defendants Stephen Glascock, Zachariah G. Draper alias Z. G. Draper Lewis W. Ballthrope alias L. W. Ballthrope and George W. Shields alias G. W. Shields to the fol=lowing effect.

$1250. Hannibal May 22nd 1847.

Two years after date for value received we or either of us promise to pay William J. Rand agent or order twelve hundred and fifty Dollars with six per cent interest per annum on the same from date till paid negotiable and payable with=out defalcation or discount witness our hands this day above written

Stephen Glascock
Z. G. Draper
Jameson Samuel
L. W. Ballthrope
G. W. Shields

Yet the debt remains unpaid, therefore he demands judgment for his debt and damages

2. for the detention thereof together with costs (4)

Glover & Campbell
& Buckner for Pltff

Filed June 13th 1849.

Tho. E. Thompson, Clk.

And on the said 13th day of June 1849 there was issued from the office of the Clerk of our said Court a writ of Summons in the words and figures following towit=

State of Missouri
Writ. County of Marion. ss. } The State of Missouri

To the Sheriff of Marion County, Greeting= We command you to Summon Stephen Glascock Zachariah G. Draper, alias Z. G. Draper, Lewis W. Balthrope alias L. W. Balthrope and George W. Shields alias G. W. Shields that they be and appear in our Circuit Court at the Court house in the town of Palmyra within and for said County on the first Monday in August next, then and there before the Judge of our said Court to answer William J. Rand of a plea of debt by Petition of which the annexed foregoing writing is a copy and this you shall in no wise omit and have you then there this writ- Witness my hand as Clerk of our said Court and the seal thereof - Done at office in Palmyra at the County aforesaid on the 13th day of June A. D. 1849.

Tho. E. Thompson, Clerk

On which said writ is the following endorsement

Executed the within Summons & declaration
Shffs by leaving a copy of the same with a white mem=
Return =ber of the family of the within named Lewis W. Balthrope the 16th day of July A. D. 1849 by reading the same to the within named Stephen Glascock 22d June

3.

A.D. 1849 and offered to read the same to the within named Zachariah G. Draper & George W. Shields 22d June A.D. 1849 - all done in Marion County Missouri days & dates above mentioned

B.B. King. Shff Marion County Missouri
Shffs fee $4.00 cts } By his Deputy D. F. Jackson

And afterwards towit on the 20th day of November 1849 at a Circuit Court continued and held at the Court house in the town of Palmyra it being during a continuance of the August adjourned term 1849 of the Circuit Court for Marion County Missouri ~~the~~ before the Honorable Carty Wells Judge of said Court the following amongst other pro=
=ceedings were had, towit=

William J. Rand Pltff
vs } Pet in Debt.
Stephen Glascock, etal Defts

motion to consolidate overruled

At this day comes the defen=
=dants by their attorney and file their motion to consolidate the actions of the plaintiff against the said defendants which said motion being seen and considered by the court is overruled and thereupon the said defendants file their plea of the general issue herein

which said plea is in the words and figures following towit=

Stephen Glascock, Lewis W. Balthrope } Marion Cir. Court
Zachariah G. Draper & George W. Shields } Pet in debt.
Plea ads
William J. Rand

Defts come and defend the demand of the plaintiff

Pratt & Redd. atty for Defts

Filed Nov. 20. 1849. Tho. E. Thompson - clk.

And afterwards towit on the 8th day of December 1849 at the Court house in the Town of Palmyra being during the continuance of said term of said Court the following amongst other proceedings were had, towit=

William J. Rand Pltff
vs } Pet in Debt.
Stephen Glascock, Zachariah G. Draper Lewis W. Bulthrope and George W. Shields Defts

At this day come the parties by their attornies and thereupon on the affidavit of Stephen Glascock this cause is continued till the next term of this court at the costs of the said defendants.

And afterwards towit on the 19th day of March 1850 at a Circuit Court continued and held at the Court house in the Town of Palmyra, being during the continuance of the March term 1850 of the Circuit Court for Marion County in the State of Missouri before the Honorable Carty Wells Judge of said Court the following amongst other proceedings were had-

William J. Rand Pltff
vs } Pet in Debt.
Stephen Glascock et al. Defts

At this day comes the defendant Stephen Glascock and files his affidavit for a continuance herein-

And afterwards towit on the 23rd day of March 1850 at the Court house in the Town of Palmyra being during said March term 1850 of said Circuit Court the following amongst other proceedings were had, towit=

5.

William J. Rand
vs
Stephen Glascock, Zachariah G. Draper, Lewis W. Balthrope and George W. Shields.

Pltff
Defts
Pet in debt-

affidavit for continuance overruled

At this day come the parties aforesaid by their attornies and thereupon the defendants motion for a continuance herein being seen and considered is overruled by the court, and thereupon neither party requiring a jury this cause is submitted to the Court sitting as a jury on the issue to the defendants plea herein and thereupon the court finds the issue aforesaid in favor of the plaintiff and that the said defendants are indebted to the plaintiff in the sum of twelve hundred and fifty dollars the amount of the note herein and that the said plaintiff has sustained damages by reason of the detention of said debt to the sum of two hundred and twelve dollars and fifty cents- It is therefore considered by the court that the said plaintiff do have and recover against the said defendants the said sum of twelve hundred and fifty dollars the debt aforesaid as also the further sum of two hundred and twelve dollars and fifty cents for his damages for the detention of said debt together with his costs by him about his suit herein expended and that execution may issue therefor- and thereupon the said defendants file their motion to set aside the verdict and judgment and grant a new trial herein which said motion being seen and considered is overruled by the court- and

Judgment.

motion for new trial overruled

6

Appeal bond approved & appeal granted

Thereupon the defendant Stephen Glascock makes his affidavit and prays an appeal to the Supreme Court of the State of Missouri and files his bond in the penalty of two thousand dollars with Abraham Curts and Theophilus Stone as securities which said bond being seen is approved by the Court and an appeal granted herein to the Supreme Court of the State of Missouri and the Clerk of this court is ordered to make out a full and com= =plete transcript of the Record and proceedings herein as had in this court in relation to this cause and of all the papers filed herein and properly forming a part of the Record hereof and that he transmit the same under the seal of this court to the Clerk of the said Supreme Court for the State of Missouri to the end that this cause may be therein finally determined - and thereupon the defendants file their bill of exceptions herein which is received, signed and sealed by the Court and made part of the Record herein.

Which said affidavit for an appeal is in the words and figures following to wit=

affidavit for appeal

Wm. J. Rand vs Stephen Glascock, etal	Marion Cir. Court March term 1850

Stephen Glascock prays an appeal in this cause and states that this appeal is not made for vexation or delay but be= =cause ~~he be cause~~ he believes he is aggrieved by the Judgment of the court

Subscribed and sworn to before me this 23rd day of March 1850.
Tho. B. Thompson. clk

Stephen Glascock

7. Filed 23rd March 1850.

Tho. C. Thompson. clk.

Which said bill of exceptions is in the words and figures following to wit=

Bill of Exceptions

William J. Rand vs Stephen Glascock, et al } Marion Cir. Court March term A.D. 1850-

Be it Remembered that on this 23rd day of March 1850 this cause coming on to be heard defendant moved for a continuance upon the following affidavit

Copy affidavit for continuance

William J. Rand vs Stephen Glascock } Marion Circuit Court

Stephen Glascock States that the above note was given in conjunction with 3 others in part consideration of the interest of Brigham's heirs in lands and lots in Hannibal for which interest he gave 1500 dollars in cash and four notes for 1250 dollars each two of the notes he has paid- the legal title to the land and lots pur= =chased is in the three heirs of Brigham, but one of whom was of age at the time of purchase as Respon= =dent has been informed and believes; deponent is anxious to obtain a title for said land that will place him out of further trouble as to that title That deponent in February last Wrote to William Brigham to Frankfort Kentucky if he was of age to send a deed of the property- deponent further expected to prove by the family Record the age of the children of William Brigham but learned that Mr. Brigham had Re= =moved from Virginia and learned from Mr. Fugua for the first time that she had the family Record with her in Frankfort Kentucky and that

William was there, and deponent has had various letters written to ascertain as to the ages of the children, and by whom it could be legally proved, but has been unable to ascertain the testi=
=mony until he recieved a letter from Joel Rich=
=mond an attorney employed by Respondent & Z. G. Draper the latter part of February, too late to obtain the testimony for this Court. Deponent says he wishes to prove that on the day of the deed signed by Lavinia V. Brooks to wit the 16th day of June A.D. 1847 she was not twenty one years of age and consequently not bound by it.

Second that William A. Brigham if of age has made no deed and that one third of the title remains in him and that proof of the family record, now as deponent is informed in the pos=
=session of Mrs. Brigham will establish it. De=
=ponent has no doubt he will be able to prove the above facts by the next term of this court. that this application is not made for delay but that he obtain his rights and obtain his deeds befor payment of the money

Subscribed and sworn to before me this the 18th day of March 1850. } Stephen Glascock

Tho. E. Thompson, clk

Which motion was by the Court overruled to which Deft excepted and thereupon the cause was tried and a verdict found for plaintiff whereupon deft filed his motion for a new trial as follows

William J. Rand vs Stephen Glascock, etal } Marion Cir. Court March Term 1850.

9

copy of motion for new trial.

Deft moves the Court to set aside Verdict in this cause and grant him a new trial. Because the court erred in re=fusing to grant a continuance upon affidavit filed

Pratt & Redd. Attys for Defts

to which opinion deft except and prays this his bill of exception be signed and sealed and made a part of the record

Carty Wells (Seal)

Filed 23rd March 1850.

Tho. E. Thompson, clk

Costs—

	plffs costs. #	cts.	Defts costs #	cts	Total costs #	cts.
Barnabas B. King Sheriff—	4	20		10	4	30
Thomas E. Thompson, Clerk	4	75	5	60	10	35
($2.70. of above fee of Thompson is for this Transcript & certificate & Seal.) (2.70 p.d. by S. Glascock)	$ 8	95	5	70	14	65
					$ 14	65.

State of Missouri } I Thomas E. Thompson Clerk of the
County of Marion, ss. } Circuit Court in and for the County of Marion aforesaid certify that the foregoing pages con=tain a full true and complete transcript of the record and proceedings had in said court in relation to the cause therein mentioned together with all the papers filed in said cause and properly forming a part of the record thereof, as fully and completely as the same remains of record and on file in my said office— In testimony whereof I hereto set my hand and affix the Seal of said Court. Done at office at Palmyra in the County aforesaid this 19th day of June 1850—

Tho. E. Thompson Clk

Index.

INDEX.

Petition	page	1.
Writ	"	2.
Sheriffs Return	"	2.
Motion to consolidate actions overruled	"	3.
Defendants plea	"	3.
Affidavit for continuance overruled	"	5.
Judgment.	"	5.
Motion for new trial overruled	"	5
Appeal bond approved & appeal granted	"	6.
copy Affidavit for Appeal		6.
Bill of Exceptions	"	7.
Copy of Affidavit for continuance	"	7.
Copy of motion for new trial	"	9.

Sup Court
Stephen Grasack Pltff in Error
ads
Wm J. Rand

Error from Mains Co. Court
asst of Errors

Pltff in Error Stephen Grasack assigns the following causes as Error in the above Cause

Because 1st The Court below, refused to grant him a continuance till the next term, on affidavit filed,

2d Because it refused to set aside verdict & grant a new trial, all which is Error

Pratt & Reed
Attys for Grasack

Supreme Court

Stephen Glasack
ads
Wm. J. Rand

Assignment of Errors

Filed 25th Oct 1850
W. B. Starke Clerk

Supreme Court

Stephen Glascock
ads
Wm J. Rand
"

Error to S. Marion the hon
asst of Error

Stephen Glascock Pltff in Error in the above cause assigns for Error. The Court below refused to grant him a continuance on affidavit filed

2d Because the court refused to grant him a new trial all which is Error

Pratt & Hedd
Atty for Pltff in Error

Supreme Court

Stephen Glascock
ad
William J. Rand

Asst in Errors
by Pff

Filed 25th Oct. 1850
W. B. Starke Clk

Rand } Appeal from Marion.
v.
Glascock & others. (2 cases.)

This was petition in debt—plea the statutory one. Glascock was served on the 22d of June, 1849. At the trial term in November following, the cause was continued on his affidavit; and at the succeeding term, in March 1850, he again applied for a continuance, filing, for that purpose, the following affidavit:

"Stephen Glascock states that the above note was given in conjunction with 3 others, in part consideration of the interest of Brigham's heirs in land and lots in Hannibal, for which interest he gave 1500 dollars in cash, and four notes for 1250 dollars each. Two of the notes he has paid. The legal title to the land and lots purchased is in the three heirs of Brigham, but one of whom was of age at the time of purchase, as respondent has been informed and believes. Deponent is anxious to obtain a title for said land that will place him out of further trouble as to that title. Deponent in February last wrote to William Brigham, to Frankfort, Ky., if he was of age, to send a deed of the property. Deponent further expected to have by the family record the age of the children of William Brigham, but learned that Mrs Brigham had removed from Virginia, and learned

from Mr Fugua, for the first time, that she had the family record with her in Frankkfort, Ky., and that William was there, and deponent has had various letters written to ascertain as to the ages of the children, and by whom it could be legally proved, but has been unable to ascertain the testimony, until he received a letter from Joel Richmond, an attorney employed by respondent and by G. Draper, the latter part of February, too late to obtain the testimony for this Court. Deponent says that he wishes to prove that on the day of the deed signed by Lavinia V. Brooks, to wit, the 16th day of June, 1847, she was not twenty one years of age, and consequently not bound by it. Second, that William A. Brigham, if of age, has made no deed, and that one third of the title remains in him, and that proof of the family record, now as deponent is informed in the possession of Mr Brigham, will establish it. Deponent has no doubt he will be able to prove the above facts, by the next term of this Court — that this application is not made for delay, but that he obtain his rights and obtain his deeds before payment of the money."

The notes in suit having been made to the plaintiff, and expressed to be "negotiable and payable without defalcation or discount", we suppose that ~~the~~ his right to recover them would have been wholly unaffected, even if all the testimony

31

Glaycock vs Rand
(2 cases.)

Opinion by
Judge Birch

Filed 28th March 1851.
W. B. Starks Clk

Abel Young
vs
E Engle & B Lemme

Supreme Court Mo
Fall Term 1851

This is an action of forcible and unlawful detainer for the recovery of possession of a tract of 30 acres of land. Pltff by parol contract sold said land to Defts - Defts refused to pay for said land - and also refused to restore possession to Pltff -

~~Pltff counsel~~ the counsel for Pltff insists on following points

1st That the court erred in giving Defts instructions
2d That the court erred in refusing Pltffs instructions
3d That Court erred in overruling motion for new trial
4 That Defts were Tenants at will See 1st Section of act "Frauds & Perjuries" R S 1845
5th That an estate "at will" in lands is the smallest and most insignificant known to the law - and can be terminated at any moment by either Landlord or Tenant -
Blackstone 2d Book 145-6 -
6 That Defts being Tenants at will - Pltff had a right to possession after giving them reasonable notice to quit - 4th Kent 115 - Blackstone 2 Book 147
7 That the notice given in this case is sufficient -
8 The estate of Defts terminated the instant said notice was served upon them - and from that moment they held over wrongfully and unlawfully - Blackstone same Book & Page
Bouvier's Law dictionary See Tenant at will
9th That if the notice of Pltff terminated the estate of Defts and from that moment they held

over wrongfully and unlawfully - then "forcible and unlawful detainer" is the proper remedy

10" If this is not the proper remedy - then by means merely of the delay attendant upon the remedy in the Circuit Court - an estate at will - becomes as great as an estate for a year - And a travelling stranger who by consent of the owner gets possession of a house but for a moment can hold it at least for 12 months and until a tedious suit is terminated -

11" The Defts being tenants at will cannot have any interest in the land - they are entitled only to emblements if they have any growing when dispossessed - And to ingress - egress and regress to cut and carry them away -

Blackstone 2 Book 146

Lipscomb & Anderson
for Pltffs

James C. Young
vs
Tyler & Sommer

Pltffs. Brief
by H. S. Lipscomb
attorney.

"Small vs Proctor 15th Mass.
495

Wm T. Rand appellee
ads

Stephen Glasscock
Zachariah G Draper
Jamison Samuel
Lewis N Ballthrope
& George N Sheeds
appellants

In the Supreme
Court of Missouri
Sitting in St Louis
October T 1850

June 13. 1849 Rand sued the appellants in circuit
Court of Marion County on a note for 1250
dollars dated May 22. 1847 and due in two
years. Defts Glasscock
Draper Sheeds & Ballthrope filed their
plea Nov 20. 1849. At this Nov T 1849
which was adjourned to December 1849
the defts continued the cause on the affi
davit of Stephen Glasscock.

At the March Term 1850 the defts again
moved for a continuance of the case, the
motion was overruled and verdict and
judgement for the plaintiff, The defts
moved for new trial, overruled — defts appeal
ed filing their affidavit and bond says the
record, but the bond no where appears
in the record,

The defts excepted to the opin
ion of the court overruling their motion for a
continuance,

that to do with it? — Why did he not prove that, he does not show, Was Sanna B one of the three heirs? —

I suppose he was interested in the share of three infants who had not conveyed.

This is not of course a defence, He may have secured himself by indemnifying bonds that they should convey on arriving at age,

Wm P. Rand
appellee

ads

Stephen Babcock
& others
appellants

appellees brief
by Glover & Campbell

Wm I. Rand appellee
ads

Stephen Glascock &
others appellants

In Supreme
Court

Oct T. 1850
St Louis
Mo.

The appellee by his atty.s has filed a brief in another case precisely like this; which the court may examine if any brief can in such a case be of any value

Glover & Campbell

Wm I Rand
adt

Stephen Glascocks
others

appellee brief by
Glover & Campbell