Yeldell, John W.; Barnes, John v. Stemmons, John 1852 2nd C. Boone 188/13

(11) Replev

Horses; Ferries; Slaves; Boats

1. John W. Yeldell & John Barnes v. Replevin John Stemmons

Pleas had before Hon. Wm A. Hall, Judge of the Circuit Court within and for the County of Boone, in the Second Judicial Circuit in the State of Missouri, in a cause lately pending in said Circuit Court, wherein John W. Yeldell and John Barnes were plaintiffs and John Stemmons was defendant, at a Term of said Court continued and held at the Court House in the Town of Columbia, in said County of Boone, on the 24th day of August, in the year of our Lord one thousand eight hundred and fifty.

Be it remembered that on the 30th day of May, A.D. 1848, said Yeldell and Barnes, by Hayden their attorney, filed in the office of the clerk of the Circuit Court for said County of Boone, their Declaration in Replevin, against said Stemmons; which said Declaration is as follows, to wit:

Declaration "State of Missouri In the Circuit Court, of Boone County, to wit. the August Term 1848. John Stemmons of the County of Boone in the State of Missouri was summoned to answer unto John W. Yeldell and John Barnes of a plea wherefore he the said Stemmons wrongfully took three certain slaves, that is to say, one negro man slave named Dave, aged about sixty years, of great value, to wit of the value of fifty dollars: one other negro slave, a woman

2 named Rebecca, & aged about twenty six or twenty seven years, of great value, to wit, of the value of four hundred dollars, and one other negro girl slave of great value, to wit, of the value of Two hundred dollars, named Emily & aged about five or six years and one certain Horse-ferry-boat & all its fixtures & rigging, of great value, to wit of the value of Three hundred dollars, the same being the property goods, and chattels of them the said John W. Yeldell and John Barnes, and wrongfully & unjustly detained the said slaves and said Horse-ferry-boat with its fixtures & rigging, being of the value aforesaid, against sureties and pledges &c. and whereupon the said John W. Yeldell and John Barnes by P. R. Hay den their attorney, complain, that the said Stemmons, heretofore, to wit, on the eleventh day of March in the year of our Lord 1848, to wit, at the Town of Roche port, in said County of Boon, wrongfully took the said three slaves & the said horse-ferry-boat & its fixtures & rigging of them the said John W. Yeldell and John Barnes, being of the value aforesaid, and wrong fully and unjustly detained the same property against sureties and pledges, until &c. Whereby they the said plaintiffs, Barnes and Yeldell, say that they are worse and that they have sustained damage to the value of Two Thousand dollars. And for that, also, the said John Stem mons of the County of Boon aforesaid, was summoned to answer unto the said

John W. Yeldell and the said John Barnes in a plea wherefore he the said Stemmons wrongfully took one certain other Horse ferry boat, with the fixtures & rigging of great value, to wit, of the value of Four hundred dollars, and three certain other negro slaves, that is to say, one certain other negro man slave, named Ann, of the Value of fifty dollars: and a certain other negro woman slave, named Rebecca aged about twenty six or twenty seven years of the value of four hundred dollars: and one other negro girl slave named Emily aged about five or six years of the value of two hundred dollars - the same being the property, goods & chattels of them the said Barnes, and Yeldell; and which said property goods and chattels in this count above mentioned of them the said plaintiffs, he the said John Stemmons wrongfully and unjustly detains against sureties and pledges &c. and whereupon the said John W. Yeldell and John Barnes by Neander their attorney, complain, that the said John Stemmons, heretofore, to wit, on the 11th day of March in the year of our Lord 1848, to wit, at the Town of Rockport in said County of Boon, wrongfully took the said horse-ferry boat its fixtures rigging and the said three said last mentioned slaves, being of the value, respectively, above stated in this count of them the said plaintiffs, and wrongfully and unjustly detains the same against sureties and pledges &c. Wherefore the said plaintiffs say, that

4 they are worse, and that they have sustained damage by reason of the injury in this count above mentioned, of the value of two thousand dollars = and therefore upon the said John W. Teldell and the said John Barnes for the wrongs and injuries set forth above in the said first and in the said second count of this declaration above specified now here bring this their suit &c &c.

R. R. Hayden, atty for the Pltffs

State of Missouri John W. Teldell, one of the
Affidavit Boone County, towit, Plaintiffs in the above and foregoing declaration mentioned being duly sworn on oath states, that he doth verily believe that he this affiant and John Barnes, the plaintiffs mentioned in the above and foregoing declaration, are lawfully entitled to the possession of the said Horse-ferry boat & fixtures & rigging and the said three negro slaves mentioned in said declaration, and he further states, that the same property is wrongfully detained by the said John Stemmons, the defendant in said declaration mentioned from them said Plaintiffs. And this affiant further states that their, the Plaintiffs' right of action in the premises accrued within one year last past = and further this affiant saith not: Given under my hand this 30th day of May AD 1848.

Jno. W. Teldell

Subscribed and sworn to before me clerk of the Boone Circuit court on this 30th day of May AD 1848. Robert L. Todd, clerk.

And afterwards, towit, on the 30th day

3 of May, A.D. 1848, the Clerk of said Circuit Court entered upon a copy of said foregoing declaration a writ: which copy and writ are as follow, to wit:

Copy Declaration

"State of Mississippi In the Circuit Court, of the Bow County, Court: August Term 1848.

John Slemmons of the County of Bow in the State of Mississippi was summoned to answer unto John W. Zeldell and John Barnes of a plea whereof he the said Slemmons wrongfully took three certain slaves, that is to say one negro man slave named Dave, aged about sixty years, of great value, to wit of the value of fifty dollars: one other negro slave, a woman named Rebecca, aged about twenty six or twenty seven years, of great value to wit of the value of four hundred dollars, and one other negro girl slave of great value, to wit, of the value of two hundred dollars named Emily aged about five or six years and one certain horse ferry boat with its fixtures & rigging of great value, to wit, of the value of three hundred dollars, the same being the property goods, and chattels of them the said John W. Zeldell and John Barnes, and wrongfully & unjustly detained the said slaves and said horse ferry boat with its fixtures & rigging being of the value aforesaid, against sureties and pledges &c = and whereupon the said John W. Zeldell and John Barnes by P. R. Hayden their attorney, complain, that the said Slemmons, heretofore, to wit, on the Eleventh day of March in the year

of our Lord 1848, to wit, at the Town of Rockport in said County of Brown, wrongfully took the said three slaves & the said horse ferry boat & its fixtures & rigging of them the said John W. Yeldell and John Barnes, being of the value aforesaid and wrongfully and unjustly detained the same property against sureties and pledges, until &c, whereby they the said plaintiffs, Barnes and Yeldell, say that they are worse and that they have sustained damage to the value of Two thousand dollars.

And for that, also, the said John Slemmons of the County of Brown aforesaid, was summoned to answer unto the said John W. Yeldell and the said John Barnes in a plea wherefore he the said Slemmons, wrongfully took one certain other horse ferry-boat with its fixtures & rigging of great value, to wit, of the value of three hundred dollars, and three certain other negro slaves, that is to say one certain other negro man slave named Dave of the value of fifty dollars: and a certain other negro woman slave named Rebecca, & aged about twenty six or twenty seven years of the value of four hundred dollars; and one other negro girl slave named Emily aged about five or six years of the value of two hundred dollars - the same being the property, goods & chattels of them the said Barnes, and Yeldell: and which said property goods and chattels in this count above mentioned of them the said plaintiffs, to the said John Slemmons wrongfully and unjustly detains against sureties & pledges &c - and whereupon the said John W. Yeldell and John Barnes, by Hayden their attorney com

7 plain, that the said John Stemmons here
tofore towit, on the 11th day of March in
the year of our Lord 1848, towit, at the Town
of Rockport in said County of Bowen, wrong
fully took the said Horse ferry boat & its fixtures
& rigging and the said three said last men
tioned slaves, being of the value, respectively,
above stated in this count, of them the said
Plaintiffs, and wrongfully and unjustly
detains the same against sureties and
pledges &c — Wherefore the said Plaintiffs
say, that they are worse and that they
have sustained damage by reason of the
injury in this count above mentioned, of
the value of two Thousand dollars — and there
upon the said John W. Yeldell and the said
John Barnes for the wrongs and injuries set
forth above in the said first and in the said second
Count of this Declaration, above specified
now here bring this their suit &c o
State of Missouri P. R. Hayden atty for the plffs
Bowen County, towit, John W Yeldell one of the
plaintiffs in the above and foregoing Declara
tion mentioned being duly sworn on oath states,
that he doth verily believe that he this affi
ant and John Barnes, the Plaintiffs, men
tioned in the above and foregoing Declara
tion, are lawfully entitled to the possession
of the said Horse ferry boat & fixtures & rigg
ing and the said three negro slaves men
tioned in said Declaration, and he further
states, that the same property is wrong
fully detained by the said John Stemmons,
the defendant in said Declaration men
tioned, from them said plaintiffs; and this

8 affiant further states that their, the Plaintiffs' right of action in the premises accrued within one year last past - and further this affiant saith not. Given under my hand this 30th day of May AD 1848. John W. Yeldell
Subscribed and sworn to before me clerk of the Boone Circuit Court this 30th day of May AD. 1848. Robert L. Todd Clerk.

Writ State of Missouri } Sct. The State of Missouri
County of Boone } To the Sheriff of Boone County, Greeting: We hereby command you, that you cause to be delivered unto John W Yeldell and John Barnes without delay, one negro man slave named Dave aged about sixty years, one other negro slave, a woman named Rebecca aged about twenty six or twenty seven years and one other negro girl slave named Emily aged about five or six years and one certain horse-ferry-boat, being the property described in the foregoing declaration and now in the possession of John Simmons (if the plaintiffs, said Yeldell & Barnes give the security required by law): and that you summon the said John Simmons that he be and appear before the Judge of our said Boone Circuit Court on the first day of the next Term thereof to be held at the Court House in the Town of Columbia within and for the County of Boone on the Third Monday in August next 1848, to answer John W. Yeldell and John Barnes of a plea wherefore he wrongfully took and wrongfully and unjustly detained and still detains the above described property of said plaintiffs, against sureties & pledges until &c, and

9 have you then and there this writ. Witness Robert L. Todd clerk of said circuit court at office in Columbia on this 30th day of May A.D. 1848. (Seal) Robert L. Todd clerk"

And afterwards, to wit, on the return day of the foregoing writ, the Sheriff of Boone County made his return thereof as follows;

Sheriff's Return "I executed the within writ, upon the execution & delivery to me of a bond by John Barnes, John W. Yeldell, John W. Keiser Abram Barnes & Reuben Beeman in the sum of nineteen hundred dollars, conditioned according to law, by causing all the property mentioned in the foregoing writ and declaration to be delivered to the plaintiffs Yeldell & Barnes and by summoning the defendant John Stemmons according to the tenor of the writ. Said bond taken by me is herewith filed and made part of this my return. Service had on the 30th day of May, A.D. 1848, in Boone County, Missouri — fee $1.50 Thos Bellaupin

Sheriff of B.C.Mo"

which said bond, so taken and filed by said Sheriff is as follows, To wit:

Replevin Bond "State of Missouri } Sct. Know all men by these
County of Boone } presents that we John Barnes & John W. Yeldell as principals and John W. Keiser & Reuben Beeman as securities are held and firmly bound to Thomas C. Maupin Sheriff of Boone County Missouri in the sum of Nineteen hundred dollars, to be paid to the said Maupin, Sheriff as aforesaid, to which payment well & truly to be made, we bind ourselves,

10

our executors and administrators firmly by these presents. Sealed with our seals & signed this 30th day of May 1848. The condition of the above obligation is such, that whereas the above principals John Barnes, & John W. Yeldell have begun the prosecution of a certain action of Replevin in the Boone Circuit Court against one John Simmons, for 3 negroes slaves named Dave, Rebecca, & Emily, & a certain horse-ferry boat. Now if said Barnes and Yeldell shall prosecute their said suit with effect and without delay, make return of the property if return thereof is adjudged, keep harmless the officer touching the replevying of the property and pay all costs which may accrue in said action, then and in that event this obligation to be null and void, otherwise to be & remain in full force & effect. Witness our hand, & seals this 30th day of May 1848. John Barnes (Seal)

Jno W. Yeldell (Seal)

John W. Keiser (Seal)

Abram Barnes (Seal)

Reuben Beeman (Seal)

Attest

Sidney Maupin

And afterwards, towit, at a Term of said Boone Circuit Court, continued and held at the Court House, in the Town of Columbia, within and for said County of Boone on the 28th day of August, A.D. 1848, the following proceedings were had, Towit:

Plea "Now on this day came the defendant by his Atty and filed his plea of the general issue; and the plaintiffs joined issue thereon, and this cause is ordered to be continued until the next Term of this Court."

11 Said Plea is as follows, To wit:

"John Stemmons deft } Action of Replevin in the
ats } Boone Circuit Court. Aug.
John W. Yeldell & John Barnes Plffs } Term 1848.

The said defendants comes and defend the demand of the plaintiffs. Clark & Rolleards
attys for Defendant.

And the plaintiffs for replication say that the said defendant cannot defend & has no defence to his action & prays the same may be enquired of by the Country &c Russell & Hayden
for Plffs."

And afterwards, to wit, at a Term of said Circuit Court, continued and held as aforesaid, on the 24th day of March A.D. 1849, the following proceedings were had, To wit:

1849 March ct. "Now on this day came the parties aforesaid by their attorneys and the plaintiffs not being ready for trial this cause is put at the foot of the days Docket at the costs of the Plaintiffs:

Cont'd. It is therefore considered and ordered that the defendant recover against said Plaintiffs his costs of this day and have his execution therefor: and afterwards, on the motion of the Plaintiffs, this cause is ordered to be continued until the next Term of this Court: It is therefore considered and ordered by the Court, that said Defendant recover against said Plaintiffs his costs of this Term by him laid out and expended and said Plaintiffs be in mercy &c,"

1849 Aug.t ct. And afterwards, to wit, at a Term of said Court, continued and held as aforesaid, on the 27th day of August, A.D. 1849, the following proceedings were had, To wit:

"Now on this day came the parties aforesaid

by their attorneys, and on the motion of the defendant by his attorney, this cause is ordered to be continued until the next Term of this Court: It is therefore considered and ordered by the Court that said Plaintiffs recover against said defendant their costs of this Term and said defendant be in mercy &c"

Cont'd.

Feby Ct 1830

And afterwards, to wit, at a Term of said Court, continued and held as aforesaid, on the 19th day of February, A.D. 1830, the following proceedings were had, to wit:

"Now on this day came the parties aforesaid by their attorneys, and on the motion of the defendant, this cause is ordered to be continued until the next Term of this Court; It is therefore considered and ordered by the Court that said Plaintiffs recover against said defendant their costs of this Term laid out and expended and said defendant be in mercy &c."

And afterwards, to wit, at the August Term of 1830, of said Boone Circuit Court, continued and held as aforesaid, on the 20th day of August, A.D. 1830, the following proceedings were had, to wit:

Aug. Ct 1830

"Now on this day came the parties aforesaid, by their attorneys, and thereupon came a jury, to wit: Wm. Gordon, Abner Garrett, Thomas Smith, B. J. Robinson, Martin Brawham, Nathan Schoolfield, Thos. A. Taylor, Ewing B. Johnson, Wm. Turner, James Sevenney, Henry Crumbaugh, Thos. Stephens, who were elected, tried and sworn well and truly to try the issue joined herein; and the trial not having been concluded upon the time for the adjournment of the Court

13 arrived, are permitted to disperse to meet again to morrow morning nine oclock."
and afterwards, to wit, on the 21st day of August, A.D. 1830, during said Term of said Court, the following proceedings were had, to wit:
"Now on this day came the parties aforesaid by their attorneys, and the Jury aforesaid, empannelled and sworn as aforesaid, and went on with the trial; and the trial not having been concluded before the time for the adjournment of the Court arrived, the Jury are permitted to disperse to meet again to morrow morning, nine oclock."
and afterwards, to wit, on the 22d day of August, A.D. 1830, during said August Term of said Court, the following proceedings were had, to wit:
"Now on this day came the parties aforesaid by their attorneys, and also the Jury empannelled and sworn in this cause, and went on with the
Verdict trial, and the Jury aforesaid, upon their oaths do say, We the Jury find the issue for the Defendant and assess his damage for the boat at four hundred and twenty eight dollars, for the negroes at sixty two dollars — Total damages at four hundred and ninety dollars."
And afterwards, to wit, on the 23d day of August, A.D. 1830, during said Term of said Circuit Court, the following proceedings were had, to wit:
Mo. for new trial. "Now on this day came the Plaintiffs by their attorneys and filed their motion and reasons to set aside the finding and verdict of the Jury and grant them a new trial."
Which said Motion is as follows, to wit:
"Yelldell & Barnes ads Stemmons — Boone Circuit Court — August Term 1830.

14 (14)

The defendants move the Court to set aside the verdict in this cause for the following reasons.

1. The Court gave improper instructions to the Jury.
2. The Court refused proper instructions asked by the Plaintiffs.
3. The Court admitted improper evidence offered on the part of the Defendants.
4. The Court excluded proper evidence offered by the Plaintiffs
5. The finding of the Jury is against the instructions of the Court.
6. The finding of the Jury is against the Law.
7. The finding of the Jury is against the evidence.
8. The Damages assessed by the Jury are excessive

Hayden & Leonard attys. for Plff "

And afterwards, to wit, on the 24th day of August, A.D. 1830, during said Term of said Court, the following proceedings were had, To wit:

Remittitur "Now on this day came the parties aforesaid by their attorneys, and the defendant remitted to said Plaintiffs two hundred and twenty eight Dollars of the amount of the Damages assessed by the Jury aforesaid; and the motion filed by said Plaintiffs to set aside the verdict and finding ~~[illegible]~~ of the Jury and grant them a new trial herein, is overruled by the Court: It is therefore considered and ordered by the Court that said

Judgt. Defendant recover against said Plaintiffs and Reuben Beeman and Abram Barnes, the sureties of said Plaintiffs in the bond filed herein, the sum of five hundred and twenty four dollars for his damages and also his costs by him about his defence in this behalf laid out and expended, and said plaintiffs be in mercy &c: 6 per cent: and said Plaintiffs tendered here their Bill of Exceptions to the opinions of the Court,

15 which they pray may be signed, sealed and made a part of the Record, ~~and~~ which is ~~[illegible]~~ accordingly done — And said Plaintiffs and said Reuben Beeman and Abram Barnes filed also an application and motion for an appeal to the Supreme Court, verified by the affidavit of John Barnes, and an appeal

Appeal is now here allowed said Plaintiffs; and thereupon came said John Barnes and John Hinton and George W. Parker as the sureties of the appellants (who are approved by the Court) and acknowledged themselves to be held and firmly bound unto said defendant in the sum of Eleven hundred dollars, for the full payment of which well and truly to be made, they bound themselves, their heirs and Administrators, jointly and severally — Yet conditioned to be void if said appellants shall prosecute their appeal with due diligence, to a decision in the Supreme Court; and that if the judgment appealed from is affirmed, or their appeal dismissed, they will pay whatever of damages and costs have been recovered against them by the judgment of this Court, together with the interest that shall grow due thereon, or that they will otherwise perform the judgment of this Court, and that they will also pay the costs and damages that may be adjudged against them in the Supreme Court upon their appeal. Said motion and affidavit for an appeal are as follows, To wit:

Mo for appeal

"John Barnes & John W. Yeldell Plffs vs Replevin John Stemmons defendant } In the Bone Circuit Court, August Term 1850. And now on this day the said John Barnes, John W. Yeldell, Abram Barnes & Reuben Beeman against whom judgment hath been rendered into above entitled cause, come & pray an appeal from said judgment to the Supreme Court — and John Barnes one of the plaintiffs in said cause being duly sworn on oath says that they the said John Barnes, Abram Barnes, Yeldell & Beeman do not pray for said appeal, nor is the appeal made for vexation or delay, but because this affiant believes that the appellants are aggrieved by the judgment & decision of the Circuit Court, in the cause — & further he saith not

John Barnes

Subscribed & sworn to before me, in open Court Augt 24. 1850. Witness my hand & the Seal of said Court the day & year aforesaid

(Seal) R. L. Todd, Clerk."

The bill of Exceptions filed herein is in the words and figures following, To wit:

Bill of Exceptions

"John Barnes & John W. Yeldell Plffs vs John Stemmons defendant } In the Bone Circuit Court, August term 1850.

Be it remembered that the plaintiffs upon the trial of this cause read in evidence to the jury the following judgments with the executions issued thereon, with the indorsements by the Clerk & the Sheriffs Returns upon the executions, which read

17. in these words & figures.

"James Vanlandingham Plt. V. Z. Pet. Debt } This day came the plaintiff by his attorney and the defendants, being three times solemnly called, failed to appear; but make default: neither doth they answer the plaintiffs action commenced against them: It is therefore considered by the Court that the plaintiff ought to recover against the defendants the debt in his petition mentioned and such damages as he hath sustained by reason of the detention thereof; and the plaintiffs demand being liquidated and evidenced by a writing the Court doth find that the plaintiff hath sustained damages by reason of the premises to the sum of thirty seven dollars fifty seven cents besides costs: It is therefore considered and ordered by the Court that the plaintiff recover against the defendants the debt in his petition mentioned of five hundred and fifty dollars and his damages aforesaid in manner and form aforesaid assessed, and also his costs by him about his suit in this behalf laid out and expended and the said defendants be in mercy &c: 10 per cent."

Vanlandingham V. Z. Record Stemmons et al.

D 498

Judgt.

Fi-fee "The State of Missouri, To the Sheriff of Boone County, Greeting: Whereas James Vanlandingham at our August Term of 1846 of the Boone circuit Court before our Judge hath recovered against John Stemmons, John W. Yeldell, John Barnes the sum of five hundred and fifty dollars for debt and also the sum of forty

four dollars and sixty seven cents which to the said James Vanlandingham were adjudged for his damages as well by reason of detaining the said debt as for his costs in that suit expended, as appears to us of Record: These are therefore to command you that of the goods and chattels and real estate of the said John Stemmons, John W Yeldell, John Barnes you cause to be made the aforesaid debt damages and costs, and that you have the same before the said Judge on the first day of March term next 1847 to satisfy the said James Vanlandingham of the aforesaid debt damages and costs: and that you certify to our said Judge how you execute this writ, and have you there and there this writ. Witness Robert L. Todd Clerk of said Court at office in Columbia on this 31st day of August A D 1846. Lead Robert L. Todd Clerk"

"No 1082. James Vanlandingham Vs Fifa John Stemmons, John W Yeldell & John Barnes. Debt $550.00. Dams 37.57 = Rd Todd 2.60 This writ 1.00 - 3.60 - Thos Maupin 3.50. Date of Judgt Augt 21. 1846: 10 per cent. Rd. Todd Clerk"

Shffs Return "Came to hand Septr 1st 1846 Thos C Maupin Sheriff of B C Mo. March 1st 1847. I do hereby certify that I this day levyed the within execution with two other Executions on the hull of a ferry boat at the Town of Rochepert in part as the property of John Stemmons & Abraham Barnes in Boone County Miss. omi-fee for levy $1.00 Thos C Maupin Sheriff of B C Mo I advertised the above described property according to law that is to say by posting

19 up written handbills in three of the most public places in Missouri Township, and one in the most public place in each of the other Townships in Boone County giving at least ten days notice of the time and place of sale with a description of the property to be sold and for whom sold and exposed the same to sale openly and publicly to the highest bidder for ready money at the Town of Rocheport, on the 13th day of March 1847 and George Knox became the highest and best bidder for the sum of eighty dollars therefor the said boat was struck of to the said George Knox at his highest and last bid — amount made by sale of boat $80.00

The Execution from Cooper County taking Barnes's Interest which I suppose to be one half $40. I Stemmons Interest one half 40.00 $80: 40.00

amount made by sale of Stemmons 40.00

Interest $40 to be divided between this execution and one in favor of George Batterton Administrator of Thomas Crews decd. would give to this Execution $20 deduct $20.00

From this amount take $20.00

Sheriffs costs percent and levy $1.70 1.70

$18.70

paid for taking care of boat 1.25

$17.45

This Execution is Entitled a credit of Seventeen dollars and forty five cents the amount made to this Execution by sale of Stemmons part of boat after deducting Sheriffs costs Thos C Maupin Sheriff of B C Mo. This Execution is returned not satisfied by order of the plaintiff March 1st 1848.

fee 50¢ Thos C Maupin Sheriff of B C Mo.

20 "The State of Missouri, To the Sheriff of Boone County, Greeting: whereas James Vanlandingham at our August Term of 1846 of the Boone Circuit Court, before our Judge hath recovered against John Barnes, John W. Yeldell & John Stemmons the sum of five hundred and fifty dollars and — cents for debt and also the sum of forty six dollars and seventeen cents which to the said James Vanlandingham were adjudged for his damages as well by reason of detaining the said debt as for his costs in that suit expended as appears to us of record: These are therefore to command you as you have before been commanded that of the goods and chattels and real estate of the said John Barnes, John W. Yeldell & John Stemmons you cause to be made the aforesaid debt damages and costs and that you have the same before our said Judge on the first day of March Term next 1848 to satisfy the said James Vanlandingham of the aforesaid debt damages and costs: and that you certify to our said Judge how you execute this writ, and have you then and there this writ: Witness Robert L. Todd Clerk of said Court at office in Columbia on this first day of March 1848 Lead Robert L. Todd Clerk"

Alias fi. fa.

"No 1218. James Vanlandingham v. Z. al. fi fa. John Stemmons John Barnes John W. Yeldell — Debt $550.00 Dam. 37.57 — R.L. Todd pt 4.60. Fell au pin " 4.00 — Credit March 13. 1847 by sale of Stemmons boat $17.45. Date of Judgt Augt 21. 1846. 10 per cent. R.L. Todd. Clerk"

21. Sheriff's Return

"Came to hand March 1st 1848. Thos Bellau pin Sheriff of Bbello. I do hereby certify that I this day levied the within execution on all the right title and interest of John Stemmons in and to the following described real estate lying and being in the County of Boone and State of Miposuri to wit two acres more or less, commencing at the South East corner of the Rochsport town tract and running down and along the bank of the Miposuri River so that a North line will include a large spring thirty feet and run to the top of the bluff, thence a Westward direction along the top of the bluff until it intersects the Eastern line of said Town tract thence South and along said line to the place of beginning. Also two lots in the Town of Rochsport numbers two hundred and fifty five and two hundred and fifty six including the residence of John Stemmons March 3rd 1848 Thos C Maupin

Sheriff of Boone County Mo.

March 6th 1848. I do hereby certify that I this day levied the within execution on all the right title claim and interest of John Stemmons in and to the following described property to wit one ferry boat propelled by horse power at the ferry landing of John Stemmons, one negro man David, and negro woman Rebecca and her child Emily. Thos C Maupin

Sheriff of Bb Mo.

I advertised the above described property according to law that is to say by putting up written hand bills in three of the most publick places in Miposuri Town and

22 one in the most publick place in each of the other Townships in Boone County giveing at least ten days notice of the time and place of sale with a description of the property to be sold and for whom sold and exposed the same to sale openly and publicly for ready money to the highest bidder at the house of John Stemmons for the sale of the slaves and at Stemmons boat landing on the Missouri River for the sale of the boat between the hours of nine Oclock of the forenoon and five Oclock of the afternoon of said do being the 18 day of March 1848 and John W. Yeldell and John Barnes became the highest and best bidders as follows for said Stemmons right title and interest in the slaves described in the above levy the sum of one dollar $1.00 for the right title and Interest of said Stemmons as described in the above to the ferry boat the sum of one dollar $ 1.00

2.00

fee for levy on this Exon $1.00 deduct 1.00

the ballance applied to the other execution 1.00

This Execution returned satisfied by order of the plaintiff McCullaupin Sheriff of Boone.

I advertised the above described real estate according to law that is to say by posting up written hand bills at six or more publick places in Boone County Missouri giveing at least twenty days notice of the time and place of sale with a description of the property to be sold and for whom sold and exposed the same to sale openly and publickly to the highest bidder for ready money at the Court House door in the town of Columbia Boone County Missouri on the 27th day of March 1848 during the sitting of the Boone Circuit Court and whilst said

V 3 Court was in session between the hours of nine o'clock of the forenoon and five o'clock of the afternoon of said day and John W. Tilddell and John Barnes became the highest and best bidders as follows for the lot of ground containing two acres more or less as described in the above levy adjoining the Town of Rocheport for the sum of sixty five cents 00 65
for lot No Two hundred and fifty five in the town of Rochepor for the sum of fifty cents 50
for lot No Two hundred and fifty six same town for the sum of fifty cents cents 50
Total $1.65

Fee for every $1.00. credit by 65. one dollar thirty five cents applied to Batterton's Execution

McCm aupin Sheriff of B C Mo"

Batterton V 3 Record Stemmons Transcript	"Date of Summons 10th Nov 1845 demand Two notes $72. $90.	Geo Batterton adm of Thomas Crews dec^d vs John Stemmons	Return day 3rd day of January 1846

(Judgmt) Parties met, defendant not ready for trial upon his making oath as the law requires cause continued until 1st Saturday in March next, this 3rd day of January 1846. J.W. Daly, J.P.

Parties met ready for trial, defendant filed off sets, a note & account for $89.51 which is allowed, Judgment against defendant for $106.43 ten per cent Interest from this date, costs of suit &c, this March 7th 1846, James W. Daly J.P.

I do certify that the above is a true copy of the Judgment in the above named case, taken from my docket, Given under my hand this 14th day of March 1846.

Costs in the above case. James W. Daly J.P.

Just fees $1.05. This Transcript 1 2/2 certificate 25.

24 amt $1.42½. Const. fees 1.25. Witness Rice Schooler 30
Geo. Batterton administrator of Thomas Crews dec.
vs } Jct. Execution issued in this
John Stemmons } case on the 14th day of March
Certificate of Exon 1846, to the Constable of Missouri Township which
is the Township where the defendant resides,
on which is the following return. "This
Execution returned not satisfied no goods
and chattels found in Missouri Township
in Boone County on which to levy, this 13th
day of May 1846. G Harris C. M. T." I
do certify the above to be a true copy of the
Constables Return on the above named exe
cution, taken from my docket on the 25th
day of May 1846. James W. Daly J.P.
additional fees to Justice. This copy $0.12½:
certificate 25 37½ cts.

Fi-fa State of Missouri } Jct. The State of Missouri, To the
County of Boone } Sheriff of Boone County Greeting:
Whereas George Batterton admr of Thos Crews
on the 19th day of March in the year of our
Lord one thousand eight hundred and forty six,
filed in the office of the Clerk of the Circuit
Court for Boone County a Transcript of a
Judgment had before James W Daly a Justice
of the peace in said County, in favor of
said George Batterton admr of Thos Crews and
against John Stemmons for the sum of
one hundred and eleven dollars and Eighty eight
cents, for debt and Costs, as appears to us of rec
ord: and whereas an execution has been issued
by said Justice, and the Constable of Missouri
Township having returned that no goods and
chattels of the said defendant are to be found
in said Township. These are therefore to

25 command you that of the goods and chattels lands and tenements of the said John Stemmons you cause to be made the aforesaid debt and costs, so that you have the same before the Judge of our Boone Circuit Court, at the next Term thereof, to be held on the Third Monday in March next, 1847, to satisfy the said George Batterton admr of Thos Crews of said debt and costs and that you certify to our said Judge how you execute this mit, and have you then and there this mit: Witness Robert L. Todd clerk of said Court at office in Columbia, on this third day of February eighteen hundred and forty seven (Seal) Robert L. Todd clerk.

No 1131. Geo. Batterton admr of Thos Crews Vs Fifa. John Stemmons. Debt $106.43 Justice 179. Const 1.25. Rice Schooler 50. Ret Todd 91 R.L. Todd 1.00 = $111.88. Date of Judgment March 7th 1846: 10 per cent. R.L. Todd clerk."

Sheriff's Return "Came to hand Feby 4th 1847. Thos C Maupin Sheriff of B.C. Amount made on this Execution by sale of a partnership boat as the property of John Stemmons and Abraham Barnes by a levie and sale made to satis two other executions, amount made by sale $20.00

costs on back of this Execution $5.45 percent & levie 1.70 7.15 7.15

This Execution is entitled to a credit of $12.85 Twelve dollars and eighty five cents — There being no other goods and chattels lands and tenements found in Boone — Missouri where on to levie and make the within debt and costs therefor this execution is returned not satisfied Thos C Maupin Sheriff of B.C. Mo."

Alias fi fa "State of Missouri } Jct. The State of Missouri County of Boone } To the Sheriff of Boone

26 County Writing: whereas George Batterton
adm of Thos Crews on the 19th day of March
in the year of our Lord one thousand eight
hundred and forty six, filed in the office of
the Clerk of the Circuit Court for Boone
County a Transcript of a judgment had before
J W Daly a Justice of the peace in said County,
in favour of said George Batterton adm of
Thos Crews and against John Stemmons
for the sum of One hundred and seven
dollars and forty three cents, for debt and
costs, as appears thus of record: and whereas
an execution has been issued by said Justice,
and the Constable of Miponi Township
having returned that no goods and chattels
of the said defendant are to be found in
said Township: These are therefore to comm
and you as you have before been commanded
that of the goods and chattels, lands and tene
ments of the said John Stemmons you cause
to be made the aforesaid debt and costs,
so that you have the same before the Judge
of our Boone Circuit Court at the next
term thereof to be held on the 3d Monday in
March next 1848 to satisfy the said George
Batterton adm of Thos Crews of sd. debt &
costs and that you certify to our said Judge
how you execute this mit and have you
then and there this mit Witness Robert L.
Todd clerk of said Court at office in Columbia
on this 15th day of February 1848.

Lea Robert L. Todd Clerk

No 1206. Geo. Batterton adm Thos Crews v
& al Sfi-fa John Stemmons. Debt $106.43
R L Todd plt 1.00 — $107.43. Cr by sale of

27 boat prior to March 1847 $ 12.85.
Date of Judgt March 7th 1846: 10 per cent.
R L Todd Clerk "

Sheriff's Return "Came to hand Feby 18th 1848. Thos C Maupin Sheriff of B C.
I do hereby certify that I this day levied the within execution on the following described real estate as the property of John Stemmons (to wit two acres more or less commencing at the South East corner of the Rocheport Town Tract and running down and along the Bank of the Missouri River so that a North line will include a large spring thirty feet and run to the top of the bluff - thence a western direction along the top of the bluff until it intersects the Eastern line of said Town Tract thence South and along said line to the beginning also two lots in the Town of Rocheport numbers two hundred and fifty five and two hundred and fifty six including the residence of said John Stemmons all lying and being - the County of Boone and State of Missouri March 3rd 1848. Thos C Maupin Sheriff of B C Mo
March 6th 1848. I do hereby certify that I this day levyed the within execution on all the right title claim and Interest of John Stemmons in and to the following described property to wit, one ferry boat propelled by horse power now at the ferry landing of said John Stemmons on the Missouri River one Negroman David, one Negro woman Rebecca, and her child Emily,

Thos C Maupin Sheriff of B C Mo. "
I advertised the above described property according to law that is to say by posting up written handbills at three

2.8 of the most publick places in Missouri Township and one in the most publick place in each of the other Townships in Boone County Missouri giving at least ten days notice of the time and place of sale with a description of the property to be sold and for whom sold, to wit at the house of John Stemmons for the sale of his Interest in the slaves and at the ferry landing of said John Stemmons on the Missouri River for the sale of said Stemmons interest in the ferry boat and exposed the same to sale openly and publickly for ready money between the hours of nine o'clock of the forenoon and five o'clock of the afternoon of the 18th day of March 1848 and John W. Yeldell and John Barns became the highest and best bidders as follows for said Stemmons Interest in the slaves mentioned in the above levy the the sum of one dollar $1.00 for said Stemmons Interest in the boat mentioned in the above levy the sum of one dollar $1.00

$2.00

fees for Levy Total $1.00 deduct 1.00

$1.00

This amount to applied to the levy on Vanlandingham's Execution Thos C Maupin Sheriff of B Co Mo

I advertised the above described real estate according to law that is to say by posting up written handbills at six or more publick places in Boone County giving at least twenty days notice of the time and place of sale with a description of the property to be sold and for whom sold and exposed the same to sale openly and publickly to the highest bidder for cash in hand at the Court house door in the

29 Town of Columbia Boone County Missouri on the 27th day of March AD 1848 during the sitting of the Boone Circuit Court and whilst said Court was in Session between the hours of Nine Oclock of the forenoon and five Oclock of the afternoon of said day and John W. Yeldell and John Barnes became the highest and best bidders as follows for the lot of ground containing two acres more or less adjoining the Town of Rocheport as described in the above levy for the sum of Sixty five cents $ 00.65

for lot No Two hundred and fifty five in the town of Rocheport for the sum of fifty cents .50

for lot number two hundred and fifty six the sum of fifty cents same Town .50

amounting all to the sum of $ 1.65

Levy $ 1.00 1.00

This amount to be applied to levy on Van landenhams Execution Thos C Maupin Sheriff of B Co Mo

	Parties Names	When filed	Judgt. Nature of	~~Judgt Nature~~ Debt & Costs	Date Judgt	Judgt &c
Clerks Entry of Transcript	Stemmons John	March	J W Daly	Debt $ 106.43	March	Judgt
	ats	19. 1846	J.P.	JP 1.42	7. 1846	Entered
				Const 1.25	10 pr ct	
	Geo Batterton admr of Thos Crews			R Schooler 50	Transcript	
				ell 91		

The Plaintiffs then read in evidence the following deposition of Thomas Maupin, late Sheriff of Boone County, who as such levied & returned said executions as shewn by his certificates thereon, which deposition reads in these words & figures:

T. C. Maupin deposition "Deposition of Witnesses produced sworned and examined before me Thos Porter a Justice of the peace within and for the County of Boone in the State of Missouri, at the

30 office of the Clerk of the Circuit Court of Boone County in the Town of Columbia on the 22nd day of April 1830, between the rising and setting of the sum of said day, to be read in evidence upon the trial of a certain cause pending in the Boone Circuit Court, wherein John W. Yeldell & John Barnes are Plaintiffs and John Stemmons is defendant, on the part of the Plaintiffs. Thomas C Maupin of lawful age being produced sworn and examined on the part of the Plaintiffs, deposeth and saith, That on the 6th day of March 1848 I levied one execution from the office of the Clerk of the Circuit Court of Boone County in favor of James Vanlandingham against John Stemmons, John Barnes & John W Yeldell, for the sum of five hundred & fifty dollars debt and the sum of forty six dollars and 17 cents damages. Also at the same time I levied one execution from said office in favor of George Batterton administrator of Thomas Crews deceased against John Stemmons for the sum of one hundred and seven dollars and forty three cents for debt and costs, upon a horse ferry boat, one negro man named David, one negro woman named Rebecca and her child Emily and on the 18th day of March 1848 I sold said property under the said executions to the highest bidder for cash in hand, the said negroes I sold at the residence of John Stemmons in the town of Rocheport in Boone County Miponi,

the ferry boat aforesaid sold at the ferry landing of John Slemmons at the Town of Rochsport aforesaid on the same day; when John Barnes and John N. Liddell the Plaintiffs became the purchasers thereof for the sum of two dollars, at said sale there were several other persons present. Question by Plaintiffs attorney, Where was the property at the time of the sale. Answer it was present at the place of sale. Question by same. State whether the slaves and boat mentioned in the previous part of your deposition are the same in controversy in this suit: Answer They are the same slaves and boat: Question by same. State in whose possession you found said slaves and boat at the time you levied the executions. Answer I found the slaves in the possession of John Slemmons the defendant in Boone County & the boat at the ferry landing of said Slemmons at the Town of Rochsport.

Question by same. State under whose control was said boat at the time when the same was taken in custody by you under the writ of Replevin in this case. Answer It seemed to be under the control of the defendant. Question by same. State how long the slaves and boat had been in the possession of the defendant previous to the time of your taking them in possession under the writ of Replevin in this case. Answer. They had been in possession of the defendant from the time they were sold under the aforesaid executions by me until taken by me under the writ of Replevin in this case. Question by defendant.

Question by same. State if you did not take the above described property in your possession under a writ of Replevin in this suit. Answer - I did - Question by same. State to whose possession you found said property when you executed the writ of Replevin in this case. Answer - I found the slaves in the possession of John Slemmons & the boat at the ferry landing of said Slemmons at the Town of Rochsport -

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State when said Executions came to your hand, and the date of said Executions. [32] Answer The one in favor of George Batterton administrator of Thos Henry deceased was dated February 15th 1848 and came to hand on the 18th day of same month and year, and the one in favor of James Vanlandingham, was dated March 1st 1848 and came to my hands on same day. Question by same. Was the two executions spoken of by you in favor of Vanlandingham and George Batterton administrator of Thos Henry the only executions issued in said causes. Answer No. There were two prior executions, one in each case. Question by same. State what disposition was made of said prior executions. Answer I levied said two prior executions together with an execution from the office of the clerk of the Circuit Court of Cooper County Mo. on the hull of a ferry boat: which was sold for the sum of Eighty dollars and applied to the payment of the three last mentioned executions as follows, to wit, to the Vanlandingham Execution Seventeen dollars and forty five cents to the Batterton Execution Twelve dollars and eighty five cents after the payment of costs, the balance was paid on the Execution from Cooper County. and some time in March 1847 the Vanlandingham Execution last above mentioned was satisfied in full by Joseph W. Liddell and John Barnes. Question by same. Who directed you to levy the the last execution that issued in favor of James Vanlandingham before spoken of. Answer Joseph W. Liddell and

33 John Barnes. Question by same. Did you know if John W. Yeldell and John Barnes were apprised that there were liens upon said property at the time of the levy. Answer They frequently spoke of liens on said property, but stated that they were able to prove that said liens were satisfied. Question by Plaintiffs attorney. State whether James Vanlandingham gave the plaintiffs the benefit of the execution in his favor against Stemmons, Yeldell and Barnes. Answer he did. And further this deponent saith not. Thos C Maupin.

Sworn and subscribed to before me on the 22d day of April 1830. Thos Porter J.P.

State of Missouri } Ct. I Thos Porter a justice of the peace within and
County of Boone } for the County of Boone and State aforesaid, hereby certify that Thos C Maupin the aforesaid deponent was by me sworn to testify the whole truth of his knowledge touching the matter in controversy in the cause aforesaid that said deponent was examined, and said examination reduced to writing and subscribed by said deponent in my presence at the office of the clerk of the Circuit Court of said County of Boone on the 22nd day of April 1830 and between the rising and seting of the sun of said day, pursuant to the annexed notice. All of which is herewith returned Taken and certified at the place on the day and between the hours last aforesaid.

It fees writing depositions 1.00/100 Thos Porter J.P.

Certifying same 25. Subpoena &c 20 — $1.45/100 Sheriffs fee 11

W T Hickman Subpoena 50/100

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The Plaintiffs then introduced as Witnesses one Rymer and one Jackman, who testified that they had known the slaves mentioned in the plaintiffs declaration for some ten years = That they had been claimed by the defendant, and were in his possession & service at Rochesport, as their Master & owner for several years before they were levied upon & sold as his, Slemmon's property, by Maupin the Sheriff upon said execution, to the plaintiffs = and that they were in his possession at the time of the commencement of this suit. The plaintiffs also proved by said witnesses, that the said defendant built the said ferry boat and had it with its tackle in his, Slemmons' possession & use as a ferry boat at his ferry at Rochesport in Boone County at the time it was levied upon & sold to the plaintiffs, by the Sheriff, Maupin, and that he, Slemmons, had had the same, in his possession and use, at his said ferry in ferrying passengers & things across the Missouri River for about 12 months prior to the said levy and sale thereof = And here the plaintiffs rested their case in chief. Whereupon the defendant, Slemmons, in his defence to the action, then offered to read to the jury and did read to the jury the following mortgage deed with the certificate of the acknowledgement preceding thereof from Slemmons, of the property levied upon and sold to the plaintiffs as above stated = which read in these words & figures:

"Know all ~~men~~ by these presents that I John Slemmons of Boone County in the

Rymer & Jackman Testimony

Defts Evidence

35

Stemmons
Wm Mortge
Woodson,
Mitchell,
& Crow.

State of Missouri, party of the first part, have this day for and in consideration of the sum of five dollars to me in hand paid, and the further consideration hereinafter named granted, bargained and sold, and by these presents do grant, bargain, sell and convey unto Philips Crow, Newman T. Mitchell and Warren Woodson of said County party of the second, the following named slaves, to wit, a negro man named Dave sixty five years old; a negro woman named Beck twenty four years old, and a negro girl named Emily five years and 6 months old. To have and to hold the slaves above named unto the said party of the second part, and their heirs & assigns forever: upon condition never the less, that whereas the said John Stemmons is indebted to James S. Rollins by bond in the sum of two hundred and twenty dollars dated 9th day of November 1847 and due twelve months after — at 6 per cent Interest from date; and also to Archibald W. Turner by bond in the sum of two hundred and forty six dollars, dated in the 9th day of Nov 1847, due twelve months after date, with 6 per cent Interest from date, in both of which said bonds the said Crow, Mitchell and Woodson are bound as securities for said Stemmons and also the said Stemmons is indebted to said Mitchell by bond bearing date the 1st day of July 1847 for seventy five dollars, payable twelve months after date with interest at ten per cent per annum from date. Now if the said Stemmons shall well and truly pay off and satisfy the aforesaid bonds to said Rollins and Turner and save harmless the said Crow, Mitch

ell and Woodson his securities as aforesaid, and shall also pay off and discharge the bond aforesaid owing to said Mitchell then this deed to be void and of no effect, else to remain in full force. It is understood however, that this mortgage is subject to the lien of an execution in favor of Stephen Wilhite and George Knox for a balance of some one hundred and ten dollars. In Testimony whereof the said John Stemmons has hereunto set my hand and affixed his Seal this 13th day of November A.D. 1847. John Stemmons (Seal)

State of Missouri } Sct. Be it remembered
County of Boone } that on this 13th day of November in the year of our Lord one thousand eight hundred and forty seven, personally appeared before me Thos Porter a Justice of the peace within and for the County of Boone and State aforesaid, John Stemmons, who is personally known to me to be the individual whose name is subscribed to the foregoing deed of mortgage or Instrument of writing as a party thereto as having executed the same, and acknowledged said deed of mortgage or Instrument of writing to be his act and deed hand and seal for the purposes therein mentioned Taken and certified on this 13th day of November A.D. 1847. Thos Porter J.P.

State of Missouri } Sct. This Deed of mortgage
County of Boone } from John Stemmons to Phillips Crow, N.T. Mitchell & W. Woodson was produced before me Clerk of the Circuit Court and Ex officio Recorder of Boone County on this Thirteenth day of November A.D. Eighteen hundred and forty seven, and

37 with the certificate thereon is duly recorded in Book 2. pages 499 & 500. Given under my hand as Recorder aforesaid with the seal of said Court hereto affixed at office in Columbia on this day and year aforesaid.

(Seal) Robert L. Todd, Clerk & Recorder."

Stemmons Wz Mortgage P. Crow. "This Indenture made & entered into this 29th day of November one thousand eight hundred and forty seven between John Stemmons of the first part and Philips Crow of the second part both of the County of Boone & State of Missouri, Witnesseth that whereas the said John Stemmons is indebted unto the said P. Crow in the sum of four hundred dollars for which the said Crow holds his note bearing date the 1st day of November 1847 & the said party of the first part being desirous to secure the said party of the second part against any loss on the debt aforesaid Now therefore the said John Stemmons for and in consideration of securing the said Crow from loss as aforesaid as well as for the consideration of five dollars to him in hand paid by the said P. Crow the receipt whereof is hereby acknowledged, do grant bargain and sell unto the said P. Crow his heirs & assigns forever the following named Slave viz, A man named Dave aged sixty five years, a woman named Beck aged twenty four years and a girl named Emily aged five years and six months to have and to hold the aforesaid slaves his heirs &c forever subject however to a previous mortgage to the said slaves to W. Woodson & others for the

sum of six hundred and fifty one dollars. And provided nevertheless that should the said Slemmons will and truly pay unto the said Crow the debt of four hundred dollars with interest at the rate of six per cent. then and thence forth this Indenture and the clauses herein said shall cease determined and become null and void any thing herein contained to the contrary notwithstanding. In Testimony whereof, the said John Slemmons has hereunto set his hand and seal the date above written. John Slemmons (Seal)

The State of Mississippi } Be it remembered that
County of Bond } on this 29th day of November 1847 before me the undersigned Justice of the peace in and for the County of Bond personally appeared John Slemmons who is personally known to me to be the person whose name is subscribed to the foregoing instrument of writing as having executed the same and acknowledged the same to be his act and deed for the purposes therein mentioned Taken and certified the day and date above written William H. Phillips J.P.

State of Mississippi } Set. This deed of mortgage from
County of Bond } John Slemmons to Phillips Crow was produced before me Clerk of the Circuit Court and ex officio Recorder of Bond County on this Thirteenth day of November A.D. Eighteen hundred and forty seven, and with the certificate thereon is duly recorded in Book 2 pages 526 & 527. Given under my hand as Recorder aforesaid with the Seal of said Court hereto affixed at office in Columbia on this day and year aforesaid. (Seal) Robert L. Todd Clerk & Recorder

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Stemmons
W. Z. Martyn
Arnott
et al

2. 209

"This Indenture made and entered into this twenty sixth day of April one thousand eight hundred and forty seven, between John Stemmons of Boone County of the first part, and Jesse Arnott of Howard County, Phillips Crow, William Reed, Stephen Wilhite and Fielding Wilhite of Boone County Missouri of the second part, Witnesseth; That whereas the said party of the first part is indebted on a note to the said Jesse Arnott in the sum of one hundred and fifty dollars, to Phillips Crow on account in the sum of seventy five dollars, to William Reed, in the sum of fifty dollars: and whereas the said Stephen Wilhite and Fielding Wilhite are my securities to Moss Prewitt for the sum of four hundred dollars & also my securities to Boone County for the sum of two hundred dollars, and the said party of the first part being desirous to secure and save harmless the said parties of the second part, against all loss and responsibility as my creditors and securities as aforesaid, Now therefore the said John Stemmons as well for and in consideration of securing the said parties of the second part against any loss or responsibility upon the debts aforesaid as for the sum of one dollar to him in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged do hereby grant, bargain and sell, first unto the said Jesse Arnott (to secure to him the aforesaid sum of one hundred and fifty dollars) a ferry boat which is to be run at the Town of Rocheport, with all and singular whatsoever thereunto belongs its horses,

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machinery, anchors, cables, cabbin and furniture, & secondly unto the said Phillips Crow, William Reed Stephen and Fielding Wilhite, to secure them in the debts & liabilities afore said together with all and singular the aforesaid horse ferry boat now lieing in Mo. River at the Town of Rocheport. Provided always nevertheless, that if the said John Stemmons shall well - truly pay or cause to be paid the several debts aforesaid and by every lawful means save harmless and indemnified the said parties of the second part, them and each of them from the loss or payment of the debts above specified then and thenceforth this Indenture and the property herein sold shall cease determine and become null and void, any thing herein contained to the contrary notwithstanding. In Testimony whereof I the said John Stemmons have hereunto set my hand and seal the date above written John Stemmons (L.S.)

State of Missouri } Set. Be it remembered that in
County of Boone } this twenty sixth day of April in the year of our Lord one thousand eight hundred and forty seven personally came before me Clerk of the Circuit Court within and for Boone County, John Stemmons who is personally known to me to be the person whose name is subscribed to the above and foregoing deed or instrument of writing as a party thereto, and acknowledged the same to be his act and deed, hand and seal for the purposes therein mentioned. In Testimony whereof I hereto subscribe my name and affix my official seal at office in Columbia on this day and year aforesaid

(Lead) Robert L. Todd Clerk By Robert R Provines Dep

41 State of Missouri } Sct. This Deed of mortgage
County of Boone } from John Stemmons to
Jesse Arnott, Phillips Crow and others
was produced before me Clerk of the Cir
cuit Court and Ex officio Recorder of Boone
County on this twenty sixth day of April A.D.
eighteen hundred and forty seven and with
the certificate thereon is duly recorded in
Book 2 pages 209 & 210. Given under my
hand as Recorder aforesaid with the Seal of
said Court hereto affixed at office in Colum
bia on this day and year aforesaid.

Seal. Robert L. Todd, Clerk & Recorder."

At the time the above mortgage deeds were
offered in evidence, respectively, by the defend
ant, the plaintiffs objected to the reading thereof,
upon the ground that the same was irrelevant,
illegal & incompetent evidence upon the issue
in the cause (but plaintiffs made no objection
as to the execution or authenticity of these
deeds or the recording thereof) but the Court
overruled the objection of the plaintiffs to the
reading of the same & permitted the same
to be read, as above stated and to this opinion
of the Court the plaintiffs excepted.

The defendant then gave evidence conduc
cing to show that the debts, &c, in the mort
gage deeds respectively mentioned, were real
debts & liabilities of the said Stemmons to the
persons therein specified, & that a portion
of them yet remained unpaid & not satisfied.
And there was no evidence offered or given
conducing to show that the mortgages
were made in bad faith by said Stemmons.
And it was admitted by the parties that the

42 property mentioned in said mortgage deeds had always been in the actual possession of said Stemmons, & never in the possession of the Mortgagees.

The Defendant then read in evidence to the Jury the following proceedings and judgments therein of the Boone Circuit Court in favour of A. H. Robertson vs John Stemmons, the Defendant and of George Knox and Wilhite vs said Stemmons; together with the executions issued upon these judgments with the Sheriffs indorsements & certificates of his action & proceedings thereon - and which read in these words & figures

Robertson. Knox. Wilhite v. Record Stemmons

"To the Honorable, William A Hall, Judge of the Boone Circuit Court, Your petitioners alexander H Robertson, George Knox, & Stephen Wilhite would state that John Stemmons on the 23d day of December 1845, mortgaged to them

Pcto.

three negroes slaves, to wit a woman Rebecca about twenty four years of age - her child Emily about three years of age & a man David about sixty years of age to indemnify them as his securities as follows, to wit to secure said Robinson as surety in a bond or note to James Ferguson for about the sum of Two hundred dollars & also to Jas. S. Rollins in the sum of two hundred dollars as securities and also to secure the said Knox & Wilhite as securities in a guardian bond, executed by the said Stemmons with the said Knox & Wilhite as his securities, for the faithful performance of his trust as guardian of Elizabeth Monroe. Your petitioners would state that the amount now due in favour of the said Ferguson & Rollins upon the two notes above described is — dollars & — and

43 that the said Knox & Wilhite have paid as the securities of the said Stemmons as aforesaid the sum of — They produce said mortgage deed in Court & make the same a part of this petition marked Not. They pray the Court to render Judgment in favour of your petitioners as follows towit in favor — the said Robinson for the aforesaid sum of — and in favour of the said Knox & Wilhite jointly for the sum of Two hundred & fifteen dollars eleven cents They pray that the equity of redemption of said Stemmons may be foreclosed & the said slaves be sold to satisfy the amount due in proportion to their respective liabilities they pray their costs & expenses in this behalf laid out & expended. Robards atty for petitioners "

"Know all men by these presents that I John

Mortgage Stemmons of Boone County Missouri do hereby for and in consideration of five dollars to me in hand paid by Alexander H. Robinson George Knox and Stephen Wilhite, the receipt of which I hereby acknowledge, do hereby sell and deliver unto the said Robinson, Knox and Wilhite, three negroes, towit, one negro woman, Rebecca about twenty four years of age, Ha child Emily about three years of age, and a man David, about sixty years of age. The condition of the above sale is as follows for that whereas the said Alexander H. Robinson is now bound as my security to James Ferguson for about the sum of Two hundred dollars, and also to James S. Rollins in the sum of Two hundred dollars, and whereas the said Knox and Wilhite are my securities in a bond as Guardian of Elizabeth Monroe, to secure

the faithful performance of my trust as such guardian. Now the above sale is made upon this condition and understanding to secure and indemnify the said Robinson, Knox and Wilhite against any loss or liability they may sustain as my securities as aforesaid. And if the said Robinson, Knox and Wilhite shall sustain any loss or incur any liability on account of my default or non-payment of said debts or any part thereof, then and in that event the above sale to be of full force & binding otherwise to be null and void. Given under my hand and seal this 23d day of December 1845 — State of Missouri } Sct. John Stemmons (Lud) County of Boone } Be it remembered that on this twenty third day of December in the year ~~[illegible]~~ eighteen hundred and forty five, personally came before me the undersigned clerk of the Boone Circuit Court, John Stemmons, who is personally known to me to be the person whose name is subscribed to the within and foregoing deed or Instrument of writing as having executed the same and acknowledged the same to be his act and deed hand and seal for the purposes therein mentioned. In Testimony whereof I hereto set my hand and affix the Seal of said Circuit Court at office in Columbia on the day and year aforesaid (Lea) Roger N Todd clerk By R.L. Todd D.C. State of Missouri } Sct. This Mortgage from County of Boone } John Stemmons to Alex. H. Robinson, Geo Knox & Stephen Wilhite was produced before me the undersigned clerk of the Boone Circuit Court and Ex officio

45 Recorder of Boone County, on this twenty third day of December in the year of our Lord one thousand eight hundred and forty five, and having been duly acknowledged and certified the same with such certificate is admitted to record in my office, and is duly recorded in Book P, pages 42 & 43. Given under my hand as Recorder aforesaid with the Seal of said Court hereto affixed at office in Columbia on this day and year aforesaid. (Seal). Roger N Todd. Clerk & R.B.C."

Judgt + "Alexander H. Robertson plt } Now on this day
V Z Peto to foreclose mortgage } came the plaintiff by
John Stemmons deft } his attorney as well as
the defendant in his own proper person and said defendant saith that he cannot gainsay the plaintiffs action commenced against him but confesseth that he does owe and is justly indebted to the said plaintiff in the sum of four hundred & seventy dollars and — cents for his debt and also his costs herein: It is therefore considered and ordered by the Court that the plaintiff recover against said defendant the debt aforesaid in manner and form aforesaid confessed and also his costs by him about his suit in this behalf laid out expended, to be levied of the mortgaged property, to wit: the slaves in said mortgage specified a negress Rebecca and her child Emily and a man David: and if the mortgaged property be not sufficient to pay said debt and costs, then the residue to be levied of other goods, chattels, lands and tenements of said defendant and he be in mercy &c: 6 per cent."

"State of Missouri, County of Boone } Sct. The

46 State of Missouri, To the Sheriff of Boone County, Writing: Whereas Alexander H. Robertson on the 23d day of August in the year of our Lord Eighteen hundred and forty seven at our Circuit Court hath recovered against John Stemmons the sum of four hundred and Seventy dollars for his debt and also the sum of Two Dollars Seventy cents which to the said Alexander H. Robertson were adjudged for his costs in that suit expended. These are therefore to command you that of the property mortgaged by said Stemmons to said Robertson, to wit: a negress Rebecca and her child Emily and a man David, you cause to be made the aforesaid debt and costs; and if the mortgaged property be not sufficient to satisfy said debt and costs, then the residue to be levied of other goods, chattels, lands and tenements of said defendant, and that you have the same before the Judge of said Court on the first day of the next March Term 1848 thereof to satisfy the debt and costs aforesaid and that you certify to our said Judge how you execute this writ and have you then and there this writ. Witness Robert L. Todd clerk of said Circuit Court at office in Columbia on this 13th day of September 1847. Lead Robert L. Todd, clerk No 1188. Alex. H. Robertson v. Fi-fa, John Stemmons. Debt $470.00 R L Todd plt 2.70. Date of Judg Augt 23d 1847: 6 per cent R L Todd clerk "

Sheriff's Return "Came to hand Septr 13th 1847 Thos C Maupin Sheriff of B C Mo

The amount of this Execution was settled amongst the parties and ordered to be returned satisfied by plaintiff Thos C Maupin Sheriff of B C Mo "George Knox and Stephen Wilhite Pltr Vs"

47 Peto to foreclose mortgage, John Stemmons
deft. Now on this day came the plaintiffs by
Judgt. their attorney and the defendant came in his
own ~~[illegible]~~ person and saith that he cannot
gainsay the plaintiffs action commenced ag
ainst him, but confesseth that he does owe and
is justly indebted to said plaintiffs in the sum
of Two hundred and fifteen dollars Eleven
cents for their debt, besides costs: It is therefore con
sidered and ordered by the Court that the plain
tiffs recover against said defendant the debt
aforesaid in manner and form aforesaid con
fessed, and also their costs by them about their suit in
this behalf laid out and expended, to be levied of the
mortgaged property, to wit: the slaves in said mort
gage specified, a negress Rebecca and her child
Emily and a man David: and if the mortgaged
property be not sufficient to satisfy said debt
and costs, then the residue to be levied of other
goods and chattels, lands and tenements of said def
endant and he in mercy &c: Open cent "
"State of Missouri } Ct. The State of Missouri, To
Fi-fa County of Boone } the Sheriff of Boone County,
Greeting: Whereas George Knox and Stephen
Wilhite on the 23d day of August in the year
Eighteen hundred and forty seven at our Cir
cuit Court hath recovered against John Stem
mons the sum of Two hundred and fifteen
dollars Eleven cents for their debt and also
the sum of Two dollars Eighty cents which to
the said George Knox and Stephen Wilhite were
adjudged for their costs in that suit expend
ed. These are therefore to command you that
of the property mortgaged by said Stemmons
to said Knox and Wilhite, to wit, a negress Re

48 becca and her child Emily and a man David, you cause to be made the aforesaid debt and costs: and if the mortgaged property be not sufficient to satisfy said debt and costs, then the residue to be levied of other goods, chattels, lands and tenements of said Stemmons; and that you have the same before the Judge of said Court on the first day of the the next March Term 1848 thereof to satisfy the debt and costs aforesaid and that you certify to our said Judge how you execute this writ and have you then and there this writ: Witness Robert L. Todd clerk of said Circuit Court at office in Columbia on this 13th day of September 1847.

Robert L. Todd clerk

No 1189. S Wilhite & George Knox Vs Fi fa John Stemmons Debt $215.11 R L Todd pltt $2.80 & $217.91 Date of Judgt 23d Augt 1847 6 per cent R L Todd clk

Sheriff's Return "Came to hand Sept 13th 1847 Thos C Maupin Sheriff of B C Mo. This Execution is returned not satisfied by order of the plaintiffs Stephen Wilhite & George Knox.

Thos C Maupin. Sheriff of B C Mo."

The defendant then proved by several witnesses the value of the use of the ferryboat at Stemmons's ferry during the time it was detained from the defendant that is from the time it was taken from defendant under the writ of replevin: and also what would be a reasonable hire of the slaves during the same time. And here the defendant closed his evidence. And the above & foregoing evidence was all the evidence given by the parties in regard to the title to the property and the possession of it and of the value of its use or of the hire of the slaves mentioned in the declaration.

And thereupon before the jury retired from the bar to consider of their verdict, the plaintiff moved the Court to give them the following Instructions, which read in these words & figures.

Instructions asked by plfs

1. "If the defendant Slemmons at the time of the execution sale at which the plaintiffs purchased the property in controversy and before was and had been in possession of the property, then such property was subject as between the parties to sale under execution although the same may have been under mortgage to others as shown in evidence by the defendant.

refused

2 2 In determining the title of the Plaintiffs to the property in controversy the jury will disregard all the evidence given tending to show that this property at the time of the levy & sale, and before was under mortgage to others. 3. Personal property mortgaged to others and in possession of the mortgagor is as against the mortgagor subject to sale under execution and the mortgagor in such cases is estopped from showing the mortgage for the purpose of defeating the sale.

refused

refused

4. If the defendant Slemmons at the time of the execution sale at which the Plaintiffs purchased the property in controversy and before was and had been in possession of the property, then even if the property was not subject to sale under execution on account of the mortgages the jury cannot in this action assess the defendant any damages for the taking

or detention of the property.

5. If the defendant mortgaged the property as shown by the mortgage deed - & the same after the replevying was sold upon the mortgages under judicial process as shown in evidence, then the defendant cannot in this action recover any damage for the taking or detention of the same.

6. If the property in controversy was at the time of the execution sale at which the Plaintiffs purchased in the possession of the defendant, under an agreement with the mortgagee that he might keep the possession for any specific length of time & that this time had not expired at the time of the sale, then this property was subject to sale, under execution - and the purchaser at such sale acquired the right to the possession of the property - and the jury may find that there was such an agreement from facts & circumstances without direct or positive proof to that effect.

7. If the defendant mortgaged the property in controversy as shown in evidence by the mortgage deed - and did this not only with a view to secure the mortgage debts - but also at the same time to prevent his creditors or any of them from selling his property to pay their debts or to delay them or any of them in the collection of their debts for any length of time, no matter how short, such mortgage so far as the defendant is concerned are fraudulent.

8. If the defendant had any interest in the property in dispute at the time of the

51

execution sale that interest was subject to sale under execution

Refused

9. If the defendant had no interest in the property in dispute at the time of the execution sale - and no interest at the time the property was taken by the replevin out of his possession, then the defendant can not in this action recover any damages for the taking, or detention of the property

Refused

10. The defendant cannot recover any damages for the detention of the property after the time that it was levied upon & sold by judicial process upon the mortgages given in evidence by the defendant

Given

11. The criterion of damages occasioned by the detention of the slaves, is what they were reasonably worth - or would have hired for at the time and place of the detention.

Given

12. The criterion of damages occasioned by the detention of the boat is what the boat would have hired for or was reasonably worth at the time and place of detention

Given

13. The Plaintiffs are not liable by reason of their detention of the boat for the profits the defendant might have made at his ferry by the use of the boat - hands, horses, machinery - and ferry privilege. "

To the giving of which the defendant objected, but the Court overruled the objection of Deft & gave to the jury the following.

Instructions given for plt.

"6. If the property in controversy was at the time of the execution sale at which the Plaintiffs purchased in the possession of the defendant, under an agreement with the mortgagee that he might keep the possession

for any specific length of time & that this time had not expired at the time of the sale, then this property was subject to sale under execution & and the purchasers at such sale acquired the right to the possession of the property. And the Jury may find that there was such an agreement from facts & circumstances without direct or positive proof to that effect.

10. The Defendant cannot recover damages for the detention of the property after the time that it was levied upon & sold by Judicial process upon the mortgages given in evidence by the defendant.

11. The criterion of damages occasioned by the detention of the slaves, is what they were reasonably worth or would have hired for at the time and place of the detention.

12. The criterion of damages occasioned by the detention of the boat is what the boat would have hired for or was reasonably worth at the time and place of detention

13. The Plaintiffs are not liable by reason of their detention of the boat for the profits the defendant might have made at his ferry by the use of the boat - hands - horses - machinery - and ferry privilege." & thereupon the plaintiff excepted to the opinion of the Court in refusing to give all & every the Instructions by him moved & prayed for = And thereupon the defendant moved the Court to give to the Jury the following

Instructions asked by deft

Instructions - "The Defendant moves the Court to instruct the Jury as follows.

1st That before the Jury can find for the plaintiffs they must be satisfied from the evidence

53.

There is nothing in the margin of this Instruction, denoting whether it was given or refused.
R. L. Todd. clk.

that at the time the property was taken out of the possession of the defendant by the writ of replevin the plaintiffs had a right to the immediate possession thereof.

2nd. That if the Jury believe from the evidence that, at the time the slaves Dave, Rebecca and Emily, and the ferry boat were levied upon by the Sheriff in virtue of the Executions in favor of Vanlandingham & Batterton viz on the 6th of March 1848, the said property above named had been bona fide, and for a valuable consideration mortgaged by the defendant to Woodson Crow Wilhite Amot & others and that said Mortgages were at that time in full force and unsatisfied Barnes and Yeldell acquired no title to the ferry boat & the slaves Dave Rebecca & Emily by their purchase under the the execution aforesaid, and that if the said purchase be the only claim of title or right to possession to the property given in evidence by the plaintiffs then they must find for the defendant, and if the Jury does find for the defendant they will find for him such damages as he may have sustained by reason of the detention of the property.

Given

(See)

3rd That in the event the Jury find for the defendant, they will assess damages for the defendant for the reasonable hire of the slaves from the time they were replevied out of the defendants possession until they were taken by the Sheriff to satisfy the mortgage debts, and also the nett value of the use of the boat from the time that it was replevied until it was taken by the Sheriff to satisfy the mortgage debts."

Given

To the giving of which Instructions the plaintiff objected, but the Court overruled the objection so made by Plaintiff & gave to the

54 Jury the following (No 1. is not marked either given or refused — Nos 2 & 3 are marked given [54]
R.L. Todd. clerk.)

And the Plaintiff excepted to the opinion of the Court in overruling their said objection to said Instruction, & to the giving those Instructions so given for the defendant. And thereupon the Jury found their verdict for the said Stemmons. And the Plaintiffs then filed the following motion to set aside the verdict & to grant them a new trial of the cause, which reads in the following words & figures.

"Mo. for New trial" Yelldell & Barnes ads Stemmons. Boone circuit Court. August Term 1830. The defendants move the Court to set aside the verdict in this cause for the following reasons. 1. The Court gave improper instructions to the Jury. 2. The Court refused proper Instructions asked by the Plaintiffs. 3. The Court admitted improper evidence offered on the part of the defendant. 4. The Court excluded proper Evidence offered by the Plaintiffs. 5. The finding of the Jury is against the Instructions of the Court. 6 The finding of the Jury is against the Law. 7. The finding of the Jury is against the evidence. 8. The damages assessed by the Jury are excessive
Hayden & Leonard, attos for Pltff "

And the Defendant then remitted the sum of Two hundred and twenty eight ($228.00) dollars, And thereupon the Court overruled said motion for a new trial, and the plaintiffs excepted to this opinion of the Court in overruling the same — and now and prayed the Court to allow them their said several exceptions to the opinion of the Court, & to sign,

seal & make the same a part of the Record in the cause, which is done accordingly

Wm A Hall Seal "

State of Missouri } ct.
County of Boone } I, Robert L. Todd, clerk of the Circuit Court within and for the County and State aforesaid, do hereby certify that this page, with the foregoing annexed fifty four pages, contains a full, true and complete Transcript of the Record and proceedings, had in a cause lately pending in said Circuit Court, wherein John Barnes and John W. Yeddell were Plaintiffs and John Stemmons was defendant, as fully and amply as the same now remain of record and on file in my office.

In Testimony whereof, I hereto set my hand and affix the seal of said Circuit Court, at office in Columbia, on this 26th day of November, A.D. 1830.

Robert L. Todd,
Clerk.

Clerk's fees

Record to Supreme Court	$15.15	
Certificate & Seal	.50	
Copying Bill of Exceptions	10.65	
Certificate & Seal	.50	$26.80

R L. Todd, Clerk.

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~~13.~~ 10.

Ino. W. 75 Ino.

Yeldell & Barnes appts

Vs Record

Ino Stemmons, appee

filed Dec. 24 1850

Wm E. Drury coun

Clerk

Boone

2nd

[60]

Geldell & Barnes
vs.
Stemmons

Appeal from the Boone Circuit Court

This was an action of replevin begun by the appellants against the appellee for three slaves and a ferry boat, purchased by the appellants at a sale under an execution against the appellee. The interest of the appellee in the slaves and boat was purchased by the appellants who were not the plaintiffs in the execution under which the sale took place for the sum of two dollars. The appellee was mortgagor in possession of the property in controversy at the time of sale, and his equity of redemption was foreclosed during the pendency of this suit: The appellants having failed in their action damages were assessed against them to the amount of five hundred & twenty four dollars: after judgment they appealed to this Court

The only questions that have been raised upon the record, are whether the appellants can maintain this action and whether the appellee Stemmons being the defendant in in the execution is not estopped from setting up the defense that he had no vendible interest in the property in controversy or at least none such as was subject to sale under an execution?

13

Yeddell & Barnes

vs.

Stemmons

Opinion

Scott

filed March 8 1852

Wm E Drummond

Clerk

THE STATE OF MISSOURI, SCT.

THE STATE OF MISSOURI TO THE SHERIFF OF THE COUNTY OF Boone IN SAID STATE, **Greeting,**

WHEREAS, John Stemmons on the thirteenth day of February in the year eighteen hundred and fifty two at our Supreme Court for the State of Missouri aforesaid, before our Judges of said Court, recovered against Geo. N. Yeldell & Geo. Barnes the sum of thirty three 25/100 dollars for his costs and charges by him expended in a certain suit wherein the said Geo. N. Yeldell & Geo. Barnes were appellants and the said John Stemmons was respondent which to the said respondent were adjudged, as appears to us of record: **Therefore,** We command you, that of the goods and chattels, lands and tenements of the said Geo. N. Yeldell & John Barnes in your bailiwick, you cause to be made the aforesaid costs, and that you have the same before the Judges of our said Supreme Court, on the second Monday in January next, to render unto the said John Stemmons the costs aforesaid, and that you certify to our said Judges how you execute this writ, and have you then there this writ.

SEAL OF THE SUPREME COURT OF MISSOURI

Witness, William E. Dunscomb, Clerk of said Supreme Court, at Office, in the City of Jefferson, the thirteenth day of October in the year of our Lord one thousand eight hundred and fifty two

Wm E Dunscomb

Came to hand October 21st 1852
J B Douglass Shff B.C. Mo

48

January Term 1853

John Stemmons

v. J Exeons

Ono. W Yeldell & Ono Barnes

Costs

R L Todd	26.80
R B Jackson	.60
Wm E Dunscomb	5.85
this writ	1.00
	$34.25

R L. Todd's fees $26.80 were paid by Jno. Hinton. Jany 7. 1851.
R L. Todd.

paid

Boone

This Execution is returned satisfied November 9th 1850
J B Douglass Shff
B.C. Mo

It was a principle of the common law steadily maintained That an equitable interest in chattels could not be sold under execution: the sheriff must actually seize the property on a fi-fa before he can sell :: This was a refinement of the common law, and it has been sanctioned by our statute. The great sacrifice resulting from sales of such interests, has caused their prohibition. The interest of the debtor may be great or small and as it is uncertain, what will be realized by the purchase, there is almost unavailable a ruinous sale. This very case demonstrates the impolicy of such transactions. Here is a sale of an interest in property for two dollars & that property not having been delivered by the sheriff has given rise to this vexatious and protracted litigation: Such will always be the case when there is a departure from first principles: Our statute expressly subjects equitable interests in land to sale; but not equitable ~~so~~ of chattel interests. At law the after forfeiture the mortgagor has no interest in the chattels mortgaged The right of redemption is a mere chose in action not the subject of levy & sale upon execution The interest of the mortgagor if definite & determinate however limited may be sold under execution but a mere holding at the will of the mortgagee is not the subject of a sale: It does not comport with the dignity of the law that such evanescent interests should be the subject of sale, It is an unwarrable interference with the rights of others. A levy by a sheriff on a slave, might frequently cause his escape: Why should the law suffer the property of one man to be sold, on an execution against another :: Such interference must prove injurious to the rights of the true owner :: The creditor is not without his redress he may by suitable proceedings ascertain the precise interest his debtor has in property and then subject it to sale

when there can be no sacrifice

The authorities cited do not warrant the inference that a debtor is estopped from availing himself of the want of property in the subject of sale in an action against himself by the purchaser at such sale :: The rule prohibiting a sale of the equity of redemption under execution, is designed to protect the property of the debtor from sacrifice: to prevent gambling about uncertainties, and such being its aim, there is a propriety in suffering the debtor to avail himself of this defense.

The damages assessed ~~to~~ against the plaintiffs were for their use of the property :: The ~~finding is~~ jury have found that they ~~appellants~~ have been benefitted so much by the use of the property which they ~~have~~ wrongfully ~~taken~~ took from the defendant :: It has been ascertained that they were not entitled to the property ~~their~~ its value to them is deemed to be worth so much, then is there no injustice in making them pay the amount they have been benefitted by its enjoyment: When would be the justice, in permitting them for the sum of $2. ~~one~~ to hold on to the damages assessed by the jury?

The other Judges concurring the judgment will be affirmed

Wm Scott

Yelkell & Barns - appellants against
Stemmons - appellee

Sup. Ct. Jany Term 1851.

Points & authorities relied on ~~for the~~
by Leonard for appellants

First - Mortgaged personal property in possession of the Mortgagor, can after the mortgage has become absolute, may be sold under execution against the mortgagor and in a contest between him and the execution purchaser, he is estopped from setting up the mortgage to defeat the execution sale
Stone vs Laughlin 5. Mo Rep. 43
Meeker vs Wilson 1. Gall. Rep. 424-425
Klein vs Graham 3. Caines Rep 188.
Stone vs Scott - 18 John Rep 96
Jackson vs Parker 9. Cowen Rep. 80
Mc Gregor vs Darling & Hall - 3 Stew & Port 397
This last case is referred to in Park Ram vs Elliott - 5. Port. Rep. 189 -

Second - If the execution sale was void for want of a vendible interest in the Mortgagor, then for the same reason he cannot recover damages for its detention -

Sup. Ct.

Barnes &
Yeldell
vs
Stemmons

Leonards
Points &
authorities
for
Barnes & Yeldell

In the Supreme Court
January Term 1852

John W. Yeldell &
John Barnes
vs
John Stemmons

} appeal from the Boon Circuit Court

The appellants Yeldell & Barnes brought Replevin in the Boon Circuit Court against Stemmons the appellee, and replevied from his possession one Horse ferry Boat, and three Slaves. At the return of the writ Stemmons appeared and plead to the action the general issue, or statutory plea to which issue was taken.

At the trial Stemmons obtained a verdict and his damages were assessed for the boat to four hundred and twenty eight dollars and for the slaves to sixty two dollars making the total damages assessed four hundred and ninety dollars.

The defendant ~~[illegible]~~ ~~Stemmons~~ remitted to the plantiffs two hundred, and twenty eight dollars of the damages so assessed. The plantiffs moved for a new trial on the ground that the Circuit Court had erred in excluding evidence offered by the plantiffs, and in allowing the defendant to give illegal evidence, and because of improper instructions given for the defendant and refusing proper instructions asked by the plantiffs and also because the verdict of the Jury was against the instructions of the Court against law, and evidence, and that the damages assessed were excessive which motion being overruled the plantiffs ~~[illegible]~~ took an appeal to this Court

The plaintiffs to sustain their action read in evidence certified copies of two Judgments obtained against the defendant and ~~the~~ proved that executions were issued on said Judgments and levied upon the boat and slaves in Controversy, that the same were sold by the Sheriff by virtue of said Judgments and executions, and that the plaintiffs purchased the same, that at the time the executions were levied & for a Considerable time previous the defendant had the property in his possession and used the same, that at the ~~t~~ Sheriff sale of the property it was left in the defendants possession where it remained and was when the writ in this case was executed - that the plaintiffs ~~and~~ at and before they purchased the property knew the property was mortgaged but said they Could prove the loans were satisfied.

The defendant proved that the property in question had been regularly mortgaged to several individuals to secure real subsisting debts due from him to the mortgagees long before the issue of the executions under which the property was levied upon and sold, and that the time of redemption had passed prior to the date of said executions - on several of the mortgages, it was admitted that property had always remained in the possession of the defendant. To the introduction of the mortgages in evidence the plaintiffs objected but their objection was overruled and they excepted upon this evidence ~~instruction~~ ~~were~~ asked by both parties, some of which were given and refused by the Court on both sides

as will appear by reference to the bill of exception ~~page~~ commencing at page forty nine of the record-

The appellee makes the following points; and relies upon the following authorities to sustain the Judgment of the Circuit Court ~~as~~

1st A Mortgagee of personal property is from and after the execution and delivery & record of the Mortgage the legal owner, and the Mortgagor retains no interest in it except by agreement to that effect, the following authorities sustain this position very clearly. Jamison vs Bruice 6th Gill & Johnson 72, 4th Randolph 248 Faulkes adner vs Brockenbrough, 3 Fairfield 282 8th John 97, 4 Blackford 425, 1 Pickering 399 8 Vermont Rept 434 1 Peters 441. 13 Peters 294 4th Kent Com 163 1 Tuckers Com 109 1st Meeds Chancery Repts 486 —

2 If the defendant Steinmons had any interest in the ferry boat & slaves, it was only an equitable interest and such an one as was not subject to sale under execution this point has been expressly ruled for the appellee by this Court in the case of King vs Baily 8 Mo Repts 332- see also 8 East Repts 467 1 Pickering 399, Harden Ky Repts 19 5 Bosanquet & Puller 461, Freemans Chancery Repts 729 4th Sneedes & Marshall 153-161 8th John 96. 7 Cowin 290 1 Aleyns Repts 435 2 Tucker 361 9th Wendell 258, 1 Comstocks Repts 295 3 Wendell 500 8 Wendell 347, 4 Cowin 461, 3 P Williams 341 2 Atkyns 290

3. The bare possession of the property by Steinmons the Mortgagor after the execution and delivery of the Mortgage dont furnish no presumption of a license to him to hold it days digest of Connecticut Repts 326 sec 77-

4 The Circuit Court did right in giving the third instruction asked by the defendants The rule of law governing the action of Replevin is that if the plantiff fails to prosecute his suit with effect he must return the property & pay such damages as will be equal to the value of the use of the property see digest 1845 page 922 title Replevin 13th Mo. Repts 28 Reed guardian &c vs Allison & wife

5th The defendant Steinmons was not stopped from showing that the plantiffs purchased no ~~property~~ title to the property in question at the sheriff sale ~~4th I J Marshall~~ 4 I J Marshall 588-9 Major vs Deer 2 Penn Repts 798 (reported in the United States digest Vol 2 page 138 sec 470 title Ejectment)

Clark for Appellee

Barnes & Yeldell appts

ad

I Stemmons appellee

Appellees Brief

Clark

[97]

Supreme Court,
January Term 1851.

John W. Yeldell,
John Barns & others — } Appellants —
agt } Appeal from Boon Circuit Court —
John Stemmons — } Appellee —

John W. Yeldell and John Barns brought their action of Replevin in the Boon Circt Court in the year 1848 against John Stemmons for three Negros, David, Rebecca & Emily an Infant Child of Rebecca, and for a Horse-Ferry Boat with its Rigging, & upon Giving Bond With Reuben Beeman, John W. Keiser and Abram Barns, as Securities, obtained the possession of the property sued for =

The Defendant Stemmons, filed the General issue to the action, & the Cause was tried at the last August Term of the Boon Circuit Court, and the Defendant Stemmons got a verdict & Judgment against the plaintiffs, & their Securities, Beeman & A. Barns (Keiser having previously died) — And the plaintiffs have brought the Cause into this Court by Appeal —

Upon the Trial of the Cause in the Circuit Court, the plaintiffs proved that on or about the 6th day of March in the year 1848 Thomas C. Manpin, Sheriff of Boon County, by virtue of Certain Executions issued by the Clerk of the Boon Circuit Court, Levied upon the property sued for

to satisfy certain judgments therein mentioned (all of which will be seen by reference to the Record here) and that afterwards on the 18th day of the same month, he sold the property so levied on, under said executions, & the plaintiffs became the purchasers thereof = That Stemmons refused to deliver the property after the purchase to plaintiffs, who thereupon brought this suit =

The Defendant Stemmons in this defence to the action, offered & read in evidence to the Jury (though objected to by plaintiffs) certain Deeds of Mortgage of the same property, to certain of his creditors, which had been made & recorded previous to the dates of the executions, to secure debts therein specified = which Evidence was ruled by the Court to be competent & relevant, & to which opinion of the Court the plaintiffs excepted = The Defendant also gave evidence tending to show, & it was admitted by Stemmons, that the property had always remained with Stemmons & had never been in the possession of the Mortgagees or any of them, at any time, prior to the commencement of this suit -

It was also proved upon the trial that the property after the commencement of this suit & before the trial of the cause had been sold under judgments, foreclosing the Equity of Redemption in satisfaction of the respective debts for which the same had been Mortgaged as above stated, & the proceeds applied accordingly, leaving unsatisfied parts thereof =

The Defendant gave evidence, also, tending to shew what was the reasonable value of the use of the Boat & Rigging, & of the Hire or Services of the Slaves during the time they were replevied by Plaintiffs & prior to the time they were sold to satisfy the Mortgage Debts = and this was in substance all the evidence given in the Cause =

The Plaintiffs then moved the Court to give to the Jury some 13 Instructions as to the Law of the Case (and which will be found at pages 49 and 50 of the Record) and the Court refused to give all of them, except the 6th 10th 11th 12th & 13th =

And thereupon the Defendant asked the Court to give the Jury three Instructions, and the Court gave

[See Record at pp. 53-54.]

The plaintiffs excepted to the Opinion of the Court in refusing to give those Instructions asked for by plaintiff which were rejected, & in the giving of those asked for & given upon the motion of the Defendant =

The Jury found their verdict for the Defendant and assessed damages in his favour to the sum of $490 Dollars = of which the Defendant remitted to the plaintiffs the sum of $2 28 ~~= after the plaintiffs had filed their Bill~~

The Plaintiffs filed their motion for a New Trial for the usual Reasons assigned, & the

Defendant then remitted to the plaintiffs of the Damages assessed, the sum of $228, & the Court thereupon overruled the motion for a New trial, & rendered a Judgment against the plaintiffs and their securities in the Replevin Bond for the sum of Five hundred & twenty four Dollars, the same being double the amount of the Damages remaining, after deducting the amount remitted =

The plaintiffs Excepted to the Opinion of the Court in Overruling the motion for a New trial, & took their appeal from the Judgment rendered against them, & have brought the Cause to this Court, & have assigned for Error the Opinions of the Court Excepted to, & the rendering of the Judgment against them =

~~To the Counsel for the appellants will rely upon the following points & authorities to reverse the Judgment of the Circuit Court =~~

~~1st That personal property Levied upon & sold to the plaintiffs under the executions mentioned in the Record under the Circumstances of this case, was subject to the Levy & sale, & that the plaintiffs by their said purchase acquired (as against Stewart & the Debtor) such right & title thereto as to maintain this action =~~

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The Plaintiff's Counsel will insist in their argument upon the following points & authorities to Reverse the Judgment of the Circt. Court =

1st That the property levied upon and sold to the plaintiffs was subject to the Levy & Sale (under the Circumstances of this Case); & that the plaintiff's by their purchase acquired such a Title thereto, as against Stemmons, as to enable them to maintain their present action against him =

1st Gallison's Rep 419 - 424 - 425 & following = 5th Alabama Rep: 664. &c: Same Book 742 - 743, &c: 781 - 785: 3d Stew & Porter 397: 5th Stew & Porter 192 Purnell & Hogan: 5th Porter Rep 182. 4th Ala 402: 5 Mo Reports 43: 18 John Rep: 96: 9th Cowen Rep: 80: 3d Cain's Rep 188:

2d That as the property was subject to sale under the executions, the Plaintiffs became entitled to the possession thereof, & the Defendant was estopped to deny it, and therefore the Circuit Court upon the trial of the Cause Erred in permitting the Defendant to give Evidence Conducing to shew that he had previously mortgaged the same to Others, who never had had the possession thereof, & who did not in this Action interpose their Claim against the Plaintiff's right of Recovery =

3d — That the Circuit Court erred in refusing the Plaintiffs' Instructions, and in giving those as prayed for by the Defendant —

4th — That the Circuit Court erred in not setting aside the Verdict, & in refusing the Plaintiffs a new trial as prayed for in their motion —

Yeldell Barns & Co.

agt { Appeal —
from Boon —

John Stemmons —

Hayden's Brief
for pefts

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