Canefax, B N vs. Crenshaw, Samuel; 1860 Greene Co. #14 Cir. 259/6

92/13

· unlawful detainer of 1 brown gelding

· bought horse at sheriff's sale

^
Cannefax

dismissed

page 1 Be it Remembered that at a regular Term of the Greene Circuit Court began and held on the first monday of August 1860 at the Court house in Springfield Greene County Missouri, there were Present the Hon. P H Edwards. Judge of the fourteenth Judicial Circuit. Julian Frazier Circuit attorney. J W D L Shack Clerk of said Court. and Henry Mattock Sheriff of said County when and where the following proceedings were had Viz.

Samuel Crenshaw. plff. vs Benj. W. Cannefax. Deft } Tresspass. Bill of Exceptions

Be it Remmembered that at the August Term of the Greene Circuit Court 1860. the above entitled Cause Came on to be tried, apon the following record.

Samuel Crenshaw. plff. against Benjamin W. Cannefax. Deft } In the Greene Circuit Court

Plaintiff States that Defendant on

2 the 8th day of October 1857. at the County of Greene. in the State of Missouri without leave & wrongfully took the following property of plaintiffs & has not returned the same. that is to say one brown gilding of the value of one hundred & fifty Dollars. by which plaintiff says he is damaged to the amount of. Two hundred Dollars for which plaintiff asks. Judgement

L. Hendrick
attg for plff.

Samuel Crenshaw the plaintiff makes oath and says he believes the above petition & the matters therein as stated are true, Samuel Crenshaw

Sworn to & subscribed before me Oct 24th 1857

A. G. McCraken. clerk
By J. W. D. L. F. Hack. Dc

The answer filed to said petition is in words and figures as follows viz.

3 Samuel Crenshaw
vs
Benj. W Canefax } answer

Deft denies that the taking of the horse in plaintiff petition mentioned by deft. was wrongful. he denies that said horse was plaintiff Deft for futher answer. says that one Thomas W Anderson, and Deft. was indebted to one R.C. Cowden, in a Judgement in the Circuit Court of Greene County, that an execution was issued on said Judgt, and said horse levied on & sold as the property of said Anderson, and purchased by Deft. on said sale to satisfy said exr. by means of which hors & is the holding alledged in plaintiff petition & sale defendant became possessed of in said petition and none other. Wm C Price for Deft.

Benj. W Canefax deft makes oath & says. the foregoing answer. & matters therein as stated

he believes to be true.
Sworn to & subscribed
before me this 9th day of March
1858. B. W. Cannefax
D. H. Edwards. Cir. Judge.

upon the trial of which
plaintiff proved by Thomas
W. Anderson that the horse
sued for being a brown gilding
was the property of plff. in the
possession, suit. worth about
125$. and that Peter King
Shff. of Greene County levied
on him as the property of
Wit. to satisfy an execution
in the hands of said Sheriff
in favour said R. C. Cowden
against said Witness & B. W. Cannefax Deft in
this suit

Peter C. King second witness
for plff says B. W. Cannefax
deft. in this suit pointed
out the horse sued for as
the property of Thos. W. Anderson
Co. Defendant with said Can
nefax in an execution

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in hands aforesaid King as Sheriff of Greene County in favour of R. C. Cowden and directed him to levy on said horse to satisfy said execution that he did so. that at the sale plaintiff forbid the sale of said horse as his property, and not the property of Anderson. that said Defendant, Kennepay purchased and took possession of said horse at said sale which was worth 100$ to 110$.

This being all the Testimony for plff. the Defendant offered the following record of Judgt. in favour of R. C. Cowden against T. W. Anderson & B. W. Kennepay

Which Judgement is in words and figures following Viz. (Adjourned July Term August 26, 1874)

Rives C. Cowden
vs
Thos W. Anderson & B. W. Kennepay } Civil action

This Day comes the plaintiff by his attorney, and it appearing to the satisfaction of the Court

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that the Defendants had been duly served with process. and having failed to answer. and being three times solemnly called comes not. and the Demand being founded on an instrument of writing for the direct payment of money. said cause was submitted to the Court. and the Court find from the said instrument that the said Defendants, are and stand justly indebted to the said plaintiff in the sum of one Thousand Dollars as his debt. and the sum of ninety two Dollars and fifty cents. as his damage by reason of the detention thereof it is therefore considered and adjudged by the Court that said plaintiff Rives & Gordon have and recover of said Defendants. Thos W Anderson and Benj W Cannefax the said sum of one thousand Dollars. as his Debt and for the sum of ninety

7 two 50/100 Dollars as his Damages by reason of Detention thereof as well as the Cost of this suit herein expended for all of which execution may issue

Which the Court refused, to which oppinion of the Court the Defendant objected & excepted, the Deft. then offered to read copy of execution on said Judgement.

Which execution is in the words and figures following, as well as Endorsements thereon Viz.

The State of Missouri

To the Sheriff of Greene County Greeting,

Whereas Rives C. Cowden on the 26th day of August in the year 1854, at our Court, hath recovered against Thomas W Anderson & Benj. W Cannefax, the sum of one Thousand Dollars, for Debt, and also for the sum of Ninty two, Dollars & fifty cents, which to the said Rives C. Cowden

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were adjudged for his Damages as well by reason of detaining the said Debt. and also Judgement. for his cost in that suit expended. these are therefore to command you. as heretofore you have been commanded. that of the Goods and Chattels and real Estate of said Thos W. Anderson & Benj W Cannefax you cause to be made the debt damages and cost; and that you have the same before the Judge of said Court to commence and be holden in the Court house in Springfield on the first monday in March. next. to satisfy the Debt. Damages and cost, aforesaid and that you certify how you execute this writ

Witness A G McCraken clerk of said Court with the seal of said Court. hereunto affixed. at the Court house in Springfield on the 5th Day of October 1857

A G McCraken. clerk
By J W D L Mack D C

9 Debt. $. 1.000. 00
Damages 92. 50
Clerk Fee. 4. 30
Shff. Fee 4. 30
$ 1001. 30.
By amt. Paid 11th Decr. 1854 by T.W. Anderson. 115. 00
$ 986. 30
This Writ 1. 00
$. 987. 30
Credited By $. 10.2.31 on Sale of horse after deducting expense
P. C. King. Shff.
King fees Paid & Clerks fees up to this Date this Febuary. the 9th 1858.

I. Peter C. King Sheriff do certify. that on the 24th Oct 1857 I pursuant to advertisement offered the property Levied on to the highest bidder for cash. at the court house door and the said Horse. Saddle. Blanket & bridle was levied off to B W Cannefax. at and for the sum of one hundred and Eleven Dollars he being the highest. bidder for the same. Oct 24th 1857. P C King. Shff

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Seized on one Brown Horse & One Saddle Briddle & Blanket as the property of Thomas W. Anderson. this October the 8th 1857

P C King Shff

Fees paid by B W Cannefax this Febuary the 9th 1858.

P C King. Shff.

I Peter C King Sheriff do hereby certify that I have am unable to find other property to satisfy this execution other than that levied on and sold as set fourth. 1st March 1858

P C King Shff

Come to hand Oct 5th 1857

P C. King. Shff

which the court refused. to which opinion of the Court. in refusing the same Deft objected & excepted

This being all the Testimony in the Cause. plff asked the following instructions

the Court instructs the Jury that if they believe from the evidence that the horse mentioned in the petition was the property of the plaintiff. & that the Sheriff

11 levied on the horse by the direction of the Defendant. Deft was a Tresspasser as fully as if he had levied on the horse himself & in that case the Jury aught to find a verdict for the plaintiff

That in assessing Damage the Jury will be governed by the value as stated by the witness & may give Damages way of interest. wh

Which were by the Court given to which opinion of the Court in giving the same Deft objected & excepted, the Defendant then asked the following instructions. which were by the Court refused. to wit,

Crenshaw vs Cannefax } Trespass

the Court instructs the Jury that admitting all the facts to be true as proved by plff they must find for Deft.

That unless. Cannefax not being plff. in the Execution

A. Object to

12 Each & all of them instruction

was pressent at the taking of the horse sued for, by the Sheriff aiding and abetting they must find for Deft.

That Cannefax not being plff in the execution is not responsible for the levying on the horse by the Sheriff.

That the Jury cannot find against, Deft. as purchaser of the horse.

That this action being Trespass vi. et. armis. nothing will hold Cannefax responsible but an actual Trespass. in his assistance. of Taking the horse into Possession.

after which the Jury returned into Court the following verdict. viz.

we the Jury find for the plaintiff, in the Sum of one hundred Dollars. with interest at rate of Six per cent. from time of taking horse to pressent time, in all one hundred and seventeen Dollars and thirteen cents ($117.18) H. F. Fellows
foreman

13 and afterward the Deft. filed the following motion for a new trial. viz.

Samuel Crenshaw. plff
vs
Benjamin W. Cannefax. Deft

Deft by atty moves the court to set aside the verdict. of the Jurg. in this cause and grant him a new trial. for the following reasons.

1.st Because the court refused to permit competent testimony to go to the Jurg.

2.nd Because the court at the instance of the plff. gave improper instructions to the Jurg.

3.rd Because the Court refused to give proper instructions at the instance of Deft.

4.th Because the verdict is against law and the evidence in the case.

Price & Foster
attys for Deft

which was by the Court overruled. to the opinion of the

14 Court, in overruling the Same Deft objected & Excepted and prays that this his Bill of exceptions be Signed Sealed & made part of the record in this Cause which is accordingly done

J. H. Edwards
Cir Judge

Afterwards at said Court the following proceedings were had viz

Saml Cunshaw
v
Benj W Cannifax } Civil action

Now at this day comes the Deft and by leave of Court files his affidavit asking an appeal. together with his Bill of Exceptions and Appeal Bond which is by the Court approved and an appeal Granted to the Supreme Court

Said affidavit is in words following

Samuel Cunshaw pltff
v
Benjamin W Cannifax Deft } In the Circuit Court

Benj W Cannifax this affiant makes oath and says this application for an appeal is not made for vexation or delay but because he believes this appellant is agrieved by the Judgment of the Court

B W Cannifax

Subscribed and sworn to before me this 16th day of August 1860

J W D S F Mack Clk

Said appeal bond is in words & figures following viz

We the undersigned Benjamin W Cannefax as principal and W H Blakey and John A Foster as sureties acknowledge ourselves indebted to Samuel Leinshaw in the sum of Two Hundred and fifty Dollars to be void upon this condition whereas Benjamin W Cannefax has appealed from the Judgment of the Circuit Court in an action between Samuel Leinshaw plff and Benjamin W Cannefax Deft Now if on such appeal the appellant shall prosecute his appeal with due Diligence to a decision in the Supreme Court and shall perform such judgment as shall be given by the Supreme Court or such as the Supreme Court may direct the Circuit Court to give, And if the Judgment of of said Court be affirmed or any part thereof and said appellant shall comply with and perform the same so far as it may be affirmed and well pay all damages and costs which may be awarded against him, the appellant by the Supreme Court otherwise to remain in full force & virtue Given under our hands and seals this the 13th of Aug 1868

B W Cannefax (Seal)
W H Blakey (Seal)
John A Foster (Seal)

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State of Missouri } ss
County of Greene }

I. J. W. D. G. Shack Clerk of Circuit Court in and for said County of Greene and State of Missouri do hereby certify that the foregoing is a true Transcript of the proceedings had in the above entitled cause of Samuel Crenshaw vs Benjamin W. Cannefax as appears by the record and Bill of exception filed in said cause, now on file in my office at Springfield Missouri

Witness my hand and the seal of said Circuit Court hereto affixed this 25th Day of Oct. 1860

J. W. D. G. Shack. clk

By R. A. Shack. Dy

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Samuel Crenshaw
vs
B. W. Canefax appt.

Dismissed

$10. paid

filed December 6th 1860

(Clerk's fee $10. paid)

Wm E Dunscomb
Clerk

Greene
14th