Helms, Gabriel v. Stewart, James & Turner, Hannah 1858 St. Louis 398/4

Old Box 596/4

Helmes v. Stewart

26
529

Helms is black; says lease forfeited on house b/c used as [illegible] houses
Stewart is under lease; says lease terminated

COA = unlawful detainer

nonsuit b/c presumed slave so can't recover

Filed 1857
March 1858
Napton
Rev & Remand
A = C. Gibson

O = can't invoke presump. that he's a slave & can't make lease/maintain suit b/c not applicable

St Louis Land Court, March Term, 1857.

Gabriel Helms, complainant) Amended
vs
James Stewart; defendants) Complaint
Frank Welsh

The complainant by leave of Court first obtained files this his amended complaint & says

That the defendants did at and for a long time before the commencement of this action wilfully and without force hold over the possession of a house and lot of ground in Block No seventy nine of the City of St Louis, & being a one story house, fronting on Almond street, west of & about 105 feet from 3d street, bounded north by Almond street & South by Charleville & being No 82 on Almond street,

after the termination of the time for which the same among other property was let by complainant to one Alfred W. Hezig under whom the defendants claims the same & after demand made in writing by complainant of the defendant for the deliverance to him of the possession thereof,

The complainant also says that the monthly value of the rents & profits of said house and lot is twelve

dollars & the rent now due complainant therefor is two hundred dollars & that his damages is one hundred dollars.

Complainant prays judgment for double the amount of said profits, rents & damages & for the possession of said premises.

O. Gibson Atty.

State of Missouri }
County of St Louis } Gabriel Helms being sworn says he believes the above complaint & the matters therein stated are true

his
G. X Helms
mark.

Sworn to and subscribed before me this 7th day of April A.D. 1857 = C. A. Manty, Clk.

Helms
vs
Trustees
Complaint

Filed April 7th 1857.
C. A. Manty, Clk.

Page 1

State of Missouri }
County of St Louis } S.S.

Be it Remembered that at the Oct Term 1856 of the St Louis Land Court begun and held in the city of St Louis County and State aforesaid on the Thirteenth day of October in the year of our Lord one Thousand Eight hundred and Fifty Six among other the following proceedings were had to wit,

October Term 1856

Monday November 10th 1856

Agreement of parties filed

Gabriel Helms vs James Stewart et al } Agreement of parties filed

Which Agreement is in words and figurs as follows, to wit,

Agreement

Gabriel Helms vs James Stewart and others } Before E S Waite (two cases)

It is agreed between the parties that the Defendant may take a certiorari to land court in all these cases without security and that said cases may be set for trial at this Term with leave of the court. Copy of complaint affidavit and Recognizance waived by Plaintiff

Nov 10th 1856

James Stewart
by Shreve. his atty

C Febson. atty for plt G Helms.

Upon the filing of the above agreement a writ of Certiorari was Issued to Liberty Waite Esq. a Justice of the Peace in the words and figurs as follows, to Wit,

County of St. Louis, S.S.

The State of Missouri,
To Liberty Waite Esquire one of the Justices of the Peace for St Louis Township in St Louis County-Greeting

Writ of Certiorari

Whereas James Stewart and others Summoned to appear before you to answer a certain plaint of one Gabriel Helm for unlawful Detainer which plaint is still pending before you, and our St Louis, Land Court, for the County of St Louis, being willing that the Record and the proceedings in the cause aforesaid Should be certified unto them, Therefore we command you to certify up the Record and proceedings and original papers in the unlawful Detainer aforesaid as fully as the Same now Remains before you, by what name Soever the parties aforesaid may be called to our said St Louis Land Court, on or before the first day of the next term thereof; to be held at the city of St Louis within and for the County of St Louis on the Second Monday of March next, So that our said Court may be enabled to proceed therein and do what to them Shall appear of right ought to be done and have you then there this writ

Witness Charles A, Mantz, Clerk of our Said Court with the Seal thereof hereto affixed, at office in the city of St Louis this Tenth day of November A,D,1856

Seal

Charles A, Mantz, Clerk,

Upon which Writ of Certiorari the Sheriff made his Return in words and figures as follows, to wit,

Sheriffs Return

Executed this writ in Saint Louis County on the 10th day of November 1856 by Delivering a certified

(B)

Copy of the same as furnished by the Clerk To Liberty Waite
fee $1,00

James Castello, Sheriff
By S Michaux Dty

State of Missouri }
County of St Louis } SS.

Certified copy of Liberty Waite Justice

In obedience to the command of the within writ I Liberty Waite the above named Justice do hereby certify that the papers hereto attached are the original papers together with Transcript of my Docket and my proceedings therein

Given and certified this 11th of November 1856

Liberty Waite
Justice of the Peace

(For Notice to Quit Served on James Stewart and others see Bill of Exceptions)

Papers from Justice

Gabriel Helms Complaint
Vs
James Stewart and Hannah Turner
Defendants

Before Justice Waite

Complaint

The Complainant, Gabriel Helms, makes complaint hereby of the Defendants, James Stewart, Hannah Turner and ~~and~~ says that said Defendants forcibly and unlawfully Detain from him after Demand in writing for the possession thereof, a house and lot of ground now in their possession in Block Seventy nine of the City of St Louis, being a one and a half story house and which fronts on Third Street and is South of Almond Street, about Eighty feet there from and is Bounded North, South and West by property of said Helms and East by Third Street, being house No 114 and being part of the property leased by said Helms to Alfred, W. Heitzig on 22nd April 1846 for ten years from 1st May, 1846.
The Complainant avers that the monthly value of the rents and profits of said premises thus unlawfully

4

Complaint

Detained of him is twelve Dollars and the amount of the same now due is one hundred Dollars and that his Damages for the Detention of the same are one Hundred Dollars

He prays Judgment for possession of said premises and for Double the amount of said rent and Damages.

A. Gibson

State of Missouri }
County of St Louis }

Gabriel Helms being Sworn says the above complaint and the facts therein stated are true

Sworn to and subscribed before me this 27th day of October A.D. 1856 Liberty Waite Justice of the Peace

Gabriel his X mark Helms

The State of Missouri

To William B Watson Constable of St Louis Township in St Louis County = Greeting

Summon

You are hereby commanded to Summon James Stewart and Hannah Turner of the county of St Louis to appear before the undersigned Justice of the within and for said county, at his office No 26 Pine Street St Louis Township in the same county on the 6th day of November 1856, at the hour of 10 O. clock in the forenoon of that day, then and there to answer and Defend against the complaint of Gabriel Helms of unlawful Detainer made by the said James Stewart and Hannah Turner upon the lands of the said Gabriel Helms as by the complaint of the said Gabriel Helms hereto annexed will more fully appear and have you then and there this writ with the return of your proceedings thereon

5

Given under my hand this 27th day of October 1856
Liberty Waite, Justice of the Peace

Executed this writ by reading the same and the Complt to each of the Defendants, Done in St Louis Township Oct 31th 1856 Wm B Watson Const
fee $1,00 By Jno T Andrews Deputy

The State of Missouri
To William B Watson Constable of St Louis Township of the County of St Louis — Greeting;

Summon

Whereas complaint, in writing is made to the undersigned, a Justice of the Peace within and for said County of a certain unlawful Detainer made by James Stewart and Hannah Turner on the land of Gabriel Helms in the county aforesaid,

These are, therefore, to command you, that you cause to come before the said Justice at his office No 26 Pine Street in the county aforesaid on the 6th day of November A.D. 1856, at the hour of 10 O. clock in the forenoon of that day twelve good and lawful men of the body of the county to make a Jury to inquire into the unlawful Detainer aforesaid

Given under my hand this 27th day of October 1856 = Liberty Waite
Justice of the Peace

Constable Return

Executed this writ by Summoning Eben Peacock Jno Rewler, Henry Morison, W S Ketchum, Jacob Shafner David Worthington, George Lemmons, Jno W. McMarty, W S Catherwood, Jno Cannon, Jesse Cannon and Patrick McBride, as good and lawful men of Body of the County to make a Jury, done in St Louis Township Nov 6th

6

1856. Wm B. Watson Constable By Jno P. Andrews, Deputy.

Gabreel Helms
vs
James Stewart and
Hannah Turner

No. 105 October Term 1856
Pleadings before Justice Waite

Action for an unlawful Detainer. Complaint filed Summons and Veniri Issued to Constable Wm B. Watson October the 27th 1856. Returnable on the 6th of November A. D. 1856. Returned Executed the parties appeared and not being ready for trial case continued to November 11th 1856

Transcript of Justice Docket

Justice fees —

Sum^s —	$0,75
Veniri —	,25
Continued	,35
Trscpt — —	50
Const Watson —	1,00
Serving Veniri	1,50
Serving notice to quit	1,00
Serving notice for possession	50
	$6,85

State of Missouri } S.S.
County of St Louis }

I Liberty Waite a Justice of the Peace in and for the county aforesaid do hereby certify that the foregoing is a true full and complete Transcript of the Docket entries in the above case together with all the original papers in said case now on file in my office Given and certified this 11th day of November 1856

Liberty Waite Justice of the Peace

And afterwards the following further proceedings were had in this cause, to wit,

Motion to set these cases for trial filed

October Term 1856

Friday January 9th 1857

7

Gabriel Helms
vs
James Stewart et al } Motion to set these cases for trial, filed

Which motion is in words and figurs as follows, to wit,

Motion

Gabriel Helms
vs
Stewart et al } Unlawful Detainer 13 Cases

The plaintiff prays the court to set these cases for trial at the present Term

O. Gibson p.q.

And afterwards the following further proceedings were had in this cause, to wit,

Saturday January 10th 1857

Motion to set cases for trial submitted and overruled

Gabriel Helms
vs
James Stewart et al } Now at this day comes said plaintiff by his attorney and submits to the court, the motion hereinbefore filed in this cause, to set these cases for trial, and the court, having heard and being fully advised of and concerning the premises, doth order and adjudge that said motion be overruled

And afterwards the following further proceedings were had in this cause, to wit,

March Term 1857 Wednesday March 18th 1857

Motion to quash Complaint & Dismiss Suit, filed

Gabriel Helms
vs
James Stewart and
Hannah Turner } Motion to quash complaint and Dismiss this suit, filed in this cause

Which motion is in words and figurs as follows, to wit,

Motion

Gabriel Helms pltff
against
James Stewart and
Hannah Turner Defts } In the St Louis Land Court

On Certiorari to Justice Waite

8

And now come the Defendants and move the Court to quash the Complaint and to Dismiss this cause, for the reason, that the said complaint is insufficient in law, and is not such as to entitle the plaintiff to recover a valid judgment thereon,

Sam'l Reber, Atty for Deft

And afterwards the following further proceedings were had in this cause, to wit,

Saturday March 28th 1857

Motion to quash complaint submitted to Court

Gabriel Helms
vs
James Stewart and Hannah Turner

Now at this day comes said parties by their attorneys, and submits to the Court, the Motion hereinbefore filed in this cause, to quash Complaint and Dismiss this suit, and the Court, having heard and not being fully advised of and concerning the premises, takes time to consider thereon,

And afterwards the following further proceedings were had in this cause, to wit,

Tuesday March 31st 1857

Motion sustained

Gabriel Helms
vs
James Stewart and Hannah Turner

Now at this day the Court, being fully advised of and concerning the Motion hereinbefore submitted, in this cause, to quash Complaint and Dismiss this suit, doth order and adjudge that said Motion be sustained, unless the plaintiff shall amend his Complaint within ten days

And afterwards the following further proceedings were had in this cause, to wit,

Tuesday April 7th 1857

Amended petition filed

Gabriel Helms
vs
James Stewart and Hannah Turner

Amended Petition filed in this cause

6

Which Amended Complaint is in words and figures as follows, to wit

St Louis Land Court, March Term 1857

Gabriel Helms, Complaint
vs
James Stewart and
Hannah Turner Defendants

} Amended Complaint

The complainant by leave of Court first obtained files this his amended complaint and says

That the Defendants did at and for a long time before the commencement of this action wilfully and without force holds over the possession of a house and lot of ground in Block Seventy nine of the city of St Louis being a one and a half Story Brick house (No 114) on third Street, Bounded East by Third Street, and North, South & West by property of said Helms, after the termination of the time for which the same among other property was let by Complainant to one Alfred W Heyes under whom the Defendant Claims the Same and after Demand made in writing by Complainant of the Defendant for the Deliverance to him of the possession thereof.

Amd. Complaint

The Complainant also says that the monthly value of the rents and profits of said house and lot is Thirty five Dollars and the rent now due complainant therefore is three hundred Dollars and that his Damages is one hundred Dollars

Complainant prays Judgment for Double the amount of said rents, profits and Damages and for the possession of said premises

C. Gibson

State of Missouri
County of St Louis } Gabriel Helms being Sworn says the above complaint is true.

10

Sworn to and subscribed before me this 7th day of April AD 1857.
C. A. Mentz, Clerk,

his
G X Helms
marks

And afterwards the following further proceedings were had in this cause, to wit,

Saturday May 2d 1857

Non Suit,

Gabriel Helms
vs
James Stewart and Hannah Turner

Nonsuit

Now at this day come said parties by their respective attorneys, and thereupon came also a Jury, to wit, William Burch, C Hoffman, John Rempeter, John Coy, A. A. Ladd, Henry Gardner, Thomas Nugent, Andrew Parley, John F. Grundy, Thomas Hassey, Richard Welch, and Andrew Constant, Twelve good and lawful men who being duly Elected, tried and sworn will and truly to try the issues joined between the parties herein, therefore the trial progressed, and being fully terminated, the Plaintiff says he will not further prosecute his Suit, but Voluntarily takes a Non Suit, with leave to move to set the same aside, It is therefore ordered and adjudged by the Court, that the Plaintiff take nothing by his said Suit, but that the Defendants go hence without day and recover of said Plaintiff, their costs and charges herein Expended, and have Execution therefor,

And afterwards the following further proceedings were had in this cause, to wit,

Monday May 4th 1857

Motion to set aside Non Suit filed

Gabriel Helms
vs
James Stewart and Hannah Turner

Motion to Set aside Non Suit filed, in this cause

11

Which Motion is in words and figurs as follows, to wit,

Gabriel Helms
vs
James Stewart al } In the Land Court

Motion to Set aside non Suit

The plaintiff moves the Court to set aside the Non Suit taken in this case and grant a new trial
Because the instruction given by the court at the request of Defts was erroneous in point of law, and assumed admissions on the part of the Plaintiff that were not made, by him

C Tibson with Mr Primm
p q

And afterwards the following further proceedings were had in this cause, to wit,

Monday June 8th 1857

Motion to set aside Non suit submitted

Gabriel Helms
vs
James Stewart and
Hannah Turner } Now at this day come said parties by their respective attorneys, and submit to the Court, the Motion hereinbefore filed in this cause to set aside Non Suit, and the Court having heard and not being fully advised of and concerning the premises, takes time to consider thereon

And afterwards the following further proceedings were had in this cause, to wit,

Thursday June 11th 1857

Motion to set aside Non Suit overruled

Gabriel Helms
vs
James Stewart and
Hannah Turner } Now at this day the court being fully advised of and concerning the Motion hereinbefore Submitted in this cause to set aside Non Suit, doth order and adjudge that said Motion be overruled,

And afterwards the following further proceedings were had in this cause, to wit,

Thursday June 25th 1857

Plaintiffs Bill of Exceptions filed

Gabriel Helms
vs
James Stewart
Hannah Turner

Plaintiffs Bill of Exceptions, filed in this cause,

Which Bill of Exceptions is in words and figurs as follows to wit,

Bill of Excpts

Gabriel Helms
vs
Hannah Turner &
James Stewart

St Louis
Land Court,

On the trial of this cause the plaintiff offered in Evidence the following Document.

To James Stewart and Hannah Turner

Notice to quit served on Stewart dal

I hereby demand of you the Deliverance to me of the possession of a house and premises in Block Seventy Nine of the City of St Louis being a one and a half Story Brick tenement fronting about Sixteen feet on third Street by about Sixty feet runing West and being the fourth one from the South of several tenements fronting on Third Street Built on the premises Leased by me to Albert W Heitziz by Lease dated the twenty Second day of April 1846 for a term of ten years now Expired,

St Louis Oct 10th 1856 Gabriel his X mark Helms
Witness R V Coraron

Upon Which Notice to Quit the Constable made

13 his Return in words and figurs as follows, to Wit,

Served this writ by delivering a true copy of the Same to the within named Hannah Turner in St. Louis Township Oct 11=1856,

Wm B. Walton Const

fee $1,50 By Jno. T. Andrew, Deputy

To the admission of which defendant objected, because service of the Same was not duly proved, which objection the Court overruled and Exceptions to the same taken at the time by Deft and said notice was then read in evidence - The Plaintiff then read in Evidence the following Document,

Deed of Lease

This Deed of Lease made and entered into this twenty Second day of April Eighteen hundred and forty Six between Gabriel Helms of the first part and Alfred W Wietzig of the Second part Witnesseth, that the said party of the first part in consideration of the covenants, agreements and Stipulations herein after mentioned, as well as for the yearly rent of four hundred Dollars, to be paid quarterly: one hundred Dollars due and payable on the first days of the Months of August, November, February and May of Each and every year during the continuance of this Lease, does by these presents lease to the Said party of the Second part for the period of ten years, which Said period of ten years begins on the first day of May Eighteen hundred and forty Six fully to be ended and completed, the following described lot of land in the City of St Louis and in the County of St Louis and State of Missouri, to Wit; Situated on the corner of Third Street and Almond Street in Block number Seventy nine, Bounded as follows; on the East by Third Street, South by Louis Charleville

on the West by unknown and North by Almond Street fronting on third Street one hundred and twenty feet more or less and in depth one hundred and fifty feet. The said party of the second part for himself and his legal representatives, hereby covenant with said Lessor to pay said rent quarterly, as aforesaid, and also to pay all city County and State taxes of every Description, nature or kind whatever, which may, from time to time, be legally required or demanded of said premises pavement and side walks together included. Every failure first to keep and preform any of the covenants or stipulations herein, or second to pay the said rent quarterly or any part thereof within ten days after it is respectively made payable or third to pay the said City, County and State taxes, or any part thereof legally required or demanded of said premises, within the year the same shall become due, and payable, shall create a forfeiture of this lease, if so determined by said Lessor his heirs or legal representatives. This Lease of said premises is not to be assigned without the written consent of said Lessor. The lessee is Bound to keep said premises free of any bawdy establishments; and in case of any forfeiture of this lease the lessor may take possession of said premises. And it is further understood agreed and stipulated that at the expiration of this lease (if not renewed as hereinafter mentioned) the said lessor shall take all improvements erected on said lot of ground fronting on Third Street at valuation to be valued by three disinterested persons chosen by the parties. This lease may be renewed for ten years longer after the expiration hereof; and said renewed lease shall contain all the covenants and stipulations that this lease does except that no privilege of renewal shall be inserted in such renewed

Lease.

15

Lease, and excepting, also, that the rent in such renewed lease, Shall be at the rate of Six per centum, on the ascertained value of Said lot (not including the improvements erected by Said lessee thereon) which valuation, Shall be according to the price of lots Similarly Situated at the time, And in case the parties cannot agree upon the Valuation, then they are to choose each one disinterested free holder to Value Said lot, as aforesaid, and if the two who are chosen cannot agree they (the persons chosen) are to choose a third person and a decision of two of the three Shall be binding Said Valuation Shall be made at the expiration of the first ten years; And it is further understood that at the end of the Said renewed lease the Said lessor Shall take all improvements erected by Said lessee on Said lot of ground fronting on Third Street at valuation to be valued by three disinterested persons chosen by the parties; In Testimony whereof the parties to these presents have hereunto set their hands and seals the day and year first aforesaid

Gabriel his X mark Helms (Seal)

Note - pavement Side walk and Gutters included interlined before Signing
Geo A Hyde

Alfred W Heitzig (Seal)

State of Missouri
County of St Louis } SS.

Be it Remembered that on this 22d day of April 1846 before me a Justice of the Peace in and for Said County personally appeared Gabriel Helms and Alfred W Heitzig who are personally known to me to be the persons whose names are Subscribed to the foregoing instrument of writing as parties thereto and Severally acknowledged the Same to be their

Act and Deed for the purposes therein mentioned,
Taken and certified the date last aforesaid
Geo. A. Hyde, Justice of the Peace

Bill of Excepts. The Defendants objected to the admission of this document in Evidence, because the same was irrelevant.
Which objections the court overruled, to which Defendants at the time excepted
The Defendants admitted that they were in possession of said premises under and by virtue of said Lease
The Plaintiff then proved by Emanuel Tolker that ten or Eleven of the houses on the premises described in said Lease had been used as bawdy houses for, many years past, and were openly frequented by prostitutes, whose conduct was so lewd and gross ~~and~~ as arrest the attention of passers by both by day and by night
The Plaintiff then offered evidence tending to prove that the Defendant Stewart knew of the uses and purposes for which said premises were appropriated.
It appeared on the trial that the Plaintiff was a man of Color
The above was all the evidence in the ~~Court~~, cause
The Court on Motion of Defendants gave the following instruction.

(left out by Order of Defts & pliff attorney. Ak)

to which plaintiff at the time excepted.
The plaintiff then took non suit with leave to move to set same aside. & on (the fourth) day of (May) filed the following motion.

(For which Motion to set aside non suit See page 11 of this Transcript)

Which motion the Court overruled to which plaintiff at the time excepted

17 Prays the Court to sign Seal this his bill of exceptions which is done

C. B. Lord (Seal)

State of Missouri }
County of St Louis } S.S.

I, Charles A. Mantz, Clerk of the St Louis Land Court within and for said County, Certify the foregoing Transcript to be a true and faithful copy of the Transcript and papers from Liberty Waite Esquire, a Justice of the Peace for St Louis County and of the Record and proceedings had in the St Louis Land Court in the case of Gabriel Helm plaintiff and James Stewart and Hannah Turner defendants as fully as the same remains of Record in my office

In Testimony Whereof I hereto set my hand and affix the Seal of our said Court at Office in the City of St. Louis, this Twenty third day of September A. D. 1857.

Charles A. Mantz, Clerk.

Index

Agreement of Parties filed 1st Agreemt.	Page. 1.
Writ of Certiorari & Sheriffs Return.	" 2 & 3.
Papers from Justice	" 3 to 6 inclusive.
Mo to set aside these cases for trial filed. 1st Mo.	" 6 & 7.
" " " " " " " Overruled.	" 7.
Mo to quash Compll. 1st filed 1st Mo. Sub 1st Sustd.	" 7 & 8
Amd d petn filed 1st Amd d Compll	" 8, 9 & 10.
Non suit.	" 10.
Mo to set aside Non suit filed 1st Mo. Sub 1st Overruled	" 10 & 11
Bill of Excpts, filed	" 12
" " " (Embodying the following, viz)	" 12 to 17 in
Notice to quit	" 12 & 13.
Lease.	" 13 to 16 in

The State of Missouri, ss.

The State of Missouri, *To the Honorable the* St. Louis Land Court, within and for the County of St Louis *in said State, GREETING:*

WHEREAS, In the record and proceedings in a certain cause lately pending in the St Louis Land Court, within and for the County of St Louis and State aforesaid

wherein Gabriel Helms is plaintiff — against James Stewart is defendant —

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

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

Witness, WILLIAM S. GLANVILLE, Clerk of our said Supreme Court, at office, in the City of Saint Louis, the Third day of October in the year of our Lord one thousand eight hundred and fifty-Seven

W. S. Glanville, CLERK.

$1.50 paid G. C. Gibson

State of Missouri }
County of St Louis, } S.S.

In obedience to the command of the within writ, I Charles A. Mantz, Clerk of the St Louis Land Court, within and for the County of St. Louis and State of Missouri, certify the foregoing to be a true, and correct Transcript of the record and proceedings in the case wherein Gabriel Helms, is plaintiff, against James Stewart, defendant as fully as the same remains of record in my Office.

In testimony whereof I hereto set my hand and affix the seal of the St. Louis Land Court, at office in the City of St. Louis this 8th day of October 1857

Charles A. Mantz, Clerk.

131 ~~218~~

(4)

March. T. 1858

Gabriel Helms,
appellant

vs.

James Stewart,
respondent

Land Court,

C. Gibson for Pltff.

L. M. Shreve for deft.

Filed 3d October 1857
Wm S Glanville Ck.

Transcript $8.50 pd by C. Gibson

131 ~~218~~

Motion, Opgt., & affidavit Oct. 57 / Joinder Mt. 58 / mo. for amend record / affidavit / opts Aug /
Aug & Sub /
Dec. & remanded June 3d 58 - B. p. 448

Gabriel Helm
vs
James Stuart

In Supreme court
Oct Term 1867

The Respondent moves the court to affirm the judgment of the Land court for want of assignment of errors as required by Statute —

L M Shrew
Atty Deft

No 218

Gabriel Helmer

v

Dan Stewart

Motion to affirm

Filed 9 Novr. 1857
Wm. F. Glannini
Clk

Supreme Court

Gabriel Helms plaintiff
vs
James Stewart & al defendants

Assignment of Errors.

The plaintiff assigns the following as error in the proceedings of the court below

The court erred in giving the instructions asked by the defendants

It erred in refusing the instructions asked by plaintiff

It erred in refusing to sustain the plaintiffs motion to set aside the non suit taken

C. Gibson
for plt.

218

Supreme Court

Gabriel Helms
vs
James Stewart

Assignment of
Error.

Filed 10 Novr. 1857.
Wm J Glanville
Clk

B. Gibson

Gabriel Helms.
vs
James Stewart } Supreme Court.

Charles Gibson being sworn says he is sole attorney for plaintiff in this cause. This affiant further says that the transcript filed by him in this cause after being filed in the Clerk's office of this court, was mislaid by Clerk thereof & could not & was not found for either appellant or appellee until last Saturday, when Mr Glanville for the first time found said transcript among his private papers, and affiant did not know that said transcript was found until yesterday, when he was informed by Mr Glanville that the same had been found & that a motion had been made to affirm the judgment below, Affiant further states, that he was engaged in a case in the Circuit Court of this county during the morning hours, of yesterday & the information of the filing of said transcript was not conveyed to affiant until late in the evening.

Affiant further says, that he came into court on this morning prepared with an assignment of errors, at the earliest moment after he was informed that said transcript was found.

Affiant further says, that so far as he has been acquainted with practice in the Supreme Court, gentlemen of the

Bar have not taken advantage of the want of filing assignment of errors as provided by law and this he hopes will be an additional reason for the court to exercise its clemency in this cause, Affiant wishes to be understood as expressing his opinion of the practice at this Bar only in so far as affiant is informed of the practice thereof.

C. Gibson

Sworn to and subscribed before me this 10th day of November A.D. 1857.
Wm S Glanville
Clk. Sup. Ct.

Gabriel Helvins
vs
James Stuart
Affidavit of Gibson

Filed 10 Nov. 1857.
Wm S Glanville
Clk

218

Gabriel Helms Plf.
agst
James Stewart et al Defendts

In Supreme Court
March Term 1858
by appeal from
St Louis Land Court

Now come the Defendants by their atty and say that no such error as the appellant has hereof complained appears, and the court committed no error in the premises

L M Shreve
atty Defendants.

131

Gabriel Helms

agst.

James Stewart et al

Joinder & denial of error

Filed 17 March 1838

W L Glanville

Cl.

Supreme Court.
April 17. 1858.

Gabriel Helms.
vs
James Stewart.

The appellant Gabriel Helms. moves the court for leave to withdraw the assignment of errors made in this case & to suggest a diminution of the record. for the following reasons,

The Record in this case omits the instruction given by the court below. which was the cause of the plaintiffs becoming non suit below.

The statement that the same was left out by order of the counsel of both plt & deft is not true as regards the plaintiffs counsel.

The Transcript of the Record does not contain the notice to quit, which is called for by the Bill of Exceptions below but contains another & a different notice.

The defects in the Record were not discovered by him or his counsel until this day

Gibson for appellant

Charles Gibson being sworn says the statement of facts contained in the

Helms
vs
Stewart.

Suggestion of diminution of Record & motion to amend

Filed 17 April 1858.
Wm J Glanville
Cl.

Gabriel Helms.
vs
James Stewart.

The affidavit of Mr S. M Shreve, correctly states the instruction given by the court below & upon which the plaintiff became non suit. The precise language of the instruction is not remembered but the substance is truly stated.

~~If the~~ The notice called for by the bill of exceptions as the notice "served on Stewart & al" is now in the clerks office of the land court, & is returned as duly served on Stewart.

The hearsay statement of the deputy clerk is not true in point of fact, & is not understood either by the plaintiffs counsel or by the deputy clerk himself ~~to~~ the effect stated by Mr Shreve.

As the instruction could not be found & the time for filing the transcript was about to expire the plaintiffs counsel ~~asks~~ upon the application of Mr Leary the deputy clerk, requested him, to make & file the transcript wether the same was perfect or not,

C. Gibson

See No 9 as to this notice

Chas. Leary, D. C. Land Court

Filed 17 April 1858
W S Glanville
Ck

Supreme Court

Gabriel Helms
vs
James Stewart & al.

The appellant Gabriel Helms states that the Record in this case is defective in this

That it omits an instruction given by the court below at the instance of the appellee

That the statement that the same was left out by order of counsel is untrue as regards the appellants counsel.

That the notice to quit set out in the transcript is not the same called for by the Bill of Exceptions.

The appellant therefore suggests a diminution of the Record & prays that the same may be corrected according to law

C. Gibson

Charles Gibson being sworn says he believes the above statement to be true in all respects

Witness this 19th day of April AD 1858 } C. Gibson
Wm S Glanville
Cl.

Helms

vs

Stewart

Suggestion of diminution of record. Motion for certiorari

Filed 19 April 1858.

Wm J Glanville Ck.

Gabriel Helms } In Supreme Court
vs } by Error from
James Stewart } St Louis Land Court.

L M Shore being duly sworn upon his oath states that the deputy clerk of the St Louis Land Court who made so much of the Transcript of this cause as relates to the omitted instruction informed affiant that the atty for Plaintiff C Gibson Esq. consented and agreed to the record as the same now appears with the understanding that it should be omitted, said Instruction being understood by all parties to have been mislaid or lost the substance of which lost instruction was as follows

"It being admitted that the Plaintiff is a person of color, that fact is presumptive evidence of Slavery, and in the absence of proof showing his freedom the Plaintiff cannot recover in this action"

Affiant further states that since the filing of the motion of the Plaintiffs attorney suggesting a diminution of the Record in this cause diligent search has been made by the clerk of the Land Court to find said instruction but without success, and it would therefore be utterly unavailing to send this record back for correction even if it were defective.

Affiant further states that as to so much of Plaintiffs suggestion, for the reason that the "notice to quit" set out in the Transcript is not the same called for by the Bill of Exceptions," that the only notice in evidence on the trial of this cause in the Land Court was

the notice appearing in the Record — That the bill of Exceptions reads as follows —

"On the trial of this cause the Plaintiff offered in evidence the following document (here insert notice to quit directed to & served on Stewart & al") Which said notice appears among the original papers but as the return of the officer shows was not served upon defendant Stuart and affiant states the same was not proven on the trial to have been so served on Stuart and Defendant objected on the trial to the reading of said notice for that reason as appears from the Bill of Exceptions of Plaintiff herewith referred to as well as from the Transcript filed in this Court. and no amendment of the Record existing as manifest appears affiant submits that said motion ought not to be entertained, That he has prepared this cause in view of the Record as the same appears.

L M Shreve

Sworn to & subscribed before me this 22d April 1858
Wm S Glanville
Clerk Sup. Court

131

Gabriel Helms

v

James Stuart

Affidavit of
L M Shrew and
resisting certiorari

Filed 22 April 1858.
Wm S. Glanville
Ck.

Gabriel Helms.

vs

James Stewart et al }

This was an action of unlawful detainer.

On the trial below it appeared that the plaintiff, Helms, had executed a Lease for the premises in dispute, to one Heitzig on the 22 Apl 1846. which among other provisions contained a clause of forfeiture in case the premises were not kept free of bawdy establishments.

On the trial below.

"The defendants admitted that "they were in possession of said "premises under & by virtue "of said Lease."

"The plaintiff then proved by "Emanuel Folker that ten or "eleven of the houses on the premises described in said Lease had "been used as bawdy houses for "many years past, and were openly "frequented by prostitutes," ~~xxxxxx~~, "whose conduct was so ~~gross~~ "lewd & gross as assent the attention of passers by both by day "& by night" The plaintiff then "offered evidence tending to prove "that Stewart knew of the uses & "purposes for which said premises "were appropriated

"It appeared on the trial "that the plaintiff was a man

"of color"

~~This was all the evidence & thereupon the court gave the following ins~~

The plaintiff gave in evidence the notice served on Stewart & others in No 9. herewith filed, being another case between Helms & Stewart & al.

There was no other evidence

Thereupon the court at the request of the defendants gave the following Instruction.

"It being admitted that the "plaintiff is a person of color "this fact, is presumptive evi "dence of slavery and in the "absence of proof showing "his freedom, the plaintiff "cannot recover in this action"

The plaintiff became ~~bo~~ non suit with leave &c, moved to set same aside which was overruled & he brings appeal to this court.

C. Gibson

The plaintiff ~~admits~~ consents that the Instruction as stated in Mr Shreves affidavit may be used as if incorporated in the Bill of Exceptions, & the defendant consents that the paper served on Stewart & al in No. 9 may be likewise used as if set out in the Bill of Exceptions. — C.G.

Helms
vs
Stewart
Statement
of the case

Filed 23 April 1838
Wm S Glanville
Cl

Gabriel Helms Plf in error
Agst
James Stewart & Deft. in error
Hannah Turner —

In Supreme Court by error from the St Louis Land Court.

Plaintiff brought his action for unlawful detainer of premises described before a Justice of the Peace — Certiorari by consent to St Louis Land Court — After being there docketed Defendants moved to dismiss Complaint because it did not contain facts sufficient to constitute an action — Which motion was sustained unless Plaintiff would amend, which he did within ten days.

On the trial of the cause the ~~Defendant~~ Plaintiff offered in evidence a paper demanding the delivery of the possession of a house in Block 79 a 1½ story brick fronting 16 feet on 3d street by 60 feet deep ~~deep~~ and being the 4th house from the South of several tenements fronting on 3d Street, to which Deft objected!

The Petition or Complaint describes a house No 114 on 3d bounded East by 3d street, & N. S. and W. by property of Helms — a 1½ Story brick —

This notice was served upon Hannah Turner, no notice was served upon Defendant Stewart —

The Plaintiff read Deed of lease from Plaintiff to Alfred W Heitzig, to which Deft. objected

This lease provides that a failure to comply with its terms shall create a forfeiture if so determined by the lessor.

No such determination is shown in the notice served only on Turner — or elsewhere in the Record —

A forfeiture is created by that lease for the non payment of rent ten days after due —

A Forfeiture is also created for the nonpayment of taxes - if not paid some time during the year for which assessed -

Assignment also creates a forfeiture!

And it is also provided - that the lessee is bound to keep the premises free of bawdy establishments

The Defendants objected to the introduction of this lease as evidence on the ground of irrelevance, but admitted they were in possession by virtue of said lease, but not under Pl.

Plaintiff offered evidence tending to prove that ten or eleven of the houses in the premises ascribed in the lease were used as bawdy houses - with Defendants knowledge -

It appeared in evidence that the Plaintiff was a negro or person of color -

No proof was made of Plaintiff being a freeman of color -

Plaintiff then took a voluntary nonsuit - Moved the Court to set same aside which the Court refused and Plaintiff brings the case here by writ of error -

Respectfully
L M Shreve
Atty Deft. in error.

Gabriel Helms

v

James Stewart

Statement of Deft. in error.

Filed 25 April 1858
W. F. Glannin
Ch

Shreve

Helms vs Stewart et al } Supreme Court.
Points for appellant.

The defendants having admitted that they were in possession of the premises in dispute under & by virtue of a lease executed by the Appellant to one Heitzig were his tenants, & were not in a position to dispute his title

It is the same thing whether the appellants' title be defective on account of his color, or the want of any document necessary to its support, or the failure of proof of heirship. &c &c.

In cases of unlawful detainer the statute forbids all inquiry into the plaintiffs title, The only question that can be inquired into in that regard is whether the defendants hold the property under the plaintiff & received it of him or his ancestors in the title

The appellee's counsel admits that the presumption of slavery arising from color could be rebutted by showing that the plaintiff owned property, I reply that the defendants being his tenants have admitted that he is the owner of the premises

Helms
vs
Stewart et al

Points for appellant

The instruction takes the case from the jury on a mere presumption of law which is overcome by the fact, that plaintiff is the owner of the property & had a right to make the lease to Heitzig which facts the defendant are not permitted in a court of justice to deny. The defendants should restore to the plaintiff the possession they obtained from him before they ought in justice to be permitted to deny his title. or Heitzig the original lessee covenants in the lease, that "in case of any forfeiture of this lease, the lessor may take possession of said premises". If the lease has been duly forfeited because the premises were not kept free of bawdy establishments, shall the defendants who hold under Heitzig deny the plaintiff's right to the possession.

A devise to a slave operates by implication of law as a manumission, because a slave cannot own property.

Brown vs. Kenedy
5 Harris & J. 194

Le Grand vs Darnall
2 Peters 670.

C. Gibson

131

Briefs

Helms.
vs
Stewart & al

Points & authorities
for appellant

Filed 27 April 1858.
Wm S Glanville
Ck.

C Gibson

Helmes v. Stewart

The doctrine, that color raises the presumption of slavery, was in our opinion not applicable to this case, & the instruction upon that point should not have been given.

The suit was for unlawful detainer, & the defendant admitted himself to be in possession of the premises under a lease from the plaintiff. The point in dispute was, whether the lease had been forfeited or terminated? The plaintiff, if a slave, could have had no title to the premises, but the defendant's admission that his possession was held under a lease from ~~him~~ the plaintiff precluded him from denying the title, & it did not lie in his mouth to say that the plaintiff was a slave. There was no room for ~~in~~ submitting any presumptions about the matter to the jury, one presumption in law being destroyed by the other.

The judt. will be reversed & the case remanded

The other judges concur

W. B. Napton

131

Helmer
v.
Stewart

Opinion

Napton

Filed 3d June 1858.
Wm S Glanville Cr.

Gabriel Helms, Plf in error
against
James Stuart & al Deft.

By error
from
St Louis Land
Court to
Supreme Court. Oct. 7/57.

This was an action of "Unlawful Detainer" instuted by a person of color, by virtue of a lease whereof he is lessor, for an alledged forfeiture of its Terms, by the Defendants in possession —

On the trial the Court at the instance of Defendants and after the Plaintiff had submitted his proofs gave the following Instruction to the Jury.

"It being admitted that the Plaintiff is a person of color, this fact is presumptive evidence of Slavery And in the absence of proof Showing his freedom the Plaintiff cannot recover in this action"

This Instruction was properly given, color is prima facie evidence of slavery.

not absolute or conclusive but affords a presumption of Slavery —

"Stabit presumptio donec probitur in contrarium"

No proof sufficient to remove this presumption having been introduced, or afterwards offered as might have been invoked in the clemency of the Court, viz: enjoyment of the privaleges of a freeman, and reputed freedom —

Plaintiff's nonsuit voluntary" is strong proof that he could not show his freedom —

Deft. submits the following authorities in Support of this proposition — "That color is prima facie evidence of Slavery" Gibbons vs. Morse 2° Halsted's N. J. p 253

Do. Fox vs Lambson 3° Halsted p 275.

Scott vs Williams 1st Devlin 376. Davis vs Curry 2. Bibb 238 x Mary vs Morris 7 Louisiana 135. 4 2d Ken and Munf. 133 – 1st Taylor 100. 22d Alabama. 599. 17th do. 80. 83. 7 Iredell 275. 3 Dana 382. 2 Haywood 130 3d Green 266. 4 Harr. 173. 3 Harring 551. 5c. 559. 5th Smedes & M. 609. 5th McLean 469. 484. 1 Jones Law. N. C. 32. 5th Md. 91. 6th Gill & J. 136 19th Mart. L 648. 1 Richardson 318 1st part Comm & Wills notes 294. 361. 484. Rennick vs Chloe 7th Mo. 197.

Respectfully submitted
L. M Shaw
Atty Deft in error

Brieff

Gabriel Helms

v

James Stuart

Brief of
L M Shrord
atty Deft. in error.