Fackler, John G. vs Chapman, James 1854 Cde/1st Cir 196/10

2 Cir - $27 & $116 Plaintiff appealed

Gollahon
vs
Stephenson Gates } Error to Minnehaha

John G. Fackler
vs
James Chapman } Error to Cole

Tackler

vs

Chapman

& 1 other case

filed June 3 1854

Wm E Dunscomb

Clerk

Cole & Montieau

Parsons

THE STATE OF MISSOURI, ss.

The State of Missouri, To the Judge of the first Judicial Circuit ~~——————————~~ in said State, GREETING:

WHEREAS, In the Record and Proceedings in a certain cause lately pending in the Circuit Court of Cole County in the Judicial Circuit aforesaid ——————————

wherein John G Tackler was plaintiff and James Chapman was defendant ——————————

in an action of ——————————— manifest error hath intervened, to the great damage of the 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 at the City of Jefferson, in the county of Cole, in said State, on the first Monday in July 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 E. DUNSCOMB, Clerk of our said Supreme Court, at office, in the City of Jefferson, the third ——— day of June in the year of our Lord one thousand eight hundred and fifty four

Wm E Dunscomb

SEAL OF THE SUPREME COURT OF MISSOURI

State of Missouri }ss
County of Cole }

In obedience to the Command of the foregoing Writ of Error I have made out a full complete and perfect copy of the Record and papers on file Now in my office in the cause of John G Tacker vs James Chapman which are here with Returned to the office of the clerk of the Supreme Court at Jefferson City Mo.

In testimony whereof I G A Parsons clerk of the Cole County Circuit Court Have Here unto set my hand and affixed the official seal of said Court this 15th Day of June 1854

G. A. Parsons Clerk
By Joseph Mosby D C

State of Missouri }
County of Cole } ss

Pleas before the Honorable George W Miller Judge of the first Judicial circuit in the state of Missouri In a certain cause lately pending in the Cole circuit Court Wherein John G. Fackler was plaintiff and James Chapman was defendant Be it remembered that on the twenty Second day of January in the Year of our Lord one thousand Eight hundred and fifty one, the said plaintiff filed in the office of the Clerk of the Cole circuit Court a bond in words and figures following to wit

Know all men by these presents that we John George Fackler as principal and W M Parsons as security are held and firmly bound unto the State of Missouri in the Sum of two hundred and fifty Dollars for the payment of said Sum well and truly to be made we bind ourselves and our legal Representatives firmly by these presents Testimony Whereof we have hereunto set our hands and seals This 21st January A D 1851. The condition of the above obligation is that Whereas said Fackler is about to take out of the Circuit Court for Cole

County a writ of attachment against
the property of James Chapman which
Writ is Returnable to the next February Term
of said Court. Now if said Fackler shall
prosecute his action without delay and
with Effect to find all sums of Money
that may be adjudged to be due
to the defendant or found to have been
recovered by the plaintiff and not justly
due to him and pay all damages that
may accrue to the defendant or any
Garnishee by reason of said attach-
ment or any process or proceeding
in said suit only reason of any judg-
ment or process thereon Then this ob-
ligation to be void Otherwise to remain
in full force and Effect

John G. Fackler [Seal]
M M Parsons. [Seal]

and afterwards on the twenty third
day of January in the Georgetown term
last aforesaid the plaintiff by his at-
torney file in the Clerks office for
Cole County the following Petition
in words and figures following to wit

In the Cir Court Cole County

John G. Fackler Plaintiff Cole County
Against
James Chapman Defendant.

Plaintiff State that
on or about the 10th day of October
A D Eighteen hundred and fifty at
Cole County in the State of Missouri

two Slaves named Lewis and Henry at the time the property of and owned by defendant without leave wrongfully took took and carried away the following property of the plaintiff and have not returned the same that is to say five pair of Calf Skin boots worth seventeen dollars and fifty cents four pair of superior Calf Skin boots worth twenty dollars one pair of extra heavy Calf Skin boots worth twenty four dollars and fifty cents. three pair of Heavy Kip Boots worth nine dollars two superior fashionable hats worth nine dollars. thirteen pair of ladies kid slippers worth sixteen dollars and twenty five cents six pair of Kip Shoes worth seven dollars and fifty cents two pair of extra heavy shoes worth two dollars and fifty cents and six pair of Womens calf bootees worth eight dollars and forty cents by which plaintiff says he is damaged to the amount of one thousand and fifteen dollars and sixty five cents for which he asks judgment and said slaves are of greater value than the sum above demanded

John G Jackson
by W M Parsons his
Attorney.

John G Tackler plaintiff makes oath and says he believes the above petition and the matters therein as Statements true

Jno G Tackler

Sworn and subscribed to before me the undersigned Clerk of the Cole Cir Court-Court-this 13th day of Jany AD 1851

G A Parsons Clerk

State of Missouri }
County of Cole } ss

I John G. Tackler the above named plaintiff do swear that James Chapman the above named defendant is justly indebted to me after allowing all just-credits and offsets in the sum of one hundred and fifteen dollars and sixty five cents for and on account of the property taken from me by the slaves Lewis and Henry belonging to the said defendant as set forth in the foregoing petition and also that I have good reason to believe and do believe that the said James Chapman the defendant has absented himself from his usual place of abode in this State so that the ordinary process of law cannot be served upon him

Jno G Tackler

Sworn and subscribed to before me this 13 day of Jany AD 1851

G A Parsons Clerk of the Cole Cir Court-Count

State of Missouri }
County of Cole } ss.

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The State of Missouri

To the Sheriff of the County of Cole

Greeting

You are hereby commanded to summon J. James Chapman if he be found in County to be and appear before our Cole Circuit Court on the first day of the next term thereof to be held at the Court House in said County of Cole on the last Monday in February next to answer the Petition of John G Tackler and have you then and there this writ

Witness my name and official seal this 23rd day of Jany AD 1854

G A Parsons Clk

By E S Ewing D C

and upon said petition and writ there on the Sheriff of the County of Cole made the following Return in words and figures following to wit

I Executed the within petition and writ of attachment by seizing and levying upon the within named slaves Lewis and Harry as property of the said James Chapman in the possession of W A Davison in said County of Cole on the 30 day of January 1851 by order of Plaintiff I took no delivery and the within named James Chapman is not found.

in Cole County

M J Jefferson
Sheriff of Cole County

And to said Petition is appeared or annexed the following account in words and figures "to wit"

Mr James Chapman.

To Jno G Facker Dr

For the following articles to serve about 10" of October 1851. from the Store of the said Jno G Facker by two Negroes of the Slaves named Lewis & Henry belonging to the said Chapman

5 pair	Calf Boots	@ 350 =	$17.50
4" Sup	do do	@ 5.00 =	20 00
7"	Extra Garter Calf Boots	350. =	24.50
3. "	Heavy Kip Boots	300	9.00
2	Sup. Fash. Hats	450	9.00
13	pair Ladies Kid Slippers	125	16 25
6	" Kip Stoes	125	7 50
2.	" Extra Heavy Stoes	125	2 50
6	" Woman Calf Boots		8 40
			$ 115. 65

And afterwards to wit on the 28" day of February 1854. and during the progress of said court and on the fifth day of said court. the following Entry appears of Record. in words and figures following to wit.

John G ~~Facker~~
vs
James Chapman } Civil Action.

An Sort filed.

which said answer was in words and fig
ures following to wit—
John G Fackler Plaintiff 7
against—
James Chapman Defendant—
In Circuit Court Cole County
Defendant States that his slaves Lives
and Henry did not wrongfully steal take
or carry away the Goods & property of said
plaintiff as stated in his petition or any part
thereof, Defendant also States that he
does not owe Plaintiff the said sum of
one hundred & fifteen $\frac{65}{100}$ dollars nor any part thereof
on the account in his petition mentioned
nor does said defendant owe to said plain
tiff any amount of Money what Ever.
Defendant denies that his
Slaves Lewis & Henry or Either of them
before the Commencement of this suit,
took the property mentioned or any part
thereof in manner & form as in said
petition is set forth
Robards Atty for Chapman
Henry C Scruggs makes oath & says
the he believes the within answer of James
Chapman & the matters therein as stated are
true Henry C Scruggs
Sworn to & subscribed me as clerk
of the Cole Circuit Court this 26
day of February 1851
G A Parsons
And afterwards to wit on the same
day of said Court the following other
Entry Appears of Record to wit

John G Tackler
v
James Chapman } Civil Action

Motion to strike answer from Record filed, which said motion is in words and figures following to wit

{ In the Circuit Court
{ Cole County

John G Tackler Plaintiff
v
James Chapman Defendant

Plaintiff move the court to strike out the answer filed in this cause for the following Reason

1st Because said answer is not verified by the affidavit of the Plaintiff ~~for his~~ Agent or Attorney but it appears to be verified by a Stranger

M M Parsons atty
for Plff

And afterwards to wit on the same day of said court the following other Entry appears of Record to wit

John G Tackler
v
James Chapman } Civil Action

Motion over ruled and Cause continued until term of this Court

And afterwards to wit at a Regular
9 term of the Cole Circuit Court begun
and held at the Court house in the City
of Jefferson on the Seventh day of No
vember. A.D. 1851. Present Hon G W Miller Judge
among others the following is of Record,
and on the ninth day of said term there
is the following Entry.
John G Fackler
vs
James W Chapman
3 Civil Action

Now at this day comes
the parties aforesaid by their Attorneys
and thereupon comes a Jury Trust Charles
L Menditty B. M Smith Thos M Hanston
D C Neely J C Dodson Lafayette Sone
C Marcus Archibald Cearnell Nathan
Stockenay H. M Smith James Carmitt and
John Connell twelve Good and Lawful
Men duly Elected Tried and Sworn well
and truly to try the Issue Joined and a
true verdict give in the Cause whereinn
John G Fackler plaintiff and James
W. Chapman defendant and the Evidence
in the Cause not having gone through
With and the Court being about to
adjourn the Jury is permitted to Sep
erate under Charge of Court until
to Morrow Morning at 9 o'clock

and after wards to wit during the same term and on the following day this entry is of Record to wit.

John G Facker.

vs } Civil Action

James W Chapman

Now at this day come again the parties aforesaid by their attorneys and there upon come again the Jury to wit, Charles L Meredith B M Smith Thomas M Winston D C Neely Jesse Dodson Lafayette Lone C Marcus Archibal W Cornell Nathan Shockency H M Smith James Carnett and John Connell twelve good and lawful men duly Elected tried and sworn well and truly to try the issue joined and a true verdict give according to the Evidence. And the Jury not be in able to agree they are hereby discharged and this cause continued.

And afterwards to wit at the Regular May Term of the late Circuit Court in the year AD 1852 and on the sixth day of said Term of said Court the following appears of Record.

John G Facker

vs } Civil Action

James W Chapman

This cause is continued at the cost of the plaintiff until next Term of this court

And afterwards to wit. At the
11 Regular November term of the
Cole Circuit Court AD 1852 the
following Entry in words and fig
ures. following appears of Record
to wit, on the Eighteenth day of said
Court.
John G. Fackler.
vs } Civil Action
James H Chapman
Now at this day
Comes & Jury the parties aforesaid
by their attorneys and then upon comes
the Jury to wit John Bower A D Rey
nolds C. R. Waters Wm R Vanover John
Sachs J Barrows Henry Boggs A Foster
John Winston McDaniel Dorris Melvin
Cora and Charles Miller twelve good
and Lawful men duly Elected Tried
And Sworn Well and truly to try the
Matters and things In controversy between
the parties aforesaid. and the Evi
dence in the Cause having Gone through
with the Jury retired to Consider of their Verdict
And not being able to agree and the
Court being about to adjourn the
Jury is permitted to seperate under
a charge from the Court until
Nine O Clock to Morrow morning
After wards to wit on the following
day of said Court the following
Entry appears of Record in words
and figures to wit

John G Tackler
vs
James H Chapman } Civil action

Now at this day comes again the parties aforesaid by their attorneys and thereupon comes again the Jury to wit John Brown Ald Reynolds C R Walters W R Van over John Sachs J Barrows Henry Boggs A Faster John Winston McDaniel Dorris Melvin Cora and Charles Miller twelve good and lawful men duly Elected tried and sworn well and truly to try the Issue between the parties aforesaid and the argument of the cause having gone through with and the Jury having retired to consider of their verdict and having afterwards ~~having~~ returned in to court and not being able to agree by consent of Council the Jury is discharged and cause continued. And afterward at the regular may term of this court 1853 the following Entry appears of Record in words and figures following to wit John G Tackler.

vs
James H Chapman } Civil action

It is ordered that the Clerk issue attachment against Thomas McDearman to St Charles County returnable to this County

13 And afterwards to wit at the Regular August Term of this court and on the fifth day of said court the following Entry appears of Record to wit in words and figures following to wit

John G Fackler
vs } Civil Action
James H Chapman

An alias attachment awarded to St Charles County and cause continued,

And afterwards to wit at the Regular term of the Cole Circuit Court in February 1854 and on the 9th day of said court the following Entry appears of Record in words and figures following to wit

John G Fackler
vs } Civil Action
James H Chapman

Now at this day comes the parties aforesaid by their attorneys and thereupon comes a jury to wit Philip Miller Henry Berger John Fisk Thomas Clark J R Lampkin Floyd Crandle Robert C Glover William Bethel George Lockett nine good and lawful men of Concent duly elected tried and sworn well and truly to try the Issue between the parties aforesaid and the court being about to adjourn and the Jury not being able to agree to agree on their verdict the

Jury is permitted to seperate under a charge from the Court until to mor now ~~morning~~ nine Oclock
And afterwards to wit on the following day of said court the fol lowing Entry appears of Record, in words and figures to wit.
Johns G Chapman
vs. } Civil action
James ~~H~~ Chapman
Now at this day comes again the parties aforesaid by their at torneys and then upon comes again the Jury to wit Philip Miller Henry Berger John Lisle Thomas Clark Josiah R Lamkin Floyd Crandal Robert V Glover William Bethel and George Lockett nine good and lawful men by consent duly Elected tried and sworn well and truly to try the issue and a true verdict ~~to~~ make upon their oaths do find the issue for the plaintiff and assess his damages to the sum of twenty six dollars and nine ty one cents; It is therefore considered by the court that the plaintiff recover as well the sum of twen ty six dollars and nine ty one cents for damages in manner and form as afore said assessed as also his cost and charges in and about this suit laid out and Expended and that execution go therefor

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15 And after wards to wit on the same day of said court the following entry in words and figures following to wit appears of Record.

John G Tackler
v
James W Chapman } Civil Action

Motion for new trial filed and over ruled.

And after wards and on the fourth day of March it being the last day of said court the following Entry appears of Record.

John G Tackler
v
James W Chapman } Civil Action

Bill of Exception filed which said Bill of Exceptions are in words and figures following to wit

In the circuit court
Cole County

John G Tackler Plaintiff
against
James W Chapman Defendant

Be it remembered that at the February term 1854 of the Cole circuit court in the State of Missouri this Cause Came on to be tried where a jury was summoned and impannelled the plaintiff then read to the Jury his petition here to fore a pond on pages ~~[illegible]~~ three & four free of this transcript and the

defendant read his answer thereto
here to fore copied at pages 5 & 6, of this
transcript. The plaintiff then intro
duced the following testimony,
William A Davison testified that
he knew nothing about the stolen
goods He knew the slaves Louis and
Henry the belonged to Chapman the
defendant in the year 1850 they lived
at the house of Witness he had them
hired of Chapman they were worth
more that three hundred Dollars
Witness is not certain as to time but
thinks it was in the year 1850 He
searched for property said to have been
stolen in company with William
C Young and Jackles the plaintiff
Witness found a looking Glass and
some Shoes or gaiter boots (looked
like Shoes worn by men) under the
bed ~~there~~ the above named slaves
slept found no hats
Cross Examined, the defendant at
that time was in California the val
ue of the property found at Witness
plantation was not worth more than
6 or 8 dollars is satisfied it was not
worth more than $10, does not
know how the good came to his plan
tation the articles appeared new
had been badly used were not in
a condition to sell unless to per

17 Sons who would buy damaged goods
Some of the Shoes were split there were
three or four pair of Shoes worth
perhaps $2.50 or $3.00 per pair they they
were of a fine quality the goods
were delivered to plaintiff
Re examined I did not furnish
the Slaves these goods witness does
not know what was done with the
goods. Witness sent them to town to
plaintiff on a wagon Does not
remember.

William C Young went with
plaintiff to plantation of W. A.
Davison thinks it was in the fall
of 1850 went to search for stolen
goods while there we found some
Shoes or half boots in a box under
the bed where the negroes slept
also a looking Glass, witness
Does not remember particularly as to all
of the property found it has been so
long since the search took place
the plaintiff then asked the witness
if he heard the said Slaves
make any statements as to where
the remainder of the goods could
be found to this question the de
fendant objected and the Court
overruled the objection and the

fendant excepted to the opinion of the Court in permitting the witness to answer the question Witness answered that said slaves did make statements where the remainder of the goods could be found they stated some of the goods could be found at Mr Stanley's and Palmers the other places witness does not recolect witness stated that he did not go to those places himself does not know whether the goods were found there or not, the Court then excluded all of this testimony as to the statements of the slaves as to where the goods would be found to which the plaintiff excepted The plaintiff the offered to read the deposition of Thomas McDearmon to which defendant objected the Court excluded the parts of said deposition marked thus in Ink (this) and permitted the remainder of said deposition to be read to the Jury to the opinion of the Court in excluding the above discribed parts of said deposition the plaintiff excepted. and to the opinion of the Court in permitting the remainder to be read the defendant excepted which said deposition is in words and figures following to wit,

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In the circuit Court within and for the county of Cole in the State of Missouri

John G Jackson
against
James Chapman

Civil Action

To James Chapman the above named defendant and to C A Edwards his Attorney of record in the above entitled cause.

You are hereby notified that depositions of Witnesses to be read in evidence in the Cole circuit Court on the Trial of the above entitled cause (Wherein said plaintiff is You the said James Chapman are defendant) on the part of the plaintiff will be taken at the office of Rufus Bigelow Esquire a justice of the peace within and for the County of St Charles and State of Missouri in the Township of Femme Osage in the County of Saint Charles in the State of ~~Missouri~~ aforesaid on the 14th day of May next between the hours of eight O Clock in the fore noon and Six O Clock in the after noon and the taking of said deposition if not Completed on that day will continue from day to day at the same place and between the same hours till Completed

John G Jackson by
M M Parsons his
Attorney

I Acknowledge the Service of the within notice this 28th day of April 1852.

Attorney for Defendant

I Levi Gunsaullus do swear that I serve the within notice on the within named James Chapman by reading the same in his presence & hearing in Cole County on the 25 day of April 1853

Levi Gunsaullus

Sworn to and subscribed before me the undersigned Clerk of the Cole Circuit Court this 28" day of April 1852.

G A Parsons. Clerk

By G. C. Berry D.C.

Deposition of witnesses produced Sworn and Examined at the office of Rufus Bigelow Esqr a Justice of the Peace within and for the Township of Femme Osage and county of St Charles in the County of St Charles in the State of Missouri before me Rufus Bigelow a Justice of the Peace within and for the County and State aforesaid in a certain Cause now pending in the Circuit Court within and for the County of Cole in the State of Missouri aforesaid between John G Facken plaintiff and James Chapman defendant on the part of the Plaintiff

Thomas H McDearmon of lawful age being produced Sworn and Examined on the part of Plaintiff deposeth and saith Question by Plaintiff

Please State all you may know in reference to the matter

21 in controversy between the plaintiff and defendant
Some time in the month of October in the year
AD 1850 while I was Clerk in the Store of Jno G Fack
ler the ware house adjoining the same was bro
ken open and a quantity of goods taken out Either
on Saturday or Sunday night, I am unable
to say, which as the ware house was Shut and
locked upon Saturday night and we had no acca
sion to open the same until the Monday following
when it was discovered that a number of articles
had been taken and carried away upon Examined
it was found that one of the back windows had
been opened and remained partly open at the
time which led Mr Fackler and my self at once
to believe that the goods had been taken out through
said window I did not know at this time who
had committed the theft = Suspicion did not
fix upon any one No one knew that the ware house
had been broken open and the goods taken out
Except Mr Fackler and my self with two or three
others to whom we Communicated the same.
About two weeks after the breaking open of
said ware House (I was told by some negro men (to
whom I had shown a sample of some of the arti
cles stolen) that some negro men that lived
at Dr Wm Davisons had been seen wearing some
of the same kind of goods I had shown them which
had been stolen) Mr Fackler & Col Wm C Young
then went to Dr Wm Davisons and brought said
negroes in to town The negroes made a state
ment telling where the stolen goods could be found
which was taken down by Mr Fackler and
handed me which I took and after search
ing as directed by the same I found it correct

in almost Every Instance The first place I made search at was Mr Palmers and found Every thing Just as stated Except one pair of Slippers. I could not find, By looking over the Statement I found that Mr Stanlys negro Man (whose name I do not Remember) had two pair of Boots one coarse and the other fine and one pair of Ladies Shoes I was told By Mr Palmer that this negro of Mr Stanlys had one of his Mr Palmers negro Women for a wife upon Searching her Room and trunks I found both pair of Boots and the Shoes, also the negroes (Chapmans) Stated that two of Mr Palmer negro men had Each a pair of Boots all of which I found. (and which they said they bought of Chapmans Lewis) I also found two or three pair of Ladies Shoes I had not missed from the ware House which I idenlefed as belonging to Mr Tackler I then went to Mr Stanlys. I did not find him at Home, but at his landing on the River and consequently made no search on his place. I shown him the memorandum which I had which was taken down from the Statement of the negroes (Chapmans) and after looking over the same he told me that one of the negro men named had a wife a Judge Scotts, and Kept all of His clothing there and requested me to Call and get Judge Scott to assist me in making a search for the same. I did so and

23 found a fine Hat and a pair of boots Just as Stated in the memorandum I then called at Gen James L Minors but not finding him at home. I left a memorandum with a German who was at work for him at the time the memorandum was for a pair of boots (which Genl Minor told me the next time I saw him, he had found the memorandum Stated that some of the goods were sold to Mr Caseys negroes. I did not Go there but Returned to town I saw the Good found at Dr Wm Davisons Shown me by him ~~and~~ & recognised them as the goods belonging to Mr Fackler I cannot specify all of the articles I identified at Dr Wm Davisons it Has been a long time Since and my memory does not serve me as to all. I saw three or four pair of Patent leather Garters worth three Dollars and fifty Cents a pair two or three pair of Calf Skin Garters worth three dollars and fifty Cents and one or two pair of Ladies Stocks worth one dollar and forty Cents Dr Davison promised me to send in the articles that were found at his house and did send them in (at least a part of them) I can say that He sent all of them in. I recognized them as goods belonging to Mr Fackler I do not remember Ever having heard Col Young identify the Goods sent In by Dr Davison as being the same Goods found by him self and Mr Fackler at the house of Dr Davison I know the goods I saw at Dr Davisons belonged to Mr Fackler and I never Sold any part of to any one the following are the articles that I remember has having been

Stolen to wit, 5 pair of Calf Boots heavy at three Dollars and fifty cents a pair 4 or 5 pair of Extra fine Calf Boots at Five dollars a pair. Seven (7) pair of Gaiters at three dollars and fifty Cents each two fine Hats at four dollars and fifty Cents each I do not Know how many pair of Heavy Kip boots were taken I did not Know that any had been taken until I made the search at Mr Palmers where I found one pair worth three dollars. I do not Know how many pair of Ladies Kid slippers were Stolen I found Several pair whilst searching for the goods they were worth one dollar and twenty five cents I cannot say how many pair of Ladies Calf Boots were taken but I Know some were. I found Several pair whilst making search they were worth one dollar and forty Cents a pair I Know that the above goods were taken from the Store of Jno G Tackler by the mark being left Perfectly plain on some of them and I could have Identified them any where from the quality and appearance if there had been no mark upon them I never sold any of the above goods to any of the negroes when they were found and very few of any the same kind until after the theft was committed to any one as we had just opened them and some of them had never as much as been shown to any one Mr Tackler had no other clerk in his Employ at the time the ware house was

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broken open and had not had any one for several months. I found one or two pair of the Ladies Kid Slippers worth one dollar and twenty cents a pair and the or four pair of Ladies Kid Boots worth one dollars and forty cents a pair and farther this deponent south not

Thos. H. McDearmon

I Rufus Bigelow a Justice of the peace within and for the County of St Charles in the State of Missouri do hereby certify that Thos. H. McDearmon whose place of Residence is in the County of St Charles in the State of Missouri was by me sworn to testify the whole truth of his knowledge toughing the matter in controversy in the cause aforesaid that said deponent was Examined and his Examination was reduced to writing and subscribed by said deponent in my presence on the fourteenth day of May in the Year A.D. Eighteen hundred and fifty two between the Hours of Eight o'clock in the forenoon and Six o'clock in the afternoon at my office within and for the County of St Charles in the County of St Charles in the State of Missouri

I Rufus Bigelow, J.P.

State of Missouri
County of St Charles } I Rufus Bigelow a Justice of the peace within and for the County of St Charles in the State of Missouri do certify that in pursuance of the annexed notice came before me at my office within and for the County of St Charles in the

county of St Louis ss Pro.
State of Missouri Thomas H McDear
Now who was by me Sworn and Examin
ed and such Examination Reduced to
Writing and subscribed by him in my
Presence and the said depositions are now
herewith returned Given at my office
Within and for the County of St Charles in
the County of St Louis
in the State of Missouri this fourteenth
day of May AD 1852.

Rufus Bigelow Justice of
the Peace

The plaintiff Here rested his case
This was all the Evidence given in the
case The counsel for the plaintiff
then asked the following Instructions
Inst 1st That if the Jury find from
the Evidence that the House of the
plaintiff was forcibly entered and
his goods were stolen and further
find that part of the stolen goods were recently
after the loss found in the pos
session of the defendants slaves it
is prima facie Evidence that said
slaves stole the whole of the prop
erty lost at the time of such forcible
Entry unless the defendants
has by the Evidence otherwise accoun
ted for such possession

2nd That although the Jury
may believe from the Evidence
that other slaves were in company and
aiders and assisted in the allegd

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Larceny and burglary Still the defendants is liable for the whole of the Trespass committed provided the Jury find from the Evidence That the defendants Slaves were present aiding and assisting in the allegid larceny and burglary and provided further that the defendants said Slaves were in value worth as much as the property Stolen

Given

2nd. That if the Jury believe from the Evidence that the defendants Slaves. Lewis and Henry Entered the house of Plaintiff and took Stole and Carried away the Goods of the plaintiff the Jury must find for the plaintiff the value of the Goods so Taken provided the value does not Exceed the value of said Slaves.

Given

4th That if the Jury believes from the Evidence that defendants Slaves. Lewis and Henry after the loss of the goods by plaintiff made Statements as to where the goods might be found and the Jury for the finds from the Evidence that there said Statements are True there is a circumstance from which the Jury may Infer a guilty knowledge and participation on the part of the said slaves in the

Allagd. burglary and larceny

The Court gave the third and fourth and refused the first and second instructions asked for by Plaintiff to the opinion of the Court in refusing said instructions the plaintiff by his Counsil Excepted

"The defendant by his Counsil then asks the following instructions "Viz"

The defendant moves the Court to instruct the Jury

That unless they believe from the Evidence that the negroes of the defendant Stole the goods of Plaintiff they must find a verdict for the defendant

That Defendant is not liable for the goods stolen by the negroes of any other person.

That if the Jury believe from the Evidence that the Negroes of the Defendant Stole any goods the Plaintiff so that defendant is any liable for the goods actually stolen by his negroes and not for any other.

That the mere declaration of the Negroes Davis Harry or of any other person are not Evidence against the defendant and the Jury should disregard such declarations in Coming to their verdict

29 all of which the Court knew. To the opinion of the Court in giving the instructions asked for by defendant plaintiff by his Counsel Excepted The Court Then on its own motion gave the following instruction to wit

If the Jury find from the evidence that the House of the plaintiff was forcably entered his goods were Stolen & further find that part of the Stolen goods were recently after their loss) found in the possession of the defendants Slave it is prima facie evidence that said Slave Stole the whole of the property lost at the time of such forcible entry unless the defendant has by Evidence accounted for such possession this presumption of Guilt from possession however ceases as to such articles as were found in the possession of other persons than the defendants (recently after the loss) unless the Jury believe from the Evidence that such articles were obtained from the slaves of the defendant after they had stole them

To the opinion of the Court in giving this Instruction plaintiff by his Counsel Excepts the Jury having assessed the plaintiffs damages to the sum of twenty six dollars and ninety cents. The plaintiff files a motion to set aside the verdict of the Jury

and for a new trial which motion is in words and figures following to Court

In the ~~Cole~~ Circuit Court
Cole County

John G Fackler Plaintiff
against
James Chapman Defendant

And the said Plaintiff comes and moves the Court to set aside the verdict of the Jury in the Cause and for a new trial for the following reasons

1st Because the verdict of the Jury was against the Evidence
2d Because the verdict of the Jury was against the law
3d Because the Court excluded legal and competent testimony from the Jury offered by the plaintiff 4th Because the Court improperly instructed the Jury in this Cause
5th Because the Court gave illegal instructions on the part of the defendant 6th Because the Court refused legal Instructions on the part of the Plaintiff

Parsons atty for
Pltff

71

Which Motion was by the Court overruled to the opinion of the Court in overruling said Motion plaintiff By his Counsel Excepted and tenders this his bill of Exception to all of the opinions of the Court as above set forth and expressed which he prays may be signed & sealed by the Judge of this Court and made a part of Record in this cause which is done Accordingly

C H Miller [Seal]

State of Missouri }
County of Cole }

I G A Parsons Clerk of the Cole Circuit Court Do hereby Certify that the foregoing is a true and perfect copy of the Papers and proceedings had in this cause as truly as the same appears of file and of Record in my office

Intestimony Whereof I G A Parsons Clerk as aforesaid have hereunto set my hand and affixed Court this 15th Day of June A.D. 1854

G A Parsons Clerk
By Joseph Mosby D.C.

No. 2.
John G. Hackler p.e.
v
James Chapman

Cal. Ks. Fus = $7.75
G. A. Parsons
Clerk
By Josephine Cosby Dep.

Filed June 14 1854
Wm E Dunn Cond
Clerk

Cal. 1st

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In the Supreme Court
July Term 1834

John G. Tackler plaintiff in error
vs
James Chapman defendant in error

And the said plaintiff in error by his Counsel Comes and assigns the following Errors Committed by the Circuit Court in this Cause

1st The Court erred in excluding from the consideration of the jury that part of Thomas McDiarmans deposition in reference to the identity of the goods stolen and the value of the same, and other parts of said deposition marked thus.

2nd The Court erred in refusing the first and second instructions asked for by plaintiff in error

3rd The Court erred in giving the instructions asked by defendant in error.

4th The Court erred in giving the instruction on its own motion.

5th The Court erred in refusing to set aside the verdict of the jury & judgment, and to grant a new trial.

Parsons atty
for plff in error

John G Jackson

vs

James Chapman

Assignment of

Error

filed July 3d 1854

Wm E Dunscomb

Clerk

Inº G. Facklar Pltff in Error } Error to the ~~Cole~~
vs } Cole Circuit
Jas Chapman Defdt in Error } Court.

This was an action against the defendant in error under the 35th section of the 9th Art. of the act concerning crimes and punishments to recover damages for property of the plaintiff alleged to have been stolen by slaves ~~the~~ belonging to the defendant.

The main question in the case is whether, if the slaves of several persons unite in the commission of a larceny, the owner of one of the slaves will be liable for all the damages resulting from the wrong. Every larceny includes a trespass. In trespass all are principals, and each trespasser is liable for the entire damages which may flow from the commission of the injury although many may be concerned in it. There is no contribution among wrongdoers. If the slaves themselves could be sued for the wrong done, this principle no doubt would be applicable. Can it make any difference, that the action is given against their masters. In case the slaves of several persons unite in the commission of a larceny if the person injured by the offense, was driven to his separate action against each master for the share of property taken by his slave, the difficulty in ascertaining in such cases the portion taken by each slave would make the remedy almost nugatory. As the statute has rendered the master liable for the damages resulting from the larceny of his slave, there can be no hardship

in an action against him, in attaching to the act of the slave, the legal consequences which flow from it. If three slaves belonging to different masters unite in a theft of property of the value of one hundred dollars, each one of the slaves in the judgment of the law has stolen one hundred dollars worth of property, and not property worth one third of that sum or only such portion of it as he has actually taken and carried away.

It can scarcely be necessary to state that such portions of the depositions as merely related to what the witness heard from others were inadmissible. The declarations of the slaves, showing, when the stolen property might be found, was evidence in connection with proof that the property was found at the places mentioned by them. It is not necessary, that the declarations of the slaves and the fact that the property was found at the place where it was stated to be, should be proved by the same witness. One witness may testify as to the declarations, and another may prove, that the property was found when it was alleged to be. Under this view, there would be no impropriety in admitting the testimony of the witness Young, if it was shown by another witness, that the property was found at the place mentioned by the slaves to him.

The fact that the declarations of the slaves were reduced to writing, is no reason for refusing proof of them in the absence

of such ~~declar~~ written declarations: It appears that the writing down of the declarations was an extra judicial act, and altogether voluntary.

We cannot see that the Court erred in refusing the plaintiffs first instruction, the fact, that the goods stolen were found in the possession of the slaves of the defendant was a circumstance tending to prove that they were taken by them, the weight of which was a matter proper for the determination of the jury under all the circumstances.

There were words in the instruction given by the Court which were scarcely warranted by law: The imputation of theft arising from the possession of stolen goods could only arise as to the goods actually in the possession of the thief: If part of the goods were proved to have been stolen by the slaves, the jury would determine from the circumstances, whether all the goods lost were not taken at the same time

Judge Ryland concurring The judgment will be reversed & the cause remanded

Wm Scott

July Term 54 No. 6

J. G. Facklar

vs

Jas Chapman

Opinion

filed Febr. 9 1855

Wm E Duncomb

Clerk

Cole

810

52.

THE STATE OF MISSOURI, SCT.

THE STATE OF MISSOURI TO THE SHERIFF OF THE COUNTY OF Pettis IN SAID STATE, Greeting:

WHEREAS, John G Tackler on the ninth day of February in the year eighteen hundred and fifty five at our Supreme Court for the State of Missouri aforesaid, before our Judges of said Court, recovered against Jas. L Chapman the sum of eight 46/100 dollars for his costs and charges by him expended in a certain suit wherein the said Jno. G Tackler was plaintiff in error and the said Jas. Chapman was defendant in error which to the said plaintiff in error were adjudged, as appears to us of record. Therefore, We command you; that of the goods and chattels, lands and tenements of the said James L Chapman 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 Jno. G Tackler the costs aforesaid, and that you certify to our said Judges how you execute this writ, and have you then there this writ.

Witness, William E. Dunscomb, Clerk of said Supreme Court, at office; in the City of Jefferson, the fourth day of August in the year of our Lord one thousand eight hundred and fifty-five.

Wm E Dunscomb

52

January Term 1856

Fackler

v. Z Exeon.

Chapman

Costs

R B Jackson	60
Wm E Dunscomb	8.06
this unit	1.00
	$ 9.66

Alias March 29 '56

Pettis

One to hand augst 15th 1855

F. E. Cravens Sheriff of Pettis County

I hereby certify that that James C. Chapman is not to be found in Pettis County this 29th day of January 1856

F. E. Cravens
Sheriff of
Pettis County

THE STATE OF MISSOURI, SCT.

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

WHEREAS, John G Tackler on the ninth day of February in the year eighteen hundred and fifty six at our Supreme Court for the State of Missouri aforesaid, before our Judges of said Court, recovered against James C Chapman the sum of eight 44/100 dollars for his costs and charges by him expended in a certain suit wherein the said John G Tackler was plaintiff in error and the said James C Chapman was defendant in error which to the said plaintiff in error were adjudged, as appears to us of record: **Therefore,** We command you, that of the goods and chattels, lands and tenements of the said James C Chapman 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 first Monday in July next, to render unto the said John G Tackler the costs aforesaid, and that you certify to our said Judges how you execute this writ, and have you then there this writ.

Witness, William E. Dunscomb, Clerk of said Supreme Court, at office; in the City of Jefferson, the twenty ninth day of March in the year of our Lord one thousand eight hundred and fifty six

Wm E Dunscomb

Areas to No. 52
Jany 7, 1856

July Term 1856.

Ono. G. Fackler

v. } Excon.

James C. Chapman

Costs.

R. B. Jackson	,60
Wm E Dunscomb	8,06
two mots	2,00
	$ 10,66
	12 50
	1,84

paid

Returned Satisfied in full by the receipt of ten Copper Dollars August 1856

Wm Briscoe
Sheriff

In the Supreme Court
July Term 1834

John G. Fackler plaintiff in error
vs
James Chapman defendant in error

Plaintiffs Brief

Statement of the Case

Fackler brought his
Civil action in the Cole Circuit
Court against Chapman for the
sum of one hundred and fifteen dol
lars and sixty five cents the value
of certain goods and merchandise
alledged to have been stolen taken
and carried away by the defendants
two slaves Lewis and Henry.

Chapman the defendant by his
agent answered denying that his
said slaves stole took and carried
away the property of plaintiff as
stated in his petition, and that
defendant owed plaintiff nothing.

At the February term of said Court
in the year 1834 a trial was had before
a jury, When the plaintiff ~~produced~~
Evidence showing that the two slaves
above mentioned were at the time of the
alledged larceny the property of defendant
that they were of greater value than
the property alledged to have been stolen
That about two weeks after the larceny
about ten or fifteen dollars worth of the

property was found at Wm A. Davisons who had hired said slaves. the property was found in the quarters of said slaves under the bed where they slept. The property thus found was identified by the Clerk of the plaintiff as his property - some of which consisted of shoes which had been worn and split open after they were stolen - That the value of the whole of the property stolen amounted to about 90 or $100, all of which was proven by the Clerk. That said slaves were immediately arrested and made statements as to where the remainder of the goods could be found which ~~state~~ statements were found in almost every instance to be correct.

William C Young a witness for plaintiff was asked whether said slaves made any statements as to where the remainder of the stolen goods could be found to which defendant objected, the Court overruled his objection and defendant excepted. Witness answered that said slaves did make statements as to where the remainder of the goods could be found, they stated that some of the goods could be found at Mr Stanleys Mr Palmers and other places not recollected by him, witness further stated

that he did not go to any of the places mentioned and did not know of his own knowledge whether any of the goods were found at those places or not The Court then excluded all this testimony as to the declarations of the slaves where the goods could be found to which plaintiff excepts, The plaintiff then proceeded to read the deposition of Thomas McDearman who was at the time of the larceny Clerk of plaintiff, to which defendant objects the Court excluded parts of said deposition as appears in the transcript to which plaintiff excepts, and permitted the remainder to be read to which defendant excepts

The defendant not offering any testimony the plaintiff asked the following instructions (for which see pages 26-7 of the record) the Court refused the first and second instructions to which plaintiff excepts,

The defendant then asked the following instructions (for which see 28-9 of the record) which the Court gave and also an instruction on its own motion to all of which plaintiff excepted. The jury having found a verdict for the plaintiff for the sum of twenty six dollars and ninety one cents. He filed his motion for a new trial which being overruled he excepts

and brings his case into this court by writ of Error.

Points and Authorities

Parsons for plaintiff in error insists

1st That the Court below erred in excluding from the jury the testimony of Young in regard to where the remainder of the stolen property might be found. It was competent to prove such statements by one witness and prove that they were true by another. Although the confessions of the slaves ~~even~~ if they were extorted by fear threats pain or promises could not be admissible as evidence against either themselves or their owner, nor are their statements ~~unsupported~~ without evidence of their truth admissible yet it was competent to show a guilty knowledge on the part of the slaves by proving their knowledge of what disposition had been made of the property. See Archbold Crim Ev. p 50-51. So the acts of an animal is sometimes relied upon as its knowledge of particular facts. As was the case in a very recent cause before this court. Gibson vs Crouther See also Marr vs Hill & Haynes x mo reps 39 320

2- The first point made is a sufficient reason why the defendants fourth instruction should not have been given, But there is another objection to it

It is a repetition to the plaintiffs fourth instruction. So far as it relates to statements made by other persons it is not objectionable. But the statements of the slaves if proved to be true ought not to have been disregarded by the jury. The Court having given this instruction at defendants objection to McDearmons deposition in regard to what he was told by other persons.

3rd The Court should have given the third instruction asked by plaintiff as.

4th The Court should have given the plaintiff's second and refused the defendants fourth instruction The revised Code of 1870. Art IX of Crimes and Punishments Sec 35 p 414 gives the party injured his action for damages against the owner for larceny committed by his slave. This action is in its nature an action in Trespass. In that action if several jointly commit the act they are jointly and severally liable and the plaintiff may have his action for the whole of the injury sustained against one or more of the Co trespassers at the option of the plaintiff. It is insisted therefore that the defendant is liable for all the injuries sustained by the plaintiff by the larceny although the slaves of other persons may have partici

pated in the same. See also Com.
vs Millard 1 Mass.
4 The instruction given by the Court
at its own instance is not the
law applicable to the facts of
this Case

John G. Tackler

vs

James Chapman

Plaintiffs

Brief

In the Supreme Court
July Term 1852.

John G. Fackler, Plff in Error
vs
James Chapman. Respondent
} Error from Cole

The Defendant, James Chapman was the owner of two negro boys, named Lewis and Henry in 1851. The Plaintiff John G. Fackler, who was then a merchant in Jefferson City having lost goods from his store, had the negroes of Deft arrested on a charge of stealing his goods. Fackler afterwards commenced a suit against Chapman, by Attachment in the Cole Circuit Court, at the February Term 1852, the object of which was to recover of Chapman the value of the goods which Fackler alleged he had lost, amounting to the sum of one hundred & fifteen dollars 65/100

There was an answer filed denying the facts set forth in the petition, denying that Defendant owed Plaintiff any sum of money ~~& that~~ and that his negroes above named had stolen the goods of Plaintiff.

A motion was filed to strike out the answer of the Defendant because it was not sworn to by the proper person. That motion was overruled.

At the November Term following there was a trial, but the jury being unable to agree of a verdict, were discharged by consent of parties—

The cause was continued at the May Term 1852 by the Plaintiffs.

At the November Term following there was a second trial, and the jury not being able to agree on a verdict were discharged by consent of parties & the cause continued.

At the May & November Terms ensuing, the cause was continued to bring a witness, Thomas McDeaman, into Court by attachment.

At the May Term of this Court, 1854 the cause was tried a third time, and the jury being again unable to agree the attorneys consented that a majority of the jury might render a verdict in said cause. This consent was not a matter of record nor does the same appear upon the record. The jury thereupon returned a verdict in favor of the Plaintiffs for twenty six dollars and ninety one cents & were discharged. The Plaintiffs filed a motion for a new trial which was overruled and also a bill of exceptions

In this case the Defendant in Error will not insist that the judgment of the Circuit Court was right. He believes that illegal evidence was permitted to go to the jury, & that the law was declared wrong against him. Being anxious to get rid of a very

vexations suit, he was willing that a majority of the jury should decide his case and he would have submitted to their verdict, however hard he might have thought it, but the Plaintiff having brought this case here Hes respectfully asks that the law of his side of the case may be corrected, should this Honorable Court reverse the judgment of the Circuit Court.

~~The Defendants in Error relies upon the following the for~~

The Defendants in Error submits the following points in said cause.

First,

The circuit court erred in permitting the witness Young to be asked what he heard the negroes Lewis & Henry say in regard to the Stolen goods, although the answer of the witness was afterwards excluded - This is a proceeding under the Statute, against the owner, ~~the~~ to recover the value of goods alledged to have been stolen by his Slaves. It is admitted that the declaration of the Slaves would have been good against themselves on a criminal prosecution: Nor is the principle of law denied that where confessions are obtained under Circumstances which exclude them, from the jury, that yet

facts thus obtained may go to the jury notwithstanding the confessions are excluded. But it is proposed here to carry the rule a step further — to make the statements of the negroes evidence against their Master, or facts growing out of those statements. The subsequent action of the Court in excluding this evidence did not cure the Error —

The Court Erred in admitting the evidence of Thomas McDearman to be read to the jury. It is all hearsay in its character, or inferential, being based upon facts which the witness assumes to be true, or the statements of the negroes to others present.

The Court properly refused the first instruction asked by the Plaintiff. There was no evidence upon which to base it. The possession was not recent in the meaning of the law. The possession of the slave is not the possession of the man ~~the~~ evidence against master nor would positive proof that the slaves of Defft. stole a part of the goods of Plaintiff render the Defendant liable for all the goods which Plaintiff lost.

2nd Russ. on Crimes 12½, 4, & note ff

The Court did not err in refusing the second instruction. That instruction is based upon the hypothesis, that if Chapmans other negroes stole goods from the Plaintiff, that then Chapman is liable for the whole amount stolen. This is entirely carrying the meaning of the law much further than the Legislature intended. Rev. C. Mo 1845 S. 35 on page—414.

The fourth instruction asked by Plaintiff is clearly wrong. By it the statements of the negroes and the facts arising from them are made evidence against the master. This is not only objectionable, because it is heresay evidence, but it is negro evidence at that. The first step the Plaintiff takes is to prove his care by negro testimony, which is incompetent ~~[illegible]~~ in suits between white persons. R. S. 1845, page 1090. Sec. 32

The instruction given by the Court is erroneous. It is inconflict with the ~~first & Secon~~ instructions given on the part of the Defendant and asserts in part the same doctrine contained in the first & second instructions of the plaintiff which had been refused and was calculated to misled the jury.

The statements of the slaves should not have been received. The statement was reduced to writing & the writing was not produced. Roscoe's Criminal Ev. 57.

E. L. Edwards Atty.
for Deft —

The Defendant objected to the first second & fourth instructions of the Plaintiff. & also to the Deposition of Thomas McDeanman —

John G. Tackler

vs

James Chapman

Respondents Brief