Wyatt, J. L.; Barn, Jacob vs. Crissman, D.S. 1858 Moniteau Co. 1st. Cir. 227/6
Porter, Manon

Old 78/31

Affirmed

B & W each brought attachment suits a/g W.W. Farmer; C garnishee; appeared Judge consolidated into 1 judgment for B & W

P was Cs garnishee; C & P moved seperately & jointly to quash execution & dismiss Porter - sustained

false transcript in clerk's office - C & P did only thing they could

Judge rendered joint judgment but certified it as single judgment

State of Missouri } ss
County of Monitau }

Pleas before the honorable George W. Miller Judge of the Circuit Court within and for the County of Monitau in the State of Missouri in a certain Cause Lately finally adjudicated in said Court wherein one Jacob. Bain & J. L. Wyatt were Plaintiffs and one D. S. Chrisman was defendant, To wit,

Be it Remembered ~~—~~ that on the 18th day of November 1856. William Apperson a Justice of the peace within and for said County filed in the office of the Clerk of the Circuit Court of said County the following transcript and Original papers in a certain cause Lately pending before said Justice wherein the said Jacob. Bain & J. L. Wyatt were Plaintiffs and the said D. S. Crissman was defendant Which said Transcript ~~is~~ in words and figures following, to wit,

August 25th 1856.

Jacob Bain & J. L. Wyatt

vs

D. S Crissman

Action against Defendant who was Summons on the 26th day of May 1856 as garnishee in an action by attchment of Plaintiffs. vs. W. W. Farmer said Defendant failing to answer to said garnishment and Plaintiffs prove that he was indebted to said Farmer in a Sum of $35.00. it is therefore Considered that Judgment by Default be given in favor of said Plaintiffs and against said Defendant for

the Sum of $35.00. and for the Cost in this behalf

Judgment $35.00

Justices fee Judg. & Execution .. 60C

August 26th 1856 issued Execution on the above Judgment for the above Sum of $35.00 and for the Cost as above Stated. Constable Woods Cost with for trouble with Cart and keeping it .. 35C

Execution Returned Not Satisfied on this 4th day of November 1856, for want of goods and Chattles to Levy the Same upon and Executed on the 27th day of September 1856. one Cast

I hereby Certify that the above is a true and Correct Copy of an entry on my docket given under my hand this 15th day of November 1856

William Appersond PD

Justices fee for copying Docket .. 20C

And then afterwards to wit, on the 18th day of December 1856. the Plaintiffs aforesaid having demanded Execution of the Clerk of the Circuit Court aforesaid. Said Clerk issued an Execution against the aforesaid Defendant D. S. Crismand which Execution is in words and figures following to wit,

State of Missouri } The State of Missouri
County of Moniteau } To the Sheriff of the County of Moniteau

Greeting; Whereas Jacob Bain & J. L. Wyatt before William Appeson a Justice of the peace within and for the County and State aforesaid hath recovered against D. S. Crismand the Sum of thirty five Dollars for their Debt with Costs of Suit on the 25th day of August 1856. on an action by Attachment brought by said Bain & Wyatt against W. W. Farmer and Summoned said Crismand as Garnishee, Execution, was issued by said Justice and against said Crismand

on the 26th day of August 1856. Execution Returned November 4th 1856 not Satisfied for want of goods and Chattles to levy the Same upon and executed on the 27th day of September 1856 one Cart. all of which appears from the Transcript of Said Judgment as made and Certified by Said Appleson Justice as aforesaid and filed in the office of the Clerk of the Circuit Court of Said County of Monitean. And the Said Plaintiffs by their agent J. C. Dickerson having this day Demanded Execution to issue against Said Crissman. These are therefore to Command you as Sheriff as aforesaid That of the goods and Chattles lands and tenements of the Said David Crissman you cause to be made the Said Debt Damages & Costs aforesaid, as well the Cost of this writ as the costs before the Justice and that you have the same before the Judge of our Monitean Circuit Court on the fourth Monday in March next to Satisfy the Said Debt Damages and Costs aforesaid and do you certify how you Execute this Writ—

In Testimony whereof I Wm. G. Howard Clerk of the Circuit Court in & for the County and State aforesaid have hereunto set my hand and affixed the Seal of Said Court at office this 18th day of December. 1856

Wm. G. Howard Clerk

On the Back of Said Execution was the following endorsement by Sheriff to wit

Come to hand Feby. 5th 1857—

B. F. Bradford D. Shff. M. C.

And on the back of Said Execution was the following Return made by Said Sheriff to wit

I do hereby certify that I Return the within execution not Satisfied there being no goods & Chattles of the within named David S. Crissman whereon to levy to Satisfy the

Same — Given under my hand this 24th day of March 1857 — Stephen Howard Shff M, C
By B.F. Bradford Dep

Then afterwards, towit, on the 31st day of March 1857 the said plaintiffs having again demanded Execution against the said defendant, the said Clerk issued the following other execution, towit, —

State of Missouri } The State of Missouri
County of Monitteau } To the Sheriff of the county of Cole

Greeting; Whereas Jacob Bain & J. L. Wyatt before William Apperson a Justice of the peace within and for the county and State aforesaid hath Recovered against D.S. Crissman the Sum of Thirty five Dollars for their Debt with costs of suit on the 25th day of August 1856 on an action by Attachment brought by said Bain & Wyatt against W.W. Farmer and summoned said Crissman as garnishee, Execution was issued by said Justice and against said Crissman on the 26th day of August 1856 Execution returned November 4th 1856, not satisfied for want of goods and chattles to levy the same upon and executed on the 27th day of September 1856, one Cent, all of which appears from the Transcript of said judgment as made and certified by said Apperson Justice as aforesaid and filed in the office of the Clerk of the Circuit Court of said County of Monitteau, And the said Plaintiffs by their agent D.E. Dickerson having on the 18th day of December 1856, demanded an Execution to issue in favor of said Plaintiffs and against said Crissman the same was on that day issued directed to the Sheriff of Monitteau County returnable to the March Term of the Circuit

Court of said County of Moniteau, which said Execution was on the 24th day of March 1857 returned by said Sheriff not satisfied for want of Goods & Chattles of the said D. S. Crissman whereon to levy the same = and the said J.E. Dickerson as agent as aforesaid having again demanded Execution to issue against said, Crisman, These are therefore to command you as the Sheriff of Moniteau County has heretofore been commanded that of the goods and Chattles Lands and tenements of the said David S. Crissman you cause to be made the said debt damages and costs aforesaid, as well the costs of this writ as the costs before the Justice, and that you have the same before the Judge of our Moniteau Circuit Court on the fourth Monday in September next to satisfy the said Debt damages and costs aforesaid — and do you certify how you Execute this Writ &c

In Testimony whereof I Wm G. Howard Clerk of the Circuit Court of Moniteau County in the State of Missouri have hereunto set my hand and affixed the seal of said Court at office this 31st day of March 1857—

Wm G. Howard Clerk

On the Back of said Execution were the following endorsements to wit,

Come to hand Apr. 7th 1857—

Wm. D. Kerr Shff

By W. W. Bolton DS

I Executed the within Execution by garnisheeing Marvin Potter on the 14th day of April 1857 and Summoning him to appear before the Circuit Court of Moniteau County on the fourth monday in September

1857. and Attaching the Amount of said Execution with Costs in his hands — Wm D Kerr Shff Cc, Mo
By W. W. Bolton D.S.

Then afterwards, to wit, at a Circuit Court begun and held at the Court house in the Town of Columbia in the County of Monitteau in the State of Missouri — on Monday the 28th day of September 1857
Present the Honorable George W. Miller Judge
William D. Muir Circuit Attorney Stephen Howard Sheriff and Wm G. Howard Clerk amongother
Proceeding the following were made of Record, to wit,
Court adjorned until Tuesday September 29th 1857
When the following entry was made of Record
in the above entitled Cause to wit,

Jacob Bain & J. L. Wyatt
vs
D. S. Crisman

Plaintiff files his interrogatories against Kirkwood Porter & Co which interrogatories are in words and figures following, to wit,

In the Monitteau County Circuit Court
State of Missouri at the September Term 1857

Jacob Bain & J. L. Wyatt Plaintiffs
against
Thomas L. Price, James P. Kirkwood & Marvin Porter of the firm of Kirkwood Porter & Company garnishees on Execution against D. S. Crisman Defendant

Plaintiffs alleges that at the time of the Service of the Garnishments in said Cause the said Garnishees had in their possession and under their control and have since had in their possession and

under their Controll Moneys — of Defendant Chrissman that at the said time of serving said Garnishments and Since said time the said garnishees owed Defendant Moneys, and prays the Court that said garnishees be Required to make full direct and true answers on oath to the following interrogatories, 1st Interrogatory At the time of the service of the garnishment, did you not either or all of you have in your hands or within your Control Moneys of said Chrissman Defendant and have you not had Since within your Controll moneys which were due to or payable to defendant if So State how much on what account when did it become due or payable if not due or payable when will it become due or payable —

Interrogatory 2, At the time of the service of said garnishment did you not owe the defendant money and have you not owed him money Since and do you not owe him money now if So State how much on what account and when did it become due If not due when will it become due

G. T. White
Atty for plaintiff

When afterwards to wit on the 29 Last aforesaid the following other entry was made of Record to wit,

Baird Wyatt
vs
D. S. Chrisman

Defendant files his Motion to quash Plaintiffs Execution — which Motion ~~Execution~~ is in Words and figures following to wit, —

In the Montana Circuit Court
Sept Term 1857 —

Jacob Bain &
J. Wyatt
vs
David. S. Crissman } Execution

The said defendant by his Attorneys Comes and moves the Court to quash the Execution issued by the Clerk of this Court in the above entitled Cause and to strike the transcript of the Justice of the peace from the record of this Court. because
1st. there is no judgment against the said Crissman upon which by the Law an Execution can issue
2nd the Transcript does not shew any judgment against the original Defendant in said suit
3d a transcript cannot be taken to the Circuit Court upon such a judgment as it appears from the said Transcript was obtained before the Justice of the peace
4th, the said judgment and Execution are Irregular insufficient, illgal Null and Void

Douglass & Hayden
Attys for Crissman

Court adjourned from day to day until Thursday October 1st 1857 — when the following other entry was made of record, Court,

Jacob Bain & J. L. Wyatt } Motion to quash Execution
vs
D. S. Crisman

It is ordered by the Court that William Apperson Esqr before whom the proceedings of the above entitled Cause were had send up to this Court a true & perfect Transcript of his docket

in this Cause, and Cause Continued —
Court adjourned until Friday October 2nd 1857 —
When the following other entry was made of Record
(to wit,

Jacob Bain &
D. L. Wyatt
vs
D. S. Crisman & Marvin Porter } Garnishment against Marvin Porter —

Now at this day Court being about to adjourn and the interrogatories heretofore filed by said plaintiffs being unanswered by said Marvin Porter — On Motion of Plaintiffs Counsel it is ordered by the Court that an Attachment issue to the Sheriff of Cole County against said Marvin Porter that he be and appear, before this Court on the first day of the next term thereof to answer said interrogatories —

Then afterwards to wit on the 24th day of November 1857 the Clerk of said Court issued an attachment against said Marvin Porter and Directed to the Sheriff of the County of Cole in the State of Missouri which said attachment was in words and figures following to wit,

State of Missouri } In the Circuit Court of Montieau County
County of Montieau } September Term 1857 - Oct 2nd 1857 —

Jacob Bain &
D. L. Wyatt
vs
D. S. Crisman &
Marvin Porter } Garnishment against Marvin Porter

The State of Missouri —
To the Sheriff of Cole County Greeting;
Whereas at the Term of our Court aforesaid and on the

day last aforesaid it was ordered by the Court that an attachment issue to the Sheriff of Cole County against the said Marvin Porter he having failed after due notice to answer the Interrogatories filed by said Plaintiffs. you are therefore Commanded to attach the body of the said Marvin Porter so that you have him in proper person before our said Court on the first day of the next Term thereof to commence and be holden at the Court house in said County of Moniteau on the 4th Monday in March next to Show Cause if any he may have why he did not appear and answer said Interrogatories and to be further dealt with according to Law. And herof fail not and have you there and there this writ.

In testimony whereof I Wm. G. Howard Clerk of said Court have hereunto set my hand and affixed the seal of said Court at office this November 24th 1857

Wm. G. Howard Clerk

On the Back of said attachment was the following Return as made by said Sheriff to wit,

I Executed this writ of attachment by arresting the within named Marvin Porter who is now before the Court March 22nd 1858

William D Kerr Shff
By W. W. Bolton D.S

Then afterwards to wit, at a Circuit Court begun and held at the Court house in the town of California in the County of Moniteau in the State of Missouri on Monday the 22nd day of March 1858

Present the Honorable George W. Miller Judge William D. Muir Circuit attorney David E. Collins Sheriff and Wm. G. Howard Clerk among other

proceedings the following to wit, Court adjorned from day to day untie Wednesday March 24th 1858 – when the following other proceedings were had in said Cause, to wit,

" Now at this Comes William Apperson Esqr. and file the following other transcripts, to wit,

Jacob Bain vs W. W. Farmer } Action by attachment on an account for $25.00 filed. Writ of attachment issued against defendant on the 26th day of May 1856 returnable the 25th day of June 1856 and directed to the Constable of Walker Township at the request and risk of the plaintiff J. M. Beard was appointed to serve and return said writ –

June the 25th 1856 the writ returned served on the following property – one Wagon & partys appeared. D. S. Crisman and Wm Brown summoned as garnishee – P. T. Bowman filed an interplea in writing Claiming the wagon attached plaintiff filed an affidavit for Continuance to procure witness Case adjourned to next return day to Aug 25th 1856 plea filed denying the truth of plaintiffs affidavit sustained by Justice Defendant Called for Jury to try the account and partys agreed to try the Cause by three Jurors John Dunham J. F. Hunter and James Chambers Sworn to try the Case after hearing the evidence Returned the following verdict We the Jury find in favor of the plaintiff $25.00 it is therefore Considered that Judgment be given in favor of said plaintiff and against defendant for the above sum of $25.00 It was Considered that the interpleader in this Case had no interest in the property attached issued Execution on the above Judgment. July 1st 1856. Execution Returned Cr. by $10.88 Cents and all Costs to date ballance

not Satisfied this 4th day of Nov. 1856

William Apperson J. P.

Justices fee for copying docket. 25¢

Justices fee for Copying Docket 25¢

J. L. Wyatt
vs
W. W. Farmer } Action by on an account amount $29.80 Cents. filed. Writ of attachment Issued on the 26th day of May 1856 Returnable 25th day of June 1856. and directed to the Constable of Walker Township At the request and risk of plaintiff J. M. Baird was appointed to serve and return said writ —

June the 25th 1856 writ returned Served by attaching one Wagon party appeared D. S. Crissman and Wm Brown Summonsed as garnishee P. J. Bowman filed an interplea in writing Claiming the wagon attached and plaintiff filed an affidavit for Continuance to procure witness Case adjourned to next return day to Aug. 25th 1856. Defendant Called for a Jury to try the account John Dunham J. F. Potthoff Wm Phelin J. F. Hunter Isaac Phelin and James Chambers Sworn to try the Case and after hearing the evidence returned the following Verdict we the Jury find for the plaintiff $19.80 Cents it is therefore Considered that Judgment be given upon the verdict in favor of said plaintiff and against defendant for the above Sums of $19.80 Cents

August 25th 1856. P. J. Bowman the Interpleader in the above Cause not appearing no defence being offered it was Considered that he had no interest in the property attached issued Execution on the above Judgment

July 1st 1856 — Execution returned Cr by $8.62 cents up to date balance not satisfied this Nov. 4th 1856
William Apperson J P

Justices fee for copying docket, 25 c

I hereby certify that the above is coppys of Judgments now on my docket in the above named causes given under my hand this 24th day of March Eighteen hundred and fifty eight
William Apperson Justice of the peace

Then afterwards, to wit, on the day Last & aforesaid the following other entry was made of Record, to wit,

Jacob Bain & J. L. Wyatt
vs
D. S. Crisman & Marvin Porter } Garnishee

Defendants file their motions to dismiss garnishment — which motions Are in words and figures following, to wit, —

In the circuit Court
Moniteau County

Bayne & Wyatt
vs
Chisman and Porter - Garnishee

Marvin Porter garnisheed and attached in this Cause move the Court to dismmiss - the garnishment and attachment in this Cause Because he Says that there was not at the time of issueing the garnishment or attachment nor is there yet, any Judgment in favor of the plaintiff against the Said Chrisman and to allow him his reasonable Attorneys fee and Remuneration for trouble and Expense in attending this Court under Said garnishment and attachment, and his costs

Lay & Gardenhire
for garnishee

In the Circuit Court Monteau County

Jacob Bain & J. L. Wyatt

vs

D. S. Chrisman & Marvin Porter. garnishee

Said Chrisman and Porter move the Court to quash the Execution Garnishment, and attachment against Porter in this cause for the following Reasons—

1st it does not appear that there ever was any Judgment against Farmer in favor of Bayne and Wyatt—

2nd it does not appear that Execution was issued by the Justice directed to the Constable of the Township in which the defendant Crisman Resided and Returned that the defendant had no goods or Chattles whereof to levy the same—

3d it does not appear that there was any legal Judgment against defendant Crisman in favor of Bayne and Wyatt—

4th it does not appear that there was any Service of the garnishment—

Douglas Gardenshire
& Lay for Defts

Then afterwards to wit on the day Last aforesaid the following other entry was made of Record to wit,

Jacob Bain & J. L. Wyatt

vs

D. S. Crisman & Marvin Porter

The Motions heretofore filed to quash the Execution, Garnishment and attachment in this Cause is argued and by the Court Sustained, and Execution garnishment and attachment quashed and Judgment

in favor of Marvin Porter and against Jacob Bain and J. L. Wyatt for the Sum of ten Dollars for his costs and Attorneys fees—

Court adjourned until Friday March 26th 1858, when the following other entry was made of Record to wit,

Jacob Bain & J. L. Wyatt

vs

David S. Chrisman & Marvin Porter

Now at this come the said plaintiffs by their Attorney and present their Bill of Exceptions in the above entitled Cause and pray an appeal to the Supreme Court which Exceptions are Signed by the Court and ordered to be made a part of this Record and said appeal granted. Which Exceptions are in words and figures following Towit,

In the Moniteau County Circuit Court
State of Missouri at its March Term 1858

Bayn & Wyatt — appellants
against
D. S. Chrisman & Marvin Porter — Respondents

Be it remembered that the Clerk of the Circuit Court of Moniteau County issued an Execution to the Sheriff of Cole County Returnable to its September Term 1857 — in favor of said appellants and against said Chrisman said execution was issued on a Transcript of a judgment from a Justice of the peace filed in this office said Execution was returned no property found and said Porter Summoned as garnishee. the said Chrisman appeared in Court and filed his motion to quash said Execution (which motion has heretofore been Copied at page Eight of this Transcript) Said

motion was continued to the next term of said Court an attachment was ordered against said Porter who had not appeared, a rule was made on the Justice to send up a full and perfect Transcript of his Docket and at the March Term 1858 of said Court the said Porter appeared the amended Transcript having been Filed the said Porter and Chriesman moved to quash the Execution and the said Porter moved to be discharged from the attachment and as garnishee (which Transcript and motions have heretofore been Copyed at Pages 11. 12. 13. & 14 of this Transcript) The Court sustained the said motions quashed the Execution and judged appellants to pay Not only the Costs of said Execution but also discharged said garnishee and adjudged appellants to pay to said garnishee the Sum of Ten Dollars for his Costs and Attorneys fee. To which orders and judgment defendant then and there Excepted and tenders this his Bill of Exceptions and prays that the same may be signed and sealed by this Court and made part of the Record in the proceedings in this Cause — Given under my hand and seal this the 26th of March 1858

G. W. Miller (Seal)

State of Missouri }
County of Moniteau } I Wm. G. Howard Clerk of the Circuit Court within and for the County aforesaid do hereby Certify that the foregoing Sixteen pages is a true and

perfect Transcript of the Record and proceedings and of all the papers in a Certain Cause Lately pending in the Circuit Court in Said Moniteau County wherein one Jacob Bain and J. L. Wyatt were plaintiffs and David S. Crisman and Marvin Porter were defendants as fully as the Same appears on file and of Record in my office So far as I can ascertain the Same ——

In Testimony whereof I have hereunto Set my hand and affixed the Seal of Said Court at office this May 31st 1858

Wm G. Howard Clerk

Bill of Cost in the above entitled Cause

Justice Apperson	$1.55
Constable Wood	1.50
Sheriff of Cole	1.50
Sheriff of Moniteau	.60
Marvin Porter	10.00
Clerk	3.50
Clerk for this Transcript	4.50

Test Wm G. Howard Clerk

Index to foregoing Transcript

1st Transcript	Pages	1 & 2.
1st Execution	"	2 & 3
Sheriffs Return	"	3 & 4
2nd Execution	"	4 & 5
Sheriff Return	"	5 & 6
Record	"	6. 7. 8. 9. 10. 11. 13. 14 & 15
Interrogatories	"	6 & 7.
Motion By Crisman to quash Execution	"	8.
Order of attachment	"	9
attachment	"	9 & 10
Sheriff Return	"	10.
2nd Transcript	"	11. 12 & 13
Motion by Porter	"	13
Motion by Crisman & Porter	"	14
Bill of Exceptions	"	15 & 16

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 Montgomery County in the Judicial Circuit aforesaid wherein Bayse & Wyatt were plaintiffs and D. S. Christman & Marvin Porter were defendants

in an action on an execution, manifest error hath intervened, to the great damage of the said Bayse & Wyatt as by 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 thirtieth day of March in the year of our Lord one thousand eight hundred and fifty eight.

Wm E Dunscomb

Clerks fee $1.50 fa unit
paid by Geo. T White esqr

State of Missouri }
County of Moniteau }

In obedience to the within writ of Error I Wm. G. Howard Clerk of the Circuit Court within and for the County and State aforesaid have m out and certified to the supreme court of the state of Mi ouri a full true and perfect Transcript of all the recor Papers and proceedings had in a certain cause Lately pe in said court wherein Jacob Bain and J. L. Wyatt Wer Plaintiffs and David S. Chrisman and Marvin Porter were dependants as fully as the same appears of Recorda in my office all of which is herewith Returned

In Testimony whereof I Wm. G. Howard Cl as aforesaid have hereunto set my han and affixed the seal of said court at office this 31st day of May 1858

Wm. G. Howard clerk

~~4~~

10.

Jacob Bain & J L Wyatt pe

n } record

D. S. Chrisman & Marvin Porter, defds in error

filed June 2. 1858

Wm E Dunscomb

Clerk

Copy for Printer

Mountain

1st

Jacob Bain & J. L. Wyatt, appellants
vs. } error to Moniteau
D. S. Crisman & Marvin Porter respondents.

The suit upon which this proceeding is founded, was a suit in attachment originally commenced before a justice of the peace, and taken, by transcript, to the Circuit Court.

The transcript first filed by the justice (pages 1 & 2 of record) shows a judgment against Crisman as garnishee in favor of plaintiffs, in an attachment suit against W. W. Farmer, upon which judgment, execution was issued by the justice and returned nulla bona, whereupon a transcript was filed in the office of the Clerk of the Circuit Court, from whence execution issued against Crisman, upon which there was a return of nulla bona; and afterwards another execution was issued by the Clerk of the Circuit Court, to the Sheriff of Cole County and the defendant Marvin Porter summoned as garnishee, and interrogatories filed &c (pages 5 & 6 of record)

The defendant Crisman appeared in the Circuit Court and moved to quash the execution, because "there is no judgment against him upon which, by law, an execution

can issue, and because the transcript does not show any judgment against the original defendant in the suit." (See Record page 8) Whereupon the Court ordered the justice to send up a true and perfect transcript of his docket in the case.

At the March term 1858 of said Circuit Court the justice filed another transcript which shows an attachment suit brought by Jacob Bain against W.W. Farmer, and in which the justice says D.S. Crisman was summoned as garnishee. There was a judgment in favor of plaintiff (Bain) and against the defendant (Farmer) for $25, upon which there is a credit of $10.88 made under execution. And another transcript of an attachment suit in which J.L. Wyatt is plaintiff and W.W. Farmer is defendant in which it is said Crisman was also summoned as garnishee, and in which the plaintiff (Wyatt) recovered judgment against the defendant Farmer for $19.80. (See pages 11 & 12 of record)

A motion was filed by the defendant Porter to dismiss the garnishment upon him &c (page 13 of record)

And the defendants Brisman and Porter also filed their joint motion to quash the execution, garnishment, and attachment against Porter (who had been attached as for a contempt) because

1st It does not appear that there ever was any judgment against Farmer in favor of Bain and Wyatt, ++ and

3d It does not appear that there was any legal judgment against defendant Brisman in favor of Bain and Wyatt, and

4th It does not appear that there was any service of the garnishment.

Which motion was sustained by the Court, and the execution, garnishment and attachment (for contempt) were quashed and judgment against Bain & Wyatt in favor of Porter for the sum of $10. for attorney fee ++ Whereupon the plaintiffs file their bill of exceptions and bring the case here by appeal

Douglas & Hayden for Brisman

1. The record does not show any original judgment in favor of Bain and Wyatt and against Farmer, and no final judgment can be rendered against a garnishee until there shall be a final judgment against the defendant. Brisman being the garnishee, no judgment could therefore be rendered against him.

The first transcript filed by the justice shows a judgment against Brisman as garnishee, but does not show any judgment against Farmer, the original defendant in the attachment. (Page 1)

The second transcript shows a judgment against Farmer in favor of Bain (not Bain & Wyatt) but none against Brisman; and so with the third transcript, that is also the seperate suit of J. L. Wyatt against Farmer, and judgment against Farmer, but none against Brisman.

There is therefore no legal judgment against Brisman and the execution was properly quashed.

Rev. Stat. 1855 p 270 Sect. 37

2 It does not appear from the record that the garnishment was ever served upon Weisman

The statement made by the justice in his docket is no evidence of that fact. It could only be shown by the return of the Constable. Rev. Stat. 1855 p. 265 Sect. 9.

Perry vs Block 1 Mo. 342

Brown vs Pearson 8 Mo. 159

4

Jacob Bain & J. L. Wyatt
appellants
vs.

D. S. Crisman and
Marion Porter
Respondents.

Brief of Douglass &
Hayden for
Respondent Cris-
man

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filed July 5th 1858

Wm E Dunycomb
Clerk

In the Supreme Court of the
State of Missouri at its July term 1858

Bayne & Wyatt, Plaintiffs in error
Against
Chrisman & Foster, Defendants in error,

Plaintiffs in error say that the Court below erred in sustaining the motions filed to quash the execution,

That the Court below erred in quashing the execution,

That the Court below erred in rendering judgment in favour of Foster for ten dollars as attorneys fee.

G. W. White
For Plaintiffs in error

4

Bayn & Wyatt
vs } Assignment
} of errors
Chrissman & Foster

filed July 5th 1858

Wm E Dunscomb
Clerk

In the Supreme Court July
Term 1858

Jacob Bain & J. L. Wyatt appellants
vs.
D. S. Eriesman & Marvin Porter

The defendant, respondent here, D. S. Eriesman, joins in error, and says that in the record, proceedings and judgment of the Circuit Court there is no error, but that the judgment of the said Court is in accordance with the law of the land, and in all things ought to be affirmed.

D. S. Eriesman by
Douglas & Hayden
his attorneys

Jacob Bair & J. L. Wyatt

vs.

D. S. Crisman

---

joinder in error

Filed July 8th 1858

Wm E Duncomb

Clerk

J. Bain & J. L. Boyatt
vs.
D. S. Chrisman & Marion Porter Defdts in Error

} Error to the Monitean Circuit Court.

It would seem to be a vain undertaking to attempt to support such proceedings as are contained in the record before us. Two plaintiffs by separate actions there being no privity whatever between them obtained separate judgments against the same garnishee: afterwards a transcript of these judgments is filed in the Clerks office of the Circuit Court: This transcript is made out in such way as makes it appear, That the two separate plaintiffs had obtained a joint judgment in their joint names against the garnishee. This transcript is made the foundation of an execution against the garnishee on whose motion it was quashed. Nothing can more clearly vindicate the action of the court below in setting the execution aside than the bare statement of the case. Every execution must be founded on a legal judgment with which it must correspond. As the law provided no remedy against a false transcript filed in the Clerks office of the Circuit Court

the only course open to the defendant was a motion to set aside the execution, a power inherent in all courts of record. It is a little surprising that the plaintiffs when they discovered the gross irregularity of their proceedings did not arrest them & have the proper transcripts filed on which regular executions might have been issued. The court under the circumstances had no authority to make an amendment, and had one been ordered, it could not have been made to correspond with the execution, so that the plaintiffs were properly denied the benefit of their irregular proceedings.

As the execution was properly quashed at the instance of the garnishee against whom it was issued, it is unnecessary to inquire whether Porter the garnishee summoned under the writ could make such a motion :: The 6th sec. of the law concerning executions provides that the service of a garnishment under an execution & the subsequent proceedings against & liability of the of the garnishee shall be the same as in the case of garnishment under an attachment. The 74th sec. of the act concerning attachments, provides that in the

event the plaintiff shall fail to recover judgment against the garnishee, the costs shall be adjudged against him & that the court shall render judgment in favor of the garnishee, for a sum sufficient to indemnify him for his time & expenses and reasonable attorney's fees in attending and answering and defending in subsequent proceedings as garnishee. This will certainly be taken distributively: The garnishee will not be required to attend, answer and defend, before he entitles himself to the benefit of this section. If time is lost and expenses incurred in consequence of the summons, it is reasonable that the garnishee should be proportionably indemnified though he may not have answered, or although the prior termination of the cause may have rendered an answer unnecessary.

The other judges concur affirmed

W Scott

4.

Bain & Wyatt
vs
Chrisman & Porter

Opinion

affd.

filed Sep 23, 1858.

Mrs E Drumcondy
Clerk

In the Supreme Court of the State of Missouri, At its July term 1858

Jacob Bain & L. Wyatt, Plaintiffs in error
Against } Error to Monroe Circuit Court,
D.S. Chrissman & Marvin Porter, Defendants in error.

On the 26th of August 1856 the plaintiffs in error, who sued one Farmer by attachment and garnished Chrissman, obtained judgment against said Chrissman before a Justice of the Peace for thirty five dollars, as a debtor of Farmer.

2 Execution was issued on said judgment against said garnishee, and on the fourth of November returned by the Constable not satisfied for want of goods and chattels to levy the same upon.

A transcript of said judgment was then filed in the Clerks office, and on the 31st of March 1857 an

4, 5 alias execution was issued by the Clerk and directed to the Sheriff of Cole County, who finding no property, garnished Porter.

At the return term of the execution, Porter not

9, 10 appearing an attachment was awarded against him. Chrissman appeared and moved to quash

8 the execution on account of informalities in the transcript of the Justice. A rule was made upon the Justice requiring him to send up a true and perfect transcript, and the cause was continued.

At the March term 1858, the amended transcript being filed, Porter being brought in by attachment then moves the Court to dismiss the gar-

nishment and attachment because there was not
8 a judgment before the Justice in favor of the
plaintiffs and against Chrisman, and to allow
him reasonable attorneys fees and remuneration
for trouble and expense.
14 At the same time a motion was filed by both
the defendants in error to quash the execution and
garnishment.
The amended transcript of the Justice as filed shows
that Bayn & Wyatt had each a separate suit by at
tachment against Farmer, writs were issued in
11,12 both cases, process served and returned at the
same time, Separate judgments were rendered against
nst Farmer, But the Justice in making the
1 entry in his docket of the proceedings against
Chrisman the garnishee and debtor of Farmer,
made a separate entry in his docket, blended
the two cases of Bayn & Wyatt, and rendered a
single judgment in their favour against
Chrisman, a transcript of which last named
judgment is the one that this execution was issued
upon.
The Court sustained the motions of defendants in error
14,15 and rendered judgment against Bayn & Wyatt and
in favour of Porter for ten dollars for his costs and
attorneys fees, To which plaintiffs in error ex
cepted and bring this cause to this Court by writ
of error.

G. T. White. Atty for Plaintiffs in error.

The Court erred in sustaining the motion of Chrissman to quash the execution, Because it is not pretended that he was prejudiced by the Justice having entered a single judgment in favour of Bayn & Wyatt against him, although separate suits had been instituted by them against Farmer.
See Statutes of 1856 P 962, Art 7, Sec 18, Justice Courts.

The neglect of a Justice to make proper entries in his docket ought not to injure a plaintiff. They are not required to make formal entries in their dockets. Rutherford vs Winn 3 Mo R P 12 Forms are disregarded, and it is not expected that entries should be made with the accuracy and precision which are required in recording the acts of Courts of record. Franse vs Owens 25 Mo R P 334, Ridenhouse vs Meyers 10 Mo R P 304.5.
Chrissman seems to have been garnished in the township where the suit was begun, and in the absence of all evidence to the contrary we must regard that as his place of residence. Franse vs Owens 25 Mo R P 334.5, Besides, Chrissman should have shown he was a resident of the County, Statutes of 1856 P 962, Art 7 Sec 17,

It was not for Porter to come in as the debtor of Chrissman, and insist that the proceedings between the plaintiffs and Chrissman defendant in the execution were irregular.

A garnishee can only answer when brought into Court, See Statutes of 1856 p 258, Sec 66 Attachments. The 73 & 74 sections allow a garnishee a reasonable allowance for his trouble and expense in answering, and a reasonable attorneys fee in attending and answering and defending in the subsequent proceedings as garnishee. And hence the Court erred in allowing an attorneys fee when the garnishee did not answer,

Bayn & Wyatt
vs by Brief
Chrissman & Foster

In the Supreme Court of the
State of Missouri
July term 1858

Jacob Bain & L. Wyatt - Plaintiffs in error
Against } Error to Moniteau Circuit Court,
D.S. Chrisman & Marvin Porter, Defendants in error.

On the 26th of August 1856 the plaintiffs in error, who sued one Farmer by attachment and garnished Chrisman, obtained judgment against said Chrisman before a Justice of the Peace for thirty five dollars, as a debt of Farmer.

2 Execution was issued on said judgment against said garnishee, and on the fourth of November returned by the Constable not satisfied for want of goods and chattels to levy the same upon.

A transcript of said judgment was then filed in the Clerks office, and on the 31st of March 1857, an alias execution was issued by the Clerk and directed to the Sheriff of Cole County, who finding no property garnished Porter,

At the return term of the execution, Porter not appearing an attachment was awarded against him, Chrisman appeared and moved to quash the execution on account of informalities in the transcript of the Justice. A rule was made upon the Justice requiring him to send up a true and perfect transcript, and the cause continued.

At the March term 1858, the amended transcript being filed, Porter being brought in by attachment

then moves the Court to dismiss the garnishment
and attachment, because there was not a judg-
13 ment before the Justice in favour of the plain-
tiffs and against Chrisman, and to allow him
reasonable attorneys fees and remuneration for
trouble and expense,
14 At the same time a motion was filed by both the
defendants in error to quash the execution and
garnishment,
The amended transcript of the Justice as filed
shows that Bayn & Wyatt had each separate suits
by attachment against Farmer, Writs were issued
11,12 in both cases, process served and returned at
the same time, Separate judgments were ren-
dered against Farmer, but the Justice in making
the entry in his docket of the proceedings against
Chrisman the garnishee and debtor of Farmer,
made a separate entry in his docket, blended
the two cases of Bayn & Wyatt, and rendered a
single judgment in their favour against
Chrisman, a transcript of which last men-
tion is the one that this execution was issued
upon.
14 15 The Court sustained the motions of defendants
and rendered judgment against Bayn & Wyatt and
in favour of Carter for ten dollars for his costs and
attorneys fees. To which plaintiffs in error excepted
and bring this cause to this Court by writ of error,

G. T. White attorney for plaintiffs in error.

The Court erred in sustaining the motion of Chrissman to quash the execution. Because it is not pretended that he was prejudiced by the Justice having entered a single judgment in favour of Bayn & Wyatt against him, although separate suits had been instituted by them against Farmer.
See Statutes of 1856 P962, Sec 18, Justices Courts.

The neglect of a Justice to make proper entries in his docket ought not to injure a plaintiff; they are not required to make formal entries in their dockets Rutherford vs Wim 3 MoR P12. Forms are disregarded, and it is not expected that entries should be made with the accuracy and precision which are required in recording acts of Courts of record. Franse vs Owens 25 MoR P334, Ridenhouse vs Meyers. 10 MoR P304, 5.
Chrissman seems to have been garnisheed in the township where suit was begun, and in the absence of all evidence to the contrary we must regard that as his place of residence, Franse vs Owens 25 MoR P334, 5. Besides Chrissman should have shown he was a resident of the County, Statutes of 1856 P962 Art 7 Sec 17.

It was not for Porter to come in as the debtor of Chrissman and insist that the proceedings between the plaintiffs and Chrissman were irregular

A garnishee can only answer when brought into Court. See Statutes of 1856 C 258 Sec 66 Attachments. The 73 & 74 sections allow a garnishee a reasonable allowance for his trouble and expense in answering, and a reasonable attorneys fee in attending and answering and defending in the subsequent proceedings as garnishee. And hence the Court erred in allowing an attorneys fee when the garnishee did not answer.

Bayne & Wyatt
vs
Boyd
Christman & Foster

In the Supreme Court of the State of Missouri, at its July term 1858

Jacob Bain & D. L. Wyatt, Plaintiffs in error,
against } Error to Monroe Circuit Court,
D. S. Chrisman & Marvin Porter, Defendants in error.

On the 26th of August 1856 the Plaintiffs in error, who had sued one Farmer by attachment, and garnisheed Chrisman, obtained judgment against said Chrisman before a Justice of the Peace for thirty five dollars, as the debtor of Farmer.

2 Execution was issued on said judgment against said garnishee, and on the fourth of November was returned by the Constable, not satisfied for want of goods and chattels to levy the same upon.

A transcript of said judgment was then filed in the Clerks office, and on the 31st of March 1857

4.15 an alias execution was issued by the Clerk and directed to the Sheriff of Cole County, who finding no property, garnisheed Porter,

At the return term of the execution, Porter not

1 10 appearing an attachment was awarded against him. Chrisman appeared and moved to quash the execu-

8 tion on account of informalities in the transcript of the Justice. A rule was made upon the Justice requiring him to send up a true and perfect transcript, and the cause was continued.

At the March term 1858 the amended transcript being filed, Porter being brought in by attachment, he and Chrisman move the Court to

13 dismiss the garnishment and attachment because there was not a judgment before the Justice, in favour of the plaintiffs, and against Chrissman, and to allow him reasonable attorneys fees and remuneration for trouble and expense.

14 At the same time a motion was filed by both the ~~defendants in error~~ to quash the execution and garnishment. The amended transcript of the Justice as filed shows that Bayn & Wyatt had each a separate suit by attachment against Farmer, writs were issued in both

11,12 cases, process served and returned at the same time. Separate judgments were rendered against Farmer.

1 But the Justice in making the entry in his docket of the proceedings against Chrissman the garnishee and debtor of Farmer, made a separate entry in his docket blended the two cases of Bayn & Wyatt, and rendered a single judgment in their favour against the Chrissman, a transcript of which last named judgment is the one that this execution was issued upon.

The Court sustained the motions of ~~defendants in~~ error and

14,15 rendered judgment against Bayn & Wyatt and in favour of Porter for ten dollars for his costs and attorneys fees. To which ~~plaintiffs in~~ error excepted and bring this cause to this Court by writ of error.

G. T. White. For plaintiffs in error,

The Court erred in sustaining the motion of Chrisman to quash the execution, Because it is not pretended that he was prejudiced by the Justice having entered a single judgment in favor of Bagby & Wyatt against him, although separate suits had been instituted by them against Farmer See Statutes of 1856, 962, Art 7. Sec 18. Justices Courts,

The neglect of a Justice to make proper entries in his docket ought not to injure a plaintiff. They are not required to make formal entries on their dockets, Rutherford vs Winn 3d Mo Rep 12. Forms are disregarded, and it is not expected that entries should be made with the accuracy and precision which are required in recording the acts of Courts of record, Frances Owens 25 Mo Rep 334, Sidenhouse vs Myers 10 Mo Rep 304. 5.

Chrisman seems to have been garnished in the township where the suit was begun, and in the absence of all evidence to the contrary we must regard that as his place of residence, Frances vs Owens 25 Mo Rep 334. 5

Besides. Chrisman should have shown he was a resident of the County Statutes of 1856 P 962, Art 2 Sec 17.

It was not for Carter to come in as debtor of Chrisman and assert that the proceedings between the plaintiffs and Chrisman defendant in the execution were irregular,

A garnishee can only answer, when brought into Court, See Statutes of 1856 p 258 Sec 66, Attachment, The 73 & 74 sections allow a garnishee a reasonable allowance for his trouble and expence in answering and a reasonable attorneys fee in attending and answering, and defending in the subsequent proceedings as garnishee, And hence the Court erred in allowing an attorneys fee when the garnishee did not answer,

Bayn & Wyatt
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