Funkhouser, Robert M. vs. How, John
Allen, John A.
1853 St. Louis Co. 315/2

561/16

account/attachment
H.F. Putnam + Co.
Phoenix Insurance Co.
Jacob Lesher
affirm

Crew policy on Lester (assigned to Micajah, assigned to Funkhouser etc.)
Crew gives $ to How b/c of earlier suit against him for account

The State of Missouri, ss.

The State of Missouri, *To the Honorable the* Judge of the Saint Louis Court of Common Pleas - - *in said State, GREETING:*

WHEREAS, In the record and proceedings in a certain cause lately pending in the

said Court of Common Pleas

wherein John Orr, John A. Allen, William Claflin & Robert Cook are plaintiffs, the Phoenix Insurance Company as Garnishee of Thomas Crew, defendants, and Robert M. Funkhauser & Edward L Pottle claimed the right to intervene -

~~in an action of~~ manifest error hath intervened, to the great damage of the said Funkhauser & Pottle as by their complaint, we are informed.

NOW, we being willing that the error, if any there be, should be corrected, and full and speedy justice done to the parties aforesaid, in that behalf, COMMAND YOU, that you send to us, certified under your seal, the record and proceedings in the cause aforesaid, as fully as the same remain of record before you in said Court, so that we may have them before us at our Supreme Court, to be begun and held in the City of Saint Louis, in the County of Saint Louis, in said State, on the third Monday in March 1853 ~~next~~, so that our Judges of our Supreme Court, on inspecting the record and proceedings aforesaid, may cause to be further done therein, for correcting the error, what of right and according to law, ought to be done.

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

Wm S. Glanville,
CLERK.

$1.50 - paid by R. M. Field Atty.

(4)

State of Missouri
County of St Louis } I, Charles D. Hicks,
Clerk of the St Louis
Court of Common Pleas in and for said
County certify and herewith furnish a
full and perfect transcript of the record
and proceedings in the case named in the
written writ as the same remain in my office
In testimony whereof I hereto
set my hand and affix the
Seal of said Court at office
in St Louis this 9th March
A.D. 1853

C. D. Hicks Clerk

1 State of Missouri }
County of St Louis } SS Be it remembered that here-
tofore to wit, on the fifth day of August A.D.
Eighteen hundred & fifty one there was filed in the
office of the Clerk of the St Louis Court of Com-
mon Pleas, within & for the County aforesaid a
Petition, in words & figures following, to wit:

John A. Allen
William Claflin & Robert
Cook ——— Plffs
vs
Thomas Crew Deft

In the St Louis Court
of Common Pleas
Sept Term
1851

St Louis County Ss —

Petition — The plaintiffs state that the Defendant owes them the sum of two Hundred & twenty four Dollars & seventy eight cents for goods wares & merchandise sold & delivered by the plaintiffs to the defendant at his instance & request the particulars of all which & the credits thereon will appear by an account filed herewith & made a part hereof. The Plaintiffs also state that the defendant by his promissory note dated October 29th 1850 promised to pay to the order of H. H. Putnam and Co. by their endorsement in writing on the day & year last mentioned Endorsed & delivered said note to the plaintiffs — which & the interest still remains due & unpaid — The Plaintiffs ask judgment for the amount of said account & note —

Todd & Krum
Attys for Plffs

John A. Allen one of the plaintiffs in the above entitled cause says that the foregoing Petition & the

* the sum of four hundred dollars fifty nine cents four months from date, which note is hereto annexed & made a part of this petition — the Plaintiffs say that said H. H. Putnam & Co

2 matters therein as stated he believes to be true (67) he he further says that the Defendant Thomas Crew is justly indebted to the plaintiffs in the sum of Six hundred & twenty five dollars & thirty seven Cents after allowing all just credits & offsetts which indebtedness accrued on account of the note & goods wares & merchandise specified in the foregoing petition this affiant further says that he has reason to believe & does believe that said defendant is not a resident of nor residing in this State

Subscribed & sworn
before me Aug 5th 1851
P. Tippett Clk

John A. Allen

account Mr Thomas Crew To Howe Claflin & Cook

1850 Novem 7.	for 260 lbs Harness Leather	@ 22¢	$57.20		
"	2 doz Bridle do		$28	56.00	
	Drayage			25	$ 113.45
" Nov 20.	" 156½ lbs Sole Leather	@ 19¢	29 73		
	1 doz upper "		24 00		
	1 " Kip Skins		36.00		
	1 " Calf "		18.00		
	½ " Lining "		$5	2.50	
	Drayage			25	
	Insurance $115. @ ¾			85	111.33
					$ 224.78

Bond Know all men by these presents that we John A Allen as principal, and Alexander Peterson Jr as security are indebted to the State of Missouri, in the sum of Twelve hundred & fifty five dollars, for the payment whereof, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly, by

3 these presents, sealed with our seals, and, dated at St Louis, this 5th day of August eighteen hundred and fifty one

The condition of the above obligation is such, that whereas John Dow, John A. Allen William Clapling & Robert Cook about to institute a suit, in the St Louis Court of Common Pleas, by attachment against Thomas Crew defendant, for the sum of Six hundred & twenty five dollars, and thirty seven cents. Now, if the said plaintiff shall prosecute their action without delay, and with effect, refund all sums of money that may be adjudged to be refunded to the defendant, or found to have been received by the plaintiffs, and not justly due to them, and pay all damages that may accrue to any defendant or any garnishee, by reason of the attachment, or any process or proceeding in the suit, or by reason of any judgment or process thereon, then this obligation to be void, otherwise to remain in full force

Approved

P. Tippett Clk

John A. Allen [Seal]

Alex Peterson Jr [Seal]

4

THE STATE OF MISSOURI,

To the Sheriff of St. Louis County,—GREETING:

We command you to ATTACH Thomas Crew

by all and singular his lands and tenements, goods, chattels, moneys, credits and effects, or so much thereof as shall be sufficient to secure the sum of Six hundred & twenty five dollars and thirty seven cents, with interest and costs of suit, in whose hands or possession soever the same may be found in your bailiwick, and that you summon the said

Thomas Crew

to appear at the next term of the ST. LOUIS COURT OF COMMON PLEAS, before the Judge thereof, on the first day of said term, to be holden at the City of St. Louis, within and for the County of St. Louis, on the third Monday of September next, then and there to answer ~~unto~~ the complaint

John Dow, John A. Allen, William Claflin & Robert Cook

as set forth in the annexed petition

~~of a plea of~~ ~~to the damage of said plaintiff~~ ~~dollars~~: And also that you might summon all and every person, in whose hands or possession soever, any such lands, tenements, goods, chattels, moneys, credits or effects may be found, and particularly

The Phoenix Insurance Company

that they be and appear before the Judge of our said Court, on the first day of the term aforesaid, then and there to answer unto what may be objected against them: and have you then there this writ.

WITNESS, PHILIP TIPPETT, Clerk of our said Court, with the seal thereof hereto affixed, at office, in the City of St. Louis, this 5th day of August in the year of our Lord eighteen hundred and fifty one

L. S.

P. Tippett **CLERK.**

5 and said writ of attachment with the Sheriffs return
thereon, is endorsed in words & figures to wit

Shff ret. Executed this writ in the County of Saint Louis on
the 5th day of August 1851 by declaring to William
H. Pritchard & to John How President of Phoenix Insu-
rance Company that by virtue of this writ I did attach
any Goods Chattels moneys or evidence of Debt which
they may have in their hands belonging to the Defen-
dant, or so much thereof as shall be sufficient
to secure the Debt Interest and costs, and also all
Debts due from them to said Defendant and sum-
moned them as Garnishees to appear in Court at the re-
turn term of this writ — and answer interrogatories
that may be exhibited against them on the part
of the plaintiffs, and offered to read this writ to each of
the said Garnishees which they refused to hear. —
Thomas Crew not found in my County.

Henry D. Belt Shff
By Robt Peyton Deputy

And afterwards to wit on the twenty fourth day of
September eighteen hundred & fifty one the following
proceedings were had herein, in our said Court, to wit

John How William Claflin
Robert Cook & John A Allen
vs
Thomas Crew

Attachment
On Motion of the plain-
tiffs by their attorney it
is ordered that the defen-

order of Pub.

dant be notified that a civil action has been com-
menced against him for the sum of six hundred
and twenty five dollars and thirty seven cents on
account of goods wares and merchandise sold
by the plaintiffs to the defendant and on account
of a note executed by defendant in favor of A.

6 F Putnam & Co and by said H F. Putnam endorsed and delivered to Plaintiffs that his property has been attached and unless he appear at the next term of this Court to be begun and held at the City of St Louis within and for the County of St Louis on the first monday of February next and on or before the sixth day thereof answer the plaintiffs petition the same will be taken against him as confessed, Judgment rendered against him and his property sold to satisfy the same. and it is further ordered that a copy hereof be published according to law in the St Louis Times Newspaper

Proof of pub (Filed February 11th 1852) & in words & figures, to wit:

State of Missouri } Personally appeared before the
County of St Louis } undersigned, a Justice of the peace within and for the County of St Louis Walter B Foster, who being duly sworn, deposeth and saith, that the annexed advertisement was published in the "St Louis Times," printed in this State, the newspaper of which he is printer, for five times, the first insertion being on the fourth day of October and the last insertion on the first day of November 1851 as follows: to wit

1st ins Oct 4th 1851
2 " " 11 "
3 " " 18 "
4 " " 25 "
5 " Nov 1 "

Walter B. Foster

Sworn to and subscribed before me, this 14th day of November 1851 John Black J. P.

And Thereupon (on the same day of the filing of said proof of publication) the following proceedings were had herein, in our said Court, in words & figures, to wit:

7 John How, John A. Allen, William Claflin and Robert Cook vs Thomas Crew

Pet confessd.

Now at this day come said plaintiffs by attorneys and prove to the satisfaction of the Court that the order of publication heretofore made herein has been duly published which proof is filed but said defendant although so notified comes not but makes default wherefore on motion of said plaintiffs it is ordered that said petition be taken against said defendant as confessed

And afterwards to wit on the twentieth day of March Eighteen hundred fifty two the following further proceedings were had herein in our said Court to wit:

Petition

Sub & judgt. $659.62/100

John How, John A Allen, William Claflin & Robert Cook vs Thomas Crew

Now at this day comes the plaintiff by Attorneys and on their motion, no jury being required, the Court doth assess their damages sustained by reason of the premises in their petition at the sum of Six hundred and fifty nine dollars and Sixty two Cents, It is therefore considered by the Court that said plaintiffs recover of said defendant the damages aforesaid in form aforesaid as assessed and also their costs and charges herein expended and that Execution issue therefor

Allegat. & Interrogatories

(Filed September 24th 1851)

John How & others vs Thomas Crew

In the St Louis Court of Common Pleas Sept Term 1851

According to the form of the Statute in this behalf made and provided, the Sheriff of St Louis County has summoned, as garnishee in the above case, the following named person to wit:

8 The Phoenix Insurance Company of St Louis (47)
and thereupon the Plaintiffs come and allege that
said garnishee has and, at the time he was summo=
ned as such garnishee, had in his possession, custo=
dy and charge, divers goods, chattels, moneys, credits
and effects, of the said defendant of the value of Se=
ven hundred dollars; and also, at the same time was,
and now is indebted to the defendant in a large sum
of money, to wit: Seven hundred dollars. And
the plaintiffs exhibit the following interrogatories, to
be answered by said garnishee according to law, to
wit: 1st. At the time you were summoned as garni=
shee, had you, or have you since that time had, or ha=
ve you now in your possession, custody, or charge, a=
ny goods, chattels, moneys, credits, or effects, belonging
to the defendant. If yea, state what they were, or are,
and their value: and if goods, chattels, moneys, credits,
or effects, how they came into your possession, custody,
or charge. 2nd. At said time, were you, or have you
since become, or are you now, in any wise indebted
to the defendant. If yea, state to what amount, in
what manner the debt accrued, any instrument of wri=
ting by which it was evidenced, what has become of
such instrument, and whether, to your knowledge, it
was in the possession or under the control of the de=
fendant or of its agent at the time, or after you
were summoned as garnishee. 3d. At said time,
were you, or have you since become, or are you
now, bound in any contract to pay the defendant
money which is not yet due? If yea. State the
nature of such contract, the amount thereof, and
when the money, to be paid under it, was, or is to

9 become due and payable. The grounds upon which said several allegations & interrogatories are based are that said Defendant before before said attachment was sued out had received a written Policy of Insurance from said Phoenix Insurance Company insuring said Defendant against loss or damage on certain property specified in said Policy that said property was damaged & that at the time said Phoenix Insurance Company was served with process as aforesaid said Company was indebted & owed said Defendant for & on account of said loss the sum or sums of money before mentioned

Todd & Krum
attys for Plff

Ans. of Garnishee (Filed January 26th 1852.)

John How & others Plaintiffs } In Com Pleas
vs } The Phoenix Insurance Company
Thomas Crew Deft }

Garnishee in the above entitled cause comes & for answer to the Allegations & interrogatories Exhibited by said Plaintiffs says — that said Company on the 16th day of April 1850 by the Policy of said Company of that date No 980. Insured Jacob Lesher for Thomas Crew the said Defendant — a loss of the property insured under said policy happened & a claim therefor was made on said Company by said Defendant — which claim was made & presented before & was pending & undetermined at the time said Company was Garnisheed as aforesaid — Early in the month of January 1852 the said Claim

10 was allowed by said Company to the amount of $500.— & said & thereby said ~~Garnishees~~ Company became indebted to said Thomas Crew in that amount which is all & the only indebtedness of said Insurance Company to said Crew at the time of said Garnishment or since — The said Company therefore prays to be hence discharged with costs &c

W. H. Pritchartt
Secretary

Wm. H Pritchartt agent for the Garnishee being duly sworn on his oath says that the matters & things as above stated he really believes to be true

Sworn to & subscribed 24th
Jany 1852 W. S. Cerre clk W. H Pritchartt Sc

And on the twenty second day of March Eighteen hundred & fifty two the following proceedings were had herein in our said Court, to wit

John How John A Allen
William Claflin & Robert Cook
vs
The Phoenix Insurance Company
Garnishee of Thomas Crew

Judgt on ans.r of Garnishee

Garnishment

Now at this day comes as well said plaintiffs as said Garnishee by their attorneys and on Motion of said plaintiffs it appearing to the Court from the answer of said Garnishee that at the time it was summoned herein as such it was indebted to said defendant Thomas Crew in the sum of Five hundred dollars therefore it is considered by the Court that said plaintiffs recover of said Garnishee said sum of money so confessed to be due and owing first deducting therefrom the Costs and charges of this proceeding and the sum of ten dollars which the Court

11 allows said Garnishee for its trouble and Expense in answering herein and that Execution issue therefor

Bill Excpt (Filed June 18th 1852.) It is in words & figures, to wit:

In St. Louis Court of Common Pleas

John How. John A. Allen, William Claflin & Robert Cook — vs

Phoenix Insurance Company, Garnishee of Thomas Crew

Be it remembered that before the rendition of the judgment against the said Garnishee in this case and about the 1st day of March 1852, Robert M. Funkhauser & Edward L. Pottle moved the Court for leave to interplead in this cause and to claim the fund attached in the hands of said Garnishee. On the hearing of said motion the said Funkhauser & Pottle, read in support thereof the Plaintiffs objecting thereto but waiving all objection to the motion not being in writing the following policy of Insurance & the assignments indorsed thereon.

Policy (Filed July 7th 1852.) It is in words & figures, to wit:

Life Policy

No. 980 By the Phoenix Insurance Company

Annual Premium $12.85

This Policy of Insurance Witnesseth, That the Phoenix Insurance Company in Consideration of the sum of Twelve dollars and 85 cents to them in hand paid by Thomas Crew and of the annual premium of Twelve dollars and 85 cents, to be paid on or before the 5th day of April in every year during the continuance of this Policy. Do assure the Life of Jacob Lesher

Sum Insured $500

of Albany in the County of Whiteside State of Illinois for the sole use of the

said Thomas Crew in the amount of Five hundred (18) Dollars, for the term of Two Years commencing the 5th day of April 1850 at 12 o'clock, noon.

And the said Company do hereby promise and agree, to and with the said assured his executors, administrators, and assigns, well and truly to pay, or cause to be paid, the said sum insured to the said assured, his executors, administrators or assigns, for his sole use, within sixty days after due notice and proof of the death of the said Jacob Lesher. And in case of the death of the said Thomas Crew before the decease of the said Jacob Lesher the amount of said insurance shall be payable after his death to his legal representatives within sixty days after due notice and proof of the death of the said Jacob Lesher as aforesaid.

Provided always, and it is hereby declared to be the true intent and meaning of this Policy, and the same is accepted by the assured upon these express conditions, that the said Jacob Lesher shall have only the privilege of travelling in the usual conveyances on Land, Rivers, Lakes or Inland Seas, any of residing in any of the States or Territories of this Union, or the British Provinces of North America, North of 30 degrees North Latitude, and 20 degrees West Longitude from Washington City; except that from the 15th day of July to the 1st day of November, in each and every year, it shall not be lawful for the assured to visit or reside South of 34 degrees North Latitude and 20 degrees West Longitude from Washington City; or enter into any Military or Naval service whatever (the Militia, not in actual service excepted.) without such permission previously ob-

15 tained and endorsed on this Policy; or in case he shall die in consequence of a duel, or by the hands of justice, or in the known violation of any law of this State, or the United States, or of the said provinces, this Policy shall be void, null, and of no effect. And it is also understood and agreed to be the true intent and meaning hereof, that if the declaration made by the said Thomas Crew and bearing date the 5th day of April 1850, and upon the faith of which this agreement is made shall be found in any respect untrue then and in such case this Policy shall be null and void; or in case the said Thomas Crew shall not pay the said annual premiums on or before the several days herein before mentioned for the payment thereof, and the expiration of three days' grace, then and in every such case, the said Company shall not be liable to the payment of the sum insured, or any part thereof; and this Policy shall cease and determine.

And it is further agreed, that in every case where this policy shall cease, or become null or void, all previous payments made thereon shall be forfeited to the said Company.

N. B. if assigned, notice to be given to the Company.

In Witness Whereof, The said Phoenix Insurance Company have, by their President and Secretary, signed and delivered this Contract, this 16. day of April one thousand eight hundred and fifty at Saint Louis Missouri

R. MacKenzie President

W. A. Pitchlett Secretary

Payments

No of payments	When due	When paid	Amount	By whom received
one	Fifth April 1851	2nd April 1851	doll 12 85	W. Y. Wetzell agent Albany Ills.

Please pay the within policy to Micajah B. Crew
To whom I assign my right, Title & Interest
Albany July 3rd 1851

Thos. Crew

Please pay the within mention policy as assigned above to Messrs R. M. Funkhauser & Co and oblige
Yours Truly
Yours August 2nd 1851
M. B. Crew

It was shown to the Court that the fund in the hands of the garnishee was attached on the 5th day of August 1851. the Court overruled the said motion & thereupon the Court gave judgment for the plaintiff on the answer of said garnishee & to the overruling of said motion & the giving said judgment, the said Funkhauser and Pottle then & there excepted. The following are the rules of the Court: It is stipulated that the rules of this Court may be read in the Supreme Court as set out in this Bill of Exceptions.

Samuel Treat, Judge

Seal

State of Missouri }
County of St Louis } ss I Charles W. Hicks Clerk of the St Louis Court of Common Pleas within and for the County aforesaid, hereby certify the foregoing to be a true and correct Transcript of the record and proceedings in the case of John How, John A. Allen, William Claflin and Robert Cook vs Thomas Crew as the same re-

15 mains in my office

In Testimony Where of I. hereto set my hand and affix the seal of said court at office in the City of St Louis, this 4th day of March A.D. 1853.

Chas. W. Hicks Clerk

Index:

Petition	Page	1	to 2
Account	"	2	
Bond	"	2	" 3
Writ of Attachmt	"	4	
Shffs ret	"	5	
order of Pub.	"	"	" 6
proof of Pub.	"	6	
Def. Confessed	"	7	
Sub & Judgmt $659.62	"	"	
Allegat. & Interrogatories	"	"	" 9
Ansr. of Garnishee	"	9	" 10
Judgt on ansr. for $500 less costs & $10 all. Garnishee	"	10	" 10
Bill Exceptions on behalf of Funkhauser & Bottle		11	
Policy with assignmt endorsed	"	"	" 14
Certificate & Seal	"	14	" 15

John How, John A. Allen, William Claflin and Robert Cook
vs
Thomas Crew

Transcript

Comp.

$4.90

(ee)

(16) 63

March Term 1853

Funkhouser & Pottle
Plaintiffs in error
vs ⅌ Transcript

John Howe & others
Defendants in Error

Error to Com. Pleas.

Filed 9th March 1853
Wm L Glanville Clerk.

$49 [illegible] Field

John Hoor rat
vs
~~Citizens~~ Phoenix Ins. Co. Garnishee

In St Louis Court of Com. Pleas

Plaintiff takes notice of writ of error to Sup. Court
and out by Faulkhausen & Pottle claimants to interplead returnable
March Term 1853

March 9. 1853

Krum & Harding
for Pff

Funkhauser & Pottle
vs
John Bowtel. } Sup. Court, March Term, 1853.

Said Funkhauser & Pottle assign for error: —

1. That the Court below erred in refusing their motion to be allowed to file an interplea: —
2. That the Court below erred in giving judgement against the Garnishee: —
3. That the Court below committed other errors.

Filed

63

Funkhauser & Pottle

vs

Hon val

Assign^t of Errors

Field

Filed 23^d March 1853
Wm L Glanville
Clerk.

(Re)

Funkhauser & Pottle Pl'ffs in error

vs

John Hor & others defts in error.

Statement of the Case.

August 5. 1851, the defendants in error commenced a suit by attachment against Thomas Crew and on the same day caused "the Phoenix Insurance Company" to be summoned as garnishee. The writ was returnable to the Sept Term of St Louis Court of Common Pleas 1851. At that term an order of publication to the principal debtor. Publication was made & on the 11th day of February 1852 the petition was taken pro confesso. On the 24th Sept. 1851, allegations & interrogatories had been filed against the garnishee. January 26. 1852, the garnishee filed an answer admitting that, on the 16th April 1850, Thomas Crew took out a policy numbered 980 on the life of one Lesher in the sum of $500. that a loss had occured & the company was indebted to Crew in that sum. March 20. 1852 the damages were assessed against Crew & final judgement rendered. March 22. 1852. judgement was rendered against the garnishee on the answer. Before either of these judgements & about March 1. 1852, the plaintiffs in error applied to the Court to file their intepleader in the case claiming the fund in the hands of the garnishee. They read in support of the motion the original policy mentioned in the answer & a transfer on the back by Thomas Crew to Micajah & Crew dated July 3. 1851 & a like transfer to plaintiffs in error dated August 2. 1851. The Court refused this application & gave judgement as above in favour of the defendants in error against the garnishee. The plaintiffs in error excepted. There is

a rule of the St Louis Court of Common Pleas of the tenour following: —

"30. All claimants of property attached shall interplead therfor within the first six days of the term to which such attachment shall be returnable."

Frankhauser & Pottle
vs
Hon et al.

Statement of the Case

Filed 25 March 1853
Wm. L. Glannier
Clerk.

Junkhouser & Pottle pltffs in error
vs.
Jno. Bow & others Defdts in error

Error to the St. Louis Court of Common Pleas

In August 1851 the defendants in error commenced a suit by attachment against Thomas Brew & on the same day the Phenix Insurance Company was summoned as garnishee in the cause. In Feby 1852 judgment was taken against Brew on service by publication: In Jany of the same year 1852 on interrogatories the garnishee admitted an indebtedness to Brew in the sum of five hundred dollars. On this answer, on the 22 March 1852 a judgment was rendered against the garnishee, a ~~judgment~~ judgment having previously been taken against Brew on the 20 March of the same year. About the 1st March 1852 the plaintiffs in error applied for leave to file an interplea in the cause, claiming the funds in the hands of the garnishee and supporting their claim by evidence. It should have been previously stated that the process of attachment was made returnable to the September Term of the Court of Common Pleas. By a rule of that Court all claimants of property attached are required to interplead therein within the first six days of the term to which such attachment shall be returnable:

The Court ~~below~~ below denied permission to the plaintiffs in error to interplead & they appealed.

The 61st section of the act concerning attachments among other things gives the Circuit Courts power to ~~prescribe~~ prescribe the time of interpleading. It is very reasonable to entrust to Courts the construction and interpretation of their own rules. It should be a flagrant case that would justify the

(58)

the interference of an appellate ~~court~~ tribunal in such matters. The inferior courts must know best the purposes and extent of their own rules. Certainly there was no error in construing the rule in relation to interpleders as extending to "effects and credits" as well as to "property". The rule was obviously designed to cover all cases of interpleader.

Had the Court permitted the plaintiffs in error to interplead at the time they made application for that purpose, this court would not have ~~inferred~~ interfered with such an exercise of discretion: But as the application was delayed until a long time after the period prescribed by rule and as no cause was shown for such delay, we cannot say that the court erred in denying the application. The rights of a party failing to interplead are not compromised by such omission. The ordinary course of proceedings is still open to him. The other judges concurring the judgment will be affirmed

Wm Scott

63

Pottle & Funkhouser
vs
How & others
Opinion

Filed 9th May 1853
Wm S Glanville
Clerk.

never filed or presented to the Court. Of course it was never dismissed or stricken out.

The application amounted to nothing more than a notice to the Court & the parties, that they had a Claim.

The production of the Policy of Insurance & the assignment of it to Frankhouser & Rollte, without proving such assignment (the reading of it having been objected to) amounted to nothing more than the oral statement of their Counsel

It may be said that if the Parties are not allowed to interplead they lose their remedy. This is not so. They can sue in the usual modes. So these parties understand their rights, for the Records of this Court in the Case of Rollte & Frankhouser vs Hood. will show. That was a suit for the same Effects sought to be Claimed in this Case.

It is true they were defeated in that suit, but that does not affect the question as to their right to sue.

2nd If the right or privilege to interplead depended on the discretion of the Court of Common Pleas, this Court will not undertake to control that discretion

This rule in cases of the exercise of a discretion is well established by the repeated decisions of this Court. A Comment is unnecessary.

3rd The Statute does not prescribe the time in which a claimant shall file his Claim or interplea. But the Court regulated that by rule - requiring "All Claimants of property attached to interplead thereto within the first six days of the Term to which such Attachment shall be returnable" - The Court was authorized to make this rule.

It is like cases where the law fails to prescribe terms of Court or return days to writs &c -

In all Cases of omission or defect or want of Enactment as to such matters, Courts of Record having general jurisdiction to hear & determine Controversies & Suits may by rule prescribe terms - rule days - or periods for the return of writs &c —

These parties Funkhouser & Cotte voluntarily ask the Exercise of the jurisdiction of the Court of Common Pleas - They are bound by its rules - They are presumed to be within the jurisdiction of that Court, & had notice of its rules & mode of Procedure - All these presumptions follow from the fact of their voluntary appearance in that Court & there was nothing shown to rebut these presumptions - These parties did not offer any Excuse for the delay or failure on their part to interplead Earlier - Such as want of notice of the suit &c. They stood by & let the Proceeding go on for 12 months or more before they came forward to claim the Property -

The rule itself, therefore was a complete answer to the application of Funkhouser & Cotte for leave to interplead - If the Court had a discretion in the matter nothing was shown to induce the Exercise of that discretion in their behalf - They stood in default & exhibited nothing to the Court in Excuse of it -

(32)

Supreme Court

Funkhouser & Potter
vs appellants

John How et al.
appellees

Brief of appellee -

Todd & Kunze
Attys for appellee

Funkhauser & Pottle, plaintiffs in error,

vs

John Hon & al., defendants in error.

For the plaintiffs in error, it is insisted:-

That there was error in denying the plaintiffs the right to interpleed in the case:-

1. The statute gives the right without any limitation as to the time & no other limitation can justly be imposed by construction ~~except~~ than such as arises from an actual judgment against the garnishee.

Rev Statt 1845 Title "attachment" § 39

2. The rule of the Court of Common Pleas is in its terms inapplicable to this case. For it extends only to the case of property attached & not to cases of money effects or credits. A comparison of the rule with the statute shows what is its proper construction.

3. Besides the rules of the court can bind no one but parties before the Court. The plaintiffs in error were not made parties, nor served with process, nor in any way charged with actual or constructive notice.

4. Even if the plaintiffs were chargeable with constructive notice & bound by the rule of court, they should have been allowed to interpleed on the principle decided in Sloane v Forse 11 Mo Rep 126

See Quarles v Porter 12 Mo Rep 76.

Funkhauser & Pottle

vs

Howe & al.

Brief of plffs in error

Filed