State of Missouri to the use of Barrett, Silas W	vs.	Farmer, Gustavus E Martin, Robert A Hall, George Cyr, Francis Sr.	1855	St. Louis	353/0

576/19

Dymt of $3000.00
Ryland - rev + rem

F constable of St. Ferdinand tnship (had family)
D - had family + farmed (corn + potatoes)
F - seized, but did not appraise D or right to w/hold $150 from execution
Δ demurred -> sustained
Cir. should not have granted dem.

The State of Missouri, ss.

The State of Missouri, *To the Honorable the Saint Louis Court of Common Pleas in the 8th Judicial Circuit in said State, GREETING:*

WHEREAS, In the record and proceedings in a certain cause lately pending in the Court of Common Pleas held in and for the County of Saint Louis in said State & Circuit

wherein The State of Missouri to the use of Silas Garret was plaintiff, and Gustavus E. Farmer was defendant

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

NOW, we being willing that the error, if any there be, should be corrected, and full and speedy justice done to the parties aforesaid, in that behalf, COMMAND YOU, that you send to us, certified under your seal, the record and proceedings in the cause aforesaid, as fully as the same remain of record before you in said Court, so that we may have them before us at our Supreme Court, to be begun and held in the City of Saint Louis, in the County of Saint Louis, in said State, on the third Monday in March instant ~~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 Seventh day of March in the year of our Lord one thousand eight hundred and fifty five.

W. S. Glanville,

CLERK.

$1.50 paid by plaintiff's attorney Delafield & Kribben

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 in obedience to the Command of the within writ, herewith transmit a full true and complete transcript of the Record and proceedings, in the within named cause as fully as the same remains in my Office

In Testimony Whereof I hereto set my hand and affix the seal of said Court at Office in the City of St. Louis this Sixth day of March A D 1855

C. W. Hicks
Clerk

1 State of Mipouri } Be it remembered that here-
County of St. Louis } tofore to wit: On the 3d.
day of December 1853. there was
filed in the office of the Clerk of the St. Louis
Court of Commmon Pleas a petition in the
words and figures following to wit:

The State of Mipouri }
County of St. Louis } Court of Commmon
Pleas February Term 1854

The State of Mipouri who
sues for the use of Silas W.
Garrett. plaintiff in this suit
against
Gustavus C. Farmer. Robert N.
Martin, George Hall and Fran-
cis St. Cin defendants.

Silas W. Gar-
rett to whose
use this suit
is brought by
the State of
Mipouri ac-
cording to the
Statute in such case made and provided states
that defendant Gustavus C. Farmer. together
with his co defendants. Robert N. Martin.
George Hall. and Francis St. Cin. by their
bond dated the 11th. day of August. 1853. a cer-
tified copy of which he here in Court pro-
duced marked Exhibit "A" of this petition
became held and bound ~~to~~ the State of Mip-
ouri for the payment of Three thousand doll-
ars conditioned that said Farmer then and at
said County a duly appointed constable in
and for St. Ferdinand Township in said
County should among other things in every re-
spect discharge all the duties of Constable
according to law. References to said Bond

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a copy of which is annexed as aforesaid is herewith filed, had.

Contrary to law and in violation of the duties as constable as aforesaid the said Farmer has not in every respect discharged all the duties of Constable as aforesaid according to law but has wilfully knowingly and maliciously intending under cover of his said office, and authority to harrap, injure and impoverish said Garrett. violated his said duties, and rendered himself liable under said bond by failure to perform his duties as Constable as well as by misfeasance and malfeasance, in this to wit:

Acting in this official capacity as aforesaid the said Farmer as Constable of said St. Ferdinand Township in said County on the 20th day of September 1853. by virtue of a certain writ of attachment issued by one Justice Henley. of said County contrary to law. in favor of one Clough and directed against said Garrett. a certified copy of said writ of attachment and the proceedings therein before said Justice being here produced and marked Exhibit "B" filed with this petition did make a levy on certain property of said Garrett which said property said Farmer defendant in this official report thereof as witnesseth by his return in said exhibit "B" described as twelve acres of corn in the field more or less and also about one acre of potatoes

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this being all the specification.

Plaintiff states that in said levy so witnessed by said return. the said Farmer acted contrary to his duties as constable and not according to law and contrary to the provisions of said bond, that he would in every respect discharge all the duties as constable according to law.

Plaintiff furthermore states that at the time of said levy and for a long time before that and at this time said Garrett was and is the head of a family has wife and children residing with him in said County and notwithstanding said fact and the said Farmer well knowing the premises the said Farmer did levy on said property of said Garrett and attach the same without apprising said Garrett of his right to select certain property under the laws governing executions and attachments in this State when such property is owned by the head of a family and the said Farmer did keep the said property attached and did return said Writ of attachment and took from said Garrett the enjoyment of said property without according to law apprising said Garrett of his right to select certain property as aforesaid.

And notwithstanding said failure on the part of said Farmer to so apprise said Garrett of his rights as aforesaid

said Garrett in defence of his rights notified said Farmer of at said County on or about the Fourth day of November 1853. that he said Garrett demanded and could demand an appraisement of his said attached property in accordance with law and warned said Farmer acting in his official capacity as aforesaid from further proceeding in said matter. contrary to law and said Garretts rights as will be seen by reference to a copy of said notice duly served on said Farmer herewith filed and marked exhibit "D" the original being in the possession of said Farmer he being herewith called upon to produce the same, But disregarding his duties as constable as aforesaid in violation of his duties and in contravention of said bond contrary to law. the said Farmerly utterly failed and refused to make such appraisement or to take any steps therefor but persisted in keeping hold of said property contrary to law as aforesaid and maliciously intending to injure and impoverish said Garrett. the said Farmer in his official capacity as constable as aforesaid contrary to law and in violation of his said duties and his said Bond did afterwards and after the service of said notice offered the said property so levied upon and attached by him as aforesaid for public sale at Constables sale, and on or about the said fourth day of No-

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vember. 1853. at said County did without having appraised said Garrett. of his right and without having the same appraised said Garrett. according to law. without posting said notice publicly contrary to law to the highest and best bidder sell at auction the said property so levied upon by him and did strike the same off to one Christian Schnerko. for the sum of Sixty two dollars as will be witnesed by the receipt signed by said Farmer. as Constable as aforesaid herewith filed and marked Exhibit "C." to this petition and did receive and collect the said Sixty two dollars. and did apply the same to purposes unknown to plaintiff and did deliver over said property so publicly sold as aforesaid to said Christian Schnerko. the purchaser thereof and deprived said Garrett from the use and enjoyment thereof.

By means of which premises an action has accrued to said Garrett. to have and recover from said Farmer and his sureties and codefendants and parties to said Bond in the name of the State of Missouri all and singular the damage sustained by him by reason of the trespass and misfeasance & malfeasances of said Farmer.

And said plaintiff states that the said property so unlawfully seized and levied upon as aforesaid. and so unlawfully held and taken from said Garrett and so unlawfully sold as aforesaid was well

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~~was~~ worth the sum of one hundred and twenty dollars. That said property embraced all and singular and in good faith all property real and personal which said Garrett then and there owned and ~~employed~~ employed including some little furniture in his house of little value and of great value to said Garrett and his family. - that by reason of said forced sale said property was sac=rificed at a lower rate than its true value by at least Sixty dollars, that said property and all other property owned by said Gar=rett had it been duly and honestly appraised according to law, would not have been found to amount in value over the amount exempt=ted by law from execution when owned by a head of a family and not so much as that. all of ~~which~~ facts were well known to said Farmer, Constable at this time of so seizing attaching and selling the same.

By means of said acts by said Farmer Constable as aforesaid said Garrett says he has been greatly damaged injured and impoverished and his said family has been put to great hardships and suffering and said Garrett ~~is~~ prevented from pursuing his labor and vocation in order to maintain his said family and himself. Said Garrett has also been put to great expense in & about defending himself against said un=lawful acts of said Farmer and says he has sustained damage to the amount of

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Two thousand dollars - which he demands here
= with of said Farmer and his co defendants
George Hall Francis S. Cox and Robert N. Mar
=tin and for which he asks judgment by
Delafield and Kribben.
his attornies.

Silas Garrett to whose use this suit is
brought by the State of Missouri makes
oath and says he believes the foregoing
petition and the statements therein contain
ed are true Silas W Garrett.
Sworn to & subscribed before me this 3d Dc=
cember 1853. C. W. Hicks Clk.

The State of Missouri
Summons. To the Sheriff of St. Louis County
Greeting We command you to summon
Gustavus C. Farmer. George Hall. Francis
S. Cox. and Robert N. Martin to appear
before the Judge of our Court of Common
Pleas on the first day of the next term there=
of to be held at the City of St. Louis within
and for the County of St. Louis on the First
Monday of February next then and there
to answer the complaint of The State of
Missouri who sues for the use of Silas W.
Garrett. as set forth in the amended petition
and have you then and there this writ.
Seal Witness Charles W. Hicks Clerk of
our said Court with the seal thereof hereto
affixed at office in the City of St. Louis
this 3d day of December in the year of our

Lord Eighteen hundred and fifty three
C. W. Hicks Clk

Sheriffs Return

Executed on the 6 day of December 1853 by delivering to George Hall a copy of the writ and petition as furnished by the Clerk also by delivering a copy of the writ and by offering to read the petition to Robert N. Martin Gustavus C. Farmer and Francis L. Cox which they refused to hear in St. Louis County.

John M. Wimer Sheriff
By S. H. Douglas.

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

September Term 1854 Monday Jany 16th 1855.

The State of Missouri who sues for the use of Silas W. Garret

vs

Gustavus C. Farmer, George Hall, Francis L. Cox, and Robert N. Martin.

Now at this day come the parties by their respective attorneys and thereupon defendants by leave of Court withdraw their answer herein & file a demurrer to the plffs petition and submit the same to the Court and the Court being fully advised of and concerning the premises it is considered by the Court that the said demurrer be sustained and that the said plaintiff take nothing by his suit in this behalf but that said

Demurrer Sustained & Judgment

9 defendants go thereof without day and recover of the plaintiff their costs and charges herein expended and have thereof execution.

Whereupon the plaintiffs file a Bill of exceptions herein.

And afterwards the following Bill of exceptions was filed 15th January 1855.

The State to the use of Silas W. Garrett. against G. E. Farmer, Geo Hall S. Cin & Martin } Be it remembered that on the trial of said cause defendants by leave of Court withdrew their answer therein and obtained leave to file the following demurrer.

Demurrer The State of Missouri to the use of Silas W Garrett. Gustavus E. Farmer & others. } The defendants come and demur to the plaintiffs petition because it does not State facts sufficient to constitute a cause of action in this that the petition avers that said Garrett had none of the articles mentioned in the first and second subdivision of the eleventh Section of the act entitled an act to regulate executions approved 26th March 1845 and therefore the said Garrett had no right in law to make the selection claimed in the petition and the said Farmer was not

10 ~~was~~ required to appear said Garrett of his said pretended right of selection

Mumford att for Defts.

Which demurrer the Court sustained To all of which plaintiff excepted and now asks Court to sign this his bill of exceptions in this behalf and enroll the same as part of the Record of this cause

Samuel Treat Judge.

State of Missouri
County of St. Louis } I Charles W. Hicks clerk of the St. Louis Court of Common Pleas in & for said County certify the foregoing to be a full and complete Transcript of the Record and proceedings in the case of The State of Missouri who sues for the use of Silas W. Garrett against Gustavus C. Farmer George Hall Francis St. Bin and Robert N. Martin as the same remains in my office

In testimony whereof I hereto set my hand & affix the seal of said Court at office in St. Louis this 13th day of February 1855

Chas W Hicks
Clerk

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(19)

March. T. 1855

State of Missouri to the use of Silas. W. Garrett P.E.

vo Transcript

Gustavus E. Farmer
Robert A Warten
George Hall and
Francis St. Cyr D.E.

Appeal from St. Louis Court of Common Pleas

Filed 7th March 1855.
W. L. Glanville

Delafield & Kribben for Plaintiff

$4.25 paid by atty Kribben.

Contin. 80, Motion 35, order 25

State of Missouri } In the Supreme Court at St Louis
St Louis County, ss } To March Term A D 1855.

The State of Missouri who sues for the use of Silas W. Garrett, plaintiff in this suit against Gustavus E. Farmer, Robert A Martin, George Hall, & Francis St Cyr, defendants. ——— } Assignment of Errors.

And now come plaintiffs by their Attorneys and assign as Error in this Cause that the Court below erred in sustaining the Demurrer filed by defendants as set forth in the record, and that the Court below in sustaining said Demurrer did so against Law.

And for farther Error the plaintiffs in said cause, and who are appellants here, show that the Court below erred in allowing any demurrer to be filed after an answer had been filed, and also erred in allowing said answer to be withdrawn from the files then of record.

And because also said Demurrer is against Law.

Delafield & Kribben
p. appellants
plaintiffs.

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The State of Missouri
to use of Silas W Garrett
vs.
Gustavus E. Farmer
et al

Assignment of Errors

Filed 11th April 1855
Wm L Glanville
Clk

Delafield & Kribben
p. ap^ents

State of Missouri } In the Supreme Court at St
St Louis County ss } Louis, March Term A.D 1855.

The State of Missouri who
sues for the use of Silas W. Garrett,
plaintiff in this suit, Appellant,
against
Gustavus L. Farmer, Robert A Martin
George Hall, & Francis St Cyr. defts

Statement of Case.

Plaintiff sues defendants as principal and sureties on a Constables Bond, alleging as breaches thereof misfeasance and malfeasance on the part of the Constable in this; to wit -

That against law he levied "on 12 acres of corn in the field and about one acre of potatoes," this being all the specification in his return - This was on an attachment levy - And in making the attachment on plff's property he being the head of a family, the Constable levied thereon without apprizing plaintiff of his right to select certain property as the law requires him to do - Plaintiff notified the officer that he demanded an appraisement of his property according to Law, which appraisement the officer refused to make, but wrongfully sold the same without apprizing plaintiff of his right of selection as required by Law - That said property was all plaintiff owned except a little furniture, all being put together not being equal in value to the amount exempted from execution at Law against the head of a family. Defendant filed an answer - On the trial of the cause withdrew the same - and filed a Demurrer on the ground that petition does not allege that the articles levied on are included in the articles exempted by law, and therefore that the Constable was not required to give notice of a right of selection -

Delafield & Tribbey
for appellants

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The State of Missouri
to use of Silas W. Garrett
v
Gustavus E. Farmer
et al.

Statement of Case

Filed 11th April 1855
Wm L Glanville

Delafield & Kribben
for appellant

George W. Goode admr of Wm Christy deft in Error
&
William Myers pltf in Error

In Supreme Court
Mch Term 1855

And now comes the said deft in Error & says that there is no Error in the record.

Comfort & Maulen
attys for deft in Error

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Supreme Court

Geo W. Goode admr
of Wm Christy
v
Wm Myers

Joinder

Comfort & Mantle
for defts in Error

Filed 14th April 1855.
W L Glanvine

The state to the use of
Garrett
"
Farmer et al.

In the Supreme Court
of the state of Missouri
March Term 1855.

At this day the plaintiff appellant comes and moves the Court to set aside the continuance of said cause for the reason:

That the counsel of plaintiff about and at the time of the calling of said cause being engaged professionally in the Circuit Court of Rhonis county, and having anticipated this, plaintiff's counsel had prepared a full brief in the cause setting out his views at length upon said cause & the principles on which he rests, on which he desired to submit his cause. which brief is on file & has been for two days past. And plaintiff's counsel now desires to submit said cause on brief as filed.

[illegible]
atty for plaintiff appellant.

The state to the use of
Silas Gavott
to
E. G. Farmer et al

Mo. to set aside con-
tinuance

Filed 2d May 1855
W L Glanville
Ck

Ch Kribben
atty for pltff

The state of Missouri to the use of Silas Garrett pltff.
v.
Farmer et al.

State of Missouri.
Supreme Court
Saint Louis.

In this case there was due notice of the writ of error.

Knibben for appellant.

Cook & Mumford
for Deft resp.

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State to the use

Garrett

v

Farmer et al

Filed 14 May 1855

Wm L Glanville

ck

State to the Use of Garrett vs Farmer et als.

This was an action by the State to the use of Garrett against Farmer and others his securities on his Bond as Constable of St Ferdinand Township in St Louis County—

The Petition alleges, that Garrett was the head of a family; he having a wife and children— That he was the owner of about twelve acres of Corn in the field and about one acre of potatoes in the ground, and some small quantity of furniture— That the said Farmer as Constable levied an Attachment on his Corn and potatoes; and sold the same for about $10— That the said Farmer did not apprise the petitioner Garrett of his right to select this property as the head of a family; that Garrett demanded of Farmer, the appraisement of the property and claimed it as being exempted from execution—

The petition is unnecessarily long and requires some attention to its verboseness before we can make out that there is a cause of action set out in it at all; but it is our opinion, that there is substantially a

cause of action set out therein —

The defendants demurr to the petition and the Court sustains the demurrer — The plaintiff brings the case here by writ of Error —

In looking over the whole record carefully we find, that the case involves the construction of the of the act of our Legislature passed in 1846-7 amendatory of the act of 1845 concerning Executions —

This act of 1847 — Section-1- declares, that "Each head of a family at his election, in lieu of the property mentioned in the first and second subdivisions of the eleventh section of an act entitled "An act to regulate Executions", approved March 26th 1845, may select and hold exempt from execution any other property, real, personal or mixed not exceeding in value the amount of one hundred and fifty dollars —

Sec. 2 — It shall be the duty of ~~the~~ the Officer to apprise such person of his right to make such selection, and the same proceedings as to the selection appraisement and sale of such property shall be had as are provided with reference to the

selection, appraisement and sale of working animals in the 12 and 13 Sections of the Act of 1845 —

The 11th Sect. of the Act of 1845 with its two subdivisions mentioned to wit first and second, is as follows — Sec. 11. The following property when owned by the head of a family, shall be exempt from levy and sale, under any execution:— First — Ten head of choice hogs, ten head of choice sheep two cows and calves, one plough, one axe, one hoe, and one set of plough gears; Second; working animals of the value of sixty five dollars — Third &c &c —

Now the Act of 1847, is to be construed as making an additional exemption; not only in favor of those persons, heads, of families, who may own, the hogs, sheep & working animals mentioned in the 1st and second subdivisions of the 11 Section of the Act of 1845; who may desire to select other property, either personal real or mixed in lieu of that mentioned in these two subdivisions; but also in favor of those persons, heads of families, who have not such property as is mentioned in these subdivisions, but may have other property, real personal or mixed — The Class of ~~beings~~ persons to be benefited

was increased so as to embrace others, than those only who ~~had no stock~~ were cultivating the soil— The heads of families, who had no hogs, no sheep, no plough, no working animals, were supposed to be under as much natural and moral obligation to provide for their household, as the agricultural portion of the community— The words "in lieu", therefore do not confine the exemption to persons having the property named in 1 and 2 subdivision of Section 11 of Act, 1845— If a head of a family has such property, as well as other kinds he may select of the other kinds in lieu of the property named; but a man the head of a family although he has not such property, and has other kinds, he may select out of what kind he has so much as the law allows, and it shall be exempt from sale &c—

The 1st section of the Act of 1849 must be considered as a new class following the second subdivision of act of 1845 ~~Section~~ 11— embracing heads of families, who have not the kinds mentioned in these subdivisions, but have real or mixed or other personal property— and in 1853, even wages to a certain amount were exempted from garnishment or attachment—

selection, appraisement and sale of working animals in the 12 and 13 Sections of the Act of 1845 —

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The duty of the Courts requires them to give liberal interpretation to all such acts of legislation — They tend to increase the happiness of the poor; unfortunately too great a part of any Community — To render comfortable the feebler and weaker portion of our fellow beings, who are less able to provide for themselves; and less able to do without such provision — our wives and children —

The Creditors should not complain — They have no right to complain; they know such to be the law, when they give the credit — And often times the credit given instead of a kindness and favor, has the very opposite effect — —

The Court below erred in sustaining the demurrer to the petition. It's judgment is reversed and Cause remanded — The Securities are liable for such acts of the principal — See Case of State to use of Rupell & wife vs Moore 19 Mo. Rep 369 — The other points concurring —

John F. Ryland

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State Use of Garrett
vs
Farmer et als—

Opinion

Ryland

Filed 8 June 1855
Wm L Glanville
Ck

XX

The State of Missouri to the use of Silas Garrett
"
Gustavus D. Farmer et al.

To the March Term of the Supreme Court of Missouri - at Saint Louis.

The only question presented in this case is whether the demurrer of defendants to plaintiffs' petition should have been sustained.

The 11th section of the act concerning Executions Rev. Code 1845 declares: "that the "following property, when owned by the head of a family "shall be exempt from levy and sale, under any execution; "First. Ten head of choice hogs, ten head of choice sheep, two "cows and calves, one plough, one axe, one hoe, and one set "of plough gears; Second, working animals of the value "of fifty dollars - - - " The act of 1847 - (p. 52 pamphlet) concerning "Executions" amendatory of this same act declares as follows: Sec. 1. "Each head of a family, at "his election, in lieu of the property mentioned in the first "and second subdivisions of the eleventh section of an "act entitled 'An act to regulate Executions' (above set out) approved 26th March 1845, may select, and hold exempt "from execution, any other property, real, personal or mixed "not exceeding in value one hundred & fifty dollars."

Should the General Assembly of the State have actually intended to extend the benefits of the act of 1847 only to such persons as owned the property (in part or in whole?) exempted from levy and execution under the act of 1845? Such interpretation of their language would at least seem ~~palpably~~ strained) forced and the operation of the law palpably unjust. "In lieu" of ten sheep, hogs, a hoe, a set of plough gears &c a head of a family may hold exempt any other property not to exceed a hundred & fifty dollars in value. Is it to be supposed that the words "in

"lien" require that a hoe, a set of plough gears, ten ~~calves~~ hogs, and ten sheep &c &c must be owned by the head of a family before he can claim the benefit of the act of 1847? And if so, what proportion and quantity of that property when owned by a head of a family will bring within the operation of that? Must he be possessed of all of the property mentioned in the first & second subdivisions of the 11th Sec. of the act of 1845, or is it only necessary that he should own one & two of the articles exempted by that act? If so, the owner of a hoe and of an axe would come under the operation of the act of 1847 - and all that could have been required of the plaintiff in this case could have be to set out that at the time of the levy in question he had an interest in an old axe, and his suit would have been well brought. The doctrine seems a simple absurdity.

Is it to be supposed that the act of 1847 was intended only to benefit a particular class of our people? Is that law to apply to wealthy farmers only and not to those who are not the owners of working animals of the value of $65.00 and ten head of sheep, hogs, cows and calves? Is it pretended that that law should not apply to mechanics or other citizens? And are our courts, (even supposing the language of the act) to be susceptible of doubt as to its true meaning, to interpret the legal enactments of our General Assembly as affecting only special classes of society? Certainly a new and astounding doctrine of political science in a Republican Country.

The object of the act of 1847 was evidently to secure to every head of a family ~~some~~ means enough to secure a livelihood for his family beyond the reach of execution. And

simply because the act of 1845 confined the benefit of the exemption only to a particular class of society, the act of 1847 was passed to extend the benefits of the law to all citizens alike. The decision of the Court of Common Pleas is directly in the face of the evident intention of our legislature in this respect.

The Sup. Court of our State has - negatively - at least - passed upon a branch of this same question presented here in the case of Gregory v Evans 19 Mo. P. 261. to which appellant here refers, as also to the act of the Gen. Assembly of our State of 1853 amendatory of the act of 1847 approved July 9. 1853 which in the report of the last mentioned case is quoted. If a subsequent act can at all be taken to explain = ing a previous act, then the act of 1853 including adding to the ~~property exempted by~~ the act of 1847 "or in the absence of other property debts & wages to the amount of one hundred & fifty Dollars," clearly shows the intention of the legislature in regard to the act of 1847. which is respectfully submitted

Krekel

Atty for appellant

The state of Mo. to the
use of Silas Garrett

vs

Gustavus E. Farmer

Brief of appellant
Garrett.

Kribben.