

No. 13259

Supreme Court of Illinois

Campbell

vs.

Conover

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 154.

Campbell
75

Campbell

Refused

George W Campbell }
vs } Error
Abel S Conover. }

The Clerk of the Supreme
Court will please issue summons in this
Cause directed to the Sheriff of Peoria Co
Mar 29th 1861

W Williamson

Send to me & I will have served

Atty for plff

W Williamson Peoria Ills

Campbell
154 20
Conover

Recipe

Filed March 30 1884.

L. L. L. L.
Cell

STATE OF ILLINOIS, }
SUPREME COURT, ss.

The People of the State of Illinois,

To the Sheriff of the County of

Peoria

Greeting:

Because, In the record and proceedings, and also in the rendition of the judgments of a plea which was in the Circuit Courts of Peoria County, before the Judge thereof, between Abel S. Conover

plaintiff, and George W. Campbell

defendant....., it is said that manifest error hath intervened, to the injury of the said defendant

as we are informed by complaints the record and proceedings of which said judgments we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law: Therefore, We Command You, That by good and lawful men of your County, you give notice to the said Abel S. Conover

that he be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the record and proceedings aforesaid, and the errors assigned, if he shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Abel S. Conover

notice, together with this writ.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 30th day of March in the Year of Our Lord One Thousand Eight Hundred and Sixty one,

L. Leland

Clerk of the Supreme Court.
By J. B. Rice Deputy

184-129

Abel S. Benson

No.

vs.

George W. Campbell

SCIRE FACIAS.

Filed April 17. A. D. 1861

d. Deland

Clerk.

Last day of Service
April 6th 1861.

Copy of return on 2^d of March
from 2 miles S. E. of New
Haven, Conn.

I have duly served this writ upon
the within named Abel S. Benson by
reading the same to him, this 5th
day of April 1861. James Stewart,
Sgt. Peoria Co.
by Geo. W. Cuy, Deputy

For \$1.60

(Paid by Peff
Stewart
Peff)



IN THE SUPREME COURT, STATE OF ILLINOIS,
Third Grand Division, April Term, A. D. 1861.

GEORGE W. CAMPBELL, }
vs. } Error to Peoria County.
ABEL S. CONOVER. }

A B S T R A C T .

Page 1 This case was commenced by Conover against George W. Campbell before a Justice of the Peace, to recover three times the value of property levied on by virtue of an attachment issued at the suit of Phillip F. Elliott against said Conover, and which attachment was placed in the hands of plaintiff as constable, and by him levied upon property claimed as exempt from execution.

2 Judgment was rendered against Campbell, defendant below, before the Justice
4 for \$210, from which he appealed to the Circuit Court of Peoria county. At the
November term, 1858, a trial was had and verdict was found against the defendant
7 below for one hundred and thirty-five dollars. in which verdict the jury find the
value of the property levied on to be of the value of \$45, and assess *three* times
16 its value as damages.

8 The defendant below moved for a new trial, which was, on the 28th day of De-
7 cember, 1858, overruled by the court, and judgment rendered for \$135.

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and to set aside the verdict and judgment of the court and dismiss the suit for the
8 following reasons, to wit:

First—"The Justice of the Peace had not jurisdiction in the cause nor the Cir-
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Second—"The court gave erroneous instructions on the part of plaintiff.

Third—"The court refused proper instructions asked for by defendant.

Fourth—"The verdict of the jury was for \$45; the value of the property and
the judgment of the court was for \$135, being \$90 more than the value of the
property found by the jury."

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the defendant, the writ of attachment issued in the original suit of Elliott vs. Con-
11, 12 over, the return of the plaintiff thereon as constable, the instructions given for
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 16 and second verdict (which is the amended verdict only and designated in the ver-
 dict, and being "We find the value of the property to be 45 dollars and assess
 three times its value") and the instructions asked by defendant below.

20 The court refused to grant a new trial or set aside the verdict and judgment, on
 the ground that at too late a day, to which plaintiff excepted, and assigns for error:

First—That the Justice of the Peace nor the Circuit Court on appeal did not
 have jurisdiction.

Second—The court gave erroneous instructions asked by plaintiff.

Third—The judgment of the court was for more than the verdict of the jury
 and erroneous.

Fourth—The court erred in overruling each motion for a new trial, and to set
 aside the judgment and dismiss the suit, and rendering judgment for the plaintiff
 below.

Fifth—That judgment should have been rendered for defendant below instead of
 plaintiff.

M. WILLIAMSON, Att'y for Pl'ff.

154 - 029
G Campbell
vs
Gbel & Leovon
Abstract

Filed April 17. 1861
A. A. Daniel
clerk

George W Campbell }
vs } In Error
Abel S Conover }

And the said Abel S Conover
now comes and says that there is no
error either in the record and proceedings
aforesaid or in giving the judgment aforesaid
and therefore he prays that the said
Judgment may be affirmed and that
his costs may be adjudged to him on

C. G. Johnson
Att. for ~~Plaintiff~~ deft
in error

154-~~727~~
Campbell 29
my
Conover
Assmann
error

File April 17, 1861
Shelton
Cal.

IN THE SUPREME COURT, STATE OF ILLINOIS,
Third Grand Division, April Term, A. D. 1861.

GEORGE W. CAMPBELL, }
vs. }
ABEL S. CONOVER. }

PLAINTIFF'S BRIEF.

This action was brought before a Justice of the Peace of Peoria county to recover three times the value of property, claimed as exempt from execution, levied on by plaintiff in error as constable. Plaintiff in error, who was defendant below, appealed to the circuit court, where a verdict was rendered against him, the jury finding the value of the property levied on to be \$45, and assessed three times its value. Verdict and judgment for \$135.

First—The Justice of the Peace had not jurisdiction in an action against a constable to recover three times the value of property levied upon by virtue of an execution. The law of 1843, page 141, approved March 4, 1843, which gave such jurisdiction to justices of the peace, was repealed by revised statutes of 1845.

Rev. S. 1845, page 469.
15 Ills. Rep., 39.

An inferior court cannot take cognizance of a penal offense by implication. It must be expressly conferred by the legislature.

1 Scam. Rep., 44.

Second—The justice not having jurisdiction, it was the duty of the court, on appeal, to dismiss the case whenever it became apparent in the progress of the cause that the justice had not jurisdiction.

R. S. 1845, page 325.

If the justice of the peace had not jurisdiction of the subject matter, its judgment was a nullity, and the circuit court could not acquire jurisdiction on appeal.

18 Ill. R., 30.
20 Ill. R., 103.

Third—As neither the justice of the peace nor the circuit had jurisdiction, it was the duty of the court, on motion at any time, to vacate the judgment and dismiss the suit, it being a mere nullity.

Fourth—The instructions given for the plaintiff which instructed the jury to find three times the value of the property taken were erroneous; and the verdict and judgment both show that the jury and court found three times the value of the property. Therefore the record shows error in the verdict and judgment and which should be reversed.

M. WILLIAMSON, for pl'ff.

154
G Campbell
my
Abel S Conover
Plffs Brief

Filed Oct. 17, 1861.
L. Keland
Clk.

IN THE SUPREME COURT, STATE OF ILLINOIS,
Third Grand Division, April Term, A. D. 1861.

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 vs. }
ABEL S. CONOVER. }

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Third Grand Division, April Term, A. D. 1861.

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vs.)
ABEL S. CONOVER.)

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M. WILLIAMSON, for pl'ff.

Higher order 17th 1881

Verdict 21

Check

154
G. W. Campbell
per
Abel S. Conover
Plffs Brief

Filed Apr. 17th 1861

G. Leland
Clerk

IN THE SUPREME COURT, STATE OF ILLINOIS,
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IN THE SUPREME COURT, STATE OF ILLINOIS.

GEORGE W. CAMPBELL,
vs.
ABEL S. CANOVER.

} *THIRD GRAND DIVISION.*

} APRIL TERM, A. D. 1861.

DEFENDANT'S BRIEF.

The principal question in this case is, Was there a law in force in 1858, when the judgment below was rendered, giving triple damages against a constable for selling on execution property exempted therefrom?

A statute giving this remedy was past March 4, 1843.

Laws of 1843, page 141.

This act was repealed by the Revised Statutes of 1845.

Rev. Stat. 1845, page 469.

But another act with a similar provision was passed by the legislature of 1845.

Rev. Stat. 1845, page 306, sec. 35.

This last act took effect September 10th, 1845, and was in force at the date of the proceedings of the court below.

Rev. Stat. 1845, page 473, sec. 37.

And under the said law of 1845, the recovery was ~~had~~ ^{had} upon sufficient proofs before said court.

Vaughn vs. Thompson, 15 Ill., 39, does not refer to statute of 1845, page 306, sec. 35.

The motion for new trial made at November Term, 1860, was properly overruled as coming too late, and having been once past upon by the same court, two years previous.

We think that a motion to dismiss or set aside proceedings, even for want of jurisdiction, will not be entertained when made for the first time two years after after the matter is finally disposed of.

And we think that in cases where the Court has not jurisdiction and the parties go to trial upon the merits, interposing no objection, and final judgment is had and no objection or exception made for nearly two years, it amounts as between the parties to a submission of the matters in difference to the arbitration of the Judge, which will not be revised in this Court.

JOHNSON & HOPKINS.

Atty. of Defendant.

1864
Abel T. Canover
vs

G. W. Campbell
Defendants Brief
and argument

Filed April 27, 1861
L. Leland
Clerk

IN THE SUPREME COURT, STATE OF ILLINOIS,
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M. WILLIAMSON, for pl'ff.

*Off. of the Clerk of the Court
1881*

1881 4/10/1881

1881 4/10/1881

1881 4/10/1881

154
G Campbell
vs
Abel & Conover
Plffs Brief

Filed Apr. 17th 1861

L. Leland
Clerk

IN THE SUPREME COURT, STATE OF ILLINOIS.

GEORGE W. CAMPBELL,
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Atty. of Defendant.

Abel Honover
vs
Geo. W. Campbell
Defendants Brief
and Argument

IN THE SUPREME COURT, STATE OF ILLINOIS

DEFENDANTS BRIEF

THE STATE OF ILLINOIS

vs

Geo. W. Campbell

and

Abel Honover

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JOHNSON & HOPKINS.

Atty. of Defendant.

¹⁵⁴
Abel H. Connor
and
Geo W. Campbell
Defendants Brief
and Argument

Filed Apr. 29-1861

L. Ireland

Clerk

IN THE SUPREME COURT, STATE OF ILLINOIS.

GEORGE W. CAMPBELL, } *THIRD GRAND DIVISION.*
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154
Abel J. Canover

vs.

Geo W Campbell
Defendants Brief
and Argument

Filed Apr. 29 1861

G. Leland

clerk

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¹⁵⁴
G. W. Campbell
by
Abel S. Conover
Abstract

Filed Apr 17. 1861
A. Deland
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The court refused to grant a new trial or set aside the verdict and judgment, on the ground that at too late a day, to which plaintiff excepted, and assigns for error:

First—That the Justice of the Peace nor the Circuit Court on appeal did not have jurisdiction.

Second—The court gave erroneous instructions asked by plaintiff.

Third—The judgment of the court was for more than the verdict of the jury and erroneous.

Fourth—The court erred in overruling each motion for a new trial, and to set aside the judgment and dismiss the suit, and rendering judgment for the plaintiff below.

Fifth—That judgment should have been rendered for defendant below instead of plaintiff.

M. WILLIAMSON, Att'y for Pl'ff.

154
J. M. Campbell
my
Abel S. Conover
Abstract

Filer Apr. 17, 1861
L. Seland
Clerk.

IN THE SUPREME COURT, STATE OF ILLINOIS,
Third Grand Division, April Term, A. D. 1861.

GEORGE W. CAMPBELL, }
vs. } Error to Peoria County.
ABEL S. CONOVER. }

A B S T R A C T.

Page 1 This case was commenced by Conover against George W. Campbell before a Justice of the Peace, to recover three times the value of property levied on by virtue of an attachment issued at the suit of Phillip F. Elliott against said Conover, and which attachment was placed in the hands of plaintiff as constable, and by him levied upon property claimed as exempt from execution.

2 Judgment was rendered against Campbell, defendant below, before the Justice
4 for \$210, from which he appealed to the Circuit Court of Peoria county. At the
November term, 1858, a trial was had and verdict was found against the defendant
7 below for one hundred and thirty-five dollars. in which verdict the jury find the
value of the property levied on to be of the value of \$45, and assess *three* times
16 its value as damages.

8 The defendant below moved for a new trial, which was, on the 28th day of De-
7 cember, 1858, overruled by the court, and judgment rendered for \$135.

8 At the November term, 1860, the plaintiff renewed his motion for a new trial
and to set aside the verdict and judgment of the court and dismiss the suit for the
8 following reasons, to wit:

First—"The Justice of the Peace had not jurisdiction in the cause nor the Cir-
cuit Court on appeal on suit to recover three times the value of property levied on.

Second—"The court gave erroneous instructions on the part of plaintiff.

Third—"The court refused proper instructions asked for by defendant.

Fourth—"The verdict of the jury was for \$45; the value of the property and
the judgment of the court was for \$135, being \$90 more than the value of the
property found by the jury."

10, 9 In support of which motion the defendant below read in evidence the affidavit of
the defendant, the writ of attachment issued in the original suit of Elliott vs. Con-
11, 12 over, the return of the plaintiff thereon as constable, the instructions given for
13 plaintiff below, and the verdict of the jury in this cause.

The plaintiff below, to resist the motion, read in evidence to the court the verdict
 16 and second verdict (which is the amended verdict only and designated in the ver-
 16 dict, and being "We find the value of the property to be 45 dollars and assess
 three times its value") and the instructions asked by defendant below.

10 The court refused to grant a new trial or set aside the verdict and judgment, on
 the ground that at too late a day, to which plaintiff excepted, and assigns for error:

First—That the Justice of the Peace nor the Circuit Court on appeal did not
 have jurisdiction.

Second—The court gave erroneous instructions asked by plaintiff.

Third—The judgment of the court was for more than the verdict of the jury
 and erroneous.

Fourth—The court erred in overruling each motion for a new trial, and to set
 aside the judgment and dismiss the suit, and rendering judgment for the plaintiff
 below.

Fifth—That judgment should have been rendered for defendant below instead of
 plaintiff.

M. WILLIAMSON, Att'y for Pl'tf.

154
W Campbell
my
Abel & Conover
Abstract

Filed Apr 17. 1861
A. Adams
Clerk

IN THE SUPREME COURT, STATE OF ILLINOIS,
Third Grand Division, April Term, A. D. 1861.

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vs. } Error to Peoria County.
ABEL S. CONOVER. }

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16 and second verdict (which is the amended verdict only and designated in the ver-
dict, and being "We find the value of the property to be 45 dollars and assess
three times its value") and the instructions asked by defendant below.

20 The court refused to grant a new trial or set aside the verdict and judgment, on
the ground that at too late a day, to which plaintiff excepted, and assigns for error:

First—That the Justice of the Peace nor the Circuit Court on appeal did not
have jurisdiction.

Second—The court gave erroneous instructions asked by plaintiff.

Third—The judgment of the court was for more than the verdict of the jury
and erroneous.

Fourth—The court erred in overruling each motion for a new trial, and to set
aside the judgment and dismiss the suit, and rendering judgment for the plaintiff
below.

Fifth—That judgment should have been rendered for defendant below instead of
plaintiff.

M. WILLIAMSON, Att'y for Pl'ff.

154
G M Campbell
by
Abel T Conover
Abstract

Filed Apr 17. 1861
A. Deland
Clerk

Page 1

Be it remembered that heretofore to wit: on the
twenty second day of May in the year of our Lord
one thousand eight hundred and fifty eight there
was filed in the office of the clerk of the circuit court
in and for the county of Peoria in the State of Illinois
a ^{which with the returns endorsed thereon,} Summons, Bill of particulars, Appeal Bond
and Transcript ^{are} in the words and figures following
to wit:

Summons

" State of Illinois,
Peoria County, ss. The People of the State of Illinois
To any Constable of said County, Greeting:
You are hereby commanded to summon George H.
Campbell to appear before me at my office in Peoria
on the sixth day of May next at two o'clock
P. M. to answer the Complaint of Abel C. Conover
in an action of Trespass for selling goods of
the Plaintiff exempt from execution to his damage
not exceeding \$300. and hereof make due return
as the law directs. Given under my hand and
Seal this 29th day of April A. D. 1858.

J. J. Irons (Seal)
Justice of the Peace"

(Endorsed)

"Served on George H. Campbell by reading to him
this writ May 1st 1858.

O. V. Kidwell Const"

Bill of
Particulars

"Abel C. Conover }
vs } Trespass
George H. Campbell }

To taking ^{on} attachment
the following property exempt by the laws of this
State from execution, to wit: one Melodeon, one table

one clock

" Bedstead & bedding

" Stand

" Cupboard

" looking glass

" wash Stand

" Bureau looking glass & drawer

" Set of Chairs

" Cooking stove "

" Abel S. Conover

Transcript

vs
George W. Campbell

Trespass.

Suit brought under the
Statute Against the defendant for buying on and
selling goods exempt from execution

April 29th 1858 Summons issued on application
of the plaintiff to Alfred R. Kidwell Constable
(returnable) May 6th 1858 at 2 o'clock P.M.
which was ^{duly} returned endorsed as follows

"Served on George W. Campbell by reading to him
this writ May 1st 1858 A. R. Kidwell, Const."

May 3rd 1858 on the application of Plaintiff, a
Subpoena issued for Norman Howe and Josiah Fisher,
also for John G. S. Bohannan, Edward Bo-
hannan and Aaron Brown

May 6th 1858 2 o'clock P.M. the parties attended
with their attorneys E. G. Johnson Esqr for the plain-
tiff and Henry Lander Esqr for the defendant.

The witnesses were sworn and examined and
after hearing all the testimony offered by both parties
and the arguments of counsel the defendant is adjudged

to be guilty and judgment rendered against him for two hundred and ten dollars damages and cost taxed at \$4.73.

May 22nd 1858, at the request of defendant the above cause is appealed to the Circuit Court of Peoria County.

Abel S. Conover }
vs } Trespas
George W. Campbell }

Bill of Cost. Justice Cost, issuing sums 18 3/4 docketing
suit 12 1/2 Entry judgment, 12 1/2, issuing 2 opas 37 1/2 lwy 4
Witto .25 Transcript on appeal 25 \$ 1.43 3/4

A. R. Tidwell, Constable fees 1.55

Witt fees - E. Bohannon 50, J. H. S. Bohannon 50 }
Josiah Fisher 50 Aaron Brown 50 } 2.00
\$ 4.98 3/4

State of Illinois, } ss.
Peoria County, } I, David D. Irons a
Justice of the Peace within and for the County of
Peoria do certify that the foregoing is a true copy
from my docket of the proceedings and judgment
in the above case, Given under my hand and
Seal this 22nd day of May A. D. 1858.
David D. Irons Seal
Justice of the Peace.

Appeal
Bond.

I know all Men by these presents, that we
George W. Campbell, Philip F. Elliott and
Longworth Armstrong are held and firmly bound
unto Abel S. Conover in the penal sum of four
hundred and thirty dollars, lawful money of the
United States; for the payment of which, well
and truly to be made, we bind ourselves, our heirs

4
and administrators, jointly, severally and jointly
by these presents.

Witness our Hands and Seals, this 22nd day of
May 1858.

The Condition of the above obligation is such, that
whereas, the said Abel S. Conover did on the
sixth day of May 1858 before David D. Irons a
Justice of the Peace for the County of Peoria and
State of Illinois recover a judgment against
the above bounden George W. Campbell for the sum
of two hundred fourteen ⁷⁵/₁₀₀ dollars from which
judgment the said George W. Campbell has taken
an appeal to the Circuit Court of the County of Peoria
aforesaid, and State of Illinois: Now if the said
George W. Campbell shall prosecute his appeal with
effect, and shall pay whatever judgment may be
rendered by the Court upon dismissal or trial of said
appeal, then the above ~~of~~ obligation to be void,
otherwise to remain in full force and effect.

Approved before me, at Geo W. Campbell (Seal)
my office, this 22nd day of May 1858 { Philip F. Elliott (Seal)
David D. Irons { Longworth Armstrong (Seal)
Justice of the Peace, } //

And afterwards, to wit: on the twenty sixth day
of May in the year of our Lord one thousand eight
hundred and fifty eight there was issued out
of the office of the clerk of said Court a writ of
Summons which with the ^{acknowledgment &} return endorsed thereon is
in the words and figures following, to wit:

" The People of the State of Illinois
To the Sheriff of Peoria County, Greeting:
We Command you to Summon Abel S. Conover
if he may be found in your County, to appear
before our Circuit Court, on the first day of the
term thereof, to be held at Peoria, within and for
the said County of Peoria, on the 3^d Monday of
November next then and there, in our said court,
to prosecute his suit against Geo. W. Campbell
lately appealed to our Circuit Court from the judg-
ment of D. D. Irons, a Justice of the Peace in and
for said County, by the said Campbell and make
return of this writ with an endorsement of the time
and manner of serving the same, on or before
the first day of the term of the said court to be held
as aforesaid. Witness Enoch P. Sloan, clerk
of our said Court, and the seal thereof, at Peoria,
this 26th day of May in the year of
our Lord one thousand eight hundred
and fifty eight.
Enoch P. Sloan, clerk."

(Endorsed)

"July 22 1858

I acknowledge service on the within for
A. S. Conover.

E. G. Johnson

Atty for Conover."

"E. G. Johnson attorney for Conover ac-
knowledgeed service on this writ.

July 22nd 1858 J. W. Smith Shff

for J. F. Dawson Dpt."

60
Proceedings at a term of the Circuit Court begun and held at the Court house in the City and County of Peoria State of Illinois, on the third Monday in the month of November in the year of our Lord one thousand eight hundred and fifty-eight, it being the fifteenth day of said Month. Present - E. N. Powell judge of the Fifteenth Judicial Circuit in said State, Francis W. Smith Sheriff and Enoch P. Sloan, clerk, to wit:

Monday November 22^d A.D. 1858

Abel S. Conover

vs

Appeal from J.P.

George H. Campbell

This day came the plaintiff by Johnson his attorney and the defendant by Manning his attorney, and it is ordered by the Court that a jury be empannelled to try the issues in this cause, whereupon came a jury of twelve good and lawful men, to wit: Thomas Beall, William Houghtaling, William McElhane, Andrew Lindsey, David Combs, Joseph Blanchard, John Debord, Jacob Kepperty, Perry Savage, James Powell, John Starns, & James Elson, who were duly chosen, tried and sworn to well and truly try the issues joined in this cause and a true verdict give according to the evidence and the said jury were adjourned to meet the Court at nine o'clock to-morrow morning.

Tuesday November 23^d A.D. 1858

Abel S. Conover

vs

Appeal from J.P.

George H. Campbell

This day again came the parties by

7
their respective attorneys and also came the jury
heretofore sworn to well and truly try the issues
in this cause and a true verdict give according
to the evidence. And the said jury having heard
the evidence in this cause, the argument of Coun-
sel and the instructions of the court retired
to consider of their verdict.

Wednesday November 24th A.D. 1858
Abel S. Conover

vs Appeal from J.P.
George W. Campbell

This day again came the parties
to this suit by their respective attorneys and also
came the jury, sworn on Monday last to well
and truly try the issues joined in this cause,
and a true verdict give according to the evidence,
upon their oaths aforesaid do say, we the jury
find the defendant guilty and the value of the
property taken to be forty five dollars and assess
the plaintiffs damages at the sum of one hundred
and thirty five dollars. Therefore it is considered
by the court that the said Abel S. Conover have and
recover of the said George W. Campbell the said
sum of one hundred and thirty five dollars,
his damages aforesaid, and also two thirds
of his costs and charges by him about this
suit in his behalf expended and that he have
execution therefor.

8
Monday December 20th A.D. 1858.
Abel S. Conover

vs
Appeal from J.P.
Geo W. Campbell

This day this Cause came on to be heard on motion of defendant for new trial, and the Court being satisfied in the premises, overruled said motion.

And afterwards to wit: on the nineteenth day of November in the year our Lord one thousand eight hundred and sixty then was filed in the office of the Clerk of said Court in said Cause a Motion of the defendant which is in the words and figures following, to wit:

"Abel S. Conover

vs
George W. Campbell } Motion to set aside
verdict & judgment

And now comes the defendant & moves this Court to set aside the verdict & judgment in this Cause and dismiss this suit for the following reasons to wit

1. The Justice of the Peace had not jurisdiction in the Cause nor the Circuit Court on appeal ~~in~~ ^{on} suit to recover 3 times the value of property levied on
 2. The Court gave erroneous instructions on the part of the plaintiff
 3. The Court refused proper instructions asked for by defendant
 4. The verdict of the jury was for \$45. the value of the property and the judgment rendered by the Court was for \$135 - being \$90 - more than the value of the property found by the jury
- "M Williamson for defendant."

Proceedings at a term of the Circuit Court begun and held at the Court house in the City and County of Peoria, State of Illinois, on the nineteenth day of November in the year of our Lord one thousand eight hundred and sixty, it being the third Monday of said Month. Present the Honorable Elisha W. Powell judge of the 16th Judicial Circuit, in said State, John Byner, Sheriff and Enoch P. Sloan, clerk, to wit:—

Friday November 30th A.D. 1860

Abel S. Conover

vs

Motion to set aside Judgt.

George H. Campbell

This day came the defendant by Williamson his attorney and this cause came on to be heard on the motion of said defendant, to set aside the ~~the~~ judgment heretofore entered herein and for a new trial, and the court being fully advised in the premises overrules said motion.

And afterwards, to wit: on the eighth day of December in the Year of our Lord one thousand eight hundred and Fifty there was filed in the office of the clerk of said Court in said Cause the defendants Bill of Exceptions which is in the words and figures following, to wit:

Thel S. Conover

vs
George W. Campbell

Be it remembered that on this day Came on this cause for hearing upon the motion of the defendant herein to set aside the verdict and judgment grant a new trial herein in support of which said Motion the defendant read in evidence to said Court the following writ of attachment issued at the suit of Phillip F. Elliott vs the plaintiff herein and the return of defendant as Constable thereon and also the affidavit of defendant instructions asked by the plaintiff in this cause given on the part of the plaintiff in said Cause Verdict of the jury in this Cause

writ of
attachment.

State of Illinois,
Peoria County, ss.

The People of the State of Illinois
To any Constable of said County, Greeting:
Whereas Philip F. Elliott hath complained on oath before Bernard Bailey a Justice of the Peace in and for said county, that Thel S. Conover is justly indebted to him said Philip F. Elliott in the amount of two hundred & forty one $85\frac{1}{100}$ dollars and oath having been also made

10

that the said Abel S. Conover is about to leave this State and to carry his effects out of this State so that the ordinary process of law cannot be served upon him; and the said Philip F. Elliott having given bond and security according to the directions of the act in such case made and provided: We therefore Command you, that you attach so much of the personal estate of the said Abel S. Conover to be found in your County, as shall be of value sufficient to satisfy the said debt and costs, according to the complaint; and such personal estate, so attached, in your hand to secure, or so to provide, that the same may be liable to further proceedings thereon, according to law, before the undersigned Justice of the Peace. And in case personal property of value sufficient cannot be found, that you summon all persons whom the plaintiff or his agent shall direct, to appear before said Justice, on the 22nd day of March Inst at 1 o'clock P. M., then and there to answer what may be objected against him or them, when and where you shall make known how you have executed this writ; and have you then and there this writ. Given under my hand and Seal this 15th day of March 1858.

Demand Daily E. D. J. P.

Endorsed
"Served the within by reading the same to Christian Brown, Aaron Brown March 20th 1858."

Joseph P. Dennis Constable "

Endorsed
"I return the within attachment by attaching the following property of Abel S. Conover and also by reading to him this writ"

(affiant)
one Melodeon, one cribb, one lounge, one table, one
clock, one bedstead bed and bedding, one bureau,
one stand, one cupboard one looking glass one wash
stand one bureau looking glass and drawer one
set of chairs and one cooking stove, this 16th day
of March 1858 Geo. W. Campbell, Constable,
Also on the 18th March A. D. 1858 the following
property of Abel S. Conover one set cane seat chair
one looking glass one card table
Geo. W. Campbell Const."

Affidavit
of defendant

" State of Illinois }
Peoria County. } Circuit Court
November Term 1860

George W. Campbell being duly sworn
deposes and says that the case of Abel Conover
vs this affiant was commenced before a
Justice of the Peace of Peoria County to recover
three times the value of certain property levied on by
affiant as Constable under an attachment in favor of
Phillip J. Elliott vs said Conover that the case
was appealed to the Circuit Court of Peoria County
Illinois at the Nov. Term 1858, when the jury re-
turned a verdict in Court finding the value of the
property taken by affiant exempt from execution
to be as affiant believes the sum of \$45- and
that the plaintiff Conover recover of affiant the
sum of \$135. upon which judgment verdict judg-
ment was rendered by the circuit Court against
this affiant for the sum of \$135 That said goods so
claimed by said Conover to be exempt from execution
and for which he recovered three times the value as

19
above set forth were levied on by affiant on or about the 16th day of March 1858.

Geo H. Campbell "

" sworn to & subscribed before

me this 19th day of November 1860

Enoch P. Sloan, clk

by J. Newton Dpty."

Plaintiff's
Instructions

Plaintiff's Instructions

1 Conover is entitled to hold all the articles of property except specified & exempted by the statute and also 15 dollars worth in addition thereto.

2. If the jury believe from the evidence that Campbell took ^{an} attachment and sold any of the articles specifically exempted by the statute they will find for the plaintiff and assess damages ~~and~~ at three times the value thereof.

3. No demand is necessary to have been made upon the Constable to entitle Plaintiff to recover for property specifically exempted from levy.

4. If the jury believe from the evidence that Conover had no ~~right~~ notice of the attachment before the same was levied he as to select therefrom and that he did before the sale notify the Constable of what property he selected to the amount of \$600 worth the jury will also find for the plaintiff three times the value of said \$600 worth of property if they find that the same was levied upon and sold, unless the jury believe that Conover had other property of some value worth levying upon which he did not turn out to the

Given

Given
2

Given
3

Given
4

offices, and unless the jury believe that Conover had fraudulently conveyed property to cheat his creditors.

5. If the jury believe that Aaron Brown had a chattell mortgage upon the roan mare in question, in force at the time of the levy of attachment upon her said Brown had a right to take possession of the mare & dispose of her according to law to pay his own claim as against the attaching creditor.

6. If there was a chattell mortgage upon the roan mare in question in favor of Aaron Brown, bona fide & in force at the time the attachment was levied Conover had a right to give up the mare into the possession of said Brown.

7. If the defendant has called out from their own witnesses or upon cross examination of plaintiffs witnesses the existence of the said Chattell mortgage from Conover to Brown upon said roan mare, the defendant has no right to object to the ~~insufficiency~~ sufficiency of such evidence or that manner of proving the fact.

It is incumbent on the defendant to prove that Conover had other property of value without saying upon which he did not disclose to the Constable at the time he made selection of the \$60. worth of exempted property, or that he had fraudulently conveyed property to defraud the plaintiff in execution if he, the defendant attempts to justify himself upon those grounds. Fraud & concealment are never presumed in such a case.

but must be proved as any other fact.

9
G. Men.
Of small article of property of little or no value, not worth levying upon remaining on the premises of Coroner at the time he made demand & selected \$60 worth of exempted property would not defeat the plaintiff's right to the said \$60 worth of property by exemption.

Abel T. Corcoran

vs
George H. Campbell

Penä County Circuit Court

Nov Term 1858

Instructions for plaintiff.

10
G. Men.
If the Jury find from the evidence that the plaintiff was the head of a family and residing with the same in this state, and that the defendant as a Constable levied an attachment upon property specifically exempt from attachment belonging to the plaintiff and sold the said property upon execution, then the plaintiff is entitled to recover of the defendant three times the value of such property.

11
G. Men.
2. Necessary bedsteads and bedding for plaintiff's family one cooking stove - necessary utensils for cooking - and other necessary articles of household furniture not exceeding in value fifteen dollars are by statute specifically exempt from attachment and sale on execution - when owned and held by a head of family as aforesaid.

15

12 3. If the Plaintiff was possessed of a Melodeon and the same was not worth more than sixty dollars and the same was attached and sold by the Defendant, and the Plaintiff selected such Melodeon as exempt by statute, and notified the Defendant of such selection before the sale and as soon after the attachment as he had opportunity, then the Plaintiff is entitled to recover three times the value of such Melodeon provided he had not previously and did not at the time fraudulently dispose of or conceal other property subject to such attachment or sale to defraud his creditors.

13 4. Fraud in such case is not to be presumed and the burden of proof is upon the Defendant to show such fraud or concealment if he would justify under it.

14 5. If the jury find from the evidence that the Defendant acted by virtue of an attachment and returned such attachment of the property claimed with his return thereon enumerating said property in said return so attached by him as Constable he will be estopped from denying that he attached such property as a Constable and sold the same as Constable on execution if it be proven that he pretended to sell said property on execution.

Verdict of
the Jury

Abel S. Conover
vs
Geo W. Campbell

We the jury in the case of
Abel S. Conover versus Geo W. Campbell
find the defendant Geo W. Campbell guilty,
and assess the damages at one hundred and
thirty five dollars, on the articles specifically
exempt by law from sale on attachment
or execution. We find the value of the property
to be 45 dollars and assess three times its value.

Joseph Blanchard
Foreman

James Elson

Andrew Lindelay

James Powell

Perry Sange

William Thoughtaling

Wm M^c Elheny

Jacob Hepperty

David Combs

John Deboard

Thomas Beall

John Sturm //

Also the the plaintiff to resist said motion
read in evidence the verdict and second ver-
dict of the jury all the instructions on said trial
and motion for new trial made at November
term 1858 in this cause made part of this case
and record of Court in said case at said term.

Verdict

Abel S. Conover

vs
Geo W. Campbell

We the jury in the case of Abel S.
Conover versus Geo W. Campbell find the defendant
Geo W. Campbell, guilty, and assess the damages

at one hundred and thirty five dollars, on the articles specifically exempt by law from sale on attachment or execution. We find the value of the property to be 45 dollars and assess three times its value.

James Elson	Joseph Blanchard
Andrew Lindlay	Foreman
James Powell	Jacob Hepperly
Perry Sange	David Combs
William Houghtaling	John Deboard
Wm M ^c Elheny	Thomas Beall
	John Sturm //

Instructions
for debt

G. Green

If the Jury believe that at the time that the Plaintiff claimed any of the goods levied as exempt from attachment under "the sixty dollar clause" of the statute, he had other property over and above the amount of said sixty dollars which was liable to be levied upon and did not surrender or offer to surrender such other property to be levied upon, then the plaintiff cannot recover any thing for the property which he claimed under "the sixty dollar clause" of the statute.

2

G. Green

Or if said plaintiff had at the time he made such sale fraudulently conveyed, or incumbered his other property, or secreted it to prevent its being taken by legal process to satisfy his debts, then he cannot recover any thing for the taking of the property which he claimed under said "sixty dollar clause"

3 Under our Statute there are only two ways to
G. Allen make a valid mortgage against Creditors of
the mortgagor.

One is by having a written mortgage
acknowledged and recorded - and there has been
no such mortgage given in evidence in this
Cause.

4 The other is by the person to whom the
G. Allen mortgage is made retaining possession of the
property. If in such case the property is suf-
fered to remain in the possession of Mort-
gagor by the Mortgagor it is liable to be
taken by attachment or execution against
the mortgagor.

5 In either of the above cases if the mort-
G. Allen gage is made to hinder delay or defraud the
Creditors of the Mortgagor it is void as against
such creditors.

6 Unless the jury believe from the evidence that
G. Allen the defendant, acting as a Constable seized or
took the property of the plaintiff which was exempt
by law from ~~tax~~ levy and sale on execution
or attachment they will find the defendant not
guilty.

7 Although the jury believe from the evidence
G. Allen that the defendant did so take such property,
yet if the jury believe from the evidence that the
plaintiff was then in the act of moving to another
state, or had started a part of his goods on their

19

way to Iowa, with the intention of directly following with the residue of his goods, at the time when the attachment was levied, then will find the defendant not guilty.

8

Given.

Unless it has been proved in this case that the defendant in this case was at the time of the levy of the attachment an acting Constable having authority to act as such the plaintiff cannot recover three times the value of any property although his case is well proved in other respects.

9

Given.

If the Jury believe from the evidence that at and before the time of the levy of the attachment given in evidence in this cause, the plaintiff had fraudulently alienated, conveyed and encumbered his other personal property for the purpose of hindering, delaying and defrauding his creditors and preventing it from being reached by process of law, and that such other property over and above what was levied on, was at that time so fraudulently conveyed and secreted, and the value of such property so then conveyed and secreted exceeded the amount and value of sixty dollars of property exempt from levy and sale then the plaintiff cannot recover in this action.

but the Court overruled the said Motion and refused to set aside said verdict & judgment and grant a new trial —

21. George W Campbell }
vs } Error
Abel S Conover }

Assignment of Errors

And now comes the said George W Campbell by M Williamson his attorney and says that in the record and proceedings afore-

said there is manifest error in this to wit
~~First / The Court erred in refusing to grant a new trial or set aside the~~

First / That the Justice of the peace nor the Circuit Court on appeal did not have jurisdiction of said Cause

Second The Court gave erroneous instructions asked by Plaintiff below

Third The Judgment of the Court was for more than the verdict of the Jury

Fourth The Court erred in overruling each and both motions for new trials and to set aside the judgment and dismiss the suit and in rendering judgment for the plaintiff below

Fifth The said Judgment was given in favor of the plaintiff below whereas by the laws of the land it ought to have been given for the defendant below Therefore he prays that a summons may issue and that said Judgment may be reversed annulled and for naught held and that plaintiff herein be restored to all things he has lost by reason thereof

By M Williamson
his attorney

1547 George W Campbell
vs
129 29 Abel S Conover

Record

Jas. H. Smith & Co.
No. 27 S. Second Street,
Philadelphia.

Filed March 20. 1881
L. Leland
Clerk

Issue writ to Sheriff of Peoria
Co. on this record
\$4.60
M. Williamson
for fees