

12134

No. _____

Supreme Court of Illinois

People, ex rel.

vs.

Cotton

71641  7

To the Supreme Court of the State
of Illinois.

The People of the State of
Illinois on the relation of Roger Breman
gives this Honorable Court to understand
and he informed that heretofore to wit on
the day of A.D. 1853 William H.
Valentino recovered a judgement before
David Leasgrove a justice of the peace of LaSalle
county in said State, against said relator
in an action of trespass for alleged trespass
upon personal property - said judgement being
for \$39.25 damages and \$2.40 costs of suit -

That afterwards to wit on the
day of A.D. 1853 an execution was
issued by said justice upon said judgement,
against the goods and chattels of said
relator, which execution was afterwards
returned "No property found"

That afterwards to wit on the 11th
day of June A.D. 1853, the said Valentino made
oath before said justice that said relator
was able to pay said judgement and
fraudulently withheld the money, and thereupon
the said justice issued a capias ad satisfaciendum
upon which said capias said relator was on the
13th day of June A.D. 1853 arrested and committed
to the common jail of said county, there to
remain until he should pay and satisfy
said judgement and costs - in which jail
said ^{relator} is now imprisoned upon said capias
and upon no other charge, or for no other
cause whatever -

Said relator further shows that he
had not money, property or estate real or
personal wherewith to pay and satisfy said
judgement, and being desirous of releasing
his body from said imprisonment, he applied

to the Sheriff of said County and was by
said Sheriff taken before the Honourable
Henry G. Cotton Judge of the County Court
of said County, on the 20th day of June
A.D. 1853 - the said Cotton then sitting as
such Judge - and the said 20th day of
June being one of the days of the term
of said Court A.D. 1853 - and
said Relator then and there applied
to said Cotton as such Judge so sitting
as aforesaid, to be discharged from said
imprisonment under the provisions of
Chapter fifty two of the Revised Statutes
of said State, concerning "Insolvent
Debtors" and said Relator then and
there made a full, true, fair and perfect
schedule of all his estate real and personal
including money or property of every kind
and description, name and nature
whatsoever, together with a true and perfect
account of all debts which said Relator
was owing at that time, which schedule
was subscribed by said Relator, and
said Relator then & there took and
subscribed the oath required in such
case by the 4th section of Chapter 52
of said Revised Statutes concerning
"Insolvent Debtors" ^{which oath was ~~subscribed~~ by said Cotton as such Judge} and said Relator
then and there offered to make an
assignment of the said schedule for
the benefit of his creditors -

Said Relator further shows that
all his creditors had notice of said
application, and appeared before
said Judge at the time said application
was made as aforesaid, and that
no contest or dispute was had
as to the facts above stated and

set forth, but the same were admitted to be true - And the said Henry S. Cotton judge as aforesaid, then and there refused to hear such application, and then and there refused to appoint an assignee as required by law in such cases; and then and there refused to discharge said Relator from his said imprisonment - to the great damage of said relator, and against the peace & dignity of said people. We therefore pray this honorable Court for an attachment with mandamus requiring said Cotton as such judge to take cognizance of said matter & hear & determine said application, show cause why he does not.

State of Illinois
LaSalle County Bp.

Wallace for
relator -

Roger Brennan the above named relator being duly sworn an oath deposes and says that he has heard the above petition read & ~~and that~~ the end that the facts therein stated are true to the best of his knowledge information & belief -

Sworn & Subscribed to
before me this 23^d day of
June 1853.

his
Roger ~~X~~ Brennan.
mark

W. Raymond, Clerk
Circuit Court LaSalle Co.

12
Hutt v. Lockwood 8 Colln. 487-

2 Hill & Johnson (W) 406

Harper 128-2 U.S. Dig 549. Title
invol. Dec. 860-

2 Virg. Cas. 494-

2 Rich 86. U.S. Dig. 1347. 312
539-

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Supreme Court

The People ex al
Rosser Brennan
vs

Henry G. Cotton
County Judge &c

Petition for mandamus

Filed June 23^d 1853.
L. Leland Clk.
By P. K. Leland Depy.

People ex rel }
 Brennan } Mandamus
 vs }
 Cotton }

The object of imprisonment for debt is to compel payment. The imprisonment does not satisfy the judgment.
 2 Virg. Cas. 494.

Ca. Sa. went as a matter of course on all judgments at common law. Our constitution Art. 13 Sec. 14. forbids imprisonment for debt except in two specified classes of cases.

A judgment for damages in an action for a tort, is a debt within the meaning of the term in the constitution & in the Insolvent Debtors act - 8 Conn. Billo & Lockwood 8 Conn. 487.

19 John 163 -
 2 Wend. 248 -
~~11 B. & C. 29 -~~

1 H. Bla. 29 m.
 2 Rich 86 (U.S. Dist. Dig 1847. 3128. 39.
 Harper 128 (2 U.S. Dig. title Insolvent § 60 -
 2. Virg. Cases 494.
 22 Wm. 642. Va. Stat. 345 - title

This provision of the constitution and that Statute are made in favor of the liberty of the subject, & a liberal construction should be given to the term debtor. But its broad sense debt is any obligation that may be discharged by the payment of money or property - Construction of the word creditor - 1 Lib. 397. Va. Stat 345. § 2 -

People ex rel

Brennan

vs

Cottrell

Brief

2 Vols. 56

10 Mts. 333

~~2~~

2 Day 98-

1 Br. 57-299-

1 Ash 175-

1 Bin 462-

6. Barr. 445,

Bankrupt Law

5. M. S. Laws. 2829-

Article 8 Sec 15 P 38 Rev. Stat. Same as the new
For debt

Insolvent " " P 282 Sec 3 R 8

Justice & Court. " " 328 Sec 91 R 8

A. running in than camp Appendix^{or} 2 570 R 8

Judgment creditor has a right to insist upon a
discharge under this act

~~Humby in Strong 10 Johnson R 288~~

In England when the discharge is
not limited in its effect, the courts have
decided that it could not be pleaded to
an action of trover - Parker vs Norton
6 Linn. Rep. 698 - 7 T. R. 612, 12 East 608
M. 10. J. R. 288

That which will not protect as against
the original claim, will not as against a
judgment recovered upon it -

Norton vs Bourne 10 Maf. R. 337

Mendell Case 19th Johnsons Rep 163 -

Strong vs White 9th John Rep 161

Mynman vs Mitchell 1. Cowen & 316

6 Barr 446 - R. by Wallace

Supreme Court

Henry G. Cotton

vs.

The People & on the Relation of

Rodger Brennan

For Cause why &c the said Henry G. Cotton says that he considers that the State does not confer any authority or power upon the County Court to discharge from imprisonment persons committed upon execution on judgments rendered in actions for Trespas or Tort.

This Opinion is entertained upon the supposition that a Cl. Sec. may issue on all final judgments unless restricted by some law of this State ~~and that there is no law in this State~~ ^{or} and the party committed ~~for the satisfaction thereof~~ to remain in prison until satisfaction thereof - unless discharged under some law of this State -

By the 2^d section of the "Involunt Debtor" act power is given to hear and determine all applications for discharge from imprisonment for debt under this Chapter -

It is supposed that this act was intended to provide for carrying out the provision of Sec. 65 Art. 8 of the Constitution of this State - which was intended to protect the personal liberty of those who might not be able to fulfill their engagements - and not those who should commit wrongs -

The Involunt Debtor act appears to provide only for the issuing of executions against the body in cases where they are not allowed except for cause shown. In the present case the execution was issued upon a judgment in Trespas - and by Sec. 90 - of the Act entitled "Sentences of the Peace Constables" the justice

may issue an execution against the goods & chattels
or body of the defendant at the election of the
~~defendant~~ Plaintiff

The act of Feb. 28, 1845, page 77 - provides for such cases

Supposing that the special power given in the
Involuntary Debtor Act does not extend to a case of
this kind - I refused to entertain the case ~~and~~
ground a discharge

All which is respectfully submitted to,
Wm G. Cotton

12.

Receipts as recd

Robert Brumman

no.

Wm G. Cotton & Co

Answer of Wm G.

Filed June 23 1853.
S. deland Clerk.
By J. H. deland depy.

State of Illinois
Supreme Court - 3rd Grand Division
June Term A.D. 1853

People ex rel Bresnahan
vs.
H. G. Cotton County Judge of } Petition for a writ of habeas corpus

It is hereby stipulated
that the said Cotton shall enter his appearance & file his answer or return, ^{and show cause} ~~as this~~
an alternative writ had been issued & served - & it is also stipulated that in case the Supreme Court should ~~return~~ determine on the ~~stated~~ facts stated in the petition that a case is made out on which defendant should act, that then a peremptory writ may issue without further notice or proceeding -

W. H. Wallace for
the relator -

H. G. Cotton

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People ex rel.
Roger Brewster
vs
H. G. Cotton &c

Stipulation

Filed June 23^d 1853,
L. Leland Clk.,
By P. K. Leland Dy

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The People exd.
Roger Brinnan
vs
Henry G. Cotton
County Judges.

1853

12 P D.

Prepared

12/34