

No. 14103

Supreme Court of Illinois

John Baldwin

vs.

Elias Swan

State of Illinois Pike County 55

Copy of proceedings commenced
in the Circuit Court of said County and State on
the twenty seventh day of December A.D. 1845 in
which John Baldwin is plaintiff and Elisha Swan
defendant.

Copy of Affidavit

John Baldwin } In the Circuit Court in and
Elisha Swan } for the County of Pike and State
Attachment in aid of Sum. Ings. Case. ¹³ of Illinois of April term 1846

John Baldwin plaintiff being
first duly sworn doth depose and say that Elisha Swan
is indebted to him in the sum of twelve hundred fifty
dollars (or more or less but affiant cannot fix the sum
exactly) money the said Swan obtained from the Agent
of this affiant on Deposit in sealed packages which
money or packages the said Swan fraudulently withholds
from affiant & refuses to deliver upon demand duly
made from him of the same; Affiant further states
that he verily believes that the said Elisha Swan who
now resides at Liggsville in the County of Pike and
State of Illinois intends to depart from the State aforesaid
and to remove his personal effects therefrom. - Affiant
further states that he has brought an action of Trespass on
the case on promises against said Swan returnable at
the term aforesaid for the sum of Two Thousand Dollars and
prays this attachment in aid thereof & Summons in Garnish
for Solomon Parsons, Charles Kenney.

Subscribed and sworn to before me this 27th day of December A.D. 1845 by John Baldwin, C. M. Hatch Clerk } John Baldwin,

Copy of Attachment

State of Illinois
Pike County ss

The People of the State of Illinois
to the Sheriff of Pike County Greeting

Whereas John Baldwin hath complain-
ed on oath to C. M. Hatch Clerk of the Circuit Court
of Pike County that Elisha Swan is justly indebted
to the said John Baldwin, and that said Baldwin has
brought suit therefor enter to April term 1846, and
that he is indebted to the amount of twelve hundred
and fifty dollars (or even more) and oath having also
been made that the said Elisha Swan who now resides
at Giggsville in the County of Pike and State of Illinois
intends to depart from the State aforesaid & to remove his
personal effects therefrom. And the said John Baldwin
having given security according to the direction of
the act in such case made and provided: We therefore
Command you that you attach so much of the estate
real or personal of the said Elisha Swan as is 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 estate so attached in your hands,
to secure or so to provide that the same may be liable
to further proceedings thereupon according to law at a
Court to be holden at Pittsfield for the County of Pike
on the second Monday of April 1846 so as to compel
the said Elisha Swan to appear and answer the Compla-
int of the said John Baldwin and that you also Summ-
on Charles Kenney and Solomon Parsons as Garnishes
to be and appear at the said Court on the said second
Monday of April A.D. 1846 then and there to answer
what may be objected against them; when and where
you shall make known to the said Court how you have executed this
writ And have you then there this writ.

J. E. A. D.

Witness C. M. Hatch Clerk of our said Court at Pittsfield
this 27th day of December A.D. 1845. C. M. Hatch clerk

Copy of Summons in

"State of Illinois
Pike County ss

The People of the State of Illinois
to the Sheriff of said County greeting
We Command you to summon Elisha
Swan if he can be found in your County to be and
appear before the Circuit Court of said County on the
first day of the next term thereof to be holden at
Pittsfield in the County aforesaid on the second Monday
of April next to answer to John Baldwin in a plea of
Trespas on the case on premises Damages Two Thousand
Dollars, and of this with make legal service and
due return at the time and place aforesaid.



Witness

Clerk

of our said Court at Pittsfield this
27th day of December 1845 the seal
of said Court being hereto affixed
O. M. Hatch Clerk

Upon which summons is the following return.

"I have served the within Summons by reading the same
to the within named Elisha Swan on the 29th day of December
A.D. 1845
E. Cannon Sheriff P.C. Ill.,"

Copy of Return on Attachment

"I have lined the within writ of Attachment and
Garnisher by reading the same to the within named
Charles Straney and Solomon Parsons on the 27th day of
December 1845 also by copying the same on the same day
on the following described property to wit: to-wit: our Barrels
of Lard, three bottles, our Steam Machine for mending land
our pair of Scales, our Stove, a Lot of Salt in nine Barrels
and a Stock of Dry Goods & Groceries in a Store Room in Giggsville
E. Cannon Sheriff P.C. Ill.,"

Copy of Warrant of Attorney to
filed December 30th A.D. 1845
In the Pike Circuit Court to April term 1846

John Baldwin }
^{vs} Elisha Swan } Action of Trespass on the
Car on premises
Damages \$2000-

John Baldwin }
^{vs} Elisha Swan } Attachment in aid of
Action of Trespass on the Car on
premises for twelve hundred
and fifty Dollars being amount
sworn to in affidavit

I do hereby appoint Hardin & Smith & J.
Parsons my Attorneys to enter my appearance in
said cases and to defend the same for me
December 30. 1845
Elisha Swan, vs

John Baldwin }
^{vs} Elisha Swan } Assumpsit Damages \$2000-

John Baldwin }
^{vs} Elisha Swan } Attachment in aid of action
of Assumpsit for \$1250.-

We do hereby enter ^{the} appearance
of the defendant Elisha Swan in the above two cases
of Assumpsit & Attachment now pending in the Pike
Circuit Court
December 30. 1845
Hardin & Smith
& Parsons attys for Swan, vs

The Clerk of the Pike Circuit Court will file the above
Warrant of Attorney and Entry of appearance of Defendant
December 30th 1845
Hardin & Smith & Parsons
attys for Defs. vs

Copy of Plea in Abatement
filed December 30th A.D. 1845
" State of Illinois To the April term 1846 of the
Pike County ss Pike Circuit Court

John Baldwin

^{vs}
Elisha Swan

Attachment for \$1250:-

The said Elisha Swan comes in ^{in person} and for plea to the writ of Attachment herein above issued says that the plaintiff to have and maintain his said writ of Attachment ought not, because he says that at the time of the issuing the said writ of Attachment and of making the affidavits to obtain the same he the said defendant did not intend to depart from this State aforesaid and to remove his personal effects therefrom as is charged in said affidavits and writ of Attachment, and this he is ready to verify, Whereupon he prays judgment of the said writ of Attachment and that the same be quashed.

Elisha Swan,

State of Illinois Pike County ss

Personally appeared before
me Elisha Swan and made oath that the above plea
by him subscribed is true in substance & fact

Sworn to and subscribed before } Elisha Swan,
me at Pittsfield this 30th day of }
December 1845 O. M. Hatch Clerk },,

The Clerk of the ^{Pike} Circuit Court will file
the above plea in abatement forthwith in the attachment
suit of Baldwin vs Swan

December 30th 1845

Hardin T. Smith

Atty for Deft.,

Copy of plea of Non Assumpsit
filed December 30th A.D. 1845
"To the April term 1846 of the Pike Circuit Court
State of Illinois Pike County &c

John Baldwin

vs

Elisha Swan

Assumpsit Damages \$2000-

And the said defendant by Hardin
& Smith his attorneys comes and defends the wrong & injury
wherein and for plea says plaintiff Actio non because
he says that he did not promise & undertake in
manner & form as the plaintiff hath above thereof
complained against him & of this he puts himself
upon the Country

Hardin & Smith & S. Parsons

Attys for Defth. "

State of Illinois Pike County ss

I O. M. Hatch Clerk of the
Circuit Court of said County hereby certify that the
above and foregoing five and a half pages contain a
full true and perfect copy of all the papers on file
in my office in those suits of trespass on the Case on
promises in which John Baldwin is Plaintiff and
Elisha Swan is defendant and of the action or suits
of Attachment in aid thereof.

In testimony whereof I subscribe
at my hand and affix the seal
of said Court at Pittsfield this
30th day of December A.D. 1845
O. M. Hatch
Clerk

Frs 21 folio Record #2,62 1/2
Certificats Blanc ~~12 1/2~~ 50 #3 12 1/2

John Baldwin
adv.

Elisha Swan
ex rel. in the case

Copy of Record

Filed the July 1846
to
Clerk
C.S.

14103

Know all men that we
Elisha Swan, principal and
Alexander Starnes, Otis Parsons, & Eben May
certify an bill & finally
bound unto Ephraim Cannon
Sheriff of the County of Pike in
the penal sum of twenty five hundred
dollars, for the payment of which
will & truly to be made, we bind
ourselves our heirs, Executors and
administrators, ~~jointly~~ jointly &
severally, & finally by these presents.

Dated this 30th day of December
in the year of our Lord eighteen
hundred & forty five -

The condition of the above obligation
is such, that whereas John Baldorne
has lately, said out ~~a certain writ~~
of the Circuit Court of ~~Pike~~ ^{Pike} County
of Pike a certain writ of Attachment
in a certain plea of Trespass on the
case ~~or~~ Proving, against the
said Elisha Swan, returnable to
the next term of said Court to be holden
at Pittsfield on the second Monday
of April next; Now if the said
Elisha Swan shall be and appear at
the said Court to be holden at Pittsfield
on the said second Monday of April
next; and in case the said Alex Starnes
Otis Parsons, & Eben May -
shall not be removed as Bail in ^{the} said
action shall put in good & sufficient
Bail, which shall be removed by the
Plaintiff, or shall be adjudged sufficient
by the Court; or the said Alexander Starnes

Otis Parsons, & Clair May

being accepted as Bail, shall pay & satisfy the costs & condemnation money, which may be awarded against the said Elisha Swan, in the plea aforesaid, or surrender the body of the said Elisha Swan in execution, in case the said Elisha Swan shall not pay & satisfy the said costs & condemnation money, or surrender himself in execution, where by law such surrender is required, then this obligation to be void; otherwise to ~~be~~ remain in full force & effect.

Dated & executed the day & year first above written

Elisha Swan (S)
Alexander Stamm (S)
Otis Parsons (S)
Clair May (S)

Copy of
Bond

Filed in the Court May 1846
E. C. W. C. W.

Know all men that we Elisha Swan prin-
cipal and Alexander Stame, Otis Parsons, James ~~the~~ Higgins,
and Eben^r. May
juralties are held and firmly bound unto Ephraim
Cannon Sheriff of the County of Pike in the penal sum
of Twenty five hundred Dollars for the payment of
which well and truly to be made we bind ourselves
our heirs, executors and administrators jointly and severally
and firmly by these presents. Dated this 30th day of
December in the Year of our Lord eighteen hundred
and Forty five — The condition of the above
obligation is such that whereas John Baldwin has
lately sued out of the Circuit Court of the County of
Pike a certain writ of Attachment in a certain plea
of Trespass on the case or Promises against the said
Elisha Swan returnable to the next term of said Court
to be holden at Pittsfield on the second Monday of Ap-
ril next: Now if the said Elisha Swan shall be and
appear at the said Court to be holden at Pittsfield on
the said second Monday of April next, and in case the
said Alexander Stame, Otis Parsons and Eben^r. May
shall not be received as Bail in the said action, shall
put in good and sufficient Bail which shall be recei-
ved by the Plaintiff, or shall be adjudged sufficient by the
Court, or the said Alexander Stame, Otis Parsons and
Eben^r. May
being accepted as Bail shall pay and satisfy the costs
and condemnation money which may be rendered a-
gainst the said Elisha Swan in the Plea aforesaid or
surrender the Body of the said Elisha Swan in exe-
cution in case the said Elisha Swan shall not
pay and satisfy the said costs and condemnation mo-
ney, or surrender himself in execution, when &

Law such surrender is required then this obligation to be void
otherwise to remain in full force and effect. -
Dated and executed the day and year first above
written.

Elisha Swanwick
Alexander Stone
Chas. Parsons
Edw. May

(A)

John Balderson
m/s Paul Brown
Charles Swanwick

John Baldwin { Attachment for \$1250
Elisha Swan } in aid of Appraisement pending
in Pike Circuit Court;

vs Ephraim Cannon Sheriff of Pike
County State of Illinois, and John Baldwin
Plaintiff in above suit -

You are hereby notified that on Friday
the 9th day of January 1846, or some day
thereafter during the present term of the
Supreme Court of the State of Illinois, now
sitting in Springfield in said State, we will
apply to said Court for a writ of Mandamus
to be issued to said Cannon as Sheriff of
said County, directing ~~directing~~ him to
accept & receive a Bail Bond executed
by said Elisha Swan as principal, and Alex-
ander Starn, Otis Parsons, & Eben May
as sureties, to said Sheriff, Dated 30th December
1845, which was tendered to him on the
day of its date, in discharge of said writ of
Attachment, & was by him refused to be
accepted and received. And further directing
the property attached to be liberated, and
that the garnishers be discharged -
December 31st 1845 -

Gardner Smith & Parsons
Attys for Swan -

We do hereby admit service of the above notice
by copy given us, this 31st December 1845 -

Wm A & J. Gresham
Attys for Plaintiff

I admit service of the above notice by copy
and also that the service on the Bail Bond

Bond Marked (A) are good, - I declined
accepting said Bail Bond under the
advice of the Attorneys of said Baldwin,
who advised me that I had no right to
accept such a Bond in discharge of
this writ of Attachment.

December 31st 1845.

E Cannon Shiff
County, Mo

State of Missouri }
Carrigannon County } in Superior Court

J J Hardin states he delivered
a copy of the above notice to W A J Gurnshaw, to
E Cannon Shiff Pike Co, & to John Baldwin petff in
sent below, on 31st December 1845. ~~And~~
At same date ~~was~~ affiant read to E Cannon the
petition of E Shaw for mandamus, & said Cannon
admitted the statements made therein, in reference
to himself & his acts, were correct. - He also
states that the Atty of said ~~J J Hardin~~ Baldwin
had notice of the entry of Appearance & pleas filed
on the 30th day of Decr 1845 at the time the Bail
Bond was in the hands of the Sheriff for him to
consider whether he would accept it & before Sheriff
refused to accept said Bond.

John J Hardin
Sworn to and subscribed before
me this 1st day of Jan'y 1846
J. J. Hardin
1846

State of Illinois

In the Supreme Court of
State of Illinois - December Term
1845 -

Elisha Swan states under
oath - That on the 27th day of December
1845 John Baldwin ~~and others~~ commenced
an action of Assumpsit against him in
the Pike Circuit Court in the state
of Illinois, alleging his damage at two
thousand dollars, and that a summons
was issued in said case which was
only served on him on the 29th day of
December 1845 - Said Baldwin at the
time of commencing said action of Assump-
sit also filed an affidavit & served out a
writ of Attachment for the sum of Twelve
hundred & fifty dollars (\$1250) in aid
of said action of Assumpsit - Said writ
of Attachment on the day it issued was
by ^{W. Garrison Sheriff of Pike County,} served on a stock of goods, wares, and
groceries, in a store in Jogganville in Pike
County, and also on ~~the~~ 21 barrels of lard,
3 Kelly, a steam machine for mending
lard, 1 pair of scales, 1 stove, a lot of salt
in 9 barrels -

which said articles of property so attached
were reasonably worth four thousand
dollars or more -

Appant further states that he is a ~~resident~~
resident of the state of Illinois County of
Pike in the state of Illinois, & has resided
in said state for two years, and that
he had not at the time of issuing said
Attachment, nor has he at present any
intention of removing himself or his

property within the limits of this State.
On the 30th day of December 1845 Applicant
executed a warrant of Attorney to Harding &
Smith, & Parsons to enter his appearance
& defend said suits brought by said Baldwin.
And on a settlement of accounts between
himself & Baldwin Applicant ~~has not~~
is not indebted to said Baldwin, ~~but~~
~~said Baldwin~~

On the 30th day of December 1845, Applicant
executed a Warrant of Attorney to Harding
& Parsons to enter his appearance
& defend said suits. ~~was~~ brought by said
Baldwin - Said Attorney did on said last
named day enter the appearance of deft
in said suits, and filed pleas in said
suits - All which proceedings in said
suits will more fully appear by reference
to the Record of the same ~~before~~ from
the Clerk of the Pike Circuit Court
wherewith shewn to this Honorable
Court -

After said appearance was entered &
pleas filed in said suits - ~~said~~ this Applicant
Attorneys of said Applicant in his presence and
at his request presented to ~~the~~ ~~Applicant~~
James Starn of Pike County, (who
had said writ of Attachment, & who had
~~secured~~ ^{executed} the same) a Bail Bond,
with said Applicant as principal, and
Alexander Starn, Otis Parsons, and
Ebenezer May as Sureties, in double
the amount of the claims of p^{ty} as
set forth in said Attachment, and

tended & offered the same to said
Sheriff in discharge of said ^{sum of \$500} ~~sum of \$500~~
Attachment. Said Sheriff ^{then stated} ~~then~~ ^{that they said} ~~that~~ ^{the}
said ^{sum} ~~sum~~ ^{was} ~~was~~ ^{examined} ~~examined~~ ^{it}, & explicitly stated
that the securities were perfectly good.
He ~~did~~ further remarked he would see the
Attornies of plaintiff upon accepting the
same - Said Sheriff after taking said
Bond & consulting with the Atty of P^t
brought the same back & refused to
~~accept~~ ^{keep} accept & receive the same
& handed it to ~~the~~ ^{the} Atty of Dept -
He further refused to liberate the property
attached, under the advice of P^t's
Atty - & said he did not consider he
was ~~affiant~~ ^{affiant} ~~state~~ ^{state} bound to
take that kind of a Bond, & would not
do it.

Affiant ~~states~~ ^{states} that the securities
on said Bond, ^{executed the same, and} are ~~held~~ ^{held} & reside
in Pike County Illinois, & are abundantly
~~able~~ ^{able} to reimburse for three times the
amount of the ^{said} Bond - - Said Paul
Bond Marked (A) is ~~in~~ ⁱⁿ ~~the~~ ^{the}
present to the court & a copy ~~is~~ ^{is}
attached.

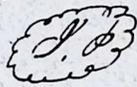
Affiant is advised that said Bond
has been executed in compliance with the
laws of this State, & that said Sheriff
ought to have received the same, & ~~should~~
liberate the property attached, & that
the securities ~~be~~ ^{should} be discharged -
He prays that a writ of ~~Attachment~~
mandamus issue to the said ~~Clerk~~
Common Sheriff of as aforesaid, directing

him to accept & receive said
Bail Bond marked (A), & to liberate
the property attached - and that the
garnishee be discharged - He further
prays that he be allowed the costs of this
suit pending, & that such further
order be made in the premises as to
this Court may seem proper -

Elisha Swan

State of Illinois }
Pike County }
Sworn to & subscribed before
me this 31st day of December 1845
J. W. Crow

J. W. Crow



Filed for the Court
Dec 31 1845
J. W. Crow

Elisha Swan
as } Motion
for Mandamus
E. Garrison Shuff
of Pike County

The People ex relatione
Elisha Swan,

vs
Cameron Sheriff

Motion for mandamus.

On the 27th of December, 1845, John Baldwin commenced an action of assumpsit in the 10th circuit court against Elisha Swan. On the same day, Baldwin filed an affidavit, in which he stated that Swan was indebted to him in the sum of \$1250, and as he verily believed, Swan intended to depart from the state, and remove his property therefrom. Baldwin gave the requisite security, and a writ of attachment was issued against the estate of Swan, in aid of the action of assumpsit. To this writ the Sheriff made return, that he had summoned certain persons as garnishees, and levied on certain articles of personal property. On the 30th of December, Swan executed a warrant of attorney empowering Hardin & Smith Esqrs, to enter his appearance in both of the actions and defend them. Hardin & Smith in pursuance of this authority, filed in the clerk's office a written appearance and plea in each of the cases. At the same time, Swan with three other persons as his securities executed a bond to the Sheriff, in the penalty of \$2500, with a condition in the form prescribed in the third section of chapter fourteen of the revised Statutes.

This bond was tendered to the Sheriff in discharge of the attachment. He admitted the securities to be good, but refused to accept it.

On this state of facts, Swan now moves the court for a mandamus commanding the Sheriff to receive the bond, and restore the property attached. Both parties have appeared and discussed the merits of the application. We are to determine it, as if the motion was for a peremptory mandamus. In deciding this question, an interpretation must be given to some of the provisions of Chapter nine, of the Revised Statutes. The chief object of this chapter is, in certain specified cases, to place the estate of the debtor under the immediate control of the law, and subject it to the payment of his debts. By the force of the writ, the plaintiff requires a qualified lien on the estate attached, for the satisfaction of his particular debt; which may become perfect when the debt is merged in a judgment. Where personal property is attached, the possession is transferred to the Sheriff. The ninth section allows the defendant to retain the possession until judgment, on his giving security that the property shall then be forthcoming. This section only relates to the possession.

The lien of the attachment as between the parties at least still subsists. The Sheriff may retake the property, on a breach of the condition of the bond. The writ still proper as a proceeding in rem. Under the twenty ninth section, the defendant may direct the lien and dissolve the attachment, by giving security for the payment of whatever judgment may be recovered by the plaintiff, within ninety days after it, rendition. When this security is given, the case ceases to be a proceeding against the estate. The property is restored, and the garnishes discharged. The writ then proceeds as if originally commenced by summons. The giving of the bond is regarded as an appearance. These are the only bonds authorized by this chapter to be given by the defendant. By the one, he retains the possession of the property till judgment; by the other, he releases it entirely from the control of the attachment.

The bond allowed by the ninth section is to be made payable to the Sheriff, who is to approve of the security. The bond authorized by the twenty ninth section may be entered into in vacation. If so, it is to be made payable to the Sheriff, and the security is to be approved by him.

If made in time, it is payable directly to the plaintiff, and the court is to approve of the security.

The bond tendered in this case is not a compliance with the provision of either of these sections - The condition is altogether different -

The fourteenth and twenty second sections of the Chapter have been referred to, as showing, that the defendant may bind himself within the operation of the general law respecting bail - In our opinion, these sections only refer to other provisions of the same Chapter, and do not contemplate the release of the estate attached, by any other mode, than the one prescribed in the twenty ninth section -

By this mode the defendant is required to give security for the absolute payment of the debt, in order to discharge the attachment; and we can hardly suppose, that the legislature intended that he might accomplish the same purpose, by merely giving security for the surrender of his person -

It was also insisted, that the provision of the Chapter, under which the bond was given, are broad enough to embrace proceedings by attachment - We cannot acquiesce in such a construction - That Chapter is solely

applicable to cases in which a
Capias ad respondendum issues in
the first instance - It has no
relation to proceedings in rem -

The application is denied,
with costs against the relator -

The People vs

vs

Cameron vs

Opinion

by Treat. J.

Filed 21st July 1846

J. P.

1846

copied & compared