

No. 13148

Supreme Court of Illinois

Watson

vs.

Ketchum

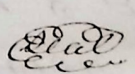
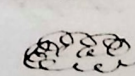
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Pleas to a Term of the Circuit
Court within and for the County
of Tazewell and State of Illinois
begun and held at the Court House
in the City of Pekin on the first
Monday of February in the year
of Our Lord one Thousand eight-
hundred and Sixty. Present the
Honorable James Harriott Judge
of the Twenty first Judicial Circuit
composed of Tazewell Mason &c

Be it remembered that on the 22nd day of
November in the year A.D. 1859 a Bond was
filed in the words and figures following
to-wit

Know all Men by these presents that
we Joel B. Ketchum and S. O. Puterbaugh of
the County of Tazewell and State of Illinois,
are held and firmly bound unto Michael
Watson of the same County and State in
the penal sum of Twenty Dollars current
money of the United States, for the payment
of which we bind ourselves, our heirs, execut-
ors and administrators, jointly, severally,
and firmly by these presents. Witness our
hands and seals this 21st day of November
A.D. 1859.

The Condition of the above obligation is such that whereas the execution numbered 1611 and bearing date the 2nd day of November A.D. 1857 issued out of the Office of Joseph L. Davis, a Justice of the Peace in and for said County in favor of the said Joel B. Ketchum and against the goods and chattels of George Outlaw for the sum of Ninety four ⁹⁴/₁₀₀ Dollars costs of suit, which execution came to the hands of E. B. Heibbard constable of said County on the 2nd day of November A.D. 1857 and was by him on the 2nd day of November A.D. 1857 levied upon the following described goods and chattels to wit one horse and other property as the property of the said George Outlaw, whereupon the said horse was claimed by the above named Michael Watson as being his own goods and chattels and as belonging of right to him, so he gave notice to the said Constable of his said claim and intention to prosecute the same according to law, And thereupon the said constable proceeded on the 21st day of November A.D. 1857 before Joseph L. Davis esq. a Justice of the Peace in and for said County to try the right of property of the Claimant, and the parties having attended at the time and place

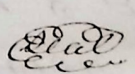
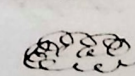
aforesaid, such proceedings were had before
 such J. P. and a jury, and that a verdict
 was found in favor of said claimant
 and against the Execution, and the said
 Joel B. Ketchum feeling himself aggrieved
 by the said verdict of the said jury prayed
 an appeal therefrom to the Circuit Court
 of the County of Tazewell State of Illinois
 and tendered said S. D. Ruterbaugh as his
 security in the appeal bond which is accep-
 ted and approved by the Clerk of said Cou-
 -rt. Now if the said Joel B. Ketchum shall
 will and truly prosecute his said appeal
 to effect and doth pay or cause to be paid
 all costs that have accrued or may accrue
 on said appeal, if judgment shall be
 given against him in the said Circuit
 Court of Tazewell County Illinois on the
 trial of said appeal, then the above oblig-
 -ation to be void and of no effect, otherwise
 to be and remain in full force and
 virtue.

J. B. Ketchum 
 S. D. Ruterbaugh 

The above Bond is approved
 by me this 22^d day of Nov
 A.D. 1857

Merrill Le Young Clerk

aforesaid, such proceedings were had before
 such J. P. and a jury, and that a verdict
 was found in favor of said claimant
 and against the Execution, and the said
 Joel B. Ketchum feeling himself aggrieved
 by the said verdict of the said jury prayed
 an appeal therefrom to the Circuit Court
 of the County of Tazewell State of Illinois
 and tendered said S. D. Ruterbaugh as his
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 trial of said appeal, then the above oblig-
 -ation to be void and of no effect, otherwise
 to be and remain in full force and
 virtue.

J. B. Ketchum 
 S. D. Ruterbaugh 

The above Bond is approved
 by me this 22^d day of Nov
 A.D. 1857

Merrill Le Young Clerk

And now afterwards to-wit on the 22nd day of November in the year A. D. 1857 there was issued a Supercedeas in the words and figures following to-wit

State of Illinois }
 Layswell County } ^{a justice of the Peace} The People of the State
 of Illinois to Joseph L. Davis, and E. B. Heibbard a Constable in and for the said County. - Greeting =

Whereas an execution having issued on a judgment rendered in a suit lately pending & determined before you, said Joseph L. Davis a justice of the peace in and for said County, wherein Joel B. Kitchens is plaintiff and George Outlaw defendant for the sum of Ninety four & ⁶⁷/₁₀₀ Dollars debt and costs of suit from the docket of said justice of the Peace which said execution came to the hands of you, the said E. B. Heibbard Constable in and for said County, and by you levied upon one horse as the property of said George Outlaw. Whereupon the said property was claimed by Michael Watson as being his own goods & chattels, as belonging of right to him the said Michael Watson who gave notice to you the said E. B.

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Heibbard constable of his said claim
& intention to prosecute the same according
to law

Then upon to wit on the 21st day of
November A.D. 1854. you the said E.B.
Heibbard constable did proceed before J.L.
Davis Esq a Justice of the Peace in and for
Lazavill County, aforesaid to try the right
of said property. wherein such proceedings
were had before you said J.L. Davis Esq
Justice of the Peace aforesaid, and a jury
that a verdict was found for said Michael
Watson, claimant and against said ex-
ecution.

Then upon the said Joel B
Ketchum feeling himself aggrieved by
the verdict of said jury aforesaid/prayed
an appeal therefrom, to the circuit Court
of Lazavill in the State of Illinois, and
has given bond with security to the said
Michael Watson, Claimant for the due
prosecution thereof according to law.

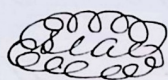
Which said Bond is filed as of Record
in the clerks Office of said circuit Court.

We therefore command and
enjoin you the said Joseph L. Davis
and E.B. Heibbard, so being Justice &
Constable, as aforesaid, that you do inter-
-ly supersede, and desist from Proceeding

to any farther in said suit and that you do forthwith suspend all proceedings in relation thereto, & cease from molesting the said Joel B. Kitchens in any wise on that account until the said Circuit Court shall make other order to the contrary.

And this you are in no wise to omit at your peril.

Witness Merrill L. Young
Clerk of the Circuit Court of Tazewell
County and the Judicial seal thereof
at Pekin this 22^d day of Nov-
ember A.D. 1857 =



Merrill L. Young Clerk
By S.W. Stone Deputy clk

To the Sheriff of Tazewell County to
execute

And now afterwards to wit
on the 27th day of December A.D. 1857 said
supersedeas was returned with the fol-
lowing endorsement thereon to wit

State of Illinois }
Tazewell County }
I have duly served the }
within by reading the same to } each one of
named Joseph L. Davis & E. B. Heibbard this }
first day of December A.D. 1857 J. C. Neene Siff J.C.
By J. B. Neene Deputy

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And now afterwards to wit on
the 30th day of November A.D. 1859 a sum-
mons was issued in the words and
figures following to-wit

State of Illinois }
Laywell County }^{ss} The People of the State
of Illinois To the Sheriff of said County
- Greeting - We command you that
you summon Michael Watson if
he shall be found in your County person-
ally to be and appear before the circuit-
Court of said County on the first ~~Monday~~
of the next term thereof, to be held at the
Court-house in Pekin in said County on
the first Monday of February next to pros-
ecute his suit against Joel B. Kitchens
lately appealed from before Joseph L. Davis
Esq. And have you then and there this
writ with an endorsement thereon in
what manner you shall have executed
the same - Witness Merrill C. Young Clerk
of said ~~Circuit~~ Court and the seal
thereof at the City of Pekin this
30th day of November A.D. 1859

Seal

Merrill C. Young Clerk Circuit Court

By S. W. Stone Deputy

And now afterwards to wit on

8 the 27th day of December said summons was returned with the following endorsement thereon to wit

State of Illinois }
Lazwell County } I have duly served the
within by reading the same to Michael
Watson this first day of December A.D. 1859

J. C. Reers Sheriff J.C.

By J. B. Reers Depty

And now afterwards to wit at a Term of the Circuit Court begun and held at the Court-House in the City of Pekin within and for the County of Lazwell and State of Illinois on the first Monday of the Month of February in the Year of our Lord One Thousand Eight Hundred and Sixty Present. The Honorable James Harriott Judge Hugh Fullerton Esq Prosecuting Attorney J. C. Reers Sheriff and Merrill & Young Clerk the following proceedings were had in said Court to wit

Michael Watson ³ appeal.
 Joel B Ketchum ³ trial of rights of
 Property.

Now on this day Come
 as well the Plaintiff, by his attorney, James
 Roberts, as the Defendant, by his attorney
 G. D. Puterbaugh, Whereupon came
 a Jury of twelve good and lawful
 men to wit: Peter Randolph, J. Gordon Bailey,
 John Fillikin, John B. Orr, J. D. Darnell,
 D. S. Risinger, Nathan C. Shaw, J. C. Tydelott
 John Harbison, A. Champion, S. B. Hardman
 + Elias Falor, duly elected tried and
 sworn, who, having heard the proofs
 and allegations of the Parties and
 the Argument of Counsel thereon, for
 Verdict say, We the jury agree that the
 right of Property is vested in Watson.

It is therefore ordered
 and adjudged by the Court that the
 Plaintiff recovers of said Defendant the
 Costs and Charges by him about his
 suit expended, and that Execution
 issue therefor.

Thereupon the Defendant
 entered his motion for a new trial
 of this Cause, which said motion is
 by the Court over-ruled.

Bill of Exceptions

State of Illinois } In Circuit Court
 Jaywell County } February Term 1860

Michael Watson }
 =vs= } Bill of Exceptions
 Joel B. Ketchum }

Be it remembered that upon the trial of this cause, which was an appeal from the trial of the right of property before a justice and constable=

The plaintiff or claimant then called E. B. Hebbard, said that he was constable of Jaywell County. That he tried the execution following to wit

" State of Illinois }
 " Jaywell County } ss The People of the State of
 " } Illinois Do any constable
 " of said County - Greeting - We command
 " you that of the goods and chattels of George
 " W. Outtaw in your County, you make the
 " sum of Thirty four Dollars and 67 cents
 " debt and one Dollar and 30 cents cost
 " which J. B. Ketchum assignee of Porter & Bro
 " lately recorded before me in a certain
 " plea against the said Geo W. Outtaw and
 " Venof make due return to me within

" servuty days from this date-

" Given under my hand and
" seal this 2nd day of Novmbr 1859

" J. L. Davis J. P. *J. L. Davis*
" which said Execution was
Endorsed as follows

" Recd this Ex this 2nd Nov 1859 at 9 o'clock
" Am. E B Heibbard Const

" By virtue of this Ex I have seized
" on one large bay horse, one Black snip's face
" one Iron Axel Wagon also one log wagon
" in the hands or possession of Dunham
" on two horse sled, one large shawl /elov.,
" one spade This Nov 2nd 1859 E. B. Heibbard Const.
" Returned no other property found to make
" this demand Trial of Rights of horses before
" Justice & appealed to court to await decision
" Jan'y 12th 1860. E. B. Heibbard Const

on a horse, the horse in question that
the claimant gave the Constable the foll
owing notice.

To E. B. Heibbard Constable
Sir I hereby claim property in the foll-
owing chattels, to wit One Brown Horse
about thirteen years old seized upon by
you by virtue of an execution issued by J.
L Davis Esquire a Justice of the peace of
Lazewell County and to you delivered in

favor of Joel B. Ketchum or for his benefit against the goods and chattels of George Outlaw. And I intend to prosecute my claim to the same according to the Statute in such case made and provided.

Dated this 17th day of Nov A.D. 1859

Michael Watson

The witness then stated that he had seen the horse in question in possession of Outlaw the defendant in execution before the execution was issued, and that it was in the possession of Outlaw at the time of the levy.

The plaintiff then called Joseph Watson who stated that sometime in August 1859 Michael Watson had sold the horse in question for eighty dollars for which Michael Watson had taken the note of Outlaw which was due about the 16th of October 1859. That Outlaw could not pay the note, and that Outlaw then told Michael Watson to take the horse back and destroy the note, and Watson agreed to do so. They then after some chatting between the parties agreed that the sale should be rescinded, and that Watson should destroy the note, and Outlaw should keep the horse and if he paid.

Watson eighty dollars by the first of February following. then Outlaw was to own the horse, and if Outlaw failed to pay for the horse by that time, the horse was to be Watson's property. and at his risk. Watson did not take possession of the horse but it still remained in the possession of Outlaw. Outlaw never paid for the horse.

The plaintiff then called William Watson who stated that the condition upon which Outlaw was to have the horse was the same as stated by Joseph Watson, and that he saw the note destroyed, prior to the time the execution was issued then was a conversation between several persons in Kitchens presence when the conditions of the sale was spoken of - he thinks Kitchens heard the conversation, - at that time they were joking about the matter - Witness is a brother of Plaintiff

The Defendant then called Austin Richmond who stated that in August of 1859 he had a conversation with the plaintiff - that plaintiff was owing witness and that he asked him for pay - when plaintiff told him that he had sold outlaw a horse, and that Outlaw was owing him - and told

Witness to go to Outlaw and get flour and have it charged to plaintiff - and that witness did get flour and had same charged to Plaintiff. =

Plaintiff then recalled William Watson who stated that the flour got by witness Richmond was after the execution was issued and after the property had been levied upon by the Officer - settled for by outlaw by an account Plaintiff had against Outlaw for Board - William Watson further stated that before the execution was issued he was at work for Outlaw and boarded at Plaintiff's. That Outlaw was to pay for the board, and that it was agreed that the flour got by Richmond was after execution issued settled for in that way. =

Defendant offered to show that Outlaw was averse to his recovery which the Court refused to allow, to which ruling Defendant there and then excepted.

This was all the evidence given. The Plaintiff then asked the Court to give the following instruction which was refused.

If the jury believe from

the evidence that Outlaw got the horse in question from Watson on the condition that it should not be the property of Outlaw until it was paid for, and that Outlaw did not pay for it, and that Ketchum had notice of the condition of the contract before the Execution was issued they will find for the plaintiff.

The Defendant then asked for the following instructions which were refused and to which ruling the defendant excepted

The Court instruct the jury that if they believe from the evidence that Michael Watson sold the horse in question to George W. Outlaw and delivered the possession, upon condition, that if Outlaw paid for the horse by a certain date that it was to be Outlaw's horse and that if Outlaw neglected to pay for the same by the time specified it was to be Watson's, and that said conditional sale was not recorded, according to law that such conditional sale is fraudulent and void as to creditors and subsequent purchasers and they will find for the defendant.

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2 The court instruct the jury that unless a conditional sale of personal property is recorded the same is absolutely void as to creditors notwithstanding that the creditor may have had notice in some other way of such conditional sale,

And the following instruction which was given

The Court instruct the jury that possession of Personal property should accompany and follow the title or a sale will be void as to creditors unless the terms of such sale are duly recorded.

The case was submitted to the jury who returned the following verdict

We the jury agree that the right of property is vested in Watson

John C. Aydelott
as firmman

The defendant then moved for a new trial which motion is in the words and figures following to wit

State of Illinois } Circuit Court
Jopwell County } February Term 1860

Michael Watson }

vs
Jas B Ketchum } and now comes the

1st Defendant moves the court for a new trial for the following ~~causes~~

1st The verdict of the jury is contrary to the evidence and the instructions of the court

2nd The Court refused proper instructions asked for by the defendant

Which motion was overruled to which defendant excepted, and now prays this bill of exceptions to be signed and sealed which is done

J. Hearriott *clerk*

State of Illinois } Circuit Court
Lazarell County } February Term 1860

Michael Watson }
-vs- }
Jarl B. Ketchum }

It is agreed by the parties to this suit, that this cause may be taken to Supreme Court at Ottawa & tried at April Term 1860, and the parties waive all process from Supreme Court.

James Roberts for Plff
S.D. Puterbaugh for Dft

State of Illinois } ss
Tazewell County }

I Merrill C Young Clerk
of the Circuit Court within and for the
County of Tazewell, do certify that the
foregoing seventeen pages contain a true
perfect & complete Record of the Proceedings
had in the Cause therein named
as the same appears of record in
my office

Witness my hand and
and the Seal of said Court
hereto affixed at Pekin
this 2nd day of March A.D.
1860

Merrill C Young Clerk

And now comes the said Joel B. Ketchum
and says that in the records and
proceedings aforesaid manifest errors have
intervened in this to wit:

- 1st The Court erred in refusing instructions
asked for by Defendant below.
- 2 The Court erred in refusing new trial.
- 3 ~~The record show that~~

S. D. Buterbaugh
for Plff.

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Michael Watson
or Deft in Error
Joel B. Ketchum
~~Plff in Error~~

Transcript

Filed Apr. 18. 1860.
S. Deland
Clk.

\$5.00. Clk.

S. D. Puterbaugh
for Plff in Error