No. 13223

Supreme Court of Illinois

Deere

vs.

Chapman

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

No. 215.

Deed
to
Chapman

1861

Papers

215

SUPREME COURT OF ILLINOIS,

APRIL TERM, A. D., 1861.

Filed Apr 16, 1861
H. Leland
Clerk

JOHN DEERE vs. JAMES CHAPMAN.

ARGUMENT FOR DEFENDANT IN ERROR.

Argus Print.

SUPREME COURT OF ILLINOIS,

April Term, A. D., 1861.

JOHN DEERE,
vs
JAMES CHAPMAN.

Argument for Defendent in Error.

Whether, may a debtor residing in this state, being a householder, and the head of a family, exempt from forced sale for debts contracted since the fourth day of July, A. D., 1851, the lot of ground whereon, with his family, he resides, when the fee in the premises is in the wife?

This is the only question presented in this case; we say the only question; it was, at least, the only question presented in the court below; and this being decided in the affirmative, it will, we conceive, be difficult for the ingenuity of counsel to discover in the record any other ground for the reversal of the judgment.

To the solution of this question, a construction of the first section of the Homestead Exemption Law is necessary.

This section prescribes, as one of the requisites to the exemption, that the premises, in respect to

which it is claimed, should be "owned by the debtor."

Now, there may be various kinds of ownership in lands. It is said (1 Inst., 345,) that "title is the means whereby the owner hath the just possession of his property,"—so that the owner of lands is he who hath the title,—or he in whom the estate rests.

But the estate may be either in possession or in expectancy. As regards the time of enjoyment, however, it can not be questioned that the estate of the debtor in the premises, sought to be exempted, must be an estate in possession, for the exemption extends to and protects only this.

But as respects the quantity of interest, the estate may be either in fee for life, for yesrs, or at will, and as many different estates as there are in land, so many distinct species of ownership, and so many different owners are there.

The fee may be in one, an estate for life in another, and under him, an estate for years in a third, and each of these may be, in some sense, said to be the owner of the land—each according to the estate which he has.

Nor is one in the possession of lands any less the owner thereof because his estate may be determined by the lapse of time; or because, upon his demise, it is limited to another than his natural heir; for whatever may be the prospective rights of others, he, for the present, "has the dominion of the thing to the exclusion of all other persons," which, after all, is the true definition of an owner.

Bouv. Law Dict. in verb.

Tenant for years is, during his term, the absolute owner of his tenement. Neither the lord, nor any

third person, may, without his consent, enter thereon.

And if a trespass be done, even to the injury of the reversion, an action therefor must be brought in the tenant's name, and not in the name of the lord, for the tenant is the owner.

Com. Dig., Trespass B. 3.
1 Taunt. R., 190.
7 Term R., 9.
Cambell vs. Arnold, (1 T. R., 511.)

And the estate of one having a bare possession, or of a tenant for years, is one which may, both at common law and under our statute, be taken in execution.

Switzer et al vs. Skiles et al, 3 Gilm. 533.
1 Johns., Cas 153.
3 Caine., 188.
10 Johns., 223.
18 Idem 95.
LaSalle Manu. Co. vs. Ottawa, (16 Ills., 416.)

And this is true of the estate of a husband in the lands of his wife, the alleged estate of the defendant here.

Brown vs. Gale, 5 N. H. R,, 416.

So then, although he who hath the fee in lands is the owner, in a larger sense, than a tenant for life, or tenant for years, yet, notwithstanding, tenant for life and tenant for years, in possession, may have been intended in this statute equally with tenant in fee.

Whether, then, should these words of the statute be received in an enlarged sense, so as to include all of these several estates; or, in the more restricted sense contended for by counsel for plaintiff in error,

third person, may, without his consent, enter thereon.

And if a trespass be done, even to the injury of the reversion, an action therefor must be brought in the tenant's name, and not in the name of the lord, for the tenant is the owner.

Com. Dig., Trespass B. 3.
1 Taunt. R., 190.
7 Term R., 9.
Cambell vs. Arnold, (1 T. R., 511.)

And the estate of one having a bare possession, or of a tenant for years, is one which may, both at common law and under our statute, be taken in execution.

Switzer et al vs. Skiles et al, 3 Gilm. 533.
1 Johns., Cas 153.
3 Caine., 188.
10 Johns., 223.
18 Idem 95.
LaSalle Manu. Co. vs. Ottawa, (16 Ills., 416.)

And this is true of the estate of a husband in the lands of his wife, the alleged estate of the defendant here.

Brown vs. Gale, 5 N. H. R,, 416.

So then, although he who hath the fee in lands is the owner, in a larger sense, than a tenant for life, or tenant for years, yet, notwithstanding, tenant for life and tenant for years, in possession, may have been intended in this statute equally with tenant in fee.

Whether, then, should these words of the statute be received in an enlarged sense, so as to include all of these several estates; or, in the more restricted sense contended for by counsel for plaintiff in error,

so as to include only the estate of him who is the owner to every intent and purpose?

Now, if the words of a statute may have two meanings, the one strict, the other more enlarged, and, if taken in the enlarged sense, the statute operates harshly, or unequally, the words should be taken in the more strict sense; for it ought not be presumed that the legislature intended a wrong.

But, on the contrary, if the words of the statute may be received in two senses, the one strict, the other enlarged, and if the statute be for the correction of defects in the law previously existing, and beneficial, or, as the term is, remedial, in its operation, certainly the words should be taken in the enlarged sense, so that the statute may include in its benefits as many subjects, persons or classes as the words will admit of.

The purpose of this statute, as expressed in its title, was to "Exempt Homesteads from Sale on Execution." The Bill of Rights has declared that the right to life is inalienable; as a corallary to this proposition, it may be asserted that every one has an inalienable right in that which is necessary to the support of life; and, as in civilized societies, at least, a habitation, of some quality, is one of the absolute necessities of life to every household, it follows, then, that any householder has an inalienable right to some sufficient habitation. But in this respect, the law, as it stood before, gave the debtor, whatever might be his merits or his misfortunes, no protection. This statute was intended to remedy this defect in the former law; it is therefore a remedial statute, and, as such, is to be most liberally con-

strued so as to advance the remedy and suppress the evil.

Will it suffice to say that the statute is in derogation of the common law, and is, therefore, to be strictly construed? Is not every statute either an addition to the previously existing law, or a repeal of some of its provisions?

Is there any reason why the legislature should discriminate between him who has the fee in the land, and the owner of some less estate? Is not the reason and necessity for the exemption the same in either case?

Permit us to refer to an authority precisely, as we conceive, in support of the construction for which we are contending:—

A statute of Mississippi provides that "Every free white citizen of this state ..... being the head of a family, shall be entitled to own, hold and possess, free and exempt from sale, by virtue of any judgment founded on any contract ..... one hundred and sixty acres of land." In Johnson vs. Richardson, (33 Miss., 464,) the question presented was whether the interest of a tenant for years could be exempted under this statute; the court say,—"The manifest object of the legislature was to secure the head of a family in the possession and enjoyment of a sufficient quantity of his own land for the maintainance of himself and family, ... these objects could not be fully attained unless we so construe the act as to extend the exemption to all cases, in which the head of a family might own, hold and possess any estate in lands which theretofore was subject to levy and sale under execution. ..... We are clearly of

the opinion that any person holding an interest in lands, for years, for life, or any greater estate of freehold, and coming within the conditions of the statute is entitled to the provisions therein named."

Now, this statute is not materially different, even in its phraseology, from our own; its requirements, so far as the debtor's estate in the lands is concerned, are the same; it provides that the debtor may "own and possess;" he must therefore "own" the homestead to entitle him to "possess" it. The same construction, therefore, should be given to both statutes. So in Massachusetts, an act passed, in 1786, defining the manner in which town ways might be laid out, provided that the "owner of the land," over which the location was made, might recover of the town a reasonable compensation. The term owner here was held to include the tenant for years.

Ellis et al vs. Welch, (6 Mass. R., 250.)

In Walters vs. The People, (18 Ills., 194,) your Honors held that, to give the exemption, the homestead need not at all times be in the occupation of the debtor, although, in the strict sense of the words used, such is the plain requirement of the statute. And so we understand the case of Kitchell vs. Burgwin et al., (21 Ills., 41,) and the case of Vansant vs. Vansant, (23 Ills., 526,) to be examples of the application of the same rule of liberal construction. In both of these, the satute is taken in such sense as most to enlarge its benefits.

In the court below the construction which this court has put upon the word "owner," in "An act to prevent trespasses by cutting timber," (Rev.

Stat. 1845, C. 104, Sec. 1,) was relied upon in support of the position assumed by the other side. But who cannot distinguish between these statutes? The one is certainly penal; the other, if there be any meaning in the term, is most highly remedial.

Counsel for the plaintiff in error also cited, in the Circuit Court, the case of Wisner vs. Farnham, (2 Mich. Rep.) It will be seen, by a reference to that case, that the court simply decided there that Farnham was not entitled to the exemption, because, at the time of the levy, he was neither owner nor occupant of the premises claimed; and what particular estate was requisite to bring the debtor within the statute, was not considered; that case was also entirely different from the one at bar, for while, even upon the state of facts offered to be shown by the plaintiff, the defendant here has an estate for his own life in this land; the defendant in that case had no legal estate whatever, in the lands then in controversy.

Moreover, there was no proof in the record in that case that the debtor had taken the preliminary steps required by the statute; and, for this reason, as well as upon the ground before mentioned, the court held that he was not entitled to the exemption.

If, however, that case is to be considered an autority for the position assumed by counsel upon the other side; it is certainly a departure from all the established rules of construction, and should, for that reason, be disregarded:—for, in every view, whether we consider the words used, or the context, or the subject matter of the law, or the reason and spirit of it, or the respective effects and conse-

quences of the different constructions contended for, it is most clear that the legislature intended to include in this exemption whatever legal estate, in possession, debtor might have in the land occupied as a homestead.

We respectfully submit that the judgment of the Circuit Court ought to be affirmed.

Chapman Nuckols
Attys for Defendant

213

SUPREME COURT OF ILLINOIS,

APRIL TERM, A. D., 1861.

Filed Apr 16. 1861

X. Leland

JOHN DEERE vs. JAMES CHAPMAN.

ARGUMENT FOR DEFENDANT IN ERROR.

Argus Print.

SUPREME COURT OF ILLINOIS,

April Term, A. D., 1861.

JOHN DEERE,
vs
JAMES CHAPMAN.

Argument for Defendent in Error.

Whether, may a debtor residing in this state, being a householder, and the head of a family, exempt from forced sale for debts contracted since the fourth day of July, A. D., 1851, the lot of ground whereon, with his family, he resides, when the fee in the premises is in the wife?

This is the only question presented in this case; we say the only question; it was, at least, the only question presented in the court below; and this being decided in the affirmative, it will, we conceive, be difficult for the ingenuity of counsel to discover in the record any other ground for the reversal of the judgment.

To the solution of this question, a construction of the first section of the Homestead Exemption Law is necessary.

This section prescribes, as one of the requisites to the exemption, that the premises, in respect to

which it is claimed, should be "owned by the debtor."

Now, there may be various kinds of ownership in lands. It is said (1 Inst., 345,) that "title is the means whereby the owner hath the just possession of his property,"—so that the owner of lands is he who hath the title,—or he in whom the estate rests.

But the estate may be either in possession or in expectancy. As regards the time of enjoyment, however, it can not be questioned that the estate of the debtor in the premises, sought to be exempted, must be an estate in possession, for the exemption extends to and protects only this.

But as respects the quantity of interest, the estate may be either in fee for life, for yesrs, or at will, and as many different estates as there are in land, so many distinct species of ownership, and so many different owners are there.

The fee may be in one, an estate for life in another, and under him, an estate for years in a third, and each of these may be, in some sense, said to be the owner of the land—each according to the estate which he has.

Nor is one in the possession of lands any less the owner thereof because his estate may be determined by the lapse of time; or because, upon his demise, it is limited to another than his natural heir; for whatever may be the prospective rights of others, he, for the present, "has the dominion of the thing to the exclusion of all other persons," which, after all, is the true definition of an owner.

Bouv. Law Dict. in verb.

Tenant for years is, during his term, the absolute owner of his tenement. Neither the lord, nor any

third person, may, without his consent, enter thereon.

And if a trespass be done, even to the injury of the reversion, an action therefor must be brought in the tenant's name, and not in the name of the lord, for the tenant is the owner.

Com. Dig., Trespass B. 3.
1 Taunt. R., 190.
7 Term R., 9.
Cambell vs. Arnold, (1 T. R., 511.)

And the estate of one having a bare possession, or of a tenant for years, is one which may, both at common law and under our statute, be taken in execution.

Switzer et al vs. Skiles et al, 3 Gilm. 533.
1 Johns., Cas 153.
3 Caine., 188.
10 Johns., 223.
18 Idem 95.
LaSalle Manu. Co. vs. Ottawa, (16 Ills., 416.)

And this is true of the estate of a husband in the lands of his wife, the alleged estate of the defendant here.

Brown vs. Gale, 5 N. H. R,, 416.

So then, although he who hath the fee in lands is the owner, in a larger sense, than a tenant for life, or tenant for years, yet, notwithstanding, tenant for life and tenant for years, in possession, may have been intended in this statute equally with tenant in fee.

Whether, then, should these words of the statute be received in an enlarged sense, so as to include all of these several estates; or, in the more restricted sense contended for by counsel for plaintiff in error,

so as to include only the estate of him who is the owner to every intent and purpose?

Now, if the words of a statute may have two meanings, the one strict, the other more enlarged, and, if taken in the enlarged sense, the statute operates harshly, or unequally, the words should be taken in the more strict sense; for it ought not be presumed that the legislature intended a wrong.

But, on the contrary, if the words of the statute may be received in two senses, the one strict, the other enlarged, and if the statute be for the correction of defects in the law previously existing, and beneficial, or, as the term is, remedial, in its operation, certainly the words should be taken in the enlarged sense, so that the statute may include in its benefits as many subjects, persons or classes as the words will admit of.

The purpose of this statute, as expressed in its title, was to "Exempt Homesteads from Sale on Execution." The Bill of Rights has declared that the right to life is inalienable; as a corallary to this proposition, it may be asserted that every one has an inalienable right in that which is necessary to the support of life; and, as in civilized societies, at least, a habitation, of some quality, is one of the absolute necessities of life to every household, it follows, then, that any householder has an inalienable right to some sufficient habitation. But in this respect, the law, as it stood before, gave the debtor, whatever might be his merits or his misfortunes, no protection. This statute was intended to remedy this defect in the former law; it is therefore a remedial statute, and, as such, is to be most liberally con-

strued so as to advance the remedy and suppress the evil.

Will it suffice to say that the statute is in derogation of the common law, and is, therefore, to be strictly construed? Is not every statute either an addition to the previously existing law, or a repeal of some of its provisions?

Is there any reason why the legislature should discriminate between him who has the fee in the land, and the owner of some less estate? Is not the reason and necessity for the exemption the same in either case?

Permit us to refer to an authority precisely, as we conceive, in support of the construction for which we are contending:—

A statute of Mississippi provides that "Every free white citizen of this state ..... being the head of a family, shall be entitled to own, hold and possess, free and exempt from sale, by virtue of any judgment founded on any contract ..... one hundred and sixty acres of land." In Johnson vs. Richardson, (33 Miss., 464,) the question presented was whether the interest of a tenant for years could be exempted under this statute; the court say,—"The manifest object of the legislature was to secure the head of a family in the possession and enjoyment of a sufficient quantity of his own land for the maintainance of himself and family,... ..... these objects could not be fully attained unless we so construe the act as to extend the exemption to all cases, in which the head of a family might own, hold and possess any estate in lands which theretofore was subject to levy and sale under execution. ..... We are clearly of

the opinion that any person holding an interest in lands, for years, for life, or any greater estate of freehold, and coming within the conditions of the statute is entitled to the provisions therein named.

Now, this statute is not materially different, even in its phraseology, from our own; its requirements, so far as the debtor's estate in the lands is concerned, are the same; it provides that the debtor may "own and possess;" he must therefore "own" the homestead to entitle him to "possess" it. The same construction, therefore, should be given to both statutes. So in Massachusetts, an act passed, in 1786, defining the manner in which town ways might be laid out, provided that the "owner of the land," over which the location was made, might recover of the town a reasonable compensation. The term owner here was held to include the tenant for years.

Ellis et al vs. Welch, (6 Mass. R., 250.)

In Walters vs. The People, (18 Ills., 194,) your Honors held that, to give the exemption, the homestead need not at all times be in the occupation of the debtor, although, in the strict sense of the words used, such is the plain requirement of the statute. And so we understand the case of Kitchell vs. Burgwin et al., (21 Ills., 41,) and the case of Vansant vs. Vansant, (23 Ills., 526,) to be examples of the application of the same rule of liberal construction. In both of these, the satute is taken in such sense as most to enlarge its benefits.

In the court below the construction which this court has put upon the word "owner," in "An act to prevent trespasses by cutting timber," (Rev.

Stat. 1845, C. 104, Sec. 1;) was relied upon in support of the position assumed by the other side. But who cannot distinguish between these statutes? The one is certainly penal; the other, if there be any meaning in the term, is most highly remedial.

Counsel for the plaintiff in error also cited, in the Circuit Court, the case of Wisner vs. Farnham, (2 Mich. Rep.) It will be seen, by a reference to that case, that the court simply decided there that Farnham was not entitled to the exemption, because, at the time of the levy, he was neither owner nor occupant of the premises claimed; and what particular estate was requisite to bring the debtor within the statute, was not considered; that case was also entirely different from the one at bar, for while, even upon the state of facts offered to be shown by the plaintiff, the defendant here has an estate for his own life in this land; the defendant in that case had no legal estate whatever, in the lands then in controversy.

Moreover, there was no proof in the record in that case that the debtor had taken the preliminary steps required by the statute; and, for this reason, as well as upon the ground before mentioned, the court held that he was not entitled to the exemption.

If, however, that case is to be considered an autority for the position assumed by counsel upon the other side; it is certainly a departure from all the established rules of construction, and, should, for that reason, be disregarded:—for, in every view, whether we consider the words used, or the context, or the subject matter of the law, or the reason and spirit of it, or the respective effects and conse-

quences of the different constructions contended for, it is most clear that the legislature intended to include in this exemption whatever legal estate, in possession, debtor might have in the land occupied as a homestead.

We respectfully submit that the judgment of the Circuit Court ought to be affirmed.

Chapman & Jackson
Attys for Defendant

IN THE SUPREME COURT OF ILLINOIS,

APRIL TERM, A. D., 1861.

JOHN DEERE,
vs
JAMES CHAPMAN.

ARGUMENT OF COUNSEL FOR PLAINTIFF IN ERROR.

MAY IT PLEASE YOUR HONORS—

This was an action of ejectment by the plaintiff in error, against defendant in error, in the Rock Island Circuit Court, for a lot in the Village of Moline, the plaintiff claiming therein an estate for the life of the defendant. On the trial, in the Court below, the plaintiff produced title to himself by means of a judgment rendered in his favor in that Court, and against defendant,—an execution issued thereon,—a levy upon, and sale of the property in question, under that execution,—and a Sheriff's deed to himself; these proceeding being in all things regular.

The defendant set up in bar of the action the "Act to Exempt Homesteads from Sale on Execution," and it must be conceded that, of itself, the proofs produced by him constitute a complete defence. To rebut this evidence, however, the plaintiff offered to show that, at the time of the levy and sale, the fee of the close in question was in the defendant's wife, and that the estate of the defendant therein was only for his own life.

The Court excluded this evidence, and this is assigned for error.

The only question presented by this record is, what is the proper construction of the first Section of the Homestead Exemption Law; to what cases does it extend; who are entitled to its benefits?

That Section, so far as necessary to be cited, is as follows:—"In addition to the property now exempt by law from sale under execution, there shall be exempt from levy and forced sale, under any process or order of any Court of law or equity in this

State, for debts contracted from and after the fourth day of July, A. D., 1851, the lot of ground and the buildings thereon occupied as a residence, and owned by the debtor, being a householder, and having a family, to the value of one thousand dollars."

Now, if your Honors please, it is a safe rule of construction, and the only safe one, that the words of a Statute, when unambiguous, should be taken in the ordinary, natural, and most commonly received sense; indeed, where the words are of themselves clear and certain, the application of any other rule would be but judicial legislation; and although Courts have, in times past, gone about to find pretexts upon which to avoid the plain requirements of Statutes of supposed questionable policy, or to extend the benefits of those deemed favorable in their operation; yet, with respect be it spoken, this is an assumption of power which ought never to be indulged in.

In such cases, where no uncertainty arises upon the text of the law, the interposition of CONSTRUCTION is both impertinent and dangerous.

Now, what can be more plain than the language of this section? The property claimed as exempt must be "OWNED BY THE DEBTOR." Can there be any doubt as to what, in the common acceptation, is the meaning of the words? They certainly convey the idea of absolute property. Broader language, except through the medium of some circumlocution could scarcely have been adopted. It is inconceivable that a thing should be OWNED by one person, and also that another should have title thereto; for although different INTERESTS in the same subject matter, may be owned by different persons, yet to the thing itself, there can be but one title, and one owner.

But admitting, for the sake of the argument, that in this section there is room for construction, the question arises, what is the proper rule of construction to be applied?

Certainly, it would seem a Statute, such as this, giving new rights, and immunities, and one of, to say the least, doubtful policy, ought not, by construction, to be extended beyond the plain import of the terms used.

Statutes in derogation of the common law are always to be construed strictly, as against those seeking advantage of them. Co. Inst. B., L. 3, §485.

And this rule of construction has been applied to Statutes of such undoubted necessity as the Statute of Frauds. Hicks vs. Whitmore, (12 Wend., 584); Goelet vs. Cowdrey, Duer, 132); Sedgwick on Stat. Law, p. 310, and the Statute of Limitations; Allen vs. Miller, (17 Wend., 202); McIver vs. Ragar, (2 Wheat,, 25); Dozier vs. Ellis, (28 Miss., 734.)

The very class of Statutes now under consideration has been held subject to the rule.

Thus, in New York, where, by a special enactment, the TEAM of the debtor was exempted from sale on execution, it was sought, by a reference to other Statutes of that state, IN PARI MATERIA, to include in this exemption the necessary food for the team; and the argument that without indulging in this implication the exemption which was express, would be rendered nugatory, was certainly one of great weight. But the Court held that the Statute, being like all of its class, in derogation of the

common law, could not, by any implication, be extended. Rae vs. Alter, (5 Denio, 119.)

So in California, it has been held that the Homestead Exemption Law could not be set up, by one of several tenants in common, in occupation of the common property. Reynolds vs. Pickley, (6 Cala., 165); Giblin vs. Jourdan, (Ibid., 416.)

In Michigan, the Statute provided "that a homestead, consisting of any quantity of land, not exceeding forty acres, and the dwelling house thereon, OWNED AND OCCUPIED by any resident of this State," shall not be subject to forced sale on execution," etc.

In the case of Wisner vs. Farnham, this statute came in question; that case was as follows: Prior to June 6th, 1849, J. S. Farnham had been the owner of certain lands; on that day he conveyed them to J. L. Farnham, his brother; on the eighth of August, 1850, Wisner recovered a judgment against J. S. Farnham, and, on the fourth of September following, caused execution to be issued, and levied upon the lands previously conveyed by J. S. to J, L.; on the 27th of September, J. L. Farnham reconveyed the lands to J. S. Farnham, and the latter moved upon them, and gave notice to the Sheriff of his claim to a certain forty acres, as a homestead. Wisner thereupon brought his bill in aid of the execution, to subject the whole to a sale, in satisfaction of his judgment. The Court granted the relief prayed, upon the ground, apparently, that "at the time of the levy, the defendant in the execution WAS NOT THE OWNER OR OCCUPANT OF THE PREMISES." (2 Mich. R., Gibbs, 472.)

Nor, are we without authorities of our own Courts bearing upon this point. Chapter 104, of the Rev. Stat., 1845, provides certain penalties for trespassers upon timbered lands; Sect. 2 of that Chapter provides that "the penalties herein provided shall be recoverable ..... by an action of debt in the name of ..... the owner, etc."

It has been repeatedly held, in order to entitle one to recover these penalties, he must show title in fee to the land trespassed upon. Wright vs. Bennett, (3 Scam., 258); Whitesides et al vs. Diver, (8 Ibid, 337); Edwards vs. Hick, (11 Ills., 23.)

It would, I conceive, be difficult to show why a different rule of construction should be applied to these two Statutes.

But, aside from any authorities, the construction contended for by the defendant in error, to-wit, that the exemption extends to the whole interests of the debtor, whatever it may be in the homestead, would seem to be altogether inadmissable; for this would be to render nugatory those words of the Statute which requires that the property should be "owned by the debtor."

Why, if the legislative intention had been as is contended, should these words have been inserted in the Statute?

E. T. WELLS,

Counsel for Plaintiff in Error.

Allen 213
as
Chapman
Argument for Plff

Filed Apr 16. 1861
A. Leland
Clerk

IN THE SUPREME COURT OF ILLINOIS,

APRIL TERM, A. D., 1861.

JOHN DEERE,
vs
JAMES CHAPMAN.

ARGUMENT OF COUNSEL FOR PLAINTIFF IN ERROR.

MAY IT PLEASE YOUR HONORS—

This was an action of ejectment by the plaintiff in error, against defendant in error, in the Rock Island Circuit Court, for a lot in the Village of Moline, the plaintiff claiming therein an estate for the life of the defendant. On the trial, in the Court below, the plaintiff produced title to himself by means of a judgment rendered in his favor in that Court, and against defendant,—an execution issued thereon,—a levy upon, and sale of the property in question, under that execution,—and a Sheriff's deed to himself; these proceeding being in all things regular.

The defendant set up in bar of the action the "Act to Exempt Homesteads from Sale on Execution," and it must be conceded that, of itself, the proofs produced by him constitute a complete defence. To rebut this evidence, however, the plaintiff offered to show that, at the time of the levy and sale, the fee of the close in question was in the defendant's wife, and that the estate of the defendant therein was only for his own life.

The Court excluded this evidence, and this is assigned for error.

The only question presented by this record is, what is the proper construction of the first Section of the Homestead Exemption Law; to what cases does it extend; who are entitled to its benefits?

That Section, so far as necessary to be cited, is as follows:—"In addition to the property now exempt by law from sale under execution, there shall be exempt from levy and forced sale, under any process or order of any Court of law or equity in this

State, for debts contracted from and after the fourth day of July, A. D., 1851, the lot of ground and the buildings thereon occupied as a residence, and owned by the debtor, being a householder, and having a family, to the value of one thousand dollars."

Now, if your Honors please, it is a safe rule of construction, and the only safe one, that the words of a Statute, when unambiguous, should be taken in the ordinary, natural, and most commonly received sense; indeed, where the words are of themselves clear and certain, the application of any other rule would be but judicial legislation; and although Courts have, in times past, gone about to find pretexts upon which to avoid the plain requirements of Statutes of supposed questionable policy, or to extend the benefits of those deemed favorable in their operation; yet, with respect be it spoken, this is an assumption of power which ought never to be indulged in.

In such cases, where no uncertainty arises upon the text of the law, the interposition of CONSTRUCTION is both impertinent and dangerous.

Now, what can be more plain than the language of this section? The property claimed as exempt must be "OWNED BY THE DEBTOR." Can there be any doubt as to what, in the common acceptation, is the meaning of the words? They certainly convey the idea of absolute property. Broader language, except through the medium of some circumlocution could scarcely have been adopted. It is inconceivable that a thing should be OWNED by one person, and also that another should have title thereto; for although different INTERESTS in the same subject matter, may be owned by different persons, yet to the thing itself, there can be but one title, and one owner.

But admitting, for the sake of the argument, that in this section there is room for construction, the question arises, what is the proper rule of construction to be applied?

Certainly, it would seem a Statute, such as this, giving new rights, and immunities, and one of, to say the least, doubtful policy, ought not, by construction, to be extended beyond the plain import of the terms used.

Statutes in derogation of the common law are always to be construed strictly, as against those seeking advantage of them. Co. Inst. B., L. 3, §485.

And this rule of construction has been applied to Statutes of such undoubted necessity as the Statute of Frauds. Hicks vs. Whitmore, (12 Wend., 584); Goelet vs. Cowdrey, Duer, 132); Sedgwick on Stat. Law, p. 310, and the Statute of Limitations; Allen vs. Miller, (17 Wend., 202); McIver vs. Ragar, (2 Wheat,, 25); Dozier vs. Ellis, (28 Miss., 734.)

The very class of Statutes now under consideration has been held subject to the rule.

Thus, in New York, where, by a special enactment, the TEAM of the debtor was exempted from sale on execution, it was sought, by a reference to other Statutes of that state, IN PARI MATERIA, to include in this exemption the necessary food for the team; and the argument that without indulging in this implication the exemption which was express, would be rendered nugatory, was certainly one of great weight. But the Court held that the Statute, being like all of its class, in derogation of the

common law, could not, by any implication, be extended. Rae vs. Alter, (5 Denio, 119.)

So in California, it has been held that the Homestead Exemption Law could not be set up, by one of several tenants in common, in occupation of the common property. Reynolds vs. Pickley, (6 Cala., 165); Giblin vs. Jourdan, (Ibid., 416.)

In Michigan, the Statute provided "that a homestead, consisting of any quantity of land, not exceeding forty acres, and the dwelling house thereon, OWNED AND OCCUPIED by any resident of this State," shall not be subject to forced sale on execution," etc.

In the case of Wisner vs. Farnham, this statute came in question; that case was as follows: Prior to June 6th, 1849, J. S. Farnham had been the owner of certain lands; on that day he conveyed them to J. L. Farnham, his brother; on the eighth of August, 1850, Wisner recovered a judgment against J. S. Farnham, and, on the fourth of September following, caused execution to be issued, and levied upon the lands previously conveyed by J. S. to J, L.; on the 27th of September, J. L. Farnham reconveyed the lands to J. S. Farnham, and the latter moved upon them, and gave notice to the Sheriff of his claim to a certain forty acres, as a homestead. Wisner thereupon brought his bill in aid of the execution, to subject the whole to a sale, in satisfaction of his judgment. The Court granted the relief prayed, upon the ground, apparently, that "at the time of the levy, the defendant in the execution WAS NOT THE OWNER OR OCCUPANT OF THE PREMISES." (2 Mich. R., Gibbs, 472.)

Nor, are we without authorities of our own Courts bearing upon this point. Chapter 104, of the Rev. Stat., 1845, provides certain penalties for trespassers upon timbered lands; Sect. 2 of that Chapter provides that "the penalties herein provided shall be recoverable ..... by an action of debt in the name of ..... the owner, etc."

It has been repeatedly held, in order to entitle one to recover these penalties, he must show title in fee to the land trespassed upon. Wright vs. Bennett, (3 Scam., 258); Whitesides et al vs. Diver, (8 Ibid, 337); Edwards vs. Hick, (11 Ills., 23.)

It would, I conceive, be difficult to show why a different rule of construction should be applied to these two Statutes.

But, aside from any authorities, the construction contended for by the defendant in error, to-wit, that the exemption extends to the whole interests of the debtor, whatever it may be in the homestead, would seem to be altogether inadmissable; for this would be to render nugatory those words of the Statute which requires that the property should be "owned by the debtor."

Why, if the legislative intention had been as is contended, should these words have been inserted in the Statute?

E. T. WELLS,

Counsel for Plaintiff in Error.

215 — 17

Kline

vs

Chapman

Argument for Plff

Filed Apr 16. 1861

A. Leland

Clerk

IN THE SUPREME COURT OF ILLINOIS,

APRIL TERM, A. D., 1861.

JOHN DEERE,
vs
JAMES CHAPMAN.

ARGUMENT OF COUNSEL FOR PLAINTIFF IN ERROR.

MAY IT PLEASE YOUR HONORS—

This was an action of ejectment by the plaintiff in error, against defendant in error, in the Rock Island Circuit Court, for a lot in the Village of Moline, the plaintiff claiming therein an estate for the life of the defendant. On the trial, in the Court below, the plaintiff produced title to himself by means of a judgment rendered in his favor in that Court, and against defendant,—an execution issued thereon,—a levy upon, and sale of the property in question, under that execution,—and a Sheriff's deed to himself; these proceeding being in all things regular.

The defendant set up in bar of the action the "Act to Exempt Homesteads from Sale on Execution," and it must be conceded that, of itself, the proofs produced by him constitute a complete defence. To rebut this evidence, however, the plaintiff offered to show that, at the time of the levy and sale, the fee of the close in question was in the defendant's wife, and that the estate of the defendant therein was only for his own life.

The Court excluded this evidence, and this is assigned for error.

The only question presented by this record is, what is the proper construction of the first Section of the Homestead Exemption Law; to what cases does it extend; who are entitled to its benefits?

That Section, so far as necessary to be cited, is as follows:—"In addition to the property now exempt by law from sale under execution, there shall be exempt from levy and forced sale, under any process or order of any Court of law or equity in this

State, for debts contracted from and after the fourth day of July, A. D., 1851, the lot of ground and the buildings thereon occupied as a residence, and owned by the debtor, being a householder, and having a family, to the value of one thousand dollars."

Now, if your Honors please, it is a safe rule of construction, and the only safe one, that the words of a Statute, when unambiguous, should be taken in the ordinary, natural, and most commonly received sense; indeed, where the words are of themselves clear and certain, the application of any other rule would be but judicial legislation; and although Courts have, in times past, gone about to find pretexts upon which to avoid the plain requirements of Statutes of supposed questionable policy, or to extend the benefits of those deemed favorable in their operation; yet, with respect be it spoken, this is an assumption of power which ought never to be indulged in.

In such cases, where no uncertainty arises upon the text of the law, the interposition of CONSTRUCTION is both impertinent and dangerous.

Now, what can be more plain than the language of this section? The property claimed as exempt must be "OWNED BY THE DEBTOR." Can there be any doubt as to what, in the common acceptation, is the meaning of the words? They certainly convey the idea of absolute property. Broader language, except through the medium of some circumlocution could scarcely have been adopted. It is inconceivable that a thing should be OWNED by one person, and also that another should have title thereto; for although different INTERESTS in the same subject matter, may be owned by different persons, yet to the thing itself, there can be but one title, and one owner.

But admitting, for the sake of the argument, that in this section there is room for construction, the question arises, what is the proper rule of construction to be applied?

Certainly, it would seem a Statute, such as this, giving new rights, and immunities, and one of, to say the least, doubtful policy, ought not, by construction, to be extended beyond the plain import of the terms used.

Statutes in derogation of the common law are always to be construed strictly, as against those seeking advantage of them. Co. Inst. B., L. 3, §485.

And this rule of construction has been applied to Statutes of such undoubted necessity as the Statute of Frauds. Hicks vs. Whitmore, (12 Wend., 584); Goelet vs. Cowdrey, Duer, 132); Sedgwick on Stat. Law, p. 310, and the Statute of Limitations; Allen vs. Miller, (17 Wend., 202); McIver vs. Ragar, (2 Wheat,, 25); Dozier vs. Ellis, (28 Miss., 734.)

The very class of Statutes now under consideration has been held subject to the rule.

Thus, in New York, where, by a special enactment, the TEAM of the debtor was exempted from sale on execution, it was sought, by a reference to other Statutes of that state, IN PARI MATERIA, to include in this exemption the necessary food for the team; and the argument that without indulging in this implication the exemption which was express, would be rendered nugatory, was certainly one of great weight. But the Court held that the Statute, being like all of its class, in derogation of the

Keene 215-17

vs

Chapman

Argument for Plff

Filed April 16. 1861

A. Leland

Clerk

SUPREME COURT—*April Term, A. D.* 1861.

JOHN DEERE,

VS.

JAMES CHAPMAN.

ABSTRACT OF THE RECORD.

1 Jan. 21st, 1861, the plaintiff in error, filed in the Rock Island Circuit Court his declaration in ejectment against the defendant in error for Lot 12, Block 1, Atkinson's addition to the village of Moline, *claiming therein an estate for the life of the defendant;* and alleging himself to have been in possession Dec. 1, A. D. 1860, and that defendant entered, &c., on the day following.

2 Subjoined to the declaration was the notice required by law in due form, and an acceptance of service thereof by the defendant.

3 On the same day, the rule to plead within twenty days was entered.

3 Jan. 23rd, 1861, defendant in error filed the usual plea.

4 On the same day, a trial was had before the court without a jury, and the court found the issue for the defendant, and gave judgment against the plaintiff for costs: The plaintiff was allowed thirty days within which to file his bill of exceptions.

4 Feb. 15th, 1861. The plaintiff filed his bill of exceptions, duly signed and sealed by the judge.

BILL OF EXCEPTIONS.

The Bill of Exceptions shows that on the trial

5 *First.* The plaintiff's counsel called E. H. Bowman, and proved by him that he was the clerk of said court, and that a certain book there produced, was Book IV of the common Law Records of said court; and from said book read without objection the record of a judgment recovered in said court July 9th, A. D. 1858 in favor of the plaintiff in error, and against defendant in error, for $141 65-100, without costs.

6 *Second.* The plaintiff's counsel, produced, and read without objection, a writ of *fieri facias*, issued upon the above judgment, to the sheriff of Rock Island County, dated August 11th, A. D. 1858; and the return of said Sheriff upon said writ, showing that on the day of the date of the writ, he levied the same, on the property 7 in question, and on the 26th day of October, 1858, sold the same to the plaintiff in error, for $149,18

Third. The plaintiff produced and read without objection a deed of M. D. Merrill, Sheriff of Rock Island County, to the plaintiff in error, for the Lot in question, upon the above sale; dated February 15th, A. D. 1860.

8 *Fourth.* The plaintiff called *L. E. Hemenway*, who testified that he knew the property named in the declaration, and that defendant was in possession of it, and had been some three years.

Here the Plaintiff rested.

9 The defendant then called the said *L. E. Hemenway*, who testified as follows:

The property is worth perhaps $1000—not more; and has not exceeded that in value since the fall of 1857; the defendant, has a family—a wife and three children; he and his family reside on this lot, and have since the spring of 1857; there is a small dwelling house on this lot, and it is enclosed with a fence.

Cross Examined.

I speak confidently of the value of this lot; am well acquainted with value of property in Moline.

Defendant then called *G. W. Pleasants*, who testified as follows:

I am an Atty. at law, was counsel for the plaintiff in the suit of *John Deere vs. James Chapman*, at the June Term, A. D. 1858 of this court; the note now shown me is the note on which that action was brought, and on which judgment was given for the plaintiff.

This note is as follows: [note of Chapman to Deere, dated Agust 8th, 1857, due one day after date for $141,65, without interest.]

The plaintiff's counsel declining to cross-examine said witness: the defendant called *Charles Deere*, who testified as follows: I know the parties; I am a son of the plaintiff [Here witness was shown the above note], I have seen this note before, was present when it was executed; it was at my father's office, in Moline; it was given in settlement of a sum of money which had been overpaid to Chapman by my father in settlement of a book account by a mistake: when the mistake was discovered Chapman gave this note in settlement of it; this account was for services rendered by Chapman as my father's book-keeper in 1856, & 1857.

Plaintiff's counsel declined to cross examine the witness. The defendant stated that he desired and intended to insist upon, the Homestead Exemption Law, as a defense to the plaintiff's action, and also rested.

The plaintiff rebutting, offered to read to the court Letters Patent of the U. S. to Huntingdon Wells for E ½ S E ¼ (N. I. B.) of Sec. 32, Tp. 18, 1 West 4th

12P. M., dated March 1st, 1848; and offered to show in connection therewith, that the lot named in the declaration was part of the land mentioned in the above letters patent, and to show that at the time of the sale of said lot on plaintiff's execution, as already shown, the fee thereof was in the wife of the defendant.

Defendant objected; and insisted that although the fact might be as supposed, and offered to be proven, yet he the defendent was still entitled to the benefit of the statute. The court sustained this objection, and excluded the latter patent, and the other rebutting evidence offered, and the plaintiff excepted.

This was all the evidence, and the court found the issue thereon for the defendant, and gave judgement
13accordingly; and the defendant excepted to the finding and judgement.

The errors assigned are, 1st: That the court erred in excluding evidence offered on the part of the plaintiff. 2nd: That the court erred in finding the issue for the plaintiff. 3d: The court erred in its judgement.

213-17

Case

Chapman

Abstract of Record

Filed Apr 16. 1861

L. Leland

Clerk

SUPREME COURT—*April Term, A. D.* 1861.

JOHN DEERE,

VS.

JAMES CHAPMAN.

ABSTRACT OF THE RECORD.

1 Jan. 21st, 1861, the plaintiff in error, filed in the Rock Island Circuit Court his declaration in ejectment against the defendant in error for Lot 12, Block 1, Atkinson's addition to the village of Moline, *claiming therein an estate for the life of the defendant;* and alleging himself to have been in possession Dec. 1, A. D. 1860, and that defendant entered, &c., on the day following.

2 Subjoined to the declaration was the notice required by law in due form, and an acceptance of service thereof by the defendant.

3 On the same day, the rule to plead within twenty days was entered.

3 Jan. 23rd, 1861, defendant in error filed the usual plea.

4 On the same day, a trial was had before the court without a jury, and the court found the issue for the defendant, and gave judgment against the plaintiff for costs: The plaintiff was allowed thirty days within which to file his bill of exceptions.

4 Feb. 15th, 1861. The plaintiff filed his bill of exceptions, duly signed and sealed by the judge.

BILL OF EXCEPTIONS.

The Bill of Exceptions shows that on the trial

5 *First.* The plaintiff's counsel called E. H. Bowman, and proved by him that he was the clerk of said court, and that a certain book there produced, was Book IV of the common Law Records of said court; and from said book read without objection the record of a judgment recovered in said court July 9th, A. D. 1858 in favor of the plaintiff in error, and against defendant in error, for $141 65-100, without costs.

6 *Second.* The plaintiff's counsel, produced, and read without objection, a writ of *fieri facias*, issued upon the above judgment, to the sheriff of Rock Island County, dated August 11th, A. D. 1858; and the return of said Sheriff upon said writ, showing that on the day of the date of the writ, he levied the same, on the property 7 in question, and on the 26th day of October, 1858, sold the same to the plaintiff in error, for $149,18

Third. The plaintiff produced and read without objection a deed of M. D. Merrill, Sheriff of Rock Island County, to the plaintiff in error, for the Lot in question, upon the above sale; dated February 15th, A. D. 1860.

8 *Fourth.* The plaintiff called *L. E. Hemenway*, who testified that he knew the property named in the declaration, and that defendant was in possession of it, and had been some three years.

Here the Plaintiff rested.

9 The defendant then called the said *L. E. Hemenway*, who testified as follows:

The property is worth perhaps $1000—not more ; and has not exceeded that in value since the fall of 1857 ; the defendant, has a family—a wife and three children ; he and his family reside on this lot, and have since the spring of 1857 ; there is a small dwelling house on this lot, and it is enclosed with a fence.

Cross Examined.

9 I speak confidently of the value of this lot ; am well acquainted with value of property in Moline.

Defendant then called *G. W. Pleasants,* who testified as follows :

I am an Atty. at law, was counsel for the plaintiff in the suit of *John Deere vs. James Chapman,* at the June Term, A. D. 1858 of this court ; the note now shown me is the note on which that action was brought, and on which judgment was given for the plaintiff.

10 This note is as follows : [note of Chapman to Deere, dated Agust 8th, 1857, due one day after date for $141,65, without interest.]

The plaintiff's counsel declining to cross-examine said witness : the defendant called *Charles Deere,* who testified as follows : I know the parties ; I am a son of the plaintiff [Here witness was shown the above note], I have seen this note before, was present when it was executed ; it was at my father's office, in Moline ; it was given in settlement of a sum of money which had been overpaid to Chapman by my father in settlement of a book account by a mistake : when the mistake was discovered Chapman gave this note in settlement of it ; this account was for services rendered by Chapman as my father's book-keeper in 1856, & 1857.

Plaintiff's counsel declined to cross examine the witness. The defendant stated that he desired and intended to insist upon, the Homestead Exemption Law, as a defense to the plaintiff's action, and also rested.

10 The plaintiff rebutting, offered to read to the court
11 Letters Patent of the U. S. to Huntingdon Wells for E ½ S E ¼ (N. I. B.) of Sec. 32, Tp. 18, 1 West 4th

12P. M., dated March 1st, 1848; and offered to show in connection therewith, that the lot named in the declaration was part of the land mentioned in the above letters patent. and to show that at the time of the sale of said lot on plaintiff's execution, as already shown, the fee thereof was in the wife of the defendant.

Defendant objected; and insisted that although the fact might be as supposed, and offered to be proven, yet he the defendent was still entitled to the benefit of the statute. The court sustained this objection, and excluded the latter patent, and the other rebutting evidence offered, and the plaintiff excepted.

This was all the evidence, and the court found the issue thereon for the defendant, and gave judgement 18accordingly; and the defendant excepted to the finding and judgement.

The errors assigned are, 1st: That the court erred in excluding evidence offered on the part of the plaintiff. 2nd: That the court erred in finding the issue for the plaintiff. 3d.: The court erred in its judgement.

Kline
vs
Chapman

Abstract of Record

Filed April 16. 1861
A. Leland
Clerk

SUPREME COURT—*April Term, A. D.* 1861.

JOHN DEERE.

VS.

JAMES CHAPMAN.

ABSTRACT OF THE RECORD.

1. Jan. 21st, 1861, the plaintiff in error, filed in the Rock Island Circuit Court his declaration in ejectment against the defendant in error for Lot 12, Block 1, Atkinson's addition to the village of Moline, *claiming therein an estate for the life of the defendant;* and alleging himself to have been in possession Dec. 1, A. D. 1860, and that defendant entered, &c., on the day following.

2 Subjoined to the declaration was the notice required by law in due form, and an acceptance of service thereof by the defendant.

3 On the same day, the rule to plead within twenty days was entered.

3 Jan. 23rd, 1861, defendant in error filed the usual plea.

4 On the same day, a trial was had before the court without a jury, and the court found the issue for the defendant, and gave judgment against the plaintiff for costs: The plaintiff was allowed thirty days within which to file his bill of exceptions.

4 Feb. 15th, 1861. The plaintiff filed his bill of exceptions, duly signed and sealed by the judge.

BILL OF EXCEPTIONS.

The Bill of Exceptions shows that on the trial

5 *First.* The plaintiff's counsel called E. H. Bowman, and proved by him that he was the clerk of said court, and that a certain book there produced, was Book IV of the common Law Records of said court; and from said book read without objection the record of a judgment recovered in said court July 9th, A. D. 1858 in favor of the plaintiff in error, and against defendant in error, for $141 65-100, without costs.

6 *Second.* The plaintiff's counsel, produced, and read without objection, a writ of *fieri facias*, issued upon the above judgment, to the sheriff of Rock Island County, dated August 11th, A. D. 1858; and the return of said Sheriff upon said writ, showing that on the day of the date of the writ, he levied the same, on the property 7 in question, and on the 26th day of October, 1858, sold the same to the plaintiff in error, for $149,18

Third. The plaintiff produced and read without objection a deed of M. D. Merrill, Sheriff of Rock Island County, to the plaintiff in error, for the Lot in question, upon the above sale; dated February 15th, A. D. 1860.

8 *Fourth.* The plaintiff called *L. E. Hemenway*, who testified that he knew the property named in the declaration, and that defendant was in possession of it, and had been some three years.

Here the Plaintiff rested.

9 The defendant then called the said *L. E. Hemenway*, who testified as follows:

The property is worth perhaps $1000—not more ; and has not exceeded that in value since the fall of 1857 ; the defendant, has a family—a wife and three children ; he and his family reside on this lot, and have since the spring of 1857 ; there is a small dwelling house on this lot, and it is enclosed with a fence.

Cross Examined.

9 I speak confidently of the value of this lot ; am well acquainted with value of property in Moline.

Defendant then called *G. W. Pleasants,* who testified as follows :

I am an Atty. at law, was counsel for the plaintiff in the suit of *John Deere vs. James Chapman,* at the June Term, A. D. 1858 of this court ; the note now shown me is the note on which that action was brought, and on which judgment was given for the plaintiff.

10 This note is as follows : [note of Chapman to Deere, dated Agust 8th, 1857, due one day after date for $141,65, without interest.]

The plaintiff's counsel declining to cross-examine said witness : the defendant called *Charles Deere,* who testified as follows : I know the parties ; I am a son of the plaintiff [Here witness was shown the above note]. I have seen this note before, was present when it was executed ; it was at my father's office, in Moline ; it was given in settlement of a sum of money which had been overpaid to Chapman by my father in settlement of a book account by a mistake : when the mistake was discovered Chapman gave this note in settlement of it ; this account was for services rendered by Chapman as my father's book-keeper in 1856, & 1857.

Plaintiff's counsel declined to cross examine the witness. The defendant stated that he desired and intended to insist upon, the Homestead Exemption Law, as a defense to the plaintiff's action, and also rested.

10 The plaintiff rebutting, offered to read to the court
11 Letters Patent of the U. S. to Huntingdon Wells for E ½ S E ¼ (N. I. B.) of Sec. 32, Tp. 18, 1 West 4th

P. M., dated March 1st, 1848; and offered to show in connection therewith, that the lot named in the declaration was part of the land mentioned in the above letters patent, and to show that at the time of the sale of said lot on plaintiff's execution, as already shown, the fee thereof was in the wife of the defendant.

Defendant objected; and insisted that although the fact might be as supposed, and offered to be proven, yet he the defendent was still entitled to the benefit of the statute. The court sustained this objection, and excluded the latter patent, and the other rebutting evidence offered, and the plaintiff excepted.

This was all the evidence, and the court found the issue thereon for the defendant, and gave judgement accordingly; and the defendant excepted to the finding and judgement.

The errors assigned are, 1st: That the court erred in excluding evidence offered on the part of the plaintiff. 2nd: That the court erred in finding the issue for the plaintiff. 3d: The court erred in its judgement.

Ellen 215-17
to
Chapman
Abstract of Record

Filed April 16, 1861
L. Leland
Clerk.

SUPREME COURT—*April Term, A. D.* 1861.

JOHN DEERE,

VS.

JAMES CHAPMAN.

ABSTRACT OF THE RECORD.

1 Jan. 21st, 1861, the plaintiff in error, filed in the Rock Island Circuit Court his declaration in ejectment against the defendant in error for Lot 12, Block 1, Atkinson's addition to the village of Moline, *claiming therein an estate for the life of the defendant;* and alleging himself to have been in possession Dec. 1, A. D. 1860, and that defendant entered, &c., on the day following.

2 Subjoined to the declaration was the notice required by law in due form, and an acceptance of service thereof by the defendant.

3 On the same day, the rule to plead within twenty days was entered.

3 Jan. 23rd, 1861, defendant in error filed the usual plea.

On the same day, a trial was had before the court without a jury, and the court found the issue for the defendant, and gave judgment against the plaintiff for costs: The plaintiff was allowed thirty days within which to file his bill of exceptions.

Feb. 15th, 1861. The plaintiff filed his bill of exceptions, duly signed and sealed by the judge.

BILL OF EXCEPTIONS.

The Bill of Exceptions shows that on the trial

First. The plaintiff's counsel called E. H. Bowman, and proved by him that he was the clerk of said court, and that a certain book there produced, was Book IV of the common Law Records of said court; and from said book read without objection the record of a judgment recovered in said court July 9th, A. D. 1858 in favor of the plaintiff in error, and against defendant in error, for $141 65-100, without costs.

Second. The plaintiff's counsel, produced, and read without objection, a writ of *fieri facias*, issued upon the above judgment, to the sheriff of Rock Island County, dated August 11th, A. D. 1858; and the return of said Sheriff upon said writ, showing that on the day of the date of the writ, he levied the same, on the property in question, and on the 26th day of October, 1858, sold the same to the plaintiff in error, for $149,18

Third. The plaintiff produced and read without objection a deed of M. D. Merrill, Sheriff of Rock Island County, to the plaintiff in error, for the Lot in question, upon the above sale; dated February 15th, A. D. 1860.

Fourth. The plaintiff called *L. E. Hemenway*, who testified that he knew the property named in the declaration, and that defendant was in possession of it, and had been some three years.

Here the Plaintiff rested.

The defendant then called the said *L. E. Hemenway*, who testified as follows:

The property is worth perhaps $1000—not more ; and has not exceeded that in value since the fall of 1857; the defendant, has a family—a wife and three children ; he and his family reside on this lot, and have since the spring of 1857; there is a small dwelling house on this lot, and it is enclosed with a fence.

Cross Examined.

I speak confidently of the value of this lot; am well acquainted with value of property in Moline.

Defendant then called *G. W. Pleasants*, who testified as follows :

I am an Atty. at law, was counsel for the plaintiff in the suit of *John Deere vs. James Chapman*, at the June Term, A. D. 1858 of this court ; the note now shown me is the note on which that action was brought, and on which judgment was given for the plaintiff.

This note is as follows : [note of Chapman to Deere, dated Agust 8th, 1857, due one day after date for $141,65, without interest.]

The plaintiff's counsel declining to cross-examine said witness : the defendant called *Charles Deere*, who testified as follows : I know the parties ; I am a son of the plaintiff [Here witness was shown the above note]. I have seen this note before, was present when it was executed ; it was at my father's office, in Moline ; it was given in settlement of a sum of money which had been overpaid to Chapman by my father in settlement of a book account by a mistake : when the mistake was discovered Chapman gave this note in settlement of it; this account was for services rendered by Chapman as my father's book-keeper in 1856, & 1857.

Plaintiff's counsel declined to cross examine the witness. The defendant stated that he desired and intended to insist upon, the Homestead Exemption Law, as a defense to the plaintiff's action, and also rested.

The plaintiff rebutting, offered to read to the court Letters Patent of the U. S. to Huntingdon Wells for E ½ S E ¼ (N. I. B.) of Sec. 32, Tp. 18, 1 West 4th

~~Carter~~ Case 218-17

~~Carter~~ Chapman

~~Blanks~~

Abstract of Record

Filed Apr. 16. 1861

L. L. Leland

Clerk

IN THE SUPREME COURT OF ILLINOIS,

APRIL TERM, A. D., 1861.

JOHN DEERE,
vs
JAMES CHAPMAN.

ARGUMENT OF COUNSEL FOR PLAINTIFF IN ERROR.

MAY IT PLEASE YOUR HONORS—

This was an action of ejectment by the plaintiff in error, against defendant in error, in the Rock Island Circuit Court, for a lot in the Village of Moline, the plaintiff claiming therein an estate for the life of the defendant. On the trial, in the Court below, the plaintiff produced title to himself by means of a judgment rendered in his favor in that Court, and against defendant,—an execution issued thereon,—a levy upon, and sale of the property in question, under that execution,—and a Sheriff's deed to himself; these proceeding being in all things regular.

The defendant set up in bar of the action the "Act to Exempt Homesteads from Sale on Execution," and it must be conceded that, of itself, the proofs produced by him constitute a complete defence. To rebut this evidence, however, the plaintiff offered to show that, at the time of the levy and sale, the fee of the close in question was in the defendant's wife, and that the estate of the defendant therein was only for his own life.

The Court excluded this evidence, and this is assigned for error.

The only question presented by this record is, what is the proper construction of the first Section of the Homestead Exemption Law; to what cases does it extend; who are entitled to its benefits?

That Section, so far as necessary to be cited, is as follows:—"In addition to the property now exempt by law from sale under execution, there shall be exempt from levy and forced sale, under any process or order of any Court of law or equity in this

State, for debts contracted from and after the fourth day of July, A. D., 1851, the lot of ground and the buildings thereon occupied as a residence, and owned by the debtor, being a householder, and having a family, to the value of one thousand dollars."

Now, if your Honors please, it is a safe rule of construction, and the only safe one, that the words of a Statute, when unambiguous, should be taken in the ordinary, natural, and most commonly received sense; indeed, where the words are of themselves clear and certain, the application of any other rule would be but judicial legislation; and although Courts have, in times past, gone about to find pretexts upon which to avoid the plain requirements of Statutes of supposed questionable policy, or to extend the benefits of those deemed favorable in their operation; yet, with respect be it spoken, this is an assumption of power which ought never to be indulged in.

In such cases, where no uncertainty arises upon the text of the law, the interposition of CONSTRUCTION is both impertinent and dangerous.

Now, what can be more plain than the language of this section? The property claimed as exempt must be "OWNED BY THE DEBTOR." Can there be any doubt as to what, in the common acceptation, is the meaning of the words? They certainly convey the idea of absolute property. Broader language, except through the medium of some circumlocution could scarcely have been adopted. It is inconceivable that a thing should be OWNED by one person, and also that another should have title thereto; for although different INTERESTS in the same subject matter, may be owned by different persons, yet to the thing itself, there can be but one title, and one owner.

But admitting, for the sake of the argument, that in this section there is room for construction, the question arises, what is the proper rule of construction to be applied?

Certainly, it would seem a Statute, such as this, giving new rights, and immunities, and one of, to say the least, doubtful policy, ought not, by construction, to be extended beyond the plain import of the terms used.

Statutes in derogation of the common law are always to be construed strictly, as against those seeking advantage of them. Co. Inst. B., L. 3, §485.

And this rule of construction has been applied to Statutes of such undoubted necessity as the Statute of Frauds. Hicks vs. Whitmore, (12 Wend., 584); Goelet vs. Cowdrey, Duer, 132); Sedgwick on Stat. Law, p. 310, and the Statute of Limitations; Allen vs. Miller, (17 Wend., 202); McIver vs. Ragar, (2 Wheat,, 25); Dozier vs. Ellis, (28 Miss., 734.)

The very class of Statutes now under consideration has been held subject to the rule.

Thus, in New York, where, by a special enactment, the TEAM of the debtor was exempted from sale on execution, it was sought, by a reference to other Statutes of that state, IN PARI MATERIA, to include in this exemption the necessary food for the team; and the argument that without indulging in this implication the exemption which was express, would be rendered nugatory, was certainly one of great weight. But the Court held that the Statute, being like all of its class, in derogation of the

common law, could not, by any implication, be extended. Rae vs. Alter, (5 Denio, 119.)

So in California, it has been held that the Homestead Exemption Law could not be set up, by one of several tenants in common, in occupation of the common property. Reynolds vs. Pickley, (6 Cala., 165); Giblin vs. Jourdan, (Ibid., 416.)

In Michigan, the Statute provided "that a homestead, consisting of any quantity of land, not exceeding forty acres, and the dwelling house thereon, OWNED AND OCCUPIED by any resident of this State," shall not be subject to forced sale on execution," etc.

In the case of Wisner vs. Farnham, this statute came in question; that case was as follows: Prior to June 6th, 1849, J. S. Farnham had been the owner of certain lands; on that day he conveyed them to J. L. Farnham, his brother; on the eighth of August, 1850, Wisner recovered a judgment against J. S. Farnham, and, on the fourth of September following, caused execution to be issued, and levied upon the lands previously conveyed by J. S. to J, L.; on the 27th of September, J. L. Farnham reconveyed the lands to J. S. Farnham, and the latter moved upon them, and gave notice to the Sheriff of his claim to a certain forty acres, as a homestead. Wisner thereupon brought his bill in aid of the execution, to subject the whole to a sale, in satisfaction of his judgment. The Court granted the relief prayed, upon the ground, apparently, that "at the time of the levy, the defendant in the execution WAS NOT THE OWNER OR OCCUPANT OF THE PREMISES." (2 Mich. R., Gibbs, 472.)

Nor, are we without authorities of our own Courts bearing upon this point. Chapter 104, of the Rev. Stat., 1845, provides certain penalties for trespassers upon timbered lands; Sect. 2 of that Chapter provides that "the penalties herein provided shall be recoverable ..... by an action of debt in the name of ..... the owner, etc."

It has been repeatedly held, in order to entitle one to recover these penalties, he must show title in fee to the land trespassed upon. Wright vs. Bennett, (3 Scam., 258); Whitesides et al vs. Diver, (8 Ibid, 337); Edwards vs. Hick, (11 Ills., 23.)

It would, I conceive, be difficult to show why a different rule of construction should be applied to these two Statutes.

But, aside from any authorities, the construction contended for by the defendant in error, to-wit, that the exemption extends to the whole interests of the debtor, whatever it may be in the homestead, would seem to be altogether inadmissable; for this would be to render nugatory those words of the Statute which requires that the property should be "owned by the debtor."

Why, if the legislative intention had been as is contended, should these words have been inserted in the Statute?

E. T. WELLS,

Counsel for Plaintiff in Error.

Reese 213-17

vs

Chapman

Argument for Plff

Filed Apr 16. 1861

A Leland

Clerk

Fee $4.02

Pleas in The Circuit Court of the County of Rock Island in the State of Illinois had at the January Term Thereof A.D 1861 Before The Honorable John H Howe Judge of said Court

Be it Remembered that on the twenty first day of January in the Year of Our Lord One Thousand Eight Hundred and Sixty one and on the Seventh day of the said January term of said Circuit Court came John Deere By E.T. Wells his attorney and filed in said Court his Certain declaration and notice in ejectment against James Chapman which said declaration and notice are and were in words and figures as follows To wit

State of Illinois } ss
Rock Island County }

Of January Term A.D 1861 of the Rock Island Circuit Court

John Deere Plaintiff in this suit by Hawley & Wells his attorneys Complains of James Chapman defendant in this suit in a plea of Trespass in Ejectment.

For that the said Plaintiff heretofore to wit on the first day of December in the Year of Our Lord 1860 at the County of Rock Island aforesaid was possessed of a Certain parcel of land situate in the said County and described as Lot No. twelve in Block No. One in Atkinsons Addition to the village of Moline in which said lands The said plaintiff Claims an Estate for the life of the said James Chapman and the said Plaintiff being so possessed of the said Lands. The said defendant afterwards to wit on the second day of December A.D 1860 at the County of Rock Island aforesaid with force and arms Entered into the said premises and Ejected the plaintiff therefrom and from Thenceforth hath and

still doth unlawfully withhold from the said Plaintiff the possession thereof. To the damage of the plaintiff in One Thousand Dollars. And therefore they bring Suit &c

Hawley & Wells

Plffs Attys

State of Illinois } ss
Rock Island County } To James Chapman Esqr

Please take notice. That the Declaration, with a copy of which you now are served and to which copy this Notice is subjoined will be filed in the Circuit Court of the said County of Rock Island on the 7th day of the January Term thereof A D 1861 being the 2nd day of January A D 1861. That upon filing the same a rule will be entered requiring you to appear and plead to the said declaration within twenty days after the entry of said rule, and that if you shall fail or neglect so to appear and plead ~~to the said declaration~~ a judgment by Default will be entered against you and the plaintiff will recover possession of the premises specified in the declaration

Dated this 14th day of December A D 1860

Hawley & Wells

Plffs Attys

And upon the said declaration was indorsed the following

I accept Service of this Declaration & Notice

This 16th day of December A D 1860

Jas Chapman.

And thereupon the same seventh day of said Term of said Circuit Court the following proceedings and order were had and made in said cause

John Deere
vs
James Chapman } Ejectment

This day Came the said plaintiff by E Y Wells his attorney and filed with the Clerk of this Court his declaration in ejectment and it appearing to the Court that the said Declaration and notice of the filing thereof have been duly served upon the said defendant according to law it is thereupon on motion of the said Plaintiffs attorney Ordered by the said Court that the said defendant plead to the said declaration within twenty days from this date

And afterwards to wit on the 23rd day of January in the year of our Lord 1861 and on the 9th day of this same term of the Circuit Court aforesaid. Came the said defendant James Chapman and filed with the Clerk, his certain plea to the Declaration of the said defendant in these words & figures to wit

State of Illinois } ss. Of the January Term AD 1861
Rock Island County } of the Rock Island Circuit Court

James Chapman
Ads
John Deere

Ejectment

And the said defendant in person Comes and defends the force and injury when &c and saith that he is not guilty of unlawfully withholding from the possession of the said plaintiff the premises named in the said declaration as the said Plaintiff hath above thereof complained against him. and of this he puts himself upon the Country &c

and the said Plaintiff also

Jas Chapman for &c

Hawley & Wells pay

And afterwards on the Same 9th day of this same Term of the said Circuit Court aforesaid the following proceedings & judgment was had and rendered in the aforesaid cause to wit

John Deere
vs
James Chapman } Ejectment

And now at this day came on to be tried by the Court the issue heretofore joined between the parties in this cause, a jury for this purpose being waived. And the Court having heard and considered the Evidence produced as well on the part of the said plaintiff as on the part of the said defendant and the argument of Counsel, doth find the said Issue for the defendant. Thereupon it is ordered by the Court that the said defendant have and recover of the said Plaintiff his costs by him in this behalf expended

And on motion of the said Plaintiffs Counsel it is Ordered that the said plaintiff have thirty days within which to file his bill of exceptions to the Opinions finding & judgment of the Court in this cause given & rendered

And afterwards to wit on the fifteenth day of February AD 1861 the said plaintiff by his Counsel filed with the Clerk of said Circuit Court his certain bill of Exceptions which was and is in words and figures as follows to wit

State of Illinois } ss. of the January Term AD 1861 of
Rock Island County } Rock Island Circuit Court

John Deere
vs
James Chapman

Be It Remembered that on this Seventh day of February AD 1861 and in the Term of said Circuit Court aforesaid Came on to be Tried by the said Court a Jury being waived by the parties the Issue Heretofore Joined in the above entitled Cause, and Thereupon the said Plaintiff to maintain and prove the said Issue on his part produced as a Witness Edward H Bowman who being duly Sworn testified as follows "I am the Clerk of this Court; the book now shown me is no IV "of the Common Law Records of this Court. The Record of Judgment "at Law obtained in this Court"

Thereupon the said Plaintiff by his Counsel to further maintain and prove the said Issue, read to the Court without objection a certain record in the said book so identified by the said Bowman, Contained. which said record was and is in these words to wit

" June Term AD 1858; Twenty ninth day: July 9th AD 1858

" John Deere
vs
James Chapman } Assumpsit

This day Came the said Plaintiff by Wilkinson & Pleasants his Attorneys, and the defendant by R H Graham his Attorney also Came, and by the agreement of the parties Signed with their own proper hands and now to the Court Shown It is Considered and adjudged by the Court that the said Plaintiff have and recover of the said defendant the Sum of One Hundred and Forty One Dollars and Sixty five Cents for his damages by him in this behalf Sustained. and that he have execution therefor It is Ordered that said Plaintiff pay the Costs of this Suit

also the said plaintiff offered and read in evidence without objection a certain writ of "Fieri Facias"

5.

with the indorsement of levy & return thereon written which said writ and indorsement were and are in words and figures as follows to wit.

State of Illinois } ss
Rock Island County }

The People of the State of Illinois to the Sheriff of Rock Island County Greeting. WE Command you that of the Goods and Chattels Lands and tenements of James Chapman defendant in your County you make or cause to be made, the Sum of One Hundred and Forty One dollars and Sixty five cents which on the 9th day of July in the year of our Lord One Thousand Eight hundred and Fifty Eight, John Deere plaintiff recovered in the Circuit Court of said County against the defendant with legal interest thereon from said date until paid, whereof the said defendant stands convicted, as appears to us of record and that you have the said Sum of money and interest and costs at the Clerks office of our said Court at Rock Island within ninety days from the date hereof and have you then and there this writ

Witness Quincy McNeil Clerk of the said Court and the Seal thereof affixed This 11th day of August in the Year of our Lord One Thousand Eight hundred and Fifty Eight

Seal

Quincy McNeil Clerk

And which said writ was returned with the following indorsement thereon to wit "By virtue of this writ and "accompanying fee bill, I have levied on the following described "property, as the property of the defendant to wit. Lot 12. in Block One in Atkinsons addition to the Town of Moline in said County

Aug 11th 1858 E M Beardsley Sheriff

and also the following return of sale under the writ aforesaid to wit "By virtue of this writ and in accordance with the levy hereon endorsed, I have after having advertised the property described in said levy by posting up notices in three of the most public places in Rock Island County, and also by causing said notice to be printed in a newspaper published and having the greatest circulation in said County the time specified by law I did, at the hour of 2 oclock P M on the 9th day of October A D 1858 at the Door of the Court House in the City and County of Rock Island and State of Illinois in accordance with said notices offer the property described in said levy at public auction, and the same was then and there sold and struck off to John Deere he being the highest and best bidder therefor, at and for the sum of One Hundred and Forty Nine 18/100 dollars. I therefore return this writ satisfied in full this 26th day of October A D 1858

E M Beardsley Sheriff
Rock Island County Illinois

Also the said Plaintiff produced and read in evidence to the Court a certain Deed in words and figures as follows to wit

Whereas, John Deere did at the June Term A D 1858 and on the 9th day of July A D 1858 in the Circuit Court for the County of Rock Island recover a judgment against James Chapman for the sum of One Hundred & Forty One 8/100 dollars upon which judgment an Execution was issued dated the 11th day of August A D 1858 directed to the Sheriff of the said Rock Island County to Execute and by virtue of said Execution the said Sheriff levied on the lands hereinafter described and the same were struck off and sold to the said John Deere he being the highest and best bidder therefor and

8
The Time and Place of ~~the~~ Sale having been duly advertised according to law. Now Therefore Know all by this Deed that I M D Merrill Sheriff of said Rock Island County in Consideration of the Premises have granted bargained & Sold and do hereby Convey to the said John D Ore his heirs or assigns the following described tract of land to wit Lot No Twelve in Block No One in Atkinsons Adelition to the town of Moline in the County of Rock Island aforesaid To Have and To Hold the said described premises with the appurtenances thereunto belonging to the said John D Ore his heirs and assigns forever. Witness my hand and seal this 15th day of February AD 1860

M D Merrill Sheriff

State of Illinois }
Rock Island County } ss Before the undersigned a Justice of the Peace in and for said County this day personally appeared M D Merrill Sheriff of said County ~~this day~~ personally known to me to be the identical person described in and who executed the foregoing deed and acknowledged that as such Sheriff he had executed said deed for the uses and purposes therein set forth. Witness my hand and seal this February 15th AD 1860 Robert W Smith J P (Seal)

Thereupon the said plaintiff called as a witness one L. E. Hennenway who being duly sworn testified as follows on Direct Examination to wit

"I reside at Moline in this County. I know the parties to this suit, and have known them since 1854; I know those Premises situate in this County of ~~Rock Island~~ described as Lot No 12 in Block No One in Atkinsons adelition to the village of Moline. The defendant is in possession of them and has been ~~sworn~~ Three years

and Thereupon the said Plaintiff rested his Case

And the said Defendant to maintain and prove the said issue on his part Called the said Witness L C Hemenway who on direct examination by the said defendant testified as follows to wit. The premises named in the declaration are worth perhaps One Thousand Dollars. They do not exceed that in value and in my opinion have not exceeded that since the fall of 1857. The Defendant is a man of family. he has a wife and three children I know the family well. Defendant and his family have resided on the lot in Controversy since the Spring of 1857. I think they moved in them in May of that year; There is a small dwelling house on the Lot and it is enclosed with a fence

On Cross Examination by plaintiffs Counsel said witness testified as follows

I speak confidently in regard to the value of this Lot. I consider myself well acquainted with the value of Town property in Moline. I have bought and sold a good deal since I have resided there and know the prices at which they range

Thereupon the said defendant produced as a witness Geo. W Pleasants who being Examined by the said defendant testified as follows To wit. I am an attorney at law. I was Counsel for the Plaintiff in the Suit of John Deere against James Chapman at the June Term AD 1858 of this Court there was only one suit of that title at that term, the note now shown me was the note upon which that action was brought, and judgment given for the defendant. This note is as follows

"$141 65 Moline August 8. 1857.
" One day after date I promise to pay to John Deere
" One Hundred and Forty one 65/100 dollars. For value
" received without interest James Chapman

And the said plaintiffs Counsel declining to Cross examine said witness. The said Defendant produced as a Witness One Charles Deere Who being duly sworn testified on direct examination as follows.

I know the parties I am a son of the Plaintiff (Witness Shown the note above set out) I have seen this note before, I was present when it was executed it was at my Fathers office in Moline. It was given in settlement of a sum of money which had been overpaid to Chapman, by my father in settlement of a book account, by mistake; when the mistake was discovered Chapman gave this note in settlement of it: This was an account for services rendered by Chapman as Book Keeper for my Father in 1856 & 1857

And Thereupon the said Plaintiffs Counsel declining to Cross Examine the said witness, The said Defendant stated that he desired and intended to insist upon and have the advantage of that certain statute of this state entitled "An act to Exempt Homesteads from Sale on Execution" Approved July 11 1851" and thereupon also rested his case

And the said plaintiff to rebut the evidence so produced on the part of the said defendant produced and offered to read in evidence to the Court certain Letters Patent in words and figures as follows to wit

"Certificate No 2710" The United States of America To all To Whom these Presents Shall Come Greeting. Whereas Huntingdon Wells has deposited in The General Land Office of the United States, a Certificate of the Register of the Land office at Galena Whereby it appears that full payment has been made by the said Huntingdon Wells According to the provisions of the act of Congress of the 24th of April 1820 entitled "an act making further provision for the Sale of the Public Lands" for the East Half of the South East quarter (E ½ S E) of Section Thirty two in Township Eighteen (18) North of Range One west of the 4th principal Meridian in the District of lands subject to Sale at Galena Illinois Containing Fifty Six and fifty Eight hundredths acres. According to the official plat of the Survey of said lands returned to the General Land office by the Surveyor General which said Tract has been purchased by the said Huntingdon Wells. Now know ye That the United States of America in Consideration of the premises and in Conformity with the Several acts of Congress in such case made and provided. Have Given and Granted and by these presents do give and grant unto the said Huntingdon Wells and to his heirs and asigns the said Tract above described; To Have & To Hold the Same Together with all the rights privileges immunities and appurtenances of whatsoever nature thereto belonging unto the said Huntingdon Wells and to his heirs and asigns forever

In Testimony whereof I James K Polk President of the United States of America have caused these Letters to be made Patent and the Seal of the General Land Office to be hereunto affixed Given under my hand at the City of Washington the first day of march in the year of our Lord One thousand Eight Hundred and forty Eight and of the

SEAL

Independence of the United States the Seventy Second

By the President James K Polk

By J K Stephens Asst Secy

Recorded vol 39, p 4. E

J A Laughlin Recorder of the General Land Office

And Together with the said Letters Patent the Counsel for the said plaintiff proposed to produce and show Title from the said Huntingdon Wells in the said Letters Patent named unto Janet Chapman wife of the said Defendant at the Time of the sale of the Lot in Controversy upon Execution on the 9th day of October AD 1858. And to the reading of the said Letters Patent in Evidence as aforesaid for the purpose aforesaid. The said defendant objected and insisted to the Court that although the fact might be as the Counsel for the Plaintiff proposed to prove that he the defendant was still entitled to the benefit of the statute and that the Lot in Controversy was still exempt from sale on Execution

And the Court having heard the arguments of Counsel sustained the ~~said~~ objection of said defendant and Excluded the said Letters Patent and the ^said other Evidence offered on the part of the said Plaintiff and to this ruling and decision of the Court the said Plaintiff by his Counsel then and there at the time thereof in open Court excepted

And thereupon the said Plaintiff rests his case

The foregoing was all of the Evidence produced offered or given in said cause and the Court having heard and considered the same and the arguments of Counsel thereon found the said Issue for the said defendant & Thereupon

gave judgment for the said defendant and to this finding and judgment of the Court the said plaintiff by his counsel then and there excepted. And because these several matters do not appear by the record herein. The counsel for the said plaintiff bring this his bill of Exceptions and pray his Honor the Judge of this Court to sign and seal the same and make it a part of the record herein. and now in open Court at this same term it is done

J H Howe Seal

Judge &c

This Bill of Exceptions is satisfactory to me

Jas. Chapman

State of Illinois
Rock Island County } ss I, Edward H Bourman Clerk of the Circuit Court in and for the County and State aforesaid hereby certify that the foregoing pages contain a full and complete transcript of the Records and proceedings of said Court in the Cause of John Deere vs Jas Chapman as fully and completely as the same appear of record in my office

witness my hand and the Seal of said Court at my Office in Rock Island this 25th day of March AD 1861

E H Bourman Clerk

John Deere
vs
Jas. Chapman

Record

State of Illinois. Supreme Court. April Term A.D. 1861

John Doe plaintiff in error

vs

James Chapman defendant in error

And now in the said Supreme Court, before the Justices thereof at the above entitled term aforesaid Court, comes the said John Doe by E. F. Wells his Attorneys, and saith that in the record and proceedings aforesaid, there is manifest error in this, to wit. That the said Circuit Court excluded proper evidence offered on the part of the said plaintiff John Doe; There is also error in this, to wit that the Circuit Court aforesaid found the issue aforesaid for the said James Chapman and against the said John Doe; There is also error in this, to wit that the said Circuit Court gave judgment for the said James Chapman, and against the said John Doe

And for the error aforesaid and for the manifold other error in the record and proceedings aforesaid the said John Doe prays that the judgment aforesaid may be reversed annulled and for him entire for naught held &c

E. F. Wells
Atty for Plff in error.

John Dere
James Chapman

And the said James Chapman in his own person comes here into Court, and says that in the record and proceedings aforesaid, nor in the judgment aforesaid is there error.

And prays that the judgment aforesaid of the said Circuit Court may in all things be affirmed &c.

Chapman & Hacker
Attys for Defts in Error

Filed April 16. 1861
A. Adams
Clerk

John Dere
vs
Jas Chapman
Record and Assignment of Error

215 - 17