

No. 11836

Supreme Court of Illinois

Capell

vs.

Williams

71641  7

Woodford

Robert J. Capell
vs
Elisha Williams

107

11836

Prepared

1851

Hear before the Hon David Davis Judge of the Eighth Judicial
Circuit of the State of Illinois Presiding & holding Courts in the County
of Woodford - And on Friday April the 11th A^C 1851 the
following Proceedings were had To-wit -

Elisha Williams

^{vs}
R. J. Caspell

This day came the parties by their
attorneys and by Consent this Cause is submitted to the Court for
trial and the Court after hearing the Evidence & Argument of Counsel
and being fully advised in the premises finds the defendant Guilty
of the Tresspasses Alleged Against him and finds the value of the
property Illegally taken by him on the Execution to be thirty three
dollars. Whereupon it is Considered and Adjudged by the Court
that the said Plaintiff recover of the said Defendant the Sum of
Ninety nine dollars being three times the value of the property Illeg-
ally taken in Execution and that he recover his Costs & Charges
by him in his Suit in this behalf Expended and that he have execution
therefor. Whereupon the Defendant prayed an appeal to the Supreme
Court which is allowed upon the defendant Entering into Bond
in thirty days in the penal Sum of Two Hundred fifty dollars
with John J. Perry or John A. Willard as Security Conditioned
according to Law -

Which Bond was Executed on the 28th day
of April A^C 1851 with John J. Perry as Security

Elisha Williams

^{vs}
Robert J. Caspell

In Circuit Court of

Woodford County

Be It Remembered that upon the trial of this
Cause (the same having been submitted to the Court for trial by
Consent of Parties) the Plaintiff to maintain the issue on his part
offered in Evidence a Judgment on the Docket of Wilceam P
Brown Esqr a Justice of the peace of the County of Woodford
in favor of D. A. Couch vs Elisha Williams the present

Plaintiff Rendered January 8th 1849 for \$20.84 and Costs
of Suit upon which Judgment Execution was issued on the
24th day of January 1850 and Delivered to Robert A. Capell
the Defendant who was then and there a Constable of Saint
County to Execute

The Plaintiff then gave in Evidence the
Execution issued upon the said Judgment showing a Levy
Made upon a Man as the property of the Plaintiff in this
Suit and Defendant in said Execution being the property in
Controversy in this Suit Made on the 11th day of March A^C 1850
and a Sale of said property Made on said Execution on the 28th
day of March 1850. — The Plaintiff then proved that the
property thus levied upon was claimed by George Kingston
and upon such Claim a trial of the right of property was had
between said Claimant & C. A. Couch the plaintiff in said
Execution before William C. Martin a Justice of the Peace of
Woodford County in the presence of both parties & their attorneys
on the 16th day of March A^C 1850 upon which trial the Jury
returned a verdict for the defendant — That the property levied
on was the property of the defendant in said Execution upon
which Judgment was entered accordingly — The Plaintiff
then called Wilson P. Brown who testified that he was
acquainted with the plaintiff, that three or four days
after the trial of the right of property the said Plaintiff gave
Notice to the defendant that he claimed the property levied
upon as Exempt from Execution — That at the time of the Levy
and Sale of said Man the Plaintiff was a Householder, a
Married Man the Head of a Family residing with them, &
that some time after the Levy and before the Sale he and
the Defendant the Constable were together at Plaintiff's house
and then Examined into his Condition as to property and that

both came to the conclusion that the plaintiff had not any more property than would be exempt from execution by the laws of this state. The witness also stated that the plaintiff upon the trial of the right of property denied that he was the owner of the Man and said she belonged to George Kingston. The plaintiff then called Joseph Morley who testified that he knew the Plaintiff and was acquainted with his circumstances at the time of the levy and sale of said man and that all the property he had at the time except the Man in Controversy was

one old Man worth about	\$10.00
one Cow " "	10.00
Six Shoats " "	3.50
one old Harness " "	1.50

Except some little Kitchen Household Furniture scarcely sufficient for the necessary purposes of the family.

The parties agreed that the Man in Controversy was worth the sum of \$33.00.

The Defendant then called George Kingston who testified that the property in Controversy as he supposed before the trial of the right of property actually belonged to him and that he still supposed and believed so, that at the time he had a Mortgage on said Man executed by Plaintiff which had been perfected and the Man had been given up to him as his property but he permitted Williams to use her when he pleased but she was in Witness possession at the time of the levy. That Plaintiff told him upon the time of the trial of the right of property that the Man was levied upon by the defendant, and that previous to said time the Plaintiff admitted and declared that she was not his the Plaintiff property but was the property of the said witness George Kingston. The Defendant proved that the Man was sold for \$11.60 more than enough to satisfy

The Execution which Sam Cassell gave over to Williams, in
January 1851 under a Stipulation that the receipt of
it by Williams should not affect this suit.

This was all
the Evidence in the Cause. The Defendant Moved
the Court to Dismiss the Cause for want of Jurisdiction
in the Justice which Motion the Court overruled & gave
Judgment for Plaintiff for \$99.00 and Costs of Suit to which
Decision of the Court the Defendant then and there Excepted
and prays that then his Bill of Exceptions be signed & sealed
by the Judge and Made part of the Record in this Cause.

David Davis *[Signature]*

Copy of Summons before Justice

State of Illinois }
Woodford County } The people of the State of Illinois to any
Constable of said County greeting

Whereby I command to Summon Robert S. Caspell to appear
before me at my office in Metamora in the Court House on
the 30th day of March next at 10 O'clock A.M. to answer the
Complaint of Elisha Williams in an Action of Supplic for a
Failure to pay him a certain demand not Exceeding one
Hundred Dollars. And that he make due Return as the Law
directs.

Given under my hand and Seal this 25th day
of March A.D. 1850
[Signature] George Ray, J.P.

Copy of Pardon

Elisha Williams }

vs } An Action of Supplic Against R. S. Caspell
R. S. Caspell } in Satisfy & Satisfy in a Matter of Louis Elisha
Williams as a Constable which he is entitled
to hold exempt from levy under the Statute also for riding &

Running

A. J. M. while in his possession under said levy
Amount Claimed of 100.00, Summons issued March the
25th 1850 Returnable on the 30th Put out at 10 O'clock. I see
and a Subpoena issued at the same time by order of Plaintiff
for George Kington Joseph Maley William S. Pool & G. W.
Arnold, March 30th 1850 Summons & Subpoena Returned by
H. S. Pool Comptroller duly served by Reading to the within
and the parties and witnesses attended and went into trial
and after hearing it is considered that the plaintiff recover
Judgment for \$99.00 Debt and \$2.87 for Costs

State of Missouri 34

Woodford County } I George Kington of the peace
within and in said County do hereby certify that the foregoing
is a true copy from my desk of the proceedings &
Judgment in the above case, Given under my hand and
Seal this 1st day of April 1850

George Kington, J. P.

State of Missouri 35

Woodford County } I J. J. Crisp Clerk of the Circuit Court
in said County do certify the foregoing to be a true and
Correct Copy of the order of Court, Bill of Exceptions
Summons & Transcript kept the Justices of Record &
on file in my office

Testimony whereof I have
signed to Subscribed my Name and affixed
the Seal of our said Circuit Court at Metamora
this 5th day of May. A. D. 1851

J. J. Crisp Clerk

Robert T. Easton

vs
Elisha M. Mearns

Supreme Court

Term J. 1837

And the said plaintiff in Error complains and says there is manifest Error in the Record of the Judgment and proceedings in the Court below and in this to wit

The Court found in overruling the said judgment it not being warranted by the evidence in the cause

The Court below found in overruling the motion to dismiss said cause

For these and other Errors Apparent on the face of said Record the said judgment should be reversed annulled set aside and wholly for naught & should

A. G. Mearns

for plff in Error

And the said Appellee complains and says that in the Record & proceedings & in the rendition of the Judgment aforesaid there is the Error wherefore he Prays that the said Judgment may be in all things reversed

A. G. Mearns
for Appellee

Woodford

Robert T. Capell
vs

Elisha Williams

Record & appt. of writs

Filed June 11, 1854.
H. A. Ireland
Clerk.

I know all Men by their presents that we Robert J. Caspell
& John J. Perry of the County of Woodford & State of Illinois are held
and firmly bound unto Elisha Williams of the County & State
aforesaid in the Penal Sum of Two Hundred & fifty dollars lawful
Money for the payment of which well & truly to be made we have ourselves
our heirs Executors & Administrators jointly severally & firmly by these
presents & Witness our hands and Seals this 28th day of
April A D 1851

The Condition of the above obligation is
such that whereas the said Elisha Williams did on the 11th
day of April A D 1851 in the Circuit Court within and for
the County of Woodford & State of Illinois recover a judgment
against the above Bounden Robert J. Caspell for aforesaid
for the Sum of Ninety nine dollars and Cents of Law, from
which Judgment of said Court the said Robert J. Caspell
has prayed for & obtained an appeal to the Supreme Court of
said State. & Now if the said Robert J. Caspell shall
duly prosecute his said appeal with effect and shall moreover
pay the amount of the Judgment Costs interest & damages
incurred & to be rendered against him the said R. J. Caspell
in case the said Judgment shall be affirmed in the
said Supreme Court then the above obligation to be null
& void otherwise to remain in full force and virtue

Approved by me this
28th day April A D 1851

R. J. Caspell
John J. Perry

J. J. Crisp. Clerk
Circuit Court Woodford Co

State of Illinois ss J. J. Crisp Clerk of the Circuit Court for
Woodford County) I do hereby certify that the above is
a true & correct copy of the bond filed in my office in the
Case of Elisha Williams vs R. J. Caspell
In testimony whereof I have hereunto set my hand & affixed the Seal of
said Court this 20th June 1851
J. J. Crisp Clerk

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Copy of Bond

Filed June 23rd 1854.
Lakeland Ok.