No. 8852

Supreme Court of Illinois

Miles Smothers

vs.

Joab Holly

71641 7

Page 1

State of Illinois }
Clay County } SS.

Pleas and Proceedings had in the Circuit Court in and for the County of Clay and State of Illinois in a certain Cause hereto fore Pending in said Court wherein Joab Holly is Plaintiff and Miles Smothers is Defendant.

Be It Remembered that on the 15th day of October A.D. 1867 Summons issued in the above entitled Cause as follows to Wit.

State of Illinois }
Clay County } SS

The People of the State of Illinois to the Sheriff of said County Greeting: We Command you to Summon Miles Smothers if to be found in your County, to be and Appear before the Circuit Court of Clay County, on the first day of the next term thereof, to be holden at the Court House in Louisville, on the fourth Monday in the month of October Inst, to Answer Joab Holly in an action of Trespass to his damage in the Sum of Three hundred Dollars as is alleged. And hereof make due return to our said court as the law directs.

Witness H Hortenstine Clerk of said Court at Louisville this 15th day of October A.D. 1867. Henry Hortenstine Clerk

S. S.

[P3352-1]

2

Upon which said Summons is the following Indorsements

Oct. Term Clay Circuit Court 1867

Joab Holley
vs
Miles Smothers
Assumpsit

I have served the within by reading the same to the within named Miles Smothers Oct. 16th 1867 N. H. Prick Sheriff

Fees - Service .75
Mileage 18 m. 1.80
Return .10
2.15

Afterwards to wit, on the 18th October AD 1867, the said plaintiff files his Declaration in the following words and figures to wit.

State of Illinois } Clay Circuit Court
Clay County } To November term 1867

Joab Holly Plaintiff in this suit by Hanna and Beeche his attorney complains of Miles Smothers Defendant of a plea of Trespass. For that the Defendant on to wit the 21st day of May A.D. 1867, at Clay County aforesaid being a Constable in and for said County by virtue of a certain Execution which the defendant then and

[8852-2]

3 there has as Constable as aforesaid in favor of John L. Dunn, James L. Dunn and David Wright Partners doing business under the name and Style of Dunn Brothers and Wright and against the plaintiff for the Sum of Sixty five Dollars debt and Dollars Costs of Suit, with interest from the day of A.D. 186, the day on which the judgment on which Said Execution was issued by Thomas L. Castor one of the Justices of the peace in and for the Said County and State and having Competent Jurisdiction and authority to issue the Same with force and Arms levied upon and took and drove away a certain Cow and Calf the property of the plaintiff of the Value of fifty Dollars and on or about the 17th day of June A.D. 1867 by Virtue of the Same Execution Sold the Said Cow and Calf, and the plaintiff avers that on and from the Said 21st day of May A.D. 1867, to the Said 17th day of June A.D. 1867, and hitherto the plaintiff was the head of a family and residing with the Same and that he Selected the Said property as Suited to his Condition and Occupation in life. And on the day and year first herein mentioned to Wit on the 21st day of May A.D. 1867 the plaintiff Selected and Claimed the Said property

[8052-B]

as being exempt from levy and sale on Execution by the laws of this State and the plaintiff avers that said Cow and Calf did not exceed the value of fifty Dollars and was suited to the plaintiff Condition and Occupation in life, And of all which the Defendant on to wit, the said 21st day of May A.D. 1869 at the County aforesaid had notice And the plaintiff avers that such levy and sale as aforesaid was Contrary to the form of the Statute in such Case made and provided by means of the premises and by force of the Statute in such Case made and provided the plaintiff hath became entitled to recover of the defendant three times the value of the said property so illegally taken and levied upon and sold by the defendant as aforesaid And the plaintiff avers that said property was of the value of fifty Dollars. And the Wrong aforesaid to the plaintiff the Defendant did then and there to wit at the County of Clay aforesaid against the peace and dignity of the people of the State of Illinois and to the damage of the plaintiff of three hundred Dollars. And therefore he brings this Suit &c

Hanna & Becker Attys Joab Holly Pltff.

[88524]

5

Miles Smothers

To Joab Holly Dr.

To three times the value of one Cow and Calf sold by him under Execution and exempt from levy by the Statute $300.00

On the back of which said Declaration are the following

Clay Circuit Court To November Term, 1867

Joab Holly

v.

Miles Smothers

Filed Oct. 18. 1867

H Hardenbrook Clerk

Beecher & Hanna

Pl'ff's Att'ys.

And now to this, Nov. 1, 1867, the Defendant files his plea as follows to wit,

State of Illinois } In the Circuit Court
Clay County } ss To October Term 1867

Miles Smothers

vs } Trespass

Joab Holly

And the said Defendant by Bryan and Rotan his Attorneys comes and defends the wrong and injury when &c

[8550-5]

and Says that he is not guilty in manner and form as the Said plaintiff hath Complained against him and of this puts himself upon the Country &c.

By Bryan & Botan
Attorneys of Deft.

Pltff. doth the like
Hanna for Pltff.

Notice of Special matter in defence.
The Plaintiff will take Notice that on the trial of this Cause the defendant will prove that the plaintiff had other property and other Cows besides the one set forth in his declaration and that Said Cow was not exempt from Execution and Sale as in his declaration he hath Complained &c.

Bryan & Botan
Atty. for Deft.

On the back of which Said plea is the following to Wit.

Filed Nov. 1. 1867
H. Hostenstein Clerk

Afterwards to Wit. on the fifth day of the October term of Said Court, the Hon. Richard E. Cunly presiding the following Order appears of Record to Wit.

1

Joab Holly
vs
Miles Smoots
Trespass

Now on this day to Wit Nov. 1. AD 1867 Came the parties by their attorneys and submit by agreement, this Cause to the Court without the intervention of a jury, and the Court having heard the evidence and the argument of Counsel and being fully advised in the premises enters judgment for the plaintiff, and assesses his damages at one hundred and eight Dollars, Whereupon Comes the defendant by his attorney and moves the Court for a new trial, which said motion is overruled by the Court, And now again Comes the said Defendant and moves the Court to grant an appeal, which said motion is allowed by the Court on Condition that defendant file bond within sixty days from November 1st. 1867, Conditional according to law in the sum of Two hundred and twenty Dollars with James L. Dunn and David Wright as sureties

And now on the same day to Wit, the said defendant files his bill of Exceptions herein as follows

Be it Remembered that at the October term of the Clay Circuit in and for the 25th Judicial Circuit in the

[8950-7]

8

County of Clay and State of Illinois His Honor Richard S Candy presiding Judge.
The Case of

Joab Holly
vs } Replevin
Miles Smothus

was called for trial and was tried before the Court without the intervention of a jury when the plaintiff to maintain his action introduced Joab Holly who testified as follows that Miles Smothus the defendant was a Constable at the time of the previous indebtedness mentioned and that he had an Execution in favor of Dunn Brothers & Wright, against said plaintiff, that said defendant, levied said Execution on a Cow that belonged to plaintiff, that said defendant afterwards sold said Cow under said Execution for $36.00 that said Cow was worth $50.00 that before the sale plaintiff served a notice on the defendant of which this is a copy,

Miles Smothus Constable you are hereby notified that the Cow you levied on belonging to me is exempt under the homestead laws of this State and I command you to return the same

Signed. Joab Holly

[1952-8]

That plaintiff had another Cow and Calf at the time of the levy that belonged to him there was Chattel Mortgage on it to one S.S. Clark, That S.S. Clark had a Chattel Mortgage on two horses and a wagon and one Cow which were in plantiffs possession that he supposed Clark had a right to take it into his possession any day, that the Cow was in his possession at the time of the levy of the execution that he had notified Defendant, one month before the Sale of the property under Execution, that he plantiff was at the time of said levy a head of a family and resided with them in the County of Clay and State of Illinois That the debt for which the execution was had was Contracted in 1866

Miles Smothers was then called for plantiff who testified as follows
I was Constable when the Levy was made I had an Execution in favor of Quin Brothers & Wright against plantiff and levied on a Cow in his possession I Sold her for thirty Six Dollars plantiff Served the Notice on me described in his testimony When I levied the execution plantiff told me he had no property which was liable to execution, he had property in his

possession, that I saw two horses and a wagon in his possession. And that was all the testimony offered by either party in the cause, The Court entered a verdict for the plantiff and assessed the damages at $108. Defendant then and there entered the motion for a new trial which motion the Court Overruled and Defendant to which defendant then and there Excepted and prayed and appeal to the Supreme Court and asked leave to file bill of Exceptions which is done. Appeal granted by Defendants filing bond with Security to be approved by the Clerk in Sixty days from 1st of November 1867.

R. S. Canby

Judge 25th Judicial
Circuit, Illinois

On the back of said bill of exceptions appears the following

Holly
vs
Smothers

Bill of Exceptions

Filed Nov. 1st. 1867
Henry Hartenstein
Clerk

11

Afterwards to wit December 9, 1867 the Defendant files his Appeal Bond which is as follows to wit.

Know all men by these presents that We Miles Smothers and James L. Dunn and David Wright of Clay County Illinois are held and firmly unto Joab Holly in the penal Sum of Two hundred and twenty Dollars lawful money of the United States for the payment of which well and truly to be made we bind ourselves our heirs executors and Administrators jointly, severally and firmly by these presents. Witness our hands and Seals this 2nd day of December A.D. 1867. The Condition of this obligation is such, That whereas the Said Joab Holly Plaintiff did on the first day of November A.D. 1867, in the Circuit Court of Clay County Illinois at the October Term A.D. 1867, thereof recover a judgment against the Said above bounden Miles Smothers in an action of Trespass for the Sum of One hundred and eight dollars and Costs of Suit, from which judgment the Said Miles Smothers has taken an Appeal to the Supreme Court of the State of Illinois.

Now if the above bounden Miles Smothers Shall duly prosecute his Appeal and Shall

[8852-11]

12

pay said Judgment, Costs Interest and damages in case the said Judgment shall be affirmed, then the above obligation to be void otherwise to remain in full force and effect

Miles Smothers (Seal)
David Wright (Seal)
James L Dunn (Seal)

Upon said bond is the following indorsement

Filed and approved by me Dec 9, 1867
Henry Hostenstine Clerk

State of Illinois
Clay County } ss

I Henry Hostenstine Clerk of the Circuit Court in and for said County & State do hereby certify that the above is a true and perfect transcript of the Record and proceedings had at the October Term of said Court 1867, in the case of Jacob Holly vs Miles Smothers as appears of Record in my Office

Given under my hand and Official Seal at Louisville in said County this 9th day of Dec. A.D. 1867
Henry Hostenstine Clerk

[PDS2-13]

Errors assigned

1st The Court erred in finding for Plaintiff

2nd The Judgment and verdict was against the law

3 The Judgment and verdict was against the evidence

4 The Court erred in overruling motion for new trial

5th And for other manifest errors this cause should be reversed

Joined in Error
Samuel Cleary Atty for Appellee

B. B. Smith & M Schaeffer } Attys for Plff in Error

Filed 2nd June 1865
Attest Timothy Ott Clk

Oct. Term 1867
Clay Circuit Court

Robt Hardy
vs
Charles Smoothers

Record

IN SUPREME COURT.

The State of Illinois, First Grand Division.

June Term, A. D. 1868.

JAMES M. PACE & HAREY T. PACE, Plaintiffs in Error. *vs.* THE PEOPLE OF THE STATE OF ILLINOIS, For use of the Trustees of Schools of Township No. 4, South of Range No. 2, East.	Error to Jefferson.

ABSTRACT.

2 Decla ation in debt on bond of James M. Pace, School Commissioner of Jefferson county
3 for $12000 debt; damages $12000.

4 Breach, that $409 10 came into hands of said School Commissioner for use of the said Trustees, that it was his duty to pay over said money to the Treasurer of said Township or other person authorized to receive it, and that on demand he refused to pay,

7 Demurrer to declaration, overruled.

8 Plea *nil debit* and issue joined.

9 The second plea avers that it was the duty of said Trustees to prepare, or cause to be prepared and forwarded to the School Commissioner, on or before the second Monday in October preceding the regular session of the General Assembly, and at such other times as may be required by the School Commissioner or State Superintendent, a statement exhibiting the condition of Schools in their Township for the preceding biennial period, and that in default thereof said Trustees should forfeit their right to demand and receive from the School Commissioner their portion of the public funds for the next ensuing year. And said Trustees did make default and failed to forward said statement as required by law, whereby they forfeited their right, &c.; and that the said $409 10 in the declaration mentioned is the sum that would have been due said Trustees from said defendant from the public funds but for said default, &c.

10 General demurrer to 2nd plea.

22 Demurrer to 2nd plea sustained, and leave to amend 2nd plea.

11 Second plea, as amended, is same as the original plea except that it is more carefully expressed, and also contains the following additional averment: "And defendants aver that such reports as aforesaid have been required to be made on or before the 2nd Monday of October annually by said State Superintendent for the period of six years before the bringing of this suit."

17 General Demurrer to 2nd plea as amended, filed.

24 General Demurrer to 2nd plea as amended, sustained.

14 Third plea alleges that when the funds that should have been apportioned to said Township came to his hands and from that time to the bringing of this suit the Township Treasurer of said Township had not filed a good and sufficient bond as required by law. And further that said plaintiffs nor any other person for them properly authorized have ever demanded the funds in said declaration mentioned.

16 General Demurrer to 3d plea filed.

24 General Demurrer to 3d plea sustained.

18 An amended plea was filed setting up the same defence substantially as the original 2nd plea and referring to the various sections of law upon which the plea was based.

25 The Court being fully advised, &c., order that plaintiffs have judgment in their favor and against defendants for the sum of $12000, the penal sum of the Bond, together with their debt of four hundred and nine dollars and ten cents, and damages of twenty-two dollars and eighty-four cents.

25 The same order proceeds as follows: "It is therefore further considered, &c., that said plaintiffs recover, &c., the aforesaid sum of $12000, the penal sum of the Bond aforesaid, to be discharged upon payment of $409 10 debt and $22 84 damages, &c."

ASSIGNMENT OF ERRORS.

1st. The Court erred in sustainning demurrer to 2nd plea and to 2d plea as amended.

2nd. The Court erred in sustaining demurrer to 3d plea and to 3d plea as amended.

3d. The Court erred in the manner of rendering judgment.

BRIEF.

The 36th section of the School Law of 1857 (see Session Acts of 1857, p. 270,) particularly recognizes October 1st as the beginning of the school year. In various sections of that law, October 1st is treated as the beginning of the school year. The State Superintendent of Public Instruction, in his authorited publication of Common School decisions, on page 143, Sec. 2, decides that the school year begins Oct. 1st.

In the 36th section above referred to, it is provided that each township shall, on or before the 2nd Monday of October, preceding each General Assembly, and at such other times as may be required by the State Superintendent, forward to the School Commissioner a statemens exhibiting the condition of schools in their respective townships for the preceding biennial period, giving separately each year, commencing on 1st Mondays of October. The amendment to that section by the Act of 1865 (see Session Acts 1865, page 113, Sec. 13) provides that any township trom which such report is not received in the manner and time required by law shall forfeit its portion of the public funds for the next ensuing year. This forfeiture took place the 2nd Monday in October, 1865, but the report, if made, would have been for the school year beginning October 1st, 1864, and ending Sept. 30, 1865. The public funds of the "next ensuing," are the taxes collected in the "next ensuing year," that is, the year 1866.

The second plea sets up the provisions of the law and that a report had been required as provided by law, and that no report was made. Wherefore the School Commissioner refused to pay, &c.

The 2nd plea alleges facts, which, if true, work a forfeiture of the rights of the township to its distributive share of the public funds. If that right was forfeited, he was obeying the law in refusing to pay its share to the negligent township, and in leaving it for the distribution to the other townships in the county. The plea was good in general demurrer.

In the 4th section of the "Act to amend the School Law," approved Feb. 16, 1865, (See Session Acts, 1865, p. 113) it is printed that no part of the School fund shall be paid to any Township Treasurer, unless said Treasurer had filed his Bond.

The third plea avers that the Treasurer had filed no bond, and is good on general demurrer.

The judgment is so informal that it can not stand, and there is nothing on the face of the judgment to authorize an amendment in this court.

The judgment is for "$12,000, the penal sum of the Bond, and debt of $409,10 and $22,84 damages." If the allegations in the declaration had been proven, and there had been no defence, or an insufficient defence, the judgment would have been for $12,000 debt, and $12,000 damages, to be discharged, &c. But as the judgment does not follow the allegations in the declaration, the court having nothing before it but the record can not correct the judgment.

GREEN & GILBERT,

For Plaintiff in Error.

IN SUPREME COURT.

The State of Illinois, First Grand Division.

June Term, A. D. 1868.

MILAS SMOTHERS, Appellant,)
vs.) Appeal from Clay County.
JOAB HOLLY, Appellee.)

BRIEF OF DEFENDANT IN ERROR.

There was no notice given to appellee of an intention to levy the execution, or if there was notice given, the Constable was informed at the same time that appellee had no property liable to execution. Under that state of case he was not required to turn out other property in satisfaction of execution. Vaughn vs. Thompson 15 Ill. 79.

The defendant was notified at the time of the levy that the property was exempt from execution, and afterwards, four weeks before the sale, the defendant was notified in writing. The notice may be informal, but it was enough to put him on his guard, and "if he doubted this, it was his duty to have made inquiry and set apart the value protected by law." 15 Ill. 79.

There is no demand for property by the Constable shown in the record—unless the fact that appellee knew of the existence of the execution is a demand. Unless that is so the appellee was not required to make a selection of the property levied on, as exempt and suitable to his condition, &c.

The claim being known to the officer four weeks before the sale, gave him ample time to try whatever rights the appellee had, and he was undoubtedly entitled to an opportunity to show his rights in the premises.

TANNER & CASEY,
Attorneys for Appellee.

36

Milas Smothers

vs

Joab Holly

Brief of Appelle

Filed June 4. 1864

R A D Milbourn Clk

Abstract Points and Authorities for Appellant.

Supreme Court of the State of Illinois

MILAS SMOTHERS, Appellant,
vs.
JOAB HOLLY, Appellee.
} Appeal from Clay County.

Page 1 This was an action of trespass, under the Statute against selling property exempt from Execution.

CAPTION AND SUMMONS.

2 1st, Count alleges that Defendant below, was a Constable in Clay County, and as a Constable, had placed in his hands, an Execution in favor of Dunn
3 Brothers & Wright, for thirty-five dollars, and blank dollars, costs and interest—that said Execution was issued duly—that Defendant, with force, levied upon, and drove away a Cow and Calf, the property of Plaintiff, of the value of fifty dollars, and sold the said Cow and Calf—that Plaintiff was, then and there, a head of a family, and resided with them, and that he selected the said Cow and Calf as suited to his condition and occupation in life, and that he claimed said property as exempt from levy and forced
4 sale, and that said property did not exceed fifty dollars in value, and was suited to Plaintiff's condition in life, of which the Defendant had notice.—That the Plaintiff is entitled to recover three times the value of said property, and that Defendant damaged Plaintiff $300.00. Defendant pleads
5 6 "Not Guilty," and gives notice of special matter in defense thus:

The Plaintiff will take notice, that on the trial of the cause, the Defendant will prove that the Plaintiff had other property and other Cows besides the one set forth in his declaration, and the said Cow was not exempt from execution and sale, as he hath complained, &c.

BRYAN & ROTAN,
For Defendant.

PLEAS FILED,

ORDER OF COURT.

7 This cause is submitted, by agreement, to the Court without a Jury, and evidence heard, and judgment for Plaintiff for one-hundred and eight dollars. Motion for a new trial. Motion over-ruled. Appeal prayed and granted. Bill of exception filed.

BILL OF EXCEPTIONS.

8 Plaintiff introduced Joab Holly, who testified—that Defendant was Constable at the time of indebtedness, and that he had an execution in favor of Dunn Brothers & Wright, against Plaintiff, that Defendant levied said execution on Plaintiff's Cow, and afterwards sold said Cow for $36.00, that she was worth $50.00—that he served a notice on Defendant, of which this is a copy:

MILAS SMOTHERS, Constable,

You are hereby notified that the Cow you levied on belonging to me, is exempt under the Homestead Law of this State, and I command you to return the same.

(Signed), JOAB HOLLY.

9 That the Plaintiff owned another Cow and Calf at the time of the levy, that had a chattel mortgage on it to S. S. Clark—that he (Clark), also had a chattel mortgage on two horses and a wagon, and one Cow—that all the above described property was Plaintiff's, and in his posession—that he supposed Clark had a right to take it into his possession any day—that the property was in Plaintiff's possession at the time of levy—that he notified Defendant one month before the sale of the property, that Plaintiff was the head of a family, and resided with them in Clay County—that the debt for which the execution was issued was contracted in 1866.

Plaintiff then introduced Milas Smothers, who testified as follows:

I was a constable when the levy was made—I had an execution in favor of Dunn Brothers & Wright, against Plaintiff, and levied on a Cow in his possession, and sold her for $36.00—Plaintiff served a notice on me, described in his testimony.

10 When I levied the execution, plaintiff told me he had no property liable to execution; he had property in his possession. That I saw two horses and a wagon in his possession.

POINTS AND AUTHORITIES.

1st. The Court erred in finding for Plaintiff
2nd The Judgment and verdict was against the law.
3rd. The Judgment and verdict was against the evidence.
4th. The Court erred in over-ruling motion for a new trial
5th. And for other manifest errors, this cause shall be reversed.

POINTS AND BRIEF OF APPELLANT.

1st, The evidence shows that the Appellee did not select the property in question as exempt, when the levy was made, and if he failed, or refused to make his selection when the levy was made, if notified of the levy when made, he cannot afterwards claim the benefit of the Law.

1st GILMAN, PAGE 333.
GILES COOK, Appellant
VS
GEORGE SCOTT, Appellee.

Holly swears that he served the notice, a copy of which is given, one month before the sale. Smothers testifies that he served the notice described but says that he said to him at the time of the levy, that he had no property subject to execution. Holly does not pretend that he made a selection at the time of levy, but Smothers states that he notified him when the levy was made. Being notified then, and failing to claim this property as exempt, he cannot claim any benefit under a subsequent notice. This being a penal action, it devolves on the plaintiff to show that he had no notice of the levy when made, before he can claim the benefit of the law, in order to avail himself of a notice served after the levy

The evidence shows that plaintiff had two horses and a wagon, and another cow and calf in his possession when the levy was made. Holly and Smothers both testify to this, and though Holly says that S. S. Clark had a chattel Mortgage on the horses and cow and wagon, and that he supposed that Clark had the right to take possession at any time, yet this was inadmissible, and could only be proven by the mortgage itself.

But if true Holly had yet a legal right in the property held under the mortgage, such as was subject to execution which he was bound to surrender to the officer, before he could claim the benefit of the Law.

Cook VS Scott. 1st Gilman; page 333.

S. L. BRYAN.
B. B. SMITH.
M. Scheuffler Atty's for Appellant.

[2253-17]

30

Smothers

vs

Hooey

Plffs Abstract

and Brief

Filed 2nd June '08

W. H. Williams

Clk

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vs.
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BRYAN & ROTAN,
For Defendant.

PLEAS FILED,

ORDER OF COURT.

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POINTS AND AUTHORITIES.

1st. The Court erred in finding for Plaintiff
2nd The Judgment and verdict was against the law.
3rd. The Judgment and verdict was against the evidence.
4th. The Court erred in over-ruling motion for a new trial
5th. And for other manifest errors, this cause shall be reversed.

POINTS AND BRIEF OF APPELLANT.

1st, The evidence shows that the Appellee did not select the property in question as exempt, when the levy was made, and if he failed, or refused to make his selection when the levy was made, if notified of the levy when made, he cannot afterwards claim the benefit of the Law.

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The evidence shows that plaintiff had two horses and a wagon, and another cow and calf in his possession when the levy was made. Holly and Smothers both testify to this, and though Holly says that S. S. Clark had a chattel Mortgage on the horses and cow and wagon, and that he supposed that Clark had the right to take possession at any time, yet this was inadmissible, and could only be proven by the mortgage itself.

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Cook VS Scott. 1st Gilman; page 333.

S. L. BRYAN.
B. B. SMITH.
M. Schaeffer
Atty's for Appellant.

86

Milas Smotten
appellant
vs
Rob Holly
appellee

Pff's Abstract
and Brief

Filed 2nd June '68
R. A. Williams
Clk

IN SUPREME COURT.

The State of Illinois, First Grand Division.

June Term, A. D. 1868.

MILAS SMOTHERS, Appellant,)
vs.) Appeal from Clay County.
JOAB HOLLY, Appellee.)

BRIEF OF DEFENDANT IN ERROR.

There was no notice given to appellee of an intention to levy the execution, or if there was notice given, the Constable was informed at the same time that appellee had no property liable to execution. Under that state of case he was not required to turn out other property in satisfaction of execution. Vaughn vs. Thompson 15 Ill. 79.

The defendant was notified at the time of the levy that the property was exempt from execution, and afterwards, four weeks before the sale, the defendant was notified in writing. The notice may be informal, but it was enough to put him on his guard, and "if he doubted this, it was his duty to have made inquiry and set apart the value protected by law." 15 Ill. 79.

There is no demand for property by the Constable shown in the record—unless the fact that appellee knew of the existence of the execution is a demand. Unless that is so the appellee was not required to make a selection of the property levied on, as exempt and suitable to his condition, &c.

The claim being known to the officer four weeks before the sale, gave him ample time to try whatever rights the appellee had, and he was undoubtedly entitled to an opportunity to show his rights in the premises.

TANNER & CASEY,
Attorneys for Appellee.

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Milas Smothers
vs
Joab Holly

Brief of Appellee

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R A Dillbaughy Clk