

#28 Law Att. Montgomery Co.

1878

J L Gausney Atty for J M Williams

Leech & Savage Atty for J W Cooper.

Filed Nov. 7, 1887

N. Dexter. CLK

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Writ of replevin 1.

State of Tennessee }
Montgomery County }

Be it remembered
that on the 8th day of March 1887. a writ
of replevin was issued from The Honorable
Circuit Court of Montgomery County Ten-
nessee in the words and figures following
to wit:

Writ of
replevin

State of Tennessee }
Montgomery County }

To the coroner of said
County;

I Command you to summon T. V.
Cooper, to personally appear before the Circuit
Court of said County at the Court-house
in Clarksville on the first Monday in May
next (1887) to answer the Complaint of T.
McWilliams, for wrongfully taking out of
his possession and detaining from him one
half interest in a crop of Tobacco, now in
the barn on the farm formerly owned by W. B.
Collins and which farm descended to the heirs of
said Collins and lies in Dist No 3. of said
County, the property of said T. McWilliams, And

I also Command you to Take said property out of the possession of said T. V. Cooper Deputy Sheriff and deliver the same to said T. McWilliams, he having given Bond and security as required by law.

Witness my hand at Office in Clarksville the first Monday in January 1887.

L. D. Bailey Clerk

[Endorsed] Issued March 8. 1887.

L. D. Bailey Clerk

Came to hand same day issued and executed by Taking the Tobacco out of the possession of T. V. Cooper and placing it in possession of T. McWilliams, and I summoned said T. V. Cooper to appear before the Circuit Court on the first Monday in May 1887 as Commanded to do.

March 14. 1887

J. T. Staton Coroner.

State of Tennessee }
Montgomery County } Personally appeared before
me, L. D. Bailey Clerk of the Circuit Court
for said County T. McWilliams and made
oath in due form, that according to his
information and belief, he is entitled

to the possession of a certain one half interest
in a Crop of Tobacco now in the barns on
the farm in Dist No 3 of said County which
farm was formerly the property of W B Collins
and which descended to his heirs, That T. V.
Cooper deputy sheriff has seized and detains
said interest in said Crop of Tobacco wrong-
fully and without authority; That said interest
in said Tobacco is not subject to such seizure
or detention; Wherefore he prays a writ
of replevin, which is allowed.

signed T. M. Williams

Sworn to and subscribed before me this the
8th day of March 1887.

L. D. Bailey Clerk

(Bond)

Replevin
Bond

We T. M. Williams and
bind ourselves to T. V. Cooper Deputy Sheriff
in the penal sum of Eight Hundred Dollars,
to be void on Condition that the said T. M.
Williams prosecute with effect an action of
Replevin he is about to commence before
the Circuit Court of Montgomery County against
T. V. Cooper Deputy Sheriff, or in case of

failure, pay all the costs adjudged against him
and abide by and perform the judgment of the
court in the premises. This 8th day of
March 1887.

T. M. Williams

R. H. Williams

T. L. Gancey

F. G. Williams

And the Plaintiff filed his Declaration
in said suit which is in the words and
figures following, to wit:

T. M. Williams

Declaration

vs

T. V. Cooper

In Circuit Court of Mont -
gomery levanty

The Plaintiff

sues the defendant for the possession of the
Tobacco now in the barn on farm known
as the W B Collins farm in Dist No 3
of Montgomery levanty & for damages for the
detention of ~~these~~ same and which is the
property of Plaintiff and which he says
the defendant wrongfully detained from
him, from March 7th 1887 to March 12th

1887

Gaucy & Wilson

Atty for Plaintiff

(Endorsed) Filed May 4, 1887

led Bailey clerk.

And the defendant filed the following Plea
to wit:

Plea 1st

Defendant for Plea says he is not
guilty in manner and form as Plaintiff
in his declaration doth allege, Defendant
asks for a Jury to try his case.

T W Cooper

Leach & Savage Atty

(Endorsed) "Plea filed May 4, 1887

led Bailey clerk

And again at the September Term 1887
the defendant filed the following additional
Plea, to wit:—

Plea 2^d

J. W. Williams

vs

T W Cooper

} Defendant for further plea
3 } says that this matter was

settled in another case - that is, on the 19th
day of October 1886. Messrs Mary and Gold Collins
sued Defendant as Constable, before J. W. Anderson

6

a J P for Montgomery County Tennessee in an action of damage for unlawfully detaining from them the same property involved in this suit. Said case was decided by said Magistrate and said Wifes Mary and Gold Collins appealed to this court, ^{and} at the May Term of this Court was tried and from that judgment no appeal was taken. On the 8th day of March 1887 during the pendency of said suit in this Court Plaintiff (Williams) in the Present suit purchased the property now in controversy, which is the same property that was litigated in the suit of Mary and Gold Collins And he is bound by the decision and judgment in said suit. The issue was the same in that case as in this, and the papers, proceedings and records in that case are made a part of this plea.

J. V. Cooper

Leach & Savage

Attys for Defendants

(Endorsed) C

Filed Sept 5. 1887

L. P. Bailey Clerk

And at a regular term of said Circuit Court held for Montgomery County at the Court house in Clarksville on the first Monday in May A D 1887 when being present and presiding the Honl A. H. Munford Judge &c, the following proceedings were had in said cause, and entered of record in said court, to wit:

Entry on minutes May 25. 1887

T. H. Williams }
vs }

Order to

vs

Justify bond

T. V. Cooper

} Upon application of defend-
} ant's Attorney and Affidavit
} filed, the court ordered that

the plaintiff justify the solvency of the bond in this cause, and give other and further security before the adjournment of this court or the suit will be dismissed and judgment rendered thereon.

(Entry on Minutes May 27. 1887.)

T. H. Williams }
vs }

vs

T. V. Cooper

} This day came the parties
} by Attorneys, and the

plaintiff having justified the solvency of his bond
 Order trial the court ordered that this suit stand for trial
 at the next Term

And at a regular Term of said
 Court held for said County, at the Court house
 in Clarksville on the first Monday in September
 AD 1887, when being present and pre-
 siding the Hon'ble A. H. Munford Judge &
 the following proceedings were had and entered
 of record. in said Court in said Cause, to wit

(Entry on Minutes Sept 10. 1887)

T. M. Williams }
 vs } Replevin
 T. W. Cooper & Shiff }

This day came the parties
 by Attornies, and thereupon came a jury of
 good and lawful men, citizens of Montgomery
 County, to wit: P. H. Reese, Tom Creal, J. M.
 Legon, W. L. Young, M. A. Williams, W. L. Lewis
 Geo Smith, W. A. Marshall, J. Smith Wm Newell
 J. P. Daley, Ed Turnley, who being duly elected,
 tried and sworn, the truth to speak upon

the issue joined in this cause, to their seats in the jury box.

Motion to
dismiss

And after proof was heard and plaintiffs attorney had addressed the court and jury, defendants attorney moved the court to dismiss this cause, because plaintiff sued to ~~replevy~~ half an interest in a crop of Tobacco.

Motion to
amend

Whereupon Plaintiff moved the Court to be allowed to amend the affidavit of his original writ so as to read: "That Plaintiff is the legal owner of half of the described crop, and by contract with his co-tenants is entitled to possession of the whole crop. The crop is unstripped and the said Cooper is in possession of the whole crop by the levy of an execution against Mattie Collins on affiant's interest in the crop." The Court

Judgment on
Motions

Overruled plaintiffs motion to amend and sustained defendants motion to dismiss

Entry Sept 28. 1887

T. Mc. Withampt

v
T. V. Cooper & Shiff } This day came the parties by Attornies

Motion over And the Plaintiff moved the court in arrest
 trial & in of judgment, and to grant a new trial in this
 arrest Cause, which motions were over ruled by the
 Overruled court: To all of which action of the court
 the Plaintiff excepts, and tendered his bill
 of exceptions, which was signed by the court
 Order and ordered by the court to be made a
 part of the record in this Cause, And the
 Appeal Plaintiff prayed and appeal to the next
 Term of the Supreme Court of Tennessee to
 be held at Nashville; And the Plaintiff
 having taken and subscribed to the oath
 prescribed by law for poor persons. The
 appeal is granted

[Entry in minutes Sept. 30. 1887]

T. Mc Williams

vs

T. V. Cooper & Shiff

On motion of defend-
 ants Attorney, the court
 ordered, that the entry
 upon the minutes of this court, made in this
 case on the 10th day of September 1887 and
 which appears on page 200 of this folio, be so
 amended as to read (in addition to the entry

Judgment
final
motion &
Judgment for
cost

there made) as follows; - It is therefore con- sidered by the court, that the defendant recover of the plaintiff, the possession of the Tobacco replevied in this action, and that he also recover of Plaintiff and on motion made against them, of, R. G. Williams, R. H. Williams and T. L. Gancey, sureties on the replevin bond, the costs in this behalf expended and that execution issue.

Paupers
Oath

The Paupers oath filed by the Plaintiff is in the words and figures following to wit:
'I T. Mc Williams do solemnly swear that owing to my poverty I am not able to bear the expenses of the action which I am about to commence by appeal to the Supreme court of Tennessee at Nashville, from a judgment rendered this day in the Circuit court of Montgomery County in favor of T. V. Cooper Deputy Sheriff in an Action of replevin, and that I am justly entitled to the redress sought to the best of my belief.
(Signed) T. Mc Williams

Sworn to and Subscribed before
me in open court Sept 10. 1887.

Ed Bailey Clerk

The Bill of exceptions filed by Plaintiff
is in words and figures following to wit:

T. Mc Williams }
vs } Testimony of Plaintiff
T. V Cooper }

T. Mc Williams
Testimony

The Plaintiff being sworn tes-
tified as follows.

The crop of Tobacco involved in this
suit was raised on the farm known as the
H. B. Collins farm in Dist No 3 of this County.
Several years ago said Collins conveyed the
farm to his four daughters and retained a
life estate in it. His daughters are Mrs Ed-
wards, Miss Mary, Gold and Mattie. He was
very old. Mattie had the sole control of the
place until the father's death, owning the
stock and crop and supporting her father
Miss Mary and Miss Gold on the place. Mr.
Collins died in 1885 in the Summer. I have
lived on the place three years. The first

year I attended to the farming for Miss Mattie and rented the place and her team from her for the year 1885. Miss Mattie began farming for 1886. and the first of March 1886 her stock was taken off the place to be sold for foreclosing a Mortgage on the Stock. Then Miss Gold and Miss Mary rented Miss Mattie One fourth interest in the land and the use of certain work stock, [Here the witness produced and read the Contract which is in words and figures as follows: -

Exhibit A.

"State of Tennessee }
 Montgomery County } This Contract between
 Me. E. and S. G. Collins of
 the one part and S. M. A. Collins of the other;
 Witnesseth, that for and in Consideration of
 the sum of seventy five dollars, the said
 S. M. A. Collins agrees, covenants with, and
 does hereby rent to said Me. E. and S. G.
 Collins her one fourth interest in the
 farm lying in Civil Dist. No 3 on which
 all parties now live, And said parties fur-
 ther agree, that said S. M. A. Collins for
 the use of certain work stock by her owned

shall receive, board washing and lodging
and be held exempt from Taxes upon her one
fourth of said land, along with all cost of re-
pairs to buildings and fences or tools, for the
current year Eighteen hundred and Eighty
Six. Witness our hands this March 23. 86

Mary E. Collins

S. G. Collins

S. M. A. Collins

On the date of Exhibit "A" Miss Mary and
Gold executed their note to Miss Nuttin for
the rent which is marked ~~2~~ and is as
follows:

Exhibit
13

January 1st Eighteen hundred and
Eighty Seven, We promise to pay S. M. A. Collins
or order the sum of Seventy five dollars, cents
for her one fourth interest in the farm of our
late father, upon which we now live - And
this note shall be a lien upon our share
of all crops grown upon said farm during
the current year - Eighteen hundred &
Eighty six. Witness our hands and seals
This March 23. 1886.

Mary E. Collins

S. G. Collins

The rental of Mrs Edwards, her one fourth interest and executed their note, therefore which is read and is in words and figures as follows

Ex B State of Tennessee 9 March 23. 1886
 Montgomery County 3 January 1st Eighteen
 hundred and Eighty-
 seven We Promise to pay Mrs N. J Edwards
 the sum of seventy five dollars rent for her
 one fourth interest in the farm of our
 late father, upon which we now live
 This note to be a first lien upon our
 share of all crops grown upon said farm
 in the Current year Eighteen hundred
 and Eighty six Witness our hands and
 Seals.

Mary E. Collins

S. G. Collins

I was living on the place and was a witness of these contracts. I remained on the place and assisted Miss Mary and Gold in superintending the crop raised in 1886. The crop was made by negroes, who by contract was to have one half the corn

and wheat and one half of the Tobacco, The negroes had been on the place three years. Miss Mattie had them, then I had them for the crop of 1885. and they began and made the crop of 1886. on the same contract, The negroes were indebted to me for supplies furnished them in 1886. In the summer of 1886 Miss Mattie wanted money and after trying in vain to raise it on her sisters' rent obligation I advanced her the money and took their obligation Exhibit A. J.

In October Mr Cooper D. S. came to the farm and levied an execution on Mattie's interest in the Tobacco that had been housed - half then housed - The Execution was against Miss Mattie in favor of John Elder and is in words and figures as follows:

Wife

State of Tennessee: Montgomery County
To ~~The~~ Sheriff or any lawful Officer of said County:

I Command you, that of the goods and chattels, lands and tenements of Miss

S. M. A. Collins if to be found in your County, you make the sum of four hundred and seventy three $\frac{40}{100}$ dollars and costs of suit to satisfy a judgment that John S. Elder obtained against her before me on the 22nd day of October 1885. and pay over the same as the law directs

This the 4th day of October 1886.

R D Read L.S.

Justice of the Peace

(Endorsed) Issued Oct 4. 1886

R D Read J.P.

Levy endorsed Came to hand when issued. Executed by
 on file levying on Miss S. M. A. Collins entire interest in all the Tobacco raised on her farm in Dist No 3. of Montgomery County in the year 1886. Her interest being one half Tobacco left in possession of defendant by order of Plaintiff This Oct 11th 1886 Served with writ of detinue, Tried before Esq Anderson, Decided in favor of J. S. Elder Appealed to Circuit Court. Oct 17. 1886.

"By agreement of all parties the Tobacco levied on is placed under control ofelay

Long and he is to direct the curing and stripping of said Tobacco - That is - to supervise the Hands who raised it in curing and stripping it. Oct 25th '86

T. V. Cooper Dist Shff.

I endorse the returns made on this Execution This Oct 25th 1886

Jas S. Elder"

Miss Mary and Miss Gold then brought an action against Cooper before J. M. Anderson a J P of this County. The Tobacco remained in the barn and having a lien on the negroes' half for supplies and for the debt obligation to Miss Mattie, wanted it stripped and put on the Market without loss. Some of the negroes refused to touch the crop after the levy. Miss Mary and Gold were indebted to me for supplies furnished them and the rent due Miss Mattie, and for these debts they sold me their half interest in the Tobacco on the 8th March 1887, Their transfer to me is here read and is in words and figures as follows & marked "C".

"We M & S. G. Collins transfer over

one half interest in a Crop of Tobacco raised on the Collins farm in Civil Dist No 3 of Montgomery County, Tenn 1886 to T M Williams for services rendered Supplies furnished to family for the said year of Eighteen hundred and eighty six Also for one rent note paid by said Williams to S. M. A. Collins. This Mar. 8 1887

Mary E. Collins
S. M. A. Collins

After this I instituted this suit and took possession of the Tobacco, stripped, prized and sold it.

Cross Examination of T. M. Williams

note of
M E Collins &
S M Collins
Ex B.

Jan 1st Eighteen hundred and Eighty seven we promise to pay S M A Collins or order the sum of seventy five dollars, rent for her one fourth interest in the farm of our late father, upon which we now live - And this note shall be a lien upon our share of all crops grown upon said farm during the year for which it is rented - The current year Eighteen hundred and Eighty

six. Witness our hands and seals This March
29th 1886.

Mary E Collins
S. G. Collins

(Endorsed) Received payment Sept 6th 1886.

Order to . Content Sept 6. 1886

F. McWilliam The hereby authorize and empower T. McWilliam
Ex Mc. Collins to raise for us seventy five dollars
upon our growing crop of Tobacco- and
any action of his to that end we agree
to recognize as valid and binding on
us.

Mary E Collins
S. G. Collins

The pauper authorizing me to collect money
75⁰⁰ signed by Mary and Gold Collins was
given on the same day I purchased Mary
and Gold Collins note to Mattie. They were
both written by Mattie and are on the same
kind of paper. I did raise the money
on that paper. When asked where he
got the money to pay Mattie, He said that was
his own business.

Exhibit
6

"The M E and S G. Collins
Transfer our one half interest in a crop

of Tobacco raised on the Collins farm in Civil District No 3. of Montgomery County Tenn 1886. to T Mc Williams, for services rendered supplies furnished to family for the said year of Eighteen hundred and Eighty six also for our rent note paid by said Williams to S. M. A. Collins, This Mar. 8. 1887

Mary E Collins
S. G. Collins

This Transfer was made to me after Mary and Gold Collins commenced their action before J Mc Anderson J.P.; That suit was commenced in Oct 1886. and the transfer to me was in March 1887. I was a Witness before J. Mc. Anderson, and I did not claim any interest in the crop, except that I had furnished the Croppers supplies, I was present in the Circuit Court when that case was tried, I knew Mary and Gold appealed from the decision of J Mc Anderson

Re-examined By Plaintiff Attorney

It was my own money I paid Mattie for the note, It was paid the day

I was authorized to raise money on the note.

Jno G. Staton for the Defendant Testified

Jno G. Staton
Testimony

"I was at the trial of the Case of Leollins vs Leoper before Anderson J. P. T. McWilliams, the Plaintiff in this action testified on that trial. He said all the Tobacco levied on was the property of Mary and Gold Leollins and that he had no interest in it.

Defendant then introduced the papers in a suit commenced before J. Mc. Anderson J. P. of Montgomery County, which Case was appealed to the Circuit Court of Montgomery County, and tried at the May Term 1887 of said Court
Writ:

Record

Mc + S. Leollins

vs

T. V. Hooper & Son

State of Tennessee: Montgomery County
To any lawful Officer to Execute & Return:

You are hereby Comanded to summon Thomas Leoper Deputy Sheriff to appear before me or some other Justice of the

Peace of Montgomery County, To Answer Mary
 And Gold Collins in a plea of damages
 \$100, for unlawfully detaining from them
 the Crop of Tobacco now on the land where-
 on they now live in Dist. No 3 of said County
 In which you will fail not and make due
 return. This 13. of Oct. 1886

J. Mc. Anderson J. P.

Endorsed.) Executed and set for hearing on
 Tues Oct 19. '86 at 10 o'clock before J. Mc.
 Anderson J. P.

Lehas Lowe clerk.

Endorsed.) Judgment in favor of Defendants
 and Cost of suit, All of the witnesses claim-
 ing their Attendance

J. Mc. Anderson J. P.

Endorsed.) Oct 19. 1886.

Plaintiff take an
 Appeal to Circuit Court, Taking Paupers
 oath, not able to pay costs.

Endorsed.) Filed Nov. 1st 1886

Le D Bailey clerk

Paupers Oath Collins vs. Elder 3

State of Tennessee }
 Montgomery County } Personally appeared before
 me J. W. Anderson J.P. for
 said County, Miss Mary Collins one of the
 complainants in this case who makes oath
 that she is not able to bear the expenses
 of this law suit on appeal which has this
 day been granted to the Circuit Court of
 said County, and that she is justly entitled
 to the redress sought to the best of her
 knowledge and belief. Oct 19th 1886.

Mary E. Collins

Personally appeared before me J. W. Anderson
 an Acting Justice of the Peace for Montgomery
 County, Miss Mary E. Collins and made oath
 that she is not able to pay the costs in this
 law suit. This Oct 19, 1886.

J. W. Anderson J.P.

Entry on Minutes May 3. 1887

M. E. & S. G. Collins

On motion and by
 T. V. Cooper & Shiff } Consent of parties it
 is ordered by the court
 that John S. Elder, he being the real party

in interest be substituted as defendant for
T. V. Leeper, who is sued as an Officer in this
Case.

(Entry on Minutes May 18th 1887.)

Mo. E. & S. G. Collins	}	This cause was heard by the court, by consent of parties without the intervention of a jury. The Judge finds that the defendant wrongfully detained from the plaintiff, three fourths of the Tobacco raised on the Collins or home place of plaintiff; and no damages being proven for such detention the court gives plaintiff nominal damages, and the Costs of the proceeding for which execution may issue.
vs John S. Elder		

Whereupon Plaintiffs Attorney moved
the court to grant a writ of enquiry, that
a jury may come to assess the value of
the Tobacco, so wrongfully detained by
defendant from plaintiff."

Entry on Minutes May 20. 1887

Mo E & S. G. Collins	}	In this Cause, after and at the time the court
vs John S. Elder		

verbally rendered its judgment Defendants Attorney for the first time produced the warrant, and suggested that the suit was for damages alone and not for the recovery of the tobacco and then Plaintiffs Attorney asked to Amend the warrant so as to erase the words from the warrant "of damages \$100" so as to read "in a plea for unlawfully detaining from them the Crop of Tobacco now on the lands whereon they now live in Dist no 3 of said County" which Amendment the court refused to allow.

And upon argument of counsel the Court overruled the motion made by Plaintiff to have a writ of enquiry issue in this cause.

Plaintiff excepted to the action of the court in this cause.

This was all the testimony introduced.

Amendment
asked by
Plaintiff

After Plaintiffs had argued the case to the court and jury Defendants Attorney moved the court to dismiss the case because of the unsufficiency of Plaintiffs affidavit on which the writ issued the affidavit showing that he said to re-

plevy a half interest of a Crop of Tobacco

Whereupon Plaintiff moved the court to permit him to amend his affidavit and write out the proposed amendments and offered it to the court. It is in the following words and figures:

"After the proof was taken and Plaintiff's Attorney had addressed the court and jury, Defendants Attorney moved the court to dismiss the Cause because Plaintiff sued to recover half a crop of Tobacco.

Whereon Plaintiff moves the court to be allowed to amend the affidavit of his original writ as to read: "That Plaintiff is the legal owner of half the described crop, and by contract with his Co-tenants is entitled to the possession of the whole crop. The crop is now reaped and said Cooper is in possession of the whole crop by the levy of an execution against Mattie Collins on affiant's interest in the crop"

And Plaintiff offered to prove the

truth of the proposed amendment
The court refused
to permit the amendment, and dismissed
the case, to which Plaintiff excepted.

Signed and Ordered to be made
a part of the record in this cause.

A. H. Munford
Judge

Bill of Cost

State tax ²⁵⁰	County tax ²⁵⁰	Rail road tax ²⁵⁰	750
Clerk	Writ 75. ^{Refiling} Bond 50. Docket 20. 3 Orders 75.	220	
	Filing declaration 25. Filing 2 pleas 50. Jury 10.	80	
	10 subpoenas 100 4 Motions & order thereon 100	200	
	Issuing capias order 25. Judgment 75.	100	
	6 Probates 30 Transcript 50 Seal 50.	620	
	Bill of cost on docket 50. Capias cost 25.	75	1300
Shff M H West	Executing 7 subpoenas	175	
" J S Staten	" Writ \$100 Excty notice 50.	150	
" J H Bufman	" 1 subpoena	25	
" L H Staten	" 2 do 50. Jury 10.	65	
Witness Geo Long	1 day 2 calls \$10 Harry Perkins 1 day 2 calls \$10 Henry Collins 1.2. \$10	330	
" Jim Collins	1 day 2 calls \$10 Hi Knott 1 day 2 calls \$10 John James 1 day 100	320	
			\$3115

L L Williams

vs

J V Cooper.

This was a replevy suit of a crop of Tobacco brought by plaintiff in the Circuit Court of Montgomery County on the 6th of March 1887, & was tried at the Sept. term 1887.

The plaintiff was the only witness. After the plaintiffs attorney had addressed the Court & jury on the facts & Law. Defts Atty call the Courts attention to the affidavit of plaintiff on which the writ issued & mooved the Court to dismiss the case. because the affidavit claimed that plaintiff owned but half the Tobacco, & had replevied but half of it.

Whereon plaintiff mooves the Court to allow the following amendment. which was written out & offered to the Court & is as follows

- " After the proof was taken & plaintiff
- " Atty had addressed the Court & jury
- " Defts Atty. mooved the Court to dismiss the
- " Cause because plaintiff sued to Replevy half a crop of Tobacco. Whereon plaintiff moove the Court to be allowed to amend the affidavit of his ^{original} writ so as to read that plaintiff is the legal owner

" of half the described crop & by Con -
" Tract with his Cotenants is entitled to
" the possession of the whole crop."
* asked to be allowed to prove the
truth of the amendment.

In Trans. Pg 27.

The Court erroneously disallowed
the amendment & dismissed the
Cause at plaintiffs Cause & awarded
a writ of enquiry.

This amendment - Carrying imme-
diately at the heels of the proposition
to dismiss - should have been al-
lowed.

Code Sec 2863. I & O. reads as follows

" No summons, writ, pleading, process,
" return or other proceeding, in any
" civil action in any Court shall be
" abated or quashed for any defect
" omission or imperfection "

Code Sec 2867. reads as follows

" The Court may allow materi-
" al amendments at any stage of
" the proceedings, upon such terms,
" and subject to such rules as it
" may prescribe "

These sections have been construed
so often by this Court & so distinctly

showing that plaintiff's proposed amendment should have been allowed, that it would be supererogation to cite them.

The rule is to allow ^{all} amendments that do not change the cause of action, & that will not work injustice.

7 Yer. 136. *Hunter & Sirey*
In Attachment cases defective affidavits are amendable.

Maples & Lewis 11 *Thump* 116.

Affidavits in replevin cases are always amendable.

Applwhite & Allen 8 *Thump* 697.

Shannon & Hall 4 *Lea* 499.

It was error not to allow the proposed amendment.

After refusing to permit the amendment the Court erroneously - we think - dismiss the case on the ground that Plaintiff's affidavit showed that he had replevied half of a Chattel on the authority of *Bogard & Jones* 9 *Thump* 740, *Hickson & Lockard* 5 *Box* 260 & *Collier & Gearwood* 9 *Box* 581.

But the facts in these cases differ widely from the case at bar.

In the first, one Coowner of a negro sought by replevin to have the sale

possessor of her. In the 2^d Plaintiff
"sought" in affidavit, writ & declara-
"tion to recover" $\frac{2}{3}$ of 500 pounds of lint
"cotton & $\frac{2}{3}$ of about of 4500 pounds of
"of picked cotton in the said" the whole
of which had been levied on by Deft.
In the 3^d Case 9 Bax. 260. no facts are
"given except that" it was a replevin
"of three fourth of three bales of cotton."

In all these cases the Court says, "Where
property is owned by two persons joint-
-ly, & not susceptible of separation,
the action must be brought in the
name of the joint owners."

In the case at hand the whole crop
of tobacco was not levied ^{on} by Deft. but
only the interest of a stranger to this suit,
in the tobacco crop.

See Return on Execution Trans Pg 16 & 17.

Plaintiffs declaration, also, ~~unlike~~ these
cases claimed the right to the possession
of the whole crop. - & this, as will ^{be} hereafter
show, excluded the objection to the affi-
davit. Coming as it did after Deft. had
pleaded, "Not guilty & res judicata"

But to fully understand the error
of the Court, it is necessary to look to the
facts & know the injustice done Plaintiff

The facts are few, & uncontradicted Plaintiff is the only witness & shows that one Collins—an old & feeble man owned a farm in Dis No 3 of Montgomery County. He died in 1885 leaving four daughters—three of them—Mary Gold & Mattie living on the farm, one Mrs Edwards had married & lived away.

For several years before the old man's death Miss Mattie had the entire control of the farm—owning all the stock & tools— & at the old man's death was bankrupt. Plaintiff lived with the family & super^{& stock}—intended the farming, & rented the farm for 1885.

At the death of the old man there were several negro families on the farm who had worked there three or four years on verbal contracts with Miss Mattie & with Plaintiff—when he rented 1885—The negroes were to have half the crops in kind, of all crops they produce on the farm, using the stock & tools. After the death of the old man the negroes agreed with Miss Mattie that they would make a crop in 1886 on the same contract. In March 1886 the Sheriff came to the farm & took off several mules

- work stock & some cattle. Part of these Miss Mattie recovered, & got back on the farm. There had been no Contract between Miss Mattie & her sisters, up to this time, about the land. The Miss Mary & Gold rented Miss Matties interest in the farm & the use of her stock. They subscribed a mutual Contract, & executed their note of hand to Miss Mattie - both of which are exhibited in plaintiffs testimony. At the same time they rented from Mrs Edwards & gave her their note - which is part of plaintiffs testimony. Plaintiff continued to live on the farm & supervised for Miss Mary & Gold, & furnished supplies to the negroes on their credit.

On Dec 25th 1886, Deft. Cooper supposing Miss Mattie to be the owner of the landlords part of the crops levied the execution on "all the interest Mattie Colling had in the tobacco crop.

Before this levy, plaintiff had paid off & had Miss Mary & Golds note for rent to Miss Mattie.

Miss Mary & Gold brought a suit of

continue against Cooper before a J. P.
was defeated & appealed to the Circuit
Court. While the appeal was pending
& on the 8th of March Messrs Mary & Gold
sold & conveyed by righting their interest
in the tobacco crop to plaintiff in
payment of their rent note & other
debts due by them to him. On the
same day plaintiff brought this
suit & replevied the tobacco from
Cooper.

Up to this time not one effort
was made to prepare the crop for
market. Plaintiff took possession,
stripped, pruned & sold the crop on the
Market at Clarksville. It netted
\$500. Plaintiffs share \$250.

All these facts fully appear from
plaintiffs testimony. They are not
contradicted by a particle of proof.

See Testimony Trans. Pgs 12-16 incls.

These facts show that if "amend-
ments may be made at any time to
reach the merits & attain justice"

~~5~~ C. Gallop v Davis, 5 ~~Cal.~~ Yer 319.

the Court below erred in dismissing this
Cause & in not allowing the amend-
ment of the affidavit.

The Court sees from these facts that plaintiff by purchase of the landlords interest in the tobacco, stood in the landlords shoes, & had a right to the possession of the whole crop until divided in kind. The contract provided for division in kind. Plaintiff had a right to the division, The tobacco was of a nature that it could be divided in kind. He sued for half the tobacco, The writ ordered that his half be delivered to him, & the Coroner returns on the writ that he had executed it, by delivering half the tobacco to plaintiff. But says Deft & the Court you can't replevy half of a Chattel & refers us to 9 Hump 140. 5- Box 260, & 9 Box 5-81. which cases hold that this is true when in the nature of the Chattel it can't be divided, but this was done in the case at bar. See writ & officers return. Pgs 1, 2.

Defto pleaded "Not guilty." & on day of trial, added. "His judicature"

But we will not notice the pleas, as the Court can only reverse for the errors pointed & remand for a new trial, or affirm the dismissal.

J L Gancy Atty.

of Wm Williams

Receipt & Argu-

of

Plaintiff

of Wm Cooper

State of Tennessee

Montgomery County

3

I. C. D. Bailey Clerk of the
Circuit Court of Montgomery
County do certify the foregoing to be a true and
perfect transcript of the record and of the
bill of cost in the case of
J. M. Williams

24

J. V. Cooper

as the same appears in

my office

Witness my hand and of-

ficial seal this Nov: 4th 1884

C. D. Bailey Clerk

L H Williams { In Supreme Courts of
 v { Term. at Nashville
 L P Cooper }

Exceptions of Plaintiff to
 the action of the Court dismissing
 his action.

This suit was brought in Circuit
 Court of Mont. Co March 4th 1867. & dis-
 miss at Sept. term. & plaintiff ap-
 pealed against the dismissal.

Plaintiffs affidavit & writ shows
 that he replevied half a tobacco crop,
 then hanging in the barns.

Plaintiff was the only witness
 & showed conclusively, that the crop
 was raised by negroes, who owned
 one half of it in kind. That in Oct-
 1866, an execution was levied on
 Miss Mattie Collins interest in the
 crop. - she had no interest in it. The
 landlord owned the other half of
 the crop. After the levy plain-
 tiff bought out the landlord. &
 replevied.

See Testimony Truss Pgs 12-16 inclu.

~~Writ~~ Writ " 1

" Plaintiffs Affidavit " 2-3

Declaration " 4.

After the testimony was taken

Filed here 3rd 1887
 N Burtler Clerk

& plaintiff's Atty had addressed the Court. Def't's Atty moved to dismiss the Case because the suit was a replevy of half of a Chattel. Whereon plaintiff asked to amend his affidavit, so as to state that he had a right to the possession of the whole Crop. This was put in writing & offered to the Court.

See Trans Pg 26-27.

The Court disallowed the amendment, & dismissed the Cause at plaintiff's Cost.

This action of the Court is error because the crop was easily divided in kind, & that fact takes the Case out of

Bogard Vs Jones. 9 Heum 740

5 Boy 260.

The Court should have allowed plaintiff's amendment.

Code Secs 2867, 2863

Applemite Vs Allen & Heum, 697.

Maples Vs Lewis 11 " 111

Hunter Vs Severe 7 Yer, 136.

Shannon Vs Hall, 4 Lea 499.

Respectfully Submitted

Thos L Gurney

Atty for Plaintiff

Declaration Pg 4

of the Well-known

Exception

of

Plants

of the