

Low Cause

16
No. 94

3rd Circuit
Blount County

John D. Alexander In Error
vs
Abraham Porter

Enrolled

Rec'd. & filed Feb. 28. 1877 - Security Thomas
Sanderson & W. D. McQuinley.

Jest J. F. Deaderick
CR.

The jury might
well have rendered
a different verdict
in this case, but
the charge was
not objectionable
and the evidence
does not so
greatly preponderate
against the verdict
as to entitle us
to reverse it.

aff? enroll

Alexander vs Porter

Enrolled

11	Mr. Jagg
11	M. Brown
11	Joe Haver
11	W. B. Stone
15	John A. Alexander
16	Thos. Anderson
17	Dr. J. M. M. M. M.
17	Lyons Carter

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State of Tennessee.

Caption

Be it remembered That at a Circuit Court began and held for the County of Blount, and State of Tennessee, at the Court House in the Town of Maryville Third Judicial Circuit of Tennessee, on the fourth Monday of December being the 20th day of the month A.D. 1870, present and presiding the Honorable Elijah T. Hall Judge &c. elected and commissioned to hold the said Court in the said Circuit the following proceedings were had and done to wit:

State of Tennessee

Warrant

To the Coroner of Blount County Greeting:
You are hereby commanded to summon John A. Alexander, Sheriff of Blount County, to appear before me or some other acting Justice of the Peace for Blount County, to answer Abraham Porter in an action of trespass vi et armis, to the damage of said Porter two hundred and fifty dollars. Given under my hand and seal at Office in the town of Maryville, This the 15th day of February 1870. Allen Garner, Justice of the Peace for Blount County

2 (Endorsed) No. 150. Warrant in Mespass.
Abraham Porter vs John D. Alexander, Issued
Feb 12th 1870. Alamer. J.P.

Warrant
Endorsed

I acknowledge service of the within warrant
and hereby waive further service. This Feb.
12th 1870. John D. Alexander, Sheriff of Plenum
Co.

We John D. Alexander Sheriff and Abraham
Porter, parties to the within warrant hereby
agree that this cause shall be tried by
Joseph Ambuster Esqr. on Saturday Feb.
26 1870 at the Court House in the town of
Mayville at 10 clock P.M. subject to
such continuance as may be given either
party.

Abraham Porter by Atty
John D. Alexander, Sheriff.

Judgt of
Justice

I give Judgement in case against the
defendant John Alexander for the sum
of fifty seven dollars and 25 cents and
all costs for which execution may issue.
This 1st day of March 1870.

Joseph Ambuster J.P.

Order of
Pauerson

Mr. Jake George - Emil stand good for forty dollars (\$40) for
Since Porter and Emil pay you all or part of it in front money
11 Sep 1868
The Pauerson

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Oath of
pauper

Abraham Porter } In this case the plaintiff
John D. Alexander } Abraham Porter makes
oath that owing to his
poverty he is unable to bear
the expenses of the action which he has
commenced against John D. Alexander
and that he is justly entitled to the redress
sought, to the best of his belief.
Sworn to & subscribed Abraham ^{his} Porter
This 26th Feb 1870 _{ma}

Joseph Ambuster, J.P. for Plenum County.

Appeal
bond

from Justice
Judge

State of Tennessee } We bind ourselves to
Plenum County } Abraham Porter in the
sum of Two Hundred and
Fifty Dollars to be void of John D. Alexander
who has this day appealed to the next term
of the Circuit Court for Plenum County
from a judgement of Joseph Ambuster a
Justice of said County in favor of Abraham
Porter against him for fifty seven dollars
and twenty five cents shall prosecute said
appeal successfully or in case of failure
shall comply with and perform the judge-
ment of said Court This 11th day of

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March, 1870.

John D. Alexander Seal
The Sandersen SealProceedings
in CourtWednesday May 25th 1870.Court met pursuant to adjournment, present
and presiding the Honorable C. D. Hall, Judge &
Abraham Porter

Continued

Appeal
 Came the parties by their
 John D. Alexander } attorneys, and by consent
 Shipp of Plaut Co. } this cause is continued
 until the next term, as on the
 affidavit of the defendant but without
 terms.

Monday December 26th 1870.

Issue

Abraham Porter } Came the parties
 John D. Alexander } by their attorneys, and
 Shipp of Plaut County } the upson came a jury
 to wit: 1 Richard Lebow

Jury

2 James Porter 3 Nicholas Brewer
 4 Moses Elliott 5 J. P. Paulston 6 John
 Courier 7 Henry Russell 8 W. Brown
 9 Henry Webb 10 James Cochran 11

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R. J. Walker 12 A. L. Sparks, all good and lawdus men and citizens of Plenum County, who having been duly summoned, empannelled, elected and sworn to well and truly try the matters in controversy between the parties, and having heard part of the evidence, by leave of the Court and by consent of the parties, they are permitted to separate until the meeting of the Court to morrow morning, to resume the further consideration of this Cause

jury respited

Tuesday, December 27th 1840.

Court met pursuant to adjournment, present and presiding the Honorable Elijah S. Hall Judge &c

Abraham Porter

John E. Alexander
Shff. of Plenum Co

Came the parties
by their Attorneys and
also came the same
jury who on last night

were permitted to separate until the meeting of the Court this morning, to resume a further consideration of this Cause, to wit;

1 Richard Tebow 2 James Porter 3 Nicholas Driver 4 Moses Elliott 5 J. P. Raulston

6 John Cairner 7 J. W. Brown 8 Henry Webb 9 Henry Russell 10 James Cochran 11 R. S. Walker 12 A. I. Sparks, and hearing the balance of the testimony and argument of counsel and receiving the charge of the Court upon their oath do say, that they find the matter in controversy in favor of the plaintiff and assess his damage to the sum of seventy five dollars - And it appearing to the Court from the defendants appeal bond filed in this cause, that Thomas Sanderson is the defendants security for the prosecution of his appeal - It is therefore considered by the Court that the plaintiff have and recover of the defendant and his security in the appeal bond the damages assessed by the jury aforesaid, and all the costs not heretofore adjudged for which execution may issue.

Saturday, December 31st 1870.

Court met pursuant to adjournment present and presiding the Honorable Elijah T. Hall, Judge, &c. when the following proceed-

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ings were had and done, to wit:
Abraham Porter

Rule for
new trial
disallowed

Appeal
Came the parties by
John O. Alexander²³ their Attorneys and came
Shiff &c on for argument the De-
fendants rule heretofore entered to show
cause why a new trial should be granted in
this cause, which rule being argued by coun-
sel and understood by the Court, the Court
is of opinion that said Rule is not well
taken and is therefore overruled and for noth-
ing held

Appeal
prayed

Abraham Porter
Came the parties
by their attorneys,
John O. Alexander²³ Shiff &c and the Defendants
excepts to the action of the
Court in disallowing his rule for a new
trial and tenders his Bill of Exceptions which
are signed and sealed and ordered to be
made a part of the record in this cause
and thereupon prayed an appeal to the
next term of the Supreme Court, to be
held at Knoxville, the Second Monday
of September next, and having execu-

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ted bond with security, said appeal is granted and said record ordered to be made out and certified

Appeal Bond
to Sup. Court

Know all men by these presents, that we John Q. Alexander Thos Sanderson and W. D. McSherry are jointly and severally held and firmly bound unto Abraham Porter in the penal sum of Two Hundred and Fifty Dollars, to be void on condition that the said John Q. Alexander doth with effect prosecute an appeal to the next term of the Supreme Court of Tennessee at Knoxville to be holden on the Second Monday of September next from the judgement of the Circuit Court of Meigs County at the December Term, 1870, in the case of Abm Porter vs John Q. Alexander, Dff., or otherwise to pay and satisfy all costs that may be awarded for failure.

Witness our hands and seals, this 30th day of December, 1870. John Q. Alexander Seal
Thos Sanderson Seal
W. D. McSherry Seal
Wm A. Meigs Clerk

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Abraham Porter

Bill of
ExceptionIn the Circuit Court
John D. Alexander vs. Mount County
December Term 1870.

Be it remembered that at the said term of the Court this cause came on for trial, when the following testimony was adduced by the parties.

Wit.
Abe Porter

1st Witness for the Plaintiff - Abraham Porter the Plaintiff. I had a wagon taken by the defendant Alexander as was sold by him as the Sheriff. Was present and forbid the sale. It was my property, paid \$110 - for it bought it from Jacob George and Alex Hagg. Wagon was taken by me to Jo Gamble's. Myself and mother and brother Simon Porter all lived together. I went to McGinley's office to see him about it, told McGinley they had taken my wagon to pay my brother Simon's debt. never come to consult McGinley as a lawyer, just came to talk. Never told McGinley the wagon was Simon's or that my mother had any part in it never

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said anything about \$15. Paid my own money for the wagon, borrowed from Simie my brother, \$25 - or \$80 - Paid the money back to Simie before he was arrested. Don't remember how much I paid him back, think now it was about \$80 - I am very certain I didn't say in the presence of Mr. Sanderson and Shff. Alexander that the wagon was my mother's property and that Simie couldn't own property because he was under age - I had been in the army and got money to pay Simie back. Went to Mr. Guiley about it to consult him as a lawyer, but made no contract with him and never promised to pay him anything.

Next witness for Plff. Jacob Henry

Was present when me and Alex Gagg sold wagon to plaintiffs. Simie had nothing to do with wagon. Simie paid me money on the wagon. Alexander Shff. told the bystanders he sold the wagon as Shff. Simie might have paid me \$80 - on wagon don't recollect certainly - Sanderson paid me money once for Simie Porter. Got a paper

Wit-

Jacob Henry

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from Time on Sanderson for some money, think the one here is the one. Never told James Waters, I was making a wagon for Time Porter, I may have said that I was to get money from Sanderson to pay rent, that Time was working for Sanderson, never had but one conversation with James Waters on the subject.

With
Alex Fagg

Next Witness Alex Fagg. We made a wagon for Abe Porter, the plff. We sold the wagon to Abe Porter. We never knew Time Porter in the trade.

With
M. Crowsow

Next witness for Plaintiff Michael Crowsow. I went to borrow the wagon from Time. Time said it was Abe's and he couldn't lend it. I went to Abe and borrowed it.

With
James Waters

1st Witness for defendant James Waters. Jacob Hume told me he was to get some money from Sanderson to pay me rent of shop. Said the money was coming from Sanderson on account of Time Porter.

With
P. P. Steele

2nd Witness for deft. Guy P. Steele. I heard Abe, the plff. say once or twice that the wagon in controversy was Time's

wagon. I wanted to borrow the wagon. He said that it belonged to his brother Jim and that he couldn't lend it. He said afterwards that Jim was willing for me to use wagon so as to get it so it would run, and he loaned it to me. He told me at different times that it was Jim's wagon, as many times as twice any how.

The conversations with Abe occurred on my farm, Abe lived adjoining my farm. don't mind the year. My wagon was broke down. Abe got my horse to go to Mayville after the wagon.

Execution
proven by
Clark Hill
A. McFar

The execution in the case of The State vs Jim Porter was introduced and proven by Will A. McFar, Clerk of this Court.

[Jim Facias]

Execution

State of Tennessee
To the Sheriff of Blount County - Greeting
You are hereby commanded that of the goods and chattel, lands and tenements of Jim Porter and Thomas Sanderson in your County, you cause to be made

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The sum of Forty Five Dollars, and Fifteen Cents, which The State of Tennessee lately in our Circuit Court for Merit County, recovered against them for Fine and Costs whereof the said Simon Porter and his security Thomas Sanderson are liable as appears to us of record, and have you the said moneys to render before the Judge of our said Court on the Fourth Monday of May next, and have them and this writ.

Witness, Will A. McDer, Clerk of our said Court at office in Maryville, the Fourth Monday of January, 1870.

Will A. McDer, Clerk

Bill of Costs.

State Tax 3.50

Clerk Will A. McDer, Receiving and filing Process and 25;
 Issuing Capias, 75; 5 Subps 50; Taking and filing
 Affidant, 25; Filing Bail, 25; 3 Vockets, 30; 3 Mt.
 Probates, 15; Empowering Jury, 10; Motion, 25;
 Rule discharged 25; Judgment, 75; Taking security
 of Record, 25; Bill of Costs, 50; Jero Facias, 40
 Costs on same, 25

5.20

Amount forward \$8.70

Execution

Copy of Costs

Amener brought forward	8.70
Atts. Gen. Thornburgh	5.00
Shff. Alexander, Summoning Jury	.15
" Jas Farmer Arrest, 1.00; Days Guard, 1.00;	
Bail Bond, 25; Ex 5 Subps 125	3.50
State Mt. Pen (Gunningham) 2 days 2.00; 20 mile, 80	2.80
" " W. H. Hedges Jr 2, 2.00; 25 " 1.00	3.00
Sept " J. E. Caldwell 2, "	2.00
	25.15

Fine, January 27th 1870 20.00

\$45.15

Execution
Endorsed

(Endorsed) Fi Fa No 1157. The State vs Simon Porter and Thos. Sanderson. Issued January 31st 1870. Will A. McQueen Clerk.

Came to hand same day issued and search made and listed one one two horse wagon bed and fixtures as the property of the defendants Simon Porter. This Jan 31st 1870 John D. Alexander, Shff. of Blount County, Tenn.

After giving legal notice as required by law sold the wagon listed on within the legal hours of sale on Saturday, the 12th day of Feb'y 1870 to Chesop White for the sum of fifty seven dollars and twenty five

15-

cents he having the highest and best bid. This Feby 12th 1870. John D. Alexander S^{ff} of P. C.

The Deft. Simon Porter having absconded so that I cannot pay the remainder of the amount bid on the wagon after satisfying the mitnia si fa being \$47⁶⁵ leaving a balance in my hands of \$9⁶⁵ which is now in my hands to be delivered to the Deft when called for. This May 21st 1870

John D. Alexander S^{ff} of P. C.

Next witness for defendant, John D. Alexander the deft. Received an execution, the one just proven, came to my hands as Sheriff of Plumer County. Went to the house where Simon Porter lived. The (peff.) was there, I was looking for a horse and wagon. Wagon was called for. He said the wagon or horse, I don't remember which did not belong to Simon, that it belonged to his mother, that Simon was under age and could not own property. We got on track of a wagon and found this wagon at Joe Gamble's Shop. Wagon was delivered up to me

dit

John D. Alexander

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as Simu Porter's wagon. Sold the wagon for fifty seven dollars. Wagon was worth \$15 when sold. Abe was present when we were at Simu's house, and never claimed the wagon as his own, when we were at Simu's house. Can't state positively whether it was a horse or the wagon Abe said was his mother's.

Next witness for defendant Thomas Sanderson. I must security for Simu Porter for a fine and costs in this Court. Simu afterwards cut a man and then run off. went to the house of Jeff. asked Jeff. about Simu's horse plaintiff said the wagon was Simu's, but that his mother had a claim of \$15 in the wagon. Jeff. was present with execution, Abe said you can't sell other people's property to pay Simu's debts, and that the wagon was his mother's. I gave Simu an order on Jake George for \$40 - paid Jake the forty dollars, at the instance and request of Simu Porter. Abe said Simu was under under age and

17 couldn't hold property, that the mother had \$15- in the wagon. He didn't claim the wagon as his own until after it was levied upon and was about to be sold.

Mr
W. D. McKinley

W. D. McKinley next witness for defendant. He, the plff. came to my office, excited talked at random, said Shoff. had levied on his brother's wagon said his mother had \$15- interest in the wagon. Stated the wagon was Time's with the exception of \$15 which was his mother's. Stated this over and over two or three times. I told him he might forbid the sale as his mother's agent. I did not consider that he consulted me as a lawyer.

Next witness for plff.

Mr
Lydian Porter

Lydian Porter - I had no interest in the wagon.

This was all the testimony adduced in this case.

The change of the Decree was not excepted by either party.

E. J. Hall, Clerk
Judge, &c.

Bill of Costs

State Tax \$5.00
5.50

Bill of Costs

2414

Clk Wm. A. McPherson, Filing Justice papers, 75

Remaing Bond, 25; 6 Lockets, 60; Continuance 25;

Empowering Jury, 10; Entering Rule on Jury, 25;

Judgement, 75; Rule for new trial and order

thereon, 25; Entering order of appeal and

taking appeal bond, 75; 10 Subpoenas, 1.00; 5.50

18 minutes prolate, 90; Bill of Costs, 50. 6.55

Shff. Tanner Ex 10 Subpoenas

2.50

Mr. Jacob Kiny 6 days

6.00

" W. Cronshaw 5 "

5.00

" Alex Mims 5 "

5.00

" Alex Hagg 6 "

6.00

" Noah Sharp 5 "

5.00

" James Kall 5 "

5.00

" Lydia Porter 5 "

5.00

" P. B. Steele 5 "

5.00

" Josias Gamble (Stat) 3 days

3.00

" James Waters 5 "

5.00

Justice Ambuster Warrant, 10; 4 Subpoenas 25;

Judgement, 50; Locketing, 15; Bill of Cost 10; Bond 50; 1.60

Court John McKenzie Ex 3 Subps

75

" Kidd

" 1 "

25

19

Wm Michael Crumson	Pay (by ex L)	50
Jacob Henry	1/4	50
Alex Fagg	1/4	50
Lee Martin	1/4	50

(467.70) 695

Judgment December 27, 1871 \$75.00

Debt \$82.88 \$141.95

Judgment Sept. 28, 1872 vs. Peff. & Sec.

State of Tennessee }
County of Plumb } Wm A. McFar,

Clerk of the Circuit Court for the County and State aforesaid
Certify that the foregoing is a full, true and perfect transcript of all the proceedings had in the case of Abner Porter vs. John D. Alexander, Sheriff, together with the Bill of Costs in the same, as appears of record in my office.

Given under my hand and the seal of said Court at office in Nashville this 16th day of February, 1874.

Wm A. McFar
Clerk



Declared on the
2nd day of Feb -
1874
Clerk of the Circuit Court



Clerk Will A. McDerm's fees for transcript
3375 words at 10¢ pr word 337
Certificate, 25; Seal 50 75
\$4.12