

versed)

No. 1

Cambridge

John Bnie

(vs)

Henry Barker alias

Henry Bnie

Claim and Delivery of Personal property

To the Sheriff of Cambridge County!

Sir,

You are hereby required to take
the property within returned from
the defendant and deliver the same
to the plaintiff in this action; provided
the plaintiff shall give the undertaking
prescribed by law.

Jno. C. Colclahan

Clerk.

B. J. C. Fuller plaintiff. Atty.

John Buie

(2)

Henry Parker alias

Henry Buie

Whereas John Buie the plaintiff in this action has made an affidavit that the defendants therein wrongfully detain a certain mule in the said affidavit mentioned, of the value of One hundred & fifty Dollars; and the plaintiff claims the immediate delivery of such mule as provided for in the second Chapter of the ninth title of the second part of the Code of Civil procedure:

Now therefore, in consideration of the taking of said property by the sheriff of the County of Cumberland by virtue of the said affidavit and the requisition entered thereupon by the Clerk of the Superior Court of Cumberland County; we the undersigned John Buie and Archibald Buie of said County do hereby undertake and become bound to the defendants in the sum of Three hundred Dollars for the prosecution of this action and for the return to the defendant of the said property, if a return thereof shall be adjudged; and for the payment to him of such sum as may, for any cause, be recovered against the plaintiff in this action.

Sealed with our seals and dated this 21st day of September 1868.

Signed and delivered in presence of

Witness

John Buie
Arch Buie

Seal
Seal

Superior Court - Cumberland County
John B. Bine

vs
Henry Parker alias
Henry Bine

The plaintiff complains, and alleges:
I That on the first day of July 1868, he owned
one light bay mare mule known by the name
of Sam.

II That from that day until the Commence-
ment of this action the Defendant has retained
the same from the plaintiff.

Whereupon the plaintiff demands judgment
I. For the possession of the said mule, or
for one hundred and fifty dollars in case
such possession cannot be had.

II For fifty dollars, Damages for detention
thereof.

By J. B. Fuller
Attor for Plaintiff

September 25th 1868.

VIII Cases involving whites & their former slaves
(or current serants)

John Bine

vs

Henry Parker also Bine

} Cumberland Superior Court
} Fall Term 1868.

Claim an delivery of a mule.

Jury trial waived.

From the evidence, Justice finds the following facts:

The defendant, Henry, a person of color, was formerly a slave of one M^r Easton, who is still living, and who in 1857 gave him by verbal gift, without writing, to his daughter, plaintiff's wife, and placed him in possession of plaintiff. Henry remained thus under control of plaintiff, up to the time General Sherman, with the Federal forces, entered the County in March 1865.

The day before General Sherman entered Fayetteville (13th March 1865) the plaintiff, who then was in the military service, had sided the Confederate cause, being on the point of leaving home for duty; told his slaves, the defendant included, that they could go to the "Yankees", or stay at home, as they pleased. The defendant chose to remain - and continued some months longer with the plaintiff in the same capacity as formerly, but during the latter part of the year was put upon wages, and continued as a hired servant for a year or two.

The mule in dispute was one of Sherman's -

Abandoned Stock, and was "picked up" by Henry on 15th March 1865 - and was by him, before the return of the plaintiff to his home, turned into plaintiff's horn lot - he telling plaintiff's wife who expressed a wish for the mule, that he desired to retain the mule himself, to make a crop with.

The mule was worked in plaintiff's wagon, part of the time by Henry himself for the plaintiff, and was fed and kept with plaintiff's stock. Both parties claimed the mule. The plaintiff offered to pay Henry for taking it up, but Henry declined receiving pay, insisting on his rights to the mule. During the latter part of 1868, Henry expressed a wish to place the mule with another person, for its feed, but plaintiff declined to let him do so.

In July 1868, Henry got possession of the mule thro' the intervention of the military. The Sheriff of Cumberland by their order, took the mule from plaintiff and gave it to ^{the} defendant.

The plaintiff recovered possession at the commencement of this action on the 18th Oct 1868, in consequence of the defendant failing to give an undertaking for its forthcoming.

The present value of mule is \$150.

It would hire for 30¢ per day

Conclusion of law drawn by District Judge.

The fact of possession, acquired after the finding, relied on by the plaintiff as evidence of property, is considered immaterial - as it is accounted for - and is therefore thrown out of the case.

Since neither party is the true owner, the rights of possession must be determined, by ascertaining which of them has the better right - as between themselves. Natural justice is on the side of the defendant, for he found the mule. Supposing Henry to have been a slave at the date of the finding (15th March 1865) the law gave the property to his owner, provided that owner claimed it. The plaintiff was not the owner - nor did he have any estate in Henry. Mr. Eason was the owner, and he could have resumed possession of his slave at will. (Rev Code Chap 50 Sec 12)

Henry's owner not having interposed his paramount legal claim - there was nothing in the way of Henry asserting his natural equitable claim, except the disability of slavery under which he then labored. He could not sue, for the law would not allow it. This disability is now removed whether by Proclamation, Act of Congress, or Conventional Ordinance - it matters not. The plaintiff by bringing this suit admits the fact. Upon this view of the case I think judgment ought to be rendered in favor of the defendant.

There is another view, presented by the evidence, which supports his rights. Henry was
(over)

turned loose from the control of the plaintiff,
and told he might go to "the Yankees" on the 12th
of March 1865. He chose to remain at his home -
but it was a matter of choice. From that hour
he was a free man. He finds the mule 3 days
afterwards. I think him entitled to the right
of a finder - which is the right to possession
against all but the real owner of the mule.

Judgement.

It is considered by the Court that judgement
be rendered in favor of defendant for the return
of the mule, or for \$150. The value thereof in case
a return cannot be had, and twenty dollars,
damages for taking and withholding the same.

Plaintiff craves an
Appeal to Supreme Court -
which is granted on his
giving Bond - Bond filed
& heretofore sent.

Ralph P. Duplon
Judge 5th Judicial
District.

Superior Court - Cumberland County
John Buie

vs
Henry Parker alias
Henry Buie

The Defendant Henry Parker,
by James C. McRae, his attorney answering the
Complaint herein:

First - For a first defence alleges:

- I. That at the time of the alleged detention, the Plaintiff was not the owner, nor entitled to the immediate possession, of the mule mentioned in the Complaint.
- II. That the defendant had good right to detain the said mule from the Plaintiff.

Second - For a second defence alleges:

That on the 28th day of May 1868, in an action brought before the "Bureau of Freedmen, Refugees and Abandoned lands" by the defendant against the plaintiff, for the possession of the mule named in the Complaint, the defendant Henry Parker, then called Henry Buie, recovered judgement duly given on the merits thereof, against the said John Buie, and under said judgement that the said mule was placed in his, the defendant's possession.

Wherefor the defendant demands judgement for the return of the said mule, or the value thereof, in case a return cannot be had, and

Over

One hundred Dollar Damages for taking and
withholding the same. —

James B. Mac Rae

Attorney for Defendants

(Endorse)

John Buie

vs

Henry Foster alias

Henry Buie

Answer filed Nov 4th 1868.

Superior Court — Cumberland County

John Baie

vs
Henry Parker
alias
Henry Baie

John Baie the above-named plaintiff
being duly sworn deposes and says: That the plaintiff
is the owner and entitled to the immediate prop-
riety of the following described property now in
the possession of the defendant at and in the
County of Cumberland; viz one light bay mule
known by the name of Ficus.

That the said mule is wrongfully detained by
Henry Parker, alias Henry Baie, the defendant above-
named. That the alleged cause of the detention
thereof, according to deponent's best knowledge,
information and belief, is as follows; That the mule
was taken up by the defendant as abandoned prop-
erty, about the 15th day of March 1865, he claiming
that he was then a freedman, and that he is
therefore the owner of the same.

That the said mule has not been taken for a
tax, assessment or fine pursuant to a statute, or
seized under an execution or attachment against
the property of the plaintiff.

That the actual value of the said mule is the
sum of One hundred and fifty dollars
Sworn to and Subscribed by John Baie
this 21st day of September 1868
before me Wm C. Callahan Clerk

Superior Court

Cumberland

John Buie

against

Henry Parker alias
Henry Buie



In this case it is agreed that a trial by jury
be waived --

By ^{Mr} Muller - Atty for plaintiff
and ^{Mr} MacRae Atty for Defendant

1888

John Buie

where his attorney says --
Muller affirms he is worth over one thousand \$1,000.

Superior Court

Cumberland County

John Price
vs
Henry Packel
vs
Henry Price

Whereas on the 15th day of December 1868 the defendant recovered judgment against the plaintiff in the Superior Court for said County for the possession of a mule of the value of One hundred and fifty Dollars, and the further sum of twelve Dollars Damages for the taking and detention thereof;

And whereas the plaintiff intends to appeal therefrom to the next term of the Supreme Court to be held at Raleigh on the first Monday in January 1869

And therefore we ^{John Price} Archibald Price and ^{John Price} J. R. Speill Price of said County undertake in the sum of Five hundred Dollars that the plaintiff will pay all costs and damages which may be awarded against him on the appeal, not exceeding Five hundred Dollars.

Witness John Callahan
C. J.

John Price (Seal)
Arch. Price (Seal)
Neill Price (Seal)

John Price
Arch. Price
Neill Price

Makes affidavit he is worth over and above his exemptions by law & his indebtedness \$1,000.
Makes affidavit he is worth over and above his exemptions by law & his indebtedness \$500.
Makes affidavit he is worth over and above his exemptions by law and his indebtedness \$1,000.

John Price)

Wm. J. ...)

Henry Price)

Slaves now eman-

culated by public land. State v. Proctor

1 Phillips 41. During the year 1865 Woodfin

v. Slade 200 - Chandler v. Holland

200 398 - Ordinance 9th Oct 1865. 17th Oct 1865.

Before their emancipation they could not acquire nor hold property. No such right or possession could be predicated of them.

White v. Chew 7th June 1744.

Love v. Brindle 200 560 -

They were chattels, and stood in relation to the land as any other chattels -

Gingert v. Flower 1st August 267

Wentworth v. Pennington 11th Dec. 640.

The plaintiff was at least a trader, and held the mule as he held the slave. This possession

was sufficient - Armony v. Delanier

Smith's Leading Cases 157. Freshwater v. Nichols

7th June 251. McArthur v. Hunt 2nd Dec 44.

R. Scott v. Elliott 1 Phil. 104

The Plaintiff was the finder of the mule,
and his right was good against all the world, ex-
cept the true owner i.e. the one who had lost
the animal - Armory v Delancey, ubi supra.

= The property in the animal found cannot attach
to the general owner, but belongs to the particular
owner, for the time of the slave belonged to him.

Even the incase of Female slaves did not be-
long to the remaindermen, at Common Law, but
to the tenant of a life-estate - Glasgow v Flower,

supra - See Rev. Code Chap 86 Sec 20 - McTommas v Thomas 2 Dec 56

The Act of 1862 could not affect the question
before this Court, because it is unconstitutional, ex-
cept as the exercise of the war-making power, and
it must not apply to cases like the present.

See Act, and the Druf of the land occupier, also note
the construction in Schofield's proclamation.

Brier
 " "
 (21) Brier alias
 Brier

Authorities cited & relied on -
 Ordinance 9th + 17th Oct 1865
 State v. Brodway 1 Phillips 41.
 Woodfin v. Sluder Id. 200
 Chandler v. Holland Id. 598.
 White v. Cline 7 Jones 174
 Love v. Brindley Id. 560
 Gargant v. Flores 1st Hay. 267
 Knechtcock v. Pennington 11 Id. 640
 v. Armorey v. Delamaine 1 Smith's
 Leading Cases 4th ed. - 157
 Foster v. Nichols 7 Jones 257.
 Scott v. Elliott 1 Phil. 104
 Rev. Code Chap. 86. Sec 20.
 Mc Namara v. Kern 2 Id. 66.

Fuller for appellant