

Buie v. Parker Teaching Resources

Excerpts from trial record of archival case file of *Buie v. Parker*, 63 N.C. 131 (1869). The full archival case file is located in The State Archives of North Carolina, Raleigh, North Carolina.

Superior Court _____ Cumberland County

John Buie vs. Henry Parker alias Henry Buie

John Buie the above-named plaintiff being duly sworn deposes and says: that the plaintiff is the owner and entitled to the immediate possession 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 Fau. That the said mule is wrongfully detained by Henry Parker, alias Henry Buie, the defendant above named. That the alleged cause of the detention thereof, according to deponent's best knowledges, information and belief, is as follows: That the mule was taken up by the defendant as abandoned property about the 15th day of March 1865, he claiming that he was then a freedman, and that he his therefore the owner of the same. That the said mule has not been taken for a Gov. appressment 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.

-John Buie

Sworn to and subscribed this 21st day of September 1868 before me Jno C. Callanahn Clerk's

The Defendant Henry Parker, by James C. McRae, his attorney answering the complained 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 Freedman, 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 defendants 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 One hundred Dollars damages for taking and withholding the same.

James C. MacRae, Attorney for Defendant

Claim an delivery of a mule. Jury Trial waived.

From the evidence, Buxton, Judge finds the following facts. The defendant, Henry, a person of color, was formerly a slave of one McEachen, 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 tho' never in the military service, had aided the Confederate Cause, being on the point of leaving home for safety, 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 in his home, turned into plaintiff's horse 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 1865, Henry expressed a wish to place the mule with an other person. for its feed, but plaintiff declined to let him do so. In July 1868, Henry got possession of the mule tho' 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 30c. per day.

Conclusion of law drawn by Buxton Judge.

The fact of possession, acquired after the finding relied on by the plaintiff as an 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 right 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. McEachen was the owner and he could have resumed possession of his slave as...Henry's owner not have 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 couldn't 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 the view of the case I think Judgement ought to be rendered in favor of the defendant. There is another view, presented by the evidence which supports his right. Henry was 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 freeman. 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 twelve dollars, damages for taking and withholding the same...