

No 35

4 Docket Reported Notes June 1st 1886

W. H. N.

Superior
Clerk

F. B. Jones

John A. Franklin

Appeal from Covington Circuit Court

March 1887 Submitted on briefs

Jan. 31st 1887.

Affirmed.

Lomenille J.

Lomenille

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Minutes of Circuit Court
Spring Term 1886.

For Covington County, Alabama,

At the regular Spring Term of Circuit Court held in the State and County aforesaid in pursuance to law in the Court House thereof in the Town of Andalusia on the first Monday in March being the first day of said month A. D. 1886 being the time fixed by law for holding said Court; Present the Hon. John P. Hubbard Judge of the 2nd Judicial Circuit of the State of Alabama Presiding; This day came John W. Denton Sheriff of Covington County and returned into open Court the Venire Facias for the Petit Jury for the 1st week of the present Term of this Court served on the following named persons To-wit: William Fletcher, J. N. Barron, Daniel Rogers, A. M. Finley, J. B. Jones, John A. Nichols, W. L. Straughn, George F. Hudson, J. A. Floyd, J. J. Barrow Sr., G. A. Burlison, J. E. Harper, J. S. Hart, W. S. Jones, P. Y. Stokes, J. T. Lord, L. C. Graves, L. C. Wilhelm, J. B. Neal, E. N. John, L. L. Henderson, W. R. Barnes, Coleman Barnes, H. C. Barden, C. T. Bell, J. W. B. Sasser, James Wayne, James Sims,

ptions
of
Court.

C. S. Thomason, and W. L. Butler all of whom being duly and legally called answered to their names, except John A. Nichols, who was excused by the Court. And upon good and sufficient excuse J. S. Hart, W. S. Jones and Coleman Barnes were excused for the Term, and the following named persons were duly and legally sworn, empaneled and charged by the Court, as Jury No 1.

To-wit: L. C. Graves, Daniel Rogers, P. J. Stokes, G. A. Burlison, James Wayne, J. A. Floyd, J. E. Harper, J. N. Barron, Wm Barnes, C. S. Bell, J. J. Barrow, and L. L. Henderson,

Caption
of
Court,

And the following named persons were duly and legally empaneled, sworn and charged by the Court as Jury No 2

To-wit; J. B. Neal, J. S. Lords, Allen Finley G. F. Hudson, James Sims, W. L. Butler, J. W. B. Sasser, L. C. Wilhelm, W. L. Straughn, J. B. Jones, A. C. Barden and C. S. Thomason,

And the following named persons were duly and legally empaneled, sworn, and charged by the Court as Jury No 3

To-wit; William Fletcher and E. N. Johns which Jury so empaneled constituted the Petit Jury for the Spring Term 1886,

tion
of
art.

Ordered that all depositions on file be opened without prejudice subject to legal exceptions which is accordingly done, and published according to law.

John A. Franklin } March 7th 1883,
 vs }
 John Jones and } came the parties
 Sandford Jones } by their attorneys
 and issue being joined
 thereupon came a jury of good and
 lawful men to-wit : and
 eleven others who being duly sworn
 and empaneled according to law
 on their oaths do say "we the jury
 find for the Defendant Sandford
 Jones, and we further find for
 the Plaintiff against John Jones
 and assess the damages at seventy-
 five Dollars". It is therefore consid-
 ered by the court that the Defendant
 Sandford Jones go hence, and it is
 further considered by the court that
 the Plaintiff do have and recover of, and
 from the Defendant John Jones seventy five
 dollars together with the costs in this behalf
 expended for which let execution issue,

ment
y.
1883.

The State of Alabama (Alias.)
 Covington County } To any Sheriff of
 the State of Alabama; You are hereby
 Comanded, that of the goods Chattels,
 lands and tenements of John L. Jones
 Defendant, you cause to be made the
 sum of Seventy-five ⁰⁰/₁₀₀ Dollars, which
 John A. Franklin Plaintiff, recovered
 of him on the 7th day of Mch-
 1883, by the judgment of our circuit Court
 held for the County of Covington besides
 the sum of Seventy-seven ⁹⁰/₁₀₀ Dollars,
 Cost of Suit, and have the same to render
 to the said John A. Franklin and make
 return of this writ, and the execution thereof,
 to our next Circuit Court, to be holden
 on the first Monday in Sept. 1885
 according to law, Witness my hand
 this 27th day of June 1885, Interest
 from 7th day of Mch. 1883,

John E. Stanley, Clerk.

Received in Office 27 June 1885.

John W. Penton

Sheriff.

Levied on one Bay horse & released.

F. B. Jones having made claim affidavit

Execution.

Sheriff's
return.

and Bond, July 10th 1885,

W. Penton
Sheriff,

No property found.

Sept 2nd 1885,

J. W. Penton
Sheriff,

The State of Alabama,

Covington County

Before me

Malachi Riley Judge of Probate personally appeared Frank B. Jones who being duly sworn, depose and say that the following described property, to-wit:

one Bay horse upon which an

execution from the Circuit Court of Covington County bearing date of issuance the 27th day of June A.D.

1885 in favor of John A. Franklin

against J. L. Jones for the sum of

seventy-five + 00/100 Dollars, has been

levied on by John W. Penton Sheriff

of Covington County, to satisfy the same,

is not the property of the said J. L. Jones

but is the property of Frank B. Jones

the affiant, and that affiant has

a just claim to the property

levied on,

Shiff
Turn,

claim

Sworn to and subscribed
before me this 10th day
of July 1885,
Malachi Riley
Judge of Probate,

Frank B. Jones,

The State of Alabama } Circuit Court.
Covington County } Know all men by
these presents, That we Frank B. Jones
Preston J. Gantt, Pollard Gantt, and James
A. Prestwood are held and firmly
bound unto John A. Franklin in the
sum of Two hundred ~~and no~~ Dollars.

Claim for the payment of which well and truly
Bond, to be made we bind ourselves and
each of us, our and each of our heirs,
~~executors and administrators~~, jointly
and severally, and firmly by these
presents. Sealed with our seals, and dated
this 10th day of July A.D. 1885,

The condition of the above obligation
is such, That whereas an execution
issued from the Circuit Court of
Covington County bearing date of
the issuance, the 27th day of June
-A.D. 1885 in favor of John A. Franklin
against J. B. Jones for the sum of

Seventy five ~~100~~ Dollars has been levied by John W. Penton Sheriff of said County, upon the following, as the property of said J. L. Jones to wit; one Bay horse, And, whereas, the said Frank B. Jones has made affidavit that he has a just claim to said property, and upon entering into this Bond, with sufficient surety, as required by law, has obtained possession of said property. Now if the said Frank B. Jones shall have the said property above described forthcoming for the satisfaction of the judgment, if it be found liable thereon, and pay such costs and damages as may be recovered for putting the said claim in for delay, then this obligation to be void, otherwise to remain in full force and effect.

Approved, this 10th day of July A.D. 1835.

J. W. Penton
Sheriff

Frank B. Jones L.S.
 Preston G. Gantt L.S.
 Pollard Gantt L.S.
 Jas. A. Postwood L.S.

8th,

John A. Franklin
Plff in Ex.

vs

J. L. Jones Deft in Ex

F. B. Jones Claimant
with J. B. Barron and

after being duly sworn and empaneled and charged according to law say upon their oaths do say "We the jury find for the Plaintiff, and that we assess the value of the horse levied on at seventy five Dollars. It is

Judgment
Entry
S. T. 1886,

therefore considered and adjudged by the Court that the horse be con- demned for the satisfaction of Plain- tiffs Judgment. It is further consid- ered by the Court, that the claimant deliver^{to} the Sheriff, the horse within thirty days after the adjournment of this Court, And that Plaintiff recover of the claimant all the costs expended in this behalf for which ~~le~~ execution issue,

John A. Franklin Plff. in Ex.
vs

J. L. Jones Deft. in Ex

F. B. Jones Claimant,

March 4th 1886.

Same the parties and issue being joined, there^{upon} came

a jury of good and

eleven others who

and empaneled

according to law say

"We the jury

find for the Plaintiff, and that we

assess the value of the horse levied

on at seventy five Dollars. It is

therefore considered and adjudged

by the Court that the horse be con-

demned for the satisfaction of Plain-

tiffs Judgment. It is further consid-

ered by the Court, that the claimant

deliver^{to} the Sheriff, the horse within

thirty days after the adjournment

of this Court, And that Plaintiff

recover of the claimant all the

costs expended in this behalf

for which ~~le~~ execution issue,

John A. Franklin Plff. in Ex.

vs

J. L. Jones Deft. in Ex

F. B. Jones Claimant,

Circuit Court
Lowington Co. Ala.
Spring Term 1886,

Be it remembered that the foregoing Stated Cause "came on to be heard at the present Term of said Court when the following proceedings were had to-wit; The issue was made under the direction of the Court as follows. John A. Franklin as Plaintiff in execution alleges that the Bay horse levied on as the property of J. L. Jones by J. W. Penton as Sheriff of Covington County Ala. on the 10th day of July 1885 is the property of John L. Jones the Defendant in execution and liable to its satisfaction and the claimant F. B. Jones denies the issue thus tendered.

Thereupon the plaintiff introduced the execution issued June 27th 1885 with endorsements thereon which is in words and figures following to-wit;

The State of Alabama } (Alias)
 Covington County } To any Sheriff
 of the State of Alabama: you are hereby commanded, that of the goods, Chattels, lands, and tenements of John L. Jones Defendant, you cause to be

10th,

made the sum of Seventy five ^{00/100} Dollars, which John A. Franklin Plaintiff, recovered of him on the 7th day of mch. 1883 by the Judgment of our Circuit Court held for the County of Covington, besides the sum of Seventy-seven + ^{90/100} Dollars cost of suit and have the same to render to the said John A. Franklin and make return of this writ, and the execution thereof to our next circuit Court, to be holden on the first Monday in Sept^r 1885 according to law,

Witness my hand this 27th day of June 1885, Interest from 7th day of mch. 1883,

John E. Stanley Clerk,

Received in office 27th June 1885.

John W. Penton, Sheriff,

Levied on one Bay horse + released, F. B. Jones having made claim affidavit and Bond. July 10th 1885.

J. W. Penton Sheriff,

No property found. Sept. 2nd 1885,

J. W. Penton, Sheriff.

Bill
of
Exceptions
Contd.

The Plaintiff further introduced in evidence the execution issued, with the endorsements thereon which is in words and figures following to-wit;

The State of Alabama } (Alias)
Covington County } To any Sheriff
of the State of Alabama; you are hereby commanded, that of the goods, Chattels, lands and tenements of John L. Jones Defendant, you cause to be made the sum of Seventy five 00/100 Dollars which John A. Franklin Plaintiff, recovered of him on the 7th day of March-1883, by the Judgment of our Circuit Court held for the County of Covington besides the sum of Twenty-seven + 90/100 Dollars Cost of suit, and have the same to render to the said John A. Franklin and make return of this Writ and the execution thereof to our next Circuit Court, to be holden on the first Monday in Sept^r 1885 according to law. Witness my hand this 27th day of June 1885, Interest from 7th of March 1883, J. E. Stanley Clerk,

all
of
reptions
acted.

12th,

Received in office, 27th June 1885,
John W. Penton, Sheriff,
Levied on one Bay horse + released,
F. B. Jones having made Claim Affidavit
and Bond, July 10th 1885,

J. W. Penton, Sheriff,
No property found, Sept. 2nd 1885,
J. W. Penton, Sheriff,

The Plaintiff then introduced in evidence
the Judgment in the case of John A. Frank-
lin vs J. L. Jones which is in words

Bill and figures to-wit:
of John A. Franklin
Exceptions vs

Cont'd

John Jones and
Sandford Jones }
and issue being joined there upon
Came a jury of good and lawful
men to-wit; and eleven others
who being duly sworn and empaneled
according to law on their oaths do
say "we the jury find for the
Defendant Sandford Jones and we
further find for the Plaintiff against
John Jones and assess the damages
at Seventy-five Dollars. It is therefore
considered by the Court that the Defendant

March 7th 1883,
Came the parties
by their attorneys

Sandford Jones go hence, and it is further considered by the Court that the Plaintiff do have and recover of and from the Defendant John Jones Seventy-five Dollars together with the costs in this behalf expended for which let execution issue,

Thereupon the Plaintiff was put upon the stand as a witness who testified substantially that in July 1885 Frank B. Jones and J. L. Jones came to Andalusia driving the Bay horse in controversy to a Buggy and that J. L. Jones was driving the horse, that

the value of the horse was seventy five Dollars. J. W. Penton was then placed on the stand as a witness who testified substantially that he levied on the horse in question, that he did ^{not} know in whose possession the horse was at the time of the levy that he found the horse hitched to a limb in Andalusia and was pointed out by J. A. Franklin and that J. L. Jones was in Andalusia on that day. The Plaintiff then introduced W. J. Knowles as a witness who testified as a witness

14th,

Substantially that he knew the horse
in question that Sanford Jones of-
fered to trade him a sorrell horse
and after J. L. Jones traded for the
Bay horse in question he told wit-
ness he would give him a better
trade than his brother Sanford offered
him in the sorrell horse. witness
replied that the horse did not suit
him and he did not wish to buy
him, this was in July 1885 according
to his best recollection but he could
not say whether this was before or
after July 10th 1885.

Bill
of
Exceptions
cont'd.

J. D. Barrow was then placed on
the stand as a witness for Plaintiff
who testified substantially that his
Father had a debt against Sanford
Jones and that payment of this debt
was to be made out of the proceeds
of the sale of the horse, that he saw
this horse in the possession of J. L.
Jones in August or Sept. 1885 that
the horse was not bought from
his Father and that he don't know
where the horse was sold or whether
he was sold or not, that his Father

got his money,

N. H. Hare was then placed on the stand as a witness by Plaintiff who testified substantially as follows that in July and August 1885 he was usually sick and that J. L. Jones frequently came over to sit up ^{with} and wait on him, and that he rode the horse in question to his house that he never heard him claim the horse as his own. The Plaintiff here rested his case. The claimant introduced

Sanford Jones as a witness who testified substantially that in May 1885 he owned a sorrell horse and was about to leave the State for Texas. And that he was due Mr. Barrow a debt and tried to sell the horse of his (the sorrell horse) to John I. Deens to get the money to pay this debt. Deens then said he did not want the horse at the price but that Matthews had a horse that would trade better than his and he could trade for him. That he went back home and left his horse in the possession of J. L. Jones and F. B. Jones and stated

X

16th

to them to dispose of the horse to pay the debt to Barrow and that they could trade the horse to Matthews and that Deens had informed him that Matthews horse would trade better than his Sorrell horse, that he said to F. B. Jones he could have the horse if he paid the debt to Barrow that the debt was not paid and that the horse was his, that J. L. Jones is dead, that he was in Texas and did not know whether J. L. Jones was ever in the possession of the horse or not, or whether he claimed the horse.

Bill
of
Exceptions

Cont'd.

John I. Deens testified substantially that Sanford Jones offered to trade him the Sorrell horse and he declined to take the horse but informed him that Matthews had a horse for which he could trade, which would trade better than the Sorrell horse, that afterwards he saw J. L. Jones going down to Matthews to trade for the Bay horse in question, this was in the summer of 1885.

F. B. Jones the claimant then testified that Sanford Jones left a sorrell horse in his possession in May 1885 and that he informed witness that Matthews had a horse for which he might trade, which would trade better than the sorrell horse and that if witness would account to Mr. Barrow for seventy-five dollars he could have the horse, that he sent J. L. Jones to trade the sorrell horse to Matthews for him, that J. L. Jones traded with Matthews for the Bay horse in question and brought him back and witness took possession of the horse. that thereafter J. L. Jones by the permission of witness rode or drove the horse but that J. L. Jones never at any time owned this horse that the horse was his (F. B. Jones) when he sold him and paid Mr. Barrow,

F. B. Jones also testified that at the time of the levy on the horse he did not claim the horse but that he was Sanford Jones that he never claimed the horse till he sold him which was some

18th

time after the levy & filing of the claim bond, and this testimony of J. B. Jones was not controverted by the Plaintiff and he so stated in open court and claimant offered no further testimony in this admission for the horse levied on ~~and~~ after that levy and after claim bond given the horse levied on was sold and after this claimant asserted his right accrued. It was in evidence that J. B. Jones after the levy and execution of his claim bond sold the horse in question and not till after such sale did he claim him. his right as asserted to the horse in question arose after said sale said sorrell horse of Sanford Jones was swapped, and the horse in question was sold by claimant after he give claim bond.

Bill
of
Exceptions.
Cont'd.

(1)
exception
no 1

This being substantially all the evidence, the court among other things charged the jury, that if J. B. Jones at the time of the levy was in the possession of the horse and claiming him as his

own and this was shown to their reasonable satisfaction, then the Plaintiff was entitled to recover unless the horse was the property of claimant, to this portion of the general charge the claimant duly and legally excepted.

The court further charged the Jury among other things, "That if (2) J. L. Jones was in possession ~~and~~ claiming the horse at the time of the levy it is immaterial, whose the horse, the question is unless the claimant shows the horse was his property at the time the levy was made,"

exception
no. 2.

ll
of
ceptions,
t'd.

To this portion of the general charge the claimant duly and legally excepted.

The Plaintiff then asked the Court to give the following which was in writing.

"That if the Jury believe from the evidence that John L. Jones traded with Matthews for the horse and took ^[him] into possession after that at any time before the

20th

levy, claimed ^{ing} title to him, and if they further believe from the evidence, that the claimant never asserted title to the horse until he sold him after the levy then they must find for the Plaintiff."

The court gave this charge and the claimant duly and legally excepted to the giving of this charge.

The claimant then asked the court to give the following charge which, which was in writing -

Bill
of

Exceptions. " The court charges the Jury that
Cont'd, " Although J. L. Jones may have in point
" Of fact swapped ~~horses~~ with Matthews
" Yet if they also believe from all
" The evidence J. L. Jones did not swap
" For the horse as his own, and that
" The whole testimony shows he made
" the swap for F. B. Jones or by his
" direction, and that his possession
" of the horse afterwards was by the
" permission of F. B. Jones - and that J. L.
" Jones never owned the horse in question
" at any time, then the Plaintiff
" cannot recover."

The court refused to give this charge and the claimant duly and legally excepted to the refusal to give this charge.

And the claimant tenders this as his Bill of exceptions in this case, which is signed and sealed as such by the presiding judge.

John P. Hubbard
Presiding Judge,

The State of Alabama,
Covington County Circuit Court,

Know all men by these presents, That we F. B. Jones, S. A. Jones, J. F. Jones and R. E. Crumpler are held and firmly bound unto John A. Franklin in the sum of one hundred & fifty Dollars for the payment of which, well and truly to be made, we bound ourselves, and each of us, our heirs, executors and administrators, jointly, severally and firmly, by these presents.

Sealed with our seals, and dated this the 5th day of March A. D. 1886.

Whereas, at the Spring Term 1886,

of the Circuit Court of and for
 said County, on to-wit: the Fourth
 day of March 1886, the said John
 A. Franklin recorded a Judgment
 in said Court against F. B. Jones
 for the sum of Seventy-five Dollars,
 the value of the horse claimed, and
 the further sum of Twenty three and
 70/100 Dollars, the cost in that behalf
 expended; and whereas, on this day the
 said F. B. Jones as such Defendant
 has prayed and obtained an appeal
 from said Judgment to the next
 Term of the Supreme Court to be
 holden of and for said State,

Appeal
 Bond,
 Cont'd.

Now, therefore, the condition of the
 foregoing obligation is such, that if
 the said F. B. Jones shall prosecute
 said appeal to effect, and satisfy
 such judgment, both as to debt and
 costs, as the Supreme Court may ren-
 der in the premises, then the said
 obligation to be null and void,
 otherwise to remain in full
 force and effect.

F. B. Jones L. S.
 J. A. Jones L. S.

J. F. Jones
R. E. Crumpler

L. S.
L. S.

Approved:

John E. Stanley Clerk,

The State of Alabama,
Covington County, I, John E. Stanley
Clerk of the Circuit Court of State and
County aforesaid, do hereby certify
that the foregoing pages, from 1st to
23rd inclusive, contain a full and
complete transcript of the record
and proceedings of the ^{said} Circuit Court
of in a cause therein pending, wherein
John A. Franklin Plff- in Execution and
J. L. Jones Deft. in Execution, F. B.
Jones Claimant are defendants, and
I further certify that the said
F. B. Jones Claimant did on the 5th
day of March 1886 pray an appeal
to the next Term of the Supreme Court
of Alabama, which Appeal was grant-
ed upon his giving security for the
costs of said Appeal: and that S. A.
Jones, J. F. Jones, and R. E. Crumpler
are the sureties for said costs, all of
which I hereby certify to said

certificates
manuscript

Supreme Court,
John C. Stanley
Clerk.

F. B. Jones, clm. } In the Supreme Court of Alabama
" } December Term, 1886.
John A. Wendell }

Com. the Appellant, F. B. Jones
and shows to the Court that in the Record
and Proceedings of the Court below, there hath
intervened to his injury, manifest error,
and he here specifies the following as error,
1st The Court below erred in that portion of his general
charge, as shown in Pages 18 & 19 of the Record, more
on the margin, 1st exception in Red Book.
2nd The Court below erred in that portion of his general
charge, with jury, as shown, in Page 19 of the Record,
and marked exception no. 2 in Red Book.
3rd The Court below erred in giving the charge 2. asked,
by the Aff. John A. Wendell as shown on Page 19 of Record.
4th The Court below erred in refusing to give the charge
asked by the Claimant, F. B. Jones, as shown on Pages
20 & 21 of the Record.
5th The Court below erred in manner and form as shown
in the Bill of exception

Caused to be returned
at the City of Montgomery,
this 1st day of December, 1886.