

JEFFERSON COUNTY Circuit Court
Case files - Cir 1

Box

16 Folder 65

November 1865, No. 67

State ex rel
stellbrink, Henry
VS

Bol, Frederick
Gasche, Henry

Attachment bond

\$1,980 damages for failure to prosecute
suit by attachment

The State of Missouri
of the Retention & to the
use of Henry Stillbrink Plaintiff
against
Frederick Bohl
Henry Garsche Defendants

In the
Circuit Court of Jefferson County Miss
ouri

The plaintiff states that on
the 26th of October 1864 the defendants
made and delivered their bond in favor
of the State of Missouri, a copy of which
is herewith filed, By which defendants
acknowledged themselves to be indebted
to the State of Missouri in the sum
of twenty three hundred dollars.

That said bond had annexed and under
written the following condition to wit
"The condition of the above obligation
is such that whereas the said Frederick
Bohl as executor as aforesaid is
about to sue out an attachment
in aid of a suit now pending in the
Circuit Court of Jefferson County
Missouri wherein said Frederick
Bohl as such executor is plaintiff
and Henry Stillbrink is defendant
against the property of said defendant
returnable to the next Term of said
Court wherein the sum sworn to is
Eleven hundred and fifty dollars. Now

if the said plaintiff shall prosecute his said action without delay and with effect refund all sums of money that may be adjudged to be refunded to the defendant or found to have been received by the plaintiff and not justly due to him and pay all damages and costs that may accrue to any defendant or garnishee by reason of the attachment or any process or proceeding in the said suit or by reason of any judgment or process thereon, then this writ shall to be null and void otherwise to remain in full force".

Plaintiff charges that the said Bohl as executor of Casper Gasche did ^{cause a writ of attachment to issue in said cause to the Sheriff of Jefferson County} but did not perform the conditions of the said

bond but committed the following breaches thereof that is to say That said Bohl executor as aforesaid failed to prosecute his said action without delay and with effect

Plaintiff states that at the May Term 1865 of the Circuit Court of Jefferson County Mo a change of venue of said suit was awarded to the circuit court of Franklin County Mo. that at the September Term 1865 of the Circuit Court of Franklin County Missouri, the said Bohl executor as aforesaid voluntarily dismissed his said suit

against said Stillbrink, whereby said writ and attachment were not properly served without delay and with effect.

Plaintiff states that in consequence of said attachment being issued in said cause, the said Stillbrink has sustained large damages, viz for attorneys fees necessarily incurred in defence of said writ of attachment which said Bohl caused to be issued in the above cause, that is to say the sum of seventy five dollars for attorneys fees.

That said Stillbrink also sustained large damage in loss of time giving security to the Sheriff of Jefferson County Mo for property of said Stillbrink attached in said writ of attachment to wit about five days loss of time worth to said Stillbrink the sum of twenty five dollars.

That said Stillbrink necessarily incurred expense of about fifty dollars in preparing for defence against said writ of attachment also lost about six days time worth \$30 to said Stillbrink in preparing for defence & for trial of said writ of attachment issued in the above cause of Bohl versus as aforesaid.

Plaintiff further states that on ground of the said attachment bond

a writ of attachment was issued out of
the Clerk's office of Jefferson County
Mo & delivered to the Sheriff of said
County, that the said Sheriff at the
direction of said Bohl levied said
writ of attachment on the lands
of said Stillbrink, his personal
property & garnished as garnisher
all the debts due said Stillbrink
by sundry persons & thereby prevent-
ing said Stillbrink from the
free use of his property and
sale & disposal at the ~~best advantage~~ ^{best} ~~possible~~,
and deprived said Stillbrink of
collecting & using his said debts
to his damage of five hundred
dollars.

Plaintiff further states that ~~said~~
in consequence of said writ of atta-
chment being issued & levied on
his property, he lost \$1200. in cash
that which has not yet been returned.

By reason of which breaches of the
said bond & condition ~~the~~ said bond
& the condition was, & became forfeited.
Wherefore plaintiff charges that Still-
brink has sustained damage to the
amount of \$1980 by said Bohl causing said
writ of attachment to issue & to be levied
as aforesaid & for failing to prosecute
his action with effect.

Plaintiff demands Judgment for forfeiture
 of said penalty of said bond and
 for execution to issue for \$ 1980
 and for all other proper relief
 J. A. Beal
 Atty. for plaintiff

Henry Stillbrink being sworn in his
 oath says that the foregoing petition
 & the matters therein contained he
 believes to be true
 Subscribed & sworn
 to before me
 this day
 of October 1865

Henry Stillbrink

Note to the use of
Henry Stillman

The Rev. Dr. B. H. White

On attachment find

The State of Missouri, } ss.

COUNTY OF JEFFERSON.

The State of Missouri,

To the Sheriff of the County of Jefferson---Greeting:

We command you, that you summon *Frederick Bohl*
and Henry Lasche

if they be found in your County, that they
be and appear before the Hon. Judge of our Circuit Court, on the first day
of the next term thereof, to be begun and held at the town of Hillsboro, within
and for the County of Jefferson, on the second Monday after the fourth
Monday of *November* next, then and there to answer unto
Henry Stelbunk

upon *his* original petition, a copy whereof is hereunto annexed and ac-
companies this writ, and have you then there this writ.

Samuel A. Reppy
Witness, *ELIAS F. HONEY*, Clerk of our said Circuit

Court, with the seal thereof hereunto affixed, at office
in Hillsboro, this *Twenty Seventh*
day of *October* A. D. 1865,

Samuel A. Reppy
Clerk Circuit Court.

I have entered the within writ at the County of
Jefferson State of Missouri on ~~Frederick~~ ~~Bohl~~ ~~Bohl~~ ~~Bohl~~
Bohl & Henry Gaska the within defendant by-
delivering to them a true copy of said writ and
the annexed petition as furnished me by the Clerk

C. C. Fletcher
Sheriff

32 67

TO JEFFERSON CIRCUIT COURT

2349

November Term, 1865-

The State of Missouri

to the use of H. Stettin

vs. Summons

Frederick Bohl &

Henry Gaska

27 Oct

Fletcher Sheriff 300

Nov 1866

The State of Missouri at relation and to the use of Henry Stelbrink, — Plaintiff Against Frederick Bohl, and Henry Gasche, — Defendants	In the Circuit Court of Jefferson County Missouri
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The Defendants for Answer to Plaintiff's
 petition, admit they gave the necessary Bond, and
 sued out a writ of attachment, on the 26th day of
 October 1864, against the property of Plaintiff, in
 aid of a suit said Frederick Bohl as Executor
 of the estate of Casper Gasche, deceased, had then
 pending in the Circuit Court of said Jefferson
 County against Henry Stelbrink; and that the
 Sheriff of said County afterwards levied the same
 on the lands of Henry Stelbrink in said County,
 But Defendants deny that any personal property
 of said Stelbrink was levied upon or seized by the
 Sheriff of said County, under said writ of attachment,
 - and deny that any interrogatories were filed for
 any persons, summoned as garnishees under said writ,
 to answer, And they state that the change of
 venue of said cause to Franklin County, was made
 on the application of said Henry Stelbrink, - and
 doubtless for the purpose of harassing said
 Bohl as such Executor, and by vexatious delays,
 and intrigues to prevent him from recovering
 the amount justly due from said Stelbrink,
 to the Estate of said Casper Gasche, And although
 said Bohl as such Executor afterwards dismissed
 said attachment suit, it was not because the facts
 alleged in his affidavit did not exist, but because
 said Stelbrink, in his endeavours to evade paying

the debt he justly owed said Gasche's estate, had encumbered his Lands by a deed of Trust in favor of Jefferson County, and said Executor found that the only ^{way} to thwart such intrigues was by a suit to enforce a vendor's lien, which said Gasche's estate had on the Lands of said Stelbrink, - and in which suit he was afterwards successful.

Defendants therefore deny that Plaintiff was damaged by said attachment being levied on his lands, as they were then subject to the vendor's lien of said Gasche's estate, and Plaintiff could not have sold the same so as to defeat the lien, as a suit was then brought to enforce it, - and defendants deny that Plaintiff was prevented from collecting his debts, or the free use of his lands,

The Defendants have no knowledge or information sufficient to form a belief, of whether said Stelbrink paid ^{or any amount whatever} \$5 dollars for Attorney fees, in defending said attachment suit, & proof is required, and whether he did or not, Defendants deny that they are liable for the same, Nor have defendants any knowledge or information sufficient to form a belief, of whether Plaintiff lost five days time, worth \$25, or any other sum, in preparing to defend said suit, or in getting security to get his property released, - nor whether his expenses & time in preparing his defence was worth \$5 dollars, ^{or \$30,} or any thing, whatever, And they deny that such ^{up}trumped items are legitimate claims for damages, & deny that Plaintiff can legally recover damages for any such claims, & deny that they necessarily arose from said attachment ~~suit~~, & said Executor's failure to prosecute the same, Defendants state that they have no knowledge or information sufficient

To form a belief, of whether or not, Plaintiff lost \$1200, or any other sum, in consequence of said writ being issued & levied upon his property, nor how said money was lost, if lost at all. Defendants deny that said loss, (if there was any) was the necessary & natural result of the institution of said attachment suit, and deny that they are legally bound to indemnify Plaintiff for such loss.

Defendants deny that Plaintiff has sustained \$1980 damages, or any sum whatever, by reason of said Executor instituting said attachment suit, or by ^{reason of} any acts of Defendants & for which any liability attaches against them. They state that if Plaintiff has sustained any loss in any way in the premises, it is in consequence of his studied and labored plans & intrigues, to avoid paying a just debt which he owed to the Estate of said Casper Gasche. Defendants deny that Plaintiff is entitled to recover on said Bond \$1980, or any sum whatever from these Defendants for any breaches of said Bond, or for any injuries Plaintiff sustained because said suit was not prosecuted with effect. And Defendants further state that there were two other suits pending against said Henry Stelbrink, in the Circuit Court of said County, by Frederick Bohl, as Executor of Casper Gasche, based on the Note of said Stelbrink for \$1150, and interest, at the same time of the attachment, - and in which other suits, said Stelbrink plead a large array of offsets, as also, a tender, and that his main efforts were made to defeat these suits, - (one being a suit to enforce a Vendor's lien against his land, & the other an injunction, -) in as much as they were instituted

in lieu of said attachment suit; and consequently if
he paid any money for Attorney fees, or expenced any
money, or time and labor in preparing for defence, it
was to defend against these suits, and not the attach-
ment suit, which operated no damage to Plaintiff.

Thomas & Ahlvers
& A. Green, Attys.
for Defendants,

Frederick Bohl, one of Defendants, makes oath & says the above An-
swer & the matters therein as stated he believes to be true.
Sworn and subscribed before me this
15th day of April 1866.

Samuel A. Pappeler Frederick Bohl

In Circuit Court
Jefferson County

Wmmy Holbrook

vs.

Frederick Bohl

& Wmmy Gasche

Defendants

Answer

Filed April 13th 1866

Samuel A. Pappeler

The State of Missouri to the {
use of Henry Stettinck, - Plaintiff

Against

Frederick Bohl, and {

Henry Gasche, } Defendants

{ In the Circuit Court of
Jefferson County Missouri

The Defendants move the Court
to rule the Plaintiff in the above Cause
to give security for the costs therein, for
the ^{reason that} the Plaintiff owns no real estate and
has no personal property liable to the
process of law, and is unable to pay
costs.

Thomas V. Alvers,
J. A. Green, Atty's
for Defts.

The State to use
of Young & the Smiths
No,
Boyle, & Gaucha
Prothon for
Accounty for Costs

Filed Nov 13 1866.
Samuel A. Peck by Clerk

State to use of Stillbrink }
Bohl & Garcke }

Refused

The Court instructs the jury that if they find from the evidence that Stillbrink took the change of venue to Franklin Co. because he could not get a fair trial in this Co. on the offset that, ^{he} put in, in the suit, in aid of which the attachment was sued out, then the jury should allow nothing for costs paid by Stillbrink for such change of venue.

Sept. 11, 1881

Alfred

He. Altman

of
Bohler

Refused

Plff: Instruction. No 3

The jury are instructed that a voluntary dismissal of the original attachment suit of the plaintiffs in that suit, has the same effect upon the breaches in the bond now sued on as if the attachment suit had been dismissed on a trial on the merits on said attachment suit.

MS. No 3

He Stethumbe

St. Paul

MS. Refused

Plaintiffs instruction No 3^d

Refused
In estimating the damages sustained by the plaintiff the jury cannot take into their consideration in mitigation of the same that the original Truckman's suit was sent to another County for trial on the Motion of the present defendants and that more costs ~~were~~ than by accrued them if no change had been taken

and all the additional expenses incurred by ~~the~~ Plaintiff in this suit & reason of said change of venue are to be taken into consideration in ~~assessing~~ the assessment of plaintiffs damages in this suit

No 5.

Re: Stillburn's

S. P. H. L.

21st Dec 1892

no 6

Refused

The jury are instructed that all material matters stated in plaintiffs petition and not denied by the defendants are to be considered true

The depts admit the execution of the bond said on -

They ^(depts) admit that there was a plea in abatement filed and that said issue an said plea was sent to Franklin County for trial and that the plaintiffs in the original suit but defendants have gotten said cause had been sent to Franklin County for trial voluntarily dismissed their suit thereon in attachment

No 6,

H. ~~Stellman~~

^{or}
J. Doherty

Refused

Decr 1865 of Henry Stillbrink fifty dollars
for legal services & fee on issue when in station
as ^{an affidavit} in attachment in favor of ~~de~~ Frederick
Still Brink Execution of Carper Buckle against Henry
Stillbrink in the circuit Court of Jefferson County
now taken by change of venue to Franklin Co

J. Q. Deal

Real. } Receipt
To } \$50
Henry Stillbrook

Filed Nov 15 1866
Saml A R p y l k

The State of Wisconsin to me of
Henry Stetson

as

Exec. Bond & Release

J. A. Rappaport, 1 copy not to be sent to the State

and 14 copy 10¢ Stamp 50¢ and 25¢ off 25¢

Notation 20 Aug 1870, Dubois 25¢

Aug 1870. vouchers 30¢ Dubois 15¢

Files 20¢

Wetzel & Co. 1870

Don't know

\$ 3.00

Cells —

15

2.15

Henry make out the

25

\$ 9.10

11580

In Great Court
Judged for \$1168 8 1/2
Nov 15 1866
Bonds 5 Aug 338