

**KISSA**, *alias* FREEMAN COOPER, Plaintiff in Error, vs. **A. B. STUBLEFIELD**,  
Sheriff of Montserrado County, and **MAX SCHMOJI**, Defendants in Error.

**LRSC 5; 1 LLR 342**

[January Term, A. D. 1899.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

Injunction.

Where the Sheriff was stopped by writ of injunction from selling property levied upon by virtue of a writ of execution, and pending the hearing of injunction, he and plaintiff hired out the property to a third party, in whose possession it was lost, it was held that plaintiff could not be held in contempt, under the circumstances, for misconduct towards the court, by interfering with property under its wings, the assent and co-operation of the ministerial officer tending to show that it was done with no contemptuous design or disregard of the court's authority.

This is a case that was tried and determined in the Court of Quarter Sessions and Common Pleas, Montserrado County, at its September term, A. D. 1898, sitting in equity before His Honor H. W. Travis, and has been brought up to this court by the plaintiff in error upon a writ of error. Before advancing in the review of the case, it may be well for the court to consider its nature, by giving a brief history of the case as gathered from the record and assignment of errors. It appears that the case of injunction grew out of an action of debt, against Kissa, *alias* Freeman Cooper, now plaintiff in error, in the District Court of Marshall at its August term, A. D. 1896, in which action the judge of said district court granted a writ of execution against the said plaintiff in error, in satisfaction of said debt, and by virtue of said writ of execution, directed to one John Lewis, Sheriff for Marshall, the Sheriff of Montserrado County, A. B. Stublefield, now one of the defendants in error, seized and advertised for sale a certain surf-boat and its appurtenances belonging to the said Kissa, *alias* Freeman Cooper, now plaintiff in error. Whereupon the said Kissa, *alias* Freeman Cooper, now plaintiff in error, by proper process of law through the Court of Quarter Sessions and Common Pleas, caused a writ of injunction to be issued in his favor against A. B. Stublefield, Sheriff aforesaid, and Max Schmoji, now defendants in error, thereby stopping them from the sale of said boat and appurtenances until proper investigation should be made by the said court below, whence the injunction emanated. The plaintiff filed his complaint in the said court below, and the defendants in error answered; and alternate pleadings of reply, rejoinder, and surrejoinder were filed respectively by the plaintiff and defendants. The parties having joined issue, the case was called up for hearing at the September term of said court, 1898, when the said defendants put in a petition, setting forth that the said plaintiff had seized and taken out of the

possession of the sheriff, without any warrant or authority, the said boat and appurtenances without awaiting the action and decision of the said court, and prayed that the court should summon the said plaintiff to show cause why he should not be attached for contempt shown the said court. This petition was made after the court had ruled out defendants' rejoinder, but still reserved ruling on the plea raised in the plaintiff's reply, as to the sufficiency of defendants' answer; which plea the judge subsequently ruled out in rendering final judgment. The judge below granted the petition, which when read was found to be in form and substance the same as the said answer in question.

Upon investigation of the subject of the petition the court ascertained that the boat had been hired to one J. W. Toles by an arrangement entered into by the plaintiff, the said Sheriff and J. W. Toles, and that the money to be paid for the hire of the said boat should go towards the payment of the debt. It also appeared that Attorney S. E. F. Cadogan was employed by the said Kissa, *alias* Freeman Cooper, now plaintiff in error, after the boat had gone to sea. On the return of the boat, it appeared that the said plaintiff sent it to sea again, being advised by his attorney, S. E. F. Cadogan. The court below in ruling held that the action of the said attorney, S. E. F. Cadogan, and the said Kissa, *alias* Freeman Cooper, plaintiff in error, was a contempt to the court, and therefore fined the said Attorney Cadogan seventy-five dollars, allowing him one month to pay, and also fined the said plaintiff fifty dollars, to be paid in one month. The judge also ruled out the answer of defendants, perpetuated the injunction, ruled the plaintiff to pay the costs, and granted an execution thereupon. The plaintiff, feeling that justice had not been meted out to him, filed an assignment of errors, and prayed. the Supreme Court to grant to him a writ of error against the said judge below, that the case might be brought up to the Supreme Court for review and correction of errors, should there be any.

Having given a brief history of the case, as gathered from the record, this court will now proceed to review the same and render its decision. Upon careful examination of the record in the case, the court finds that the answer of the defendants in error is not a sufficient answer to the complaint, in that it is not distinct and intelligible, nor does it affirm or deny the allegations of the complaint, nor does it set forth any new facts justifying him for the seizure of said boat in question. Therefore, the court sustains the judge below in ruling out said answer.

The answer having been ruled out by the judge below, the defendants had no other alternative than to rest on the bare facts only. And it is the opinion of this court that the

judge below erred when he admitted the petition of defendants, now defendants in error, it containing no facts relevant to the issue, but introducing facts foreign, which ought not to have been admitted at that stage of proceedings.

From a careful review of the record in the case, the court finds that the said boat in question was not wrested out of the possession of the said Sheriff (one of the defendants in error) before action had been taken by the court below; but rather that the Sheriff as aforesaid with the said Kissa, plaintiff, entered into contract with one J. W. Toles for the hire of said boat, with the understanding that the money accruing from the use of it should go towards the payment of said debt. And he, the said Sheriff, being a party to the contract, and the boat being in his possession at the time, exonerated the said Kissa from an unlawful taking of the boat, and his act cannot be legally construed a disobedience and contempt. On the return of the boat from the coast, it does not appear from the evidence in the case that the arrangement with J. W. Toles ended, and the said Sheriff received back the boat, and the said Kissa wrested it out of his possession; but it does appear from evidence that during the absence of the boat the said Sheriff advertised the sale of it, notwithstanding the arrangement of hire. And again, it does not appear to the court that the act of Attorney S. E. F. Cadogan in advising the said Kissa, his client, to send the boat away can be construed to be a contempt, under the foregoing circumstances. And supposing it was, still this court says that a legal process should have been issued against him, and he be granted the right to defend himself. And again, a proceeding for contempt is regarded as a distinct and independent suit. (See I Bouv. Law Dict. "Contempt.")

Therefore, it appears strange to this court that the judge below should treat the case proper and the contempt as one, by admitting the petition of the defendants, containing the same matter as the answer which he ruled out as insufficient, and also in rendering a joint judgment. This court recognizes that it is said that "it belongs exclusively to the court offended to decide what in its opinion amounts to a contempt; and in general no other court or judge can or ought to undertake, in a collateral way, to question or review proceedings for contempt, made by another competent jurisdiction." But it is also held that a court of superior jurisdiction may under certain circumstances review the decision of one of inferior jurisdiction on a matter of contempt. And had not the judge below based his decision for contempt on the violation of a principle of law, which this court fails to see, there might not be any interference with his ruling on that point. Viewing the whole matter, this court says that the judge below erred in his judgment for contempt.

This court also says that it fails to see the law, justice, or equity, by which the judge below, in his judgment on the injunction, perpetuated the injunction, and at the same time ruled the plaintiff in error to pay costs. In this the judge below erred.

This court therefore adjudges that the judgment of the court below, being erroneous, unlawful, and inequitable so far as refers to the costs, is hereby revised; and the defendants in error are ruled to pay all costs in this action. The clerk of this court is hereby ordered to send a mandate to the judge below to the effect of this judgment.