

Gimon v. Baldwin

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1 Div 3220

(N^o 2) Filed June 6th 1860 Phelan Clk

Dominick Gimon vs Henry C. Baldwin

Mobile City Court.

The State of Alabama Mobile County Supreme Court State of Ala at \[Montg-
-\] June Term 1860

1 The plaintiff in Error alleges that the Court below erred in sustaining to objection of the appellee to the examination of W^m M \[Farril--\] as a witness on the part of appellant at the several times his testimony or examination was offered.

2. The Court below also erred in admitting as evidence to the jury of testimony of what took place between Baldwin and the negroes Briester and Tarlton. 3 There is error as shown in the bill of exceptions 4th There is error in the record. Lewis S. Lude J Boyle. Atty for appellant

June 28 / 61. Reversed and remanded. A J Walker C J

M. p. 318

Cet. Prep:--

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\["Cet. Prep:--" written in lighter ink or pencil\]

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1 \[?\]

The State of Alabama Mobile County Pleas before the Honorable Alex[^r]{.ul} M[^c]{.ul}Kinstry Judge of the City Court of Mobile for the County and State aforesaid, at a Term thereof begun and holden at the Court house of said County on the first Thursday of March A D 1860

Complaint

The State of Alabama Mobile County City Court of March Term 1860

Dominick Gimon vs Henry C Baldwin The plaintiff Dominique Gimon claims of the defendant Henry C Baldwin the sum of Eighteen hundred dollars as damages for the conversion by him on the fifth day of october 1858 of a negro man Slave named Briester, the property of the plaintiff Owen & Lude Attys for Plffs.

Summons The State of Alabama Mobile County-- City Court of Mobile To any Sheriff of the State of Alabama-- greeting You are hereby commanded to summon Henry C Baldwin to appear at the City Court of Mobile for Mobile County at the place of holding the Same on the first Monday of March A D 1859 then and there to answer to the complaint of Dominique Gimon

Witness Reuben A Lewis Clerk of the Said Court at office this Eighth day of December in the year of our Lord one thousand and Eight hundred And fifty Eight. Issued 8th day of December 1858 Attest R. A Lewis. Clerk

Sheriffs return Received Dec^r 8th 1858 And on the 13th Dec^r 1858 I served a copy of the within summons or complaint upon Henry C Baldwin. James T Shelton Shff M C^o Jw \[?\] J. \[?\] B. Tisdale D. S.

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Defendants Pleas

Dominique Gimon City Court of Mobile State of Alabama

The defendant for answer to the complaint says he is not guilty of the matters alleged therein Chandler & Smith Atty for Deft

Judgment And on the 27th day of March AD 1860 being a day of said March Term 1860 the following being a day of said March Term 1860 the following judgment was rendered in said cause, to wit

Dominique Gimon v Henry C Baldwin This day came the parties by their Attorneys and thereupon came a jury of good and lawful men to wit H Griffing

and Eleven others who were Empanneled and sworn well and truly to try the issue joined. And on their oaths do say, we the jury do find for the defendant. It is therefore considered by the court that the defendant go hence and receive of the plaintiff all costs in this behalf Expended

Bill of Exceptions.

Dominique Gimon v Henry C Baldwin City Court of March Term 1860.

Be it remembered that on the trial of this cause it was admitted that the plaintiff had hired a negro Slave named Briester to the defendant to work on the Steam boat Senator as a deck hand by the trip-- that on the first of october 1858 said Negro was discharged, the Senator having "laid up" or leased running. It was further admitted that the plaintiff had brought an action of trover against W^m M Ferrell Et al owners of the Lucy Bell for the conversion of the same negro; that said action was brought after the complaint and summons in this case was sued out and was still pending & that the defendant Baldwin was solvent & good for the amount claimed in this suit There was Evidence before the Jury that the negro Briester

The above interliniation is by consent. R H Worth L S Lude

[Wavy vertical line dividing lines "Defendants Pleas" and "Dominique Gimon" on the left from the court name and line beginning "The defendant..." on the right]

[Loopy vertical line dividing the case name on the left from the three lines of main text on the right beginning "This day came the parties..."]

[Wavy vertical line dividing the case name on the left from the court and term names on the right in the Bill of Exceptions section]

[Line beginning with "defendant Baldwin was solvent..." is inserted between two lines of text, and word "suit" on the next line is inserted into the left margin]

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belonged to the plaintiff, that he was drowned while working as deck hand on the Lucy Bell, near Gainstown on the Alabama river and that he was worth fifteen hundred dollars. The plaintiff then introduced W^m. M. Ferrell and his Examination being objected to by the defendant on the ground that he was the captain and master of the Lucy Belle on which the Boy was lost, as well as part owner of said boat-- and that suit was already instituted against him and other owners in Monroe County to recover for the same loss on the ground that said Ferrell had said slave on said boat without having hired the slave from the plaintiff and because such testimony was incompetent, and that said suit was still pending. The plaintiff then by his Counsel stated that they Expected to

prove by said Ferrell that said defendant Baldwin in the Early part of october (between the first and fifth of october 1858) came to the Lucy Belle and hired the negro boy Briester to him to serve as deck hand on the Lucy Belle. The defendant insisted on his objection to the Examination of this witness, and the court sustaining the objection the plaintiff by his counsel Excepted. Another witness was introduced by the plaintiff who testified that in october 1858 he was mate of the Lucy Belle-- that on one occasion he was in the Engine room and saw Captain Baldwin the defendant, and Captain W^m M Ferrell on they wharf together, with two negroes Briester and another named Tarlton near them-- That Cap^t Ferrell called witness out and asked him if he wanted any more hands, that he replied he could do with two or three more. Capt Ferrell then told witness in the presence of Baldwin "Here are a Couple of Boys Captain Baldwin has to him \[?]" That said negroes Breister and Tarlton soon after followed him to the Lucy Belle, and he put them to work as Deck hands.

The plaintiff introduced other Evidence tending to show that Briester was drowned while on the Lucy Belle about the fifth of october 1858. The plaintiff then introduced W^m M Ferrell a second time and proposed to prove by him that Cap^t Baldwin did hire Briester to the Lucy Belle at the time mentioned

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by the mate of the Lucy Belle and that Briester and Tarlton both were Entered to the names of the defendant on the books of the Lucy Belle by an Entry made at the time. The defendant renewed his objection to the Examination of Ferrell and the Court sustaining the objection, the plaintiff Excepted-- Then was Evidence introduced by the defendant tending to show that Tarlton & Briester, after they were discharged from the Senator, applied to Captain Baldwin to hire them on the Lucy Belle, that Baldwin refused to do so without a permit from their owners or agents-- That Tarlton returned with such a permit from his mistress, M^{rs} Adrian-- but Briester returned without one-- That Baldwin thereupon peremptorily refused to hire Briester to the Lucy Belle without a permit. It was further in Evidence that Tarlton and Briester were "partners" or worked together when on the same boats. The plaintiff at the proper time objected to the introduction of any Evidence of what took place between Baldwin and the negroes Briester and Tarlton but his objection being overruled the plaintiff Excepted. And prays that this may be signed & sealed as his bill of Exceptions, which is accordingly done in open court in term time this 14 day of April 1860

Alex. M^cKinstry. Seal Judge

I Reuben A Lewis Clerk of the said City Court of Mobile for the County and State aforesaid do hereby Certify that an appeal was applied for and obtained on the 27th April 1860 in this Case at which time an appeal bond was given according to Law and that on the 30th day of april AD 1860 a Citation was

issued and served upon Mess Chandler & Smith the plaintiffs Attorney's the Bond and Citation being herewith transcribed as a part of this record Attest Reuben A Lewis Clerk

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Appeal Bond

The State of Alabama Mobile County Know all men by these presents that we Dominick Gimon and Lewis S Lude are held and firmly bound unto Henry C Baldwin heirs Executors or administrators in the sum of one hundred Dollars for the payment of which we jointly and severally bind ourselves our heirs Executors or administrators firmly by these presents, sealed with our seals and dated this 27th day of april AD 1860. The Condition of the above obligation is such That whereas the above bounden Dominick Gimon has this day applied for and obtained an appeal returnable to the June Term 1860 of the Supreme Court of Alabama to supersede and servise a judgment by the said Henry C Baldwin against the said Dominick Gimon at the March Term 1860 of the City Court of Mobile for Mobile County for Costs of Court in said Case.

Now if the said Dominick Gimon shall prosecute to Effect his said suit in the Supreme Court of the State of Alabama and shall pay and satisfy such judgment as the Supreme Court shall render in the premises then this obligation to be null and void otherwise to be and remain in full force and Effect in presence of & approved. R A Lewis Clk D. Gimon Lewis. S. Lude

Citation in Appeal

The State of Alabama. Mobile County City Court To the Sheriff of Mobile County greeting Whereas at a Term of the City Court of Mobile for Mobile County held on the first Monday March 1860, in a certain cause in said court wherein Dominick Gimon is plaintiff and Henry C Baldwin is Defendant a Judgment was rendered against said Dominick Gimon to reverse which the said Dominick Gimon has on this day applied for and obtained from this office an appeal returnable to the

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next term of our Supreme Court of the State of Alabama to be held at Montgomery on the first Monday of June next and the necessary bond having been given by the said Dominick Gimon with Lewis S Lude surety. Now you are hereby commanded without delay to cite the said Henry C Baldwin or Mess^{rs} Chandler & Smith Attorney to appear at the next term of our said supreme Court to defend against the said appeal if the think proper

Witness Reuben A Lewis Clerk of the said City Court of said County this 30th day of April AD 1860 Attest Reuben A Lewis Clerk

Sheriffs Return Received April 30 1860 and on the 1st day of May I served a copy of the within Citation in appeal on Mess^{rs} Chandler & Smith James T Shelton Sheriff M County Jw \[?\] John. W. Moore DS

The State of Alabama Mobile County I, Reuben A Lewis Clerk of the City Court of Mobile for the County and State aforesaid do hereby certify the foregoing to be a full and complete transcript of all the proceedings had in the said Entitled cause as the same remains of record in said court

In testimony whereof I have herewith set my hand and affixed the seal of said court at my office in the City of Mobile this 4 dy of May A D 1860 Attest Reuben. A. Lewis Clerk