
Trammell v. Anderson.

TRAMMELL V. ANDERSON.

EXECUTION: *On justice's judgment.*

Under section 4103 Mansfield's Digest, no execution can be issued on the judgment of a justice of the peace after five years from the date of its rendition. After that time the power of the justice to issue execution expires and cannot be revived by *scire facias*, or in any other way peculiar to courts of superior jurisdiction.

APPEAL from *Stone* Circuit Court.

J. W. BUTLER, Judge.

T. N. Baker recovered judgment against the appellee, Anderson, before a justice of the peace on the 27th day of January, 1881. On the 12th day of October, 1886, after the expiration of five years from the date of the judgment, Baker sued out an execution thereon which was levied upon the personal property in controversy in this suit. At the constable's sale of the property the appellant, Trammell, purchased it, and the appellee brought this action of replevin against him to re-

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cover it. The case having been submitted for trial to the court, the finding and judgment were for the plaintiff and the defendant appealed. Section 4103, Mansfield's Digest, is as follows: Executions for the enforcements of judgments in a justice's court, except when filed in the Clerk's office of the Circuit Court of the county in which the judgment was rendered, may be issued by the justice before whom judgment was rendered, on the application of the party entitled thereto, at any time within five years from the entry of the judgment, but not afterward."

Blackwood & Williams, for appellants.

The statute of limitations on all judgments is ten years (*Mansf. Dig., sec. 4487*), and an execution on a justice's judgment issued after five years, is not void. 76 *Ala.*, 405; 16 *Wisc.*, 493; 82 *Ind.*, 537; 13 *S. C.*, 120; 18 *N. Y.*, *Blank v. Spencer*; 6 *Yerger (Tenn.)*, 521. It was at most voidable only. The prohibition is for the benefit of the debtor, and he may waive it. As long as a judgment remains unsatisfied, execution may be issued. 14 *Ark.*, 524.

Robert Neill, for appellee.

Section 4103 Mansfield's Digest means precisely what it says, that after the expiration of five years an execution *shall not issue*. 8 *Cal.*, 513; 20 *Iowa*, 79; 3 *Duer*, 52; *Freeman on Ex., par. 29 (ed. 1888)*.

Justices' judgments cannot be revived. *Mansf. Dig., secs. 3921, 4034*.

The cases cited by appellant arose under statutes entirely different from ours, quoting them.

The writ was void, and a void writ protects nobody.

PER CURIAM. Section 4103 of Mansfield's Digest contains a positive inhibition against the issuance of an execution upon the judgment of a justice of the peace after five years from the date of its rendition.

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We must construe the statute to mean what it plainly says, and hold that after five years the power of the justice of the peace to issue execution expires. The power may not be revived by *scire facias*, or in any other way peculiar to courts of superior jurisdiction (*Hicks v. Brown*, 38., *Ark.*, 469), and therefore no presumption of a legal right to issue the execution after the lapse of five years can be indulged. *Freeman executions, sec. 27*. The execution is void.

Affirm.
