
Woolum v. Kelton.

WOOLUM V. KELTON.

1. EXECUTION: *Motion to quash.*

Questions of fact arising on a motion to quash an execution, should be tried by the court, and not by a jury.

2. SAME: *Same: Appeal.*

On appeal from the judgment of a justice refusing to quash an execution, the Circuit Court, on finding against the execution debtor, should render judgment against him and the sureties on his appeal bond for the costs only (including that of both courts), and it is error in such case to permit a recovery for the amount of the justice's judgment on which the execution issues.

APPEAL from *Washington* Circuit Court.

J. M. PITTMAN, Judge.

C. R. Buckner, for appellant.

Woolum appealed from the judgment of a justice of the peace, refusing to quash an execution against him. His motion to quash alleged that the judgment on which the execution issued had been paid. The response of the execution creditor denied the alleged payment, and the issue thus formed was by consent tried in the Circuit Court by a jury. The verdict being against Woolum, the court rendered judgment against him and the sureties on his appeal bond, for the amount of the justice's judgment on which the execution had issued. He appealed.

PER CURIAM. The questions arising upon the motion to quash the execution, should have been tried by the court, Execution: but were, by *consent*, submitted to a jury. The Motion to quash. evidence was conflicting, and their finding will not be disturbed.

But upon finding against appellant upon his motion to quash the executions, the court rendered judgment against him and the sureties upon an *appeal bond* for the amount of the justice's judgments. This was error.

Reverse the judgment and enter judgment here against the appellant and his sureties for the costs of the justice's and Circuit Court.

Reversed.