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Memphis Tenn.

30th Nov. 1865.

Hirsch vs Hart

Archer vs Hirsch

Civil Commission

transmits informal

report in their Case.

(one Enclosure)

Ans

Civil Commission for the
District of Memphis.
Nov. 30th. 1863.

General

In obedience to your
Order of the 26th. instant, (Not sent
or received until the 28th.) direct-
ing an "informal" Report to be sent
you "immediately" of "the facts in the
Cases of Hirsch vs. Hart, Exr. and Abram
vs. Hirsch, in Replevin", we submit the
following. There has been no such
case before us as "Hirsch vs. Hart, Exr."
but possibly the case of Hirsch vs. C.D.
Hart and Ellen Hart, his wife is referred
to. Mrs. Hart was formerly the wife of
A. B. Shaw, and after his death be-
came Administratrix of his estate
and married Hart. In June 1861 said
A. B. Shaw executed and delivered
to A. Vaccaro & Co. his promissory
Note at four months for the sum
of $799.08— Said Note when it be-
came due was duly protested
for non payment. After the death
of Shaw and the Marriage of his
Widow to Hart, D. Hirsch, who had
become the owner of the Note
by purchase, and Endorsement and

delivery thereof, sued Hart and Wife in the Commission to enforce the payment of said Note. This was on the 29th. of May 1863. The Petition was not exactly a faultless model of scientific pleading, but was never demurred to by Defendants, and it contained sufficient averments, though not artistically stated, to justify a judgment. After full statements about the Note, it also showed the death of Shaw, that his widow became Administratrix and afterwards married Hart, &c. The answer of Defendants, drawn up by their Attorney, R. B. Brown, denied nothing, but stated their "belief" that A. Ducaro & Co. were the real owners of the Note, and claimed that judgment should be rendered against them only as Administrator and Administratrix. To all this the Pff. filed a full and complete Replication on the 17th. day of June. The Defendants, by their Attorney, submitted the case the next day without producing any proof or making any Defense whatever. On the same judgment was duly rendered against them in proper

form and was never excepted to by Defts. We have never known that either they or their Attorney complained of it or supposed it possible or proper for us to have done otherwise. We were informed by our Deputy Marshal, Mr. Morse, that Mrs. Hart sometimes promised to pay the judgment and did not dispute its justice. At other times she swore that she would defeat the execution, that nothing should ever be made on it, and that she made many threats against him as an Officer with gross abuse and violence. But as we were credibly informed by all whom we ever heard speak of her that she was a woman of infamous character, a demi-rep & worse, we did not suppose it to be becoming for us to pay any attention to her vile conduct. After you had approved the judgmt. against her and her husband and ordered Execution to issue, a levy was made by Mr. Morse under the direction of Hirsch upon a quantity of furniture in her possession, she at the time threatening

violently and furiously to defeat the execution and levy. Soon after his son-in-law, Archer, a Clerk in some store, who had married her adopted daughter, replevied the furniture, claiming it as his own personal property, swearing that he was the owner of it in his own right, and entitled to the possession, &c. and valuing it at one thousand dollars. The statements, charges, &c. of his Petition having been duly traversed by Hirsch in his Answer duly sworn to, and issue joined on the ownership and possession of the property by Archer, trial was had on the sixth day of October. Archer was not present having quarrelled with Mrs. Hart, separated from his wife, left this region of Country and gone to St. Louis, Missouri. Mrs. Hart acted as Plaintiff, and she was the only witness for Archer! She testified in a very eager, swift-witness manner that the furniture sued for had been left in her possession by one Ballantine, who was and is in the "Confederate" Army. That he had offered to sell it to her

but she did not purchase. That Archer had married her adopted daughter, then went South, and sometime after his return, professed to her that he had bought the property from the said Rebel Ballyntine while in the Rebel service. He showed her some paper, and "told" her that it was a Bill of Sale from said Rebel Officer Ballyntine. That the furniture still remained in her house the same as before, some of it in the room occupied by Plaintiff Archer and his wife, who both boarded with her. On her cross-examination she stated that her son-in-law, Archer was or had been until he left here, a Clerk in a Drug Store, that he had not had any money to any amount at any time, that she knew of, and that she did not know that he had purchased the furniture, or had any right to it. Her manner as a witness rendered her evidence nearly or quite worthless. She was a very eager witness for the plaintiff, and being as the Commissioner well

knew the Defendant on the Execution and extremely anxious to defeat it, (as she had threatened to do,) for her own benefit and advantage she was to all intents and purposes an interested witness, a fact which must weigh strongly against her credibility, if not her competency. The Defendant called Deputy Marshal Morse, who testified that he levied on the property as belonging to Mrs. Hart, in whose possession he found it. That the Plaintiff told him he owned it and had bought it from one Flaherty. One Martin also testified to Archer's having at some time claimed the furniture, but he knew nothing about his having any right to it. That the property had long been in the house of Mrs. Hart, in her possession, and that after Archer married his daughter and became her boarder, some of it was in his room. On the above evidence the Commissioner thought that the plaintiff had not sufficiently proven his case, and gave judgment for the Defendant for a Return

Habendo, &c. and for Costs. It will be observed that Archer's different and Contradictory stories were very suspicious, that his only Witness was discredited by her interest and her eager manner of testifying, that Plaintiff did not produce on the trial any Bill of Sale, which he might have done so easily, if he had possessed any, and that he proved no right whatever even to the possession of the property, except by Contradictory declarations of his own which were hit evidence! How could we give judgment for him, when every circumstance combined to show that his pretended claim was simply got up to cover the property for the benefit of his Mother-in-law and to enable her to prevent the collection of a just debt. Mr. R. B. Brown, the Attorney for Pff. moved for a new trial, but his Motion, after due consideration was overruled. He then prepared a Bill of Exceptions which proved to be incorrect, and he and the Counsel for Defendant failing

to agree, Judge Ketchum wrote out a Bill which was submitted to Mr. Brown and admitted by him to be correct. He was then informed that in order to be entitled to have the Bill signed by the Judges and sent to you for your consideration, he must comply with our usual Rule to have his Client pay the costs and give Bond with security to abide by and perform the judgment which you should render. He said he would do so, and the next we knew of the case, we found that instead of doing as he had agreed to, (and as we require all parties to do in similar cases,) he had deceived us and surreptitiously carried the case to you by a false and scandalous affidavit professing to be made by Archer but really made by Mrs. Hart (the actual party in interest,) who swears that Archer is at St. Louis, and uses his name as a convenient instrument, merely, for the accomplishing of a fraud and escaping the payment of her debts. Said Affidavit or Statement

or intimated his assent courteously

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admits and shows clearly a refusal to obey the Orders of the Commission and a proper and necessary Rule approved by yourself. We are perfectly willing to try said case again if you see any just cause for a new trial, but we request that Mr. Brown's unprofessional and scandalous mode of assailing the Commission or at least discountenanced or be stopped, if not justly punished by suspension for a term from all practice of his profession, until he can learn to practise honorably, and that his client, (really Mrs. Holt,) be required, like other parties, to conform to our Rules, and to appeal in the regular mode.

Respectfully
Barbour Lewis
J. Williams
A. G. Waterman

Brig. Gen. Jas. C. Veatch
Commanding District of
Memphis Tenn.

Head Quarters Dist. of Memphis
Memphis Tenn Nov 26th 1863

The Gen Comdg directs that
an informal report of the
facts in the cases of Hirsch
vs Hart Ex. and Archer
vs Hirsch in Replevin
be reported immediately to
these Head Quarters. Such
Report to show the action
of the Court in both cases
and the present situation
of the goods in controversy

Paul A. Revere
Capt & Judge Advocate
Dist of Memphis

To Capt Cummins
Memphis Tenn

Not Received until
Nov. 28th. B. S.

Gentlemen—

Some time ago the Marshal of the Civil Commissioners levied on some furniture of mine to satisfy a judgment against E. C. Hart & wife. I replevied the same which a short time ago was tried in the Commissioners, when judgment was rendered against me & sureties for the value of the furniture, about one thousand dollars. I prepared a bill of exceptions to send up to you, it did not go, because I could not pay the costs & give bond to pay the debt if I lost it. I did not think this was required in such cases and declined.—

The facts in the case were about as follows— I proved by Mrs Hart, formerly Mrs Shaw that the furniture was placed in her possession by one Mr. Ballentine. that she never did own the same. Some time thereafter I having married her adopted daughter, and then living with her— I shewed her a paper stating I had sent Ballentine, and bought the furniture, She stated she then delivered me the furniture. this was last Spring— She further stated, She had intended to move to St Louis Missouri, and had sold me her house, which I was then furnishing for my Mother to keep boarding house, this was the substance of my proof—

The defendant introduced one Martin who said he knew me, had been in my room. Saw the most of this furniture in my possession, and it was claimed by me. The defendant also introduced one Morse. The Marshal of the Commission, - the pfff in the execution against P. C. Hart & wife having been substituted as deft, - who said I claimed the property and showed him some paper showing that I had purchased the same, said he thought it was from Flaherty.

This was all the proof on this the court give payment against me. Which was unjust & without proof - Mature for new trial was overruled,

The Marshal now has the execution in his hands threatening to levy the same again, I would therefore ask that the case be suspended, and a new trial granted me, to be tried before yourself if convenient.

Yours &c
W. B. Archer

[redacted]

This day Ellen J. Hart personally appeared before me. H. F. Hill an acting justice of the peace for Shelby County Tennessee, and made oath that the said W. B. Archer is now in St. Louis. that she is acting as his agent and knows the facts in this petition to be true.

Ellen J. Hart
Sworn to & subscribed before me Nov. 26 1863
Hamm F. Hill. Justice