

Case No. 1,839.

BRENT v. HAGNER.

[5 Cranch, C. C. 71.]¹

Circuit Court, District of Columbia.

Nov. Term, 1836.

REPLEVIN—TREASURY DEPARTMENT VOUCHERS.

Papers which have been filed in the proper accounting office of the treasury of the United States, as vouchers or documents to justify the settlement of a public account, are not liable to be taken from the public officer by replevin.

At law. Replevin for “a memorial of Caroline and Robert Brooke, the heirs of Michael Fenwick, deceased, of Saint Mary's county, Maryland, to the congress of the United States, asking payment for certain buildings occupied by the American troops, and destroyed by the British during the last war, signed by said Brent, as attorney of the memorialists; and also sundry depositions and evidences accompanying said memorial, and other depositions, evidences, and papers laid before a certain Peter Hagner, by said Brent, to obtain payment of said claim, the proper goods and chattels of him the said William L. Brent, which the said Peter Hagner, of the county aforesaid, hath taken and unjustly detains,” &c. The writ was tested on the 30th of November, 1836, during the present term, and was issued on the 1st of December, 1836, returnable to the next term, March, 1837.

Mr. Key, for the defendant, moved the court to quash the writ, and to order the

papers to be returned. The marshal brought the writ into court, indorsed, “replevied and delivered as per schedule and receipt. Alexander Hunter, marshal.” The schedule is in the words of the writ, and the papers are appraised at \$50. The plaintiff's receipt for the same, was also indorsed upon the writ. Mr. Key's motion was supported by the following affidavit of Mr. Hagner: “District of Columbia, County of Washington, ss. Personally appeared before me, Robert Gelty, an acting justice of the peace in and for the county aforesaid, Peter Hagner, third auditor of the treasury department, and, having been duly sworn, deposeth and saith: That in support of the claim of the legal representatives of Michael Fenwick, deceased, for whose relief an act was passed at the last session of congress [Act July 1, 1836; 6 Stat. 661, c. 251], sundry papers were transmitted to this deponent, in June last, by William L. Brent, Esq., who, by certain of them, appeared to be

the administrator of the estate of the said Michael Fenwick and trustee of Robert Brooke and S. A. Caroline, his wife, formerly S. A. Caroline Fenwick, the only child and heir of the said Michael Fenwick. That, on the 2d day of July last, the claim, so far as regards the provision made by the first section of the said act, was passed by the accounting officers of the treasury; when a requisition for the sum of \$5,000 thereby authorized to be paid was delivered to the said William L. Brent, and the papers were placed on the files of the office of this deponent for preservation, agreeably to the act of the 3d of March, 1817 [6 Stat. 194, c. 81], by which it was established that, to obtain a further allowance under the second section of the first-mentioned act, certain other papers were, at subsequent periods, furnished to this deponent by the said William L. Brent, but, the testimony therein not being satisfactory, it was objected to by this deponent, and other required, which has not been supplied. That an application was made to this deponent by the said William L. Brent for permission to withdraw the papers, or to be furnished with a copy of all the evidence, so that he might lay the claim before congress, and use, as he thought proper, in any other way; that, in reply thereto, he was informed by this deponent that the rules of the office would not allow of the papers being withdrawn; that no copies would be necessary for congress, as the originals could all be transmitted there, on the application of the committee to whom the case might be referred; and that, if he desired copies for any other purpose, they could be taken by any person he might send for the purpose. That, on the first day of the present month, the said William L. Brent called at the office of this deponent, and requested to look at the papers, and, whilst the same were in his hands, the deputy-marshal made his appearance, and, under a writ of replevin, took, not only the testimony adduced under the second section of the first-mentioned act, but all the other papers previously transmitted, whereon the act was passed, and the \$5,000 paid (with the exception of the official statement prepared in order to the payment of that sum); the appointment of the said William L. Brent as administrator; the copies of two deeds of trust to him; a deposition proving Mrs. Brooke to be the only child and heir of Michael Fenwick; a certified copy of the bill before it became a law; and two letters addressed to this deponent by the said William L. Brent. That the paper hereunto annexed, marked A, is a true copy of the notice, list, and receipt left with this deponent by the said deputy-marshal after having replevied the papers as aforesaid; and that deponent considers all the papers so replevied, which are connected with the before-mentioned payment of \$5,000, as properly belonging to the files of his office. Robert Gettys, J. P., December 19, 1836.”

Mr. R. J. Brent, for plaintiff, cited the case of *Marbury v. Madison*, 1 Cranch [5 U. S.] 139, to show that the officers of the government are liable to ordinary process, if they invade the vested rights of individuals; and he contended that detinue would not lie, because the papers could not be valued.

Mr. Key, contra, contended that they were now public documents, and, if such can be replevied at the will of every individual who may choose to claim them, the public documents would not be safe.

THE COURT (nem. con.) was of opinion that the writ of replevin ought to be quashed, and the papers returned; and made an order accordingly.

¹ [Reported by Hon. William Cranch, Chief Judge.]

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