

SHIPLEY v. THOMPSON.

[2 Bait. Law Trace 244, 300.]

Circuit Court, D. Maryland.

April 21, 1869.

WAR—RECOVERY OF MONET PAID FOR THE
RELEASE OF CAPTURED PROPERTY.

James Mackubbin and Thomas Donaldson, for
plaintiff.

R. J. Brent and Wm. Meade Addison, for
defendant.

Before GILES, District Judge.

This is an action of assumpsit to recover \$400 paid by [Joshua N. Shipley] to obtain the release of horses levied upon under a military order of Gen. Wallace, in order to indemnify [John W.] Thompson for the loss of a horse taken from him by Confederate soldiers in September, 1864. Thompson represented to Gen. Wallace that his horse had been taken by a son of Shipley; and applied to him for protection. On the witness stand he admitted that he received the money levied, but denied that he requested Gen. Wallace to issue the particular order offered in evidence, for a levy on plaintiff's property in order to indemnify himself. On the other hand, witnesses on the part of the plaintiff proved admissions of Thompson that he had instigated the levy, also that he had become satisfied that his horse had not been taken by young Shipley, and that the levy was wrongly made.

The plaintiff's counsel offered prayers to the effect that if the property of the plaintiff was levied upon and taken possession of by force, under a military order, and that he was obliged to pay the money to obtain the release of his property, and that the amount was levied at the suggestion of Thompson and for his benefit, and that the money of Shipley was paid over to him in

accordance with the order, then the plaintiff is entitled to recover.

The defendant relies upon the military order of General Wallace as a complete defence; but also insists that the action is barred, because not being brought within two years, the limitation fixed by the 7th section of the act of congress of March 3, 1863. There is no plea of limitation, but the defence is made under the general issue.

By the consent of the counsel the further consideration of the case was postponed until Wednesday, the 21st [of April], when the law points will be argued.

Verdict for the defendant.

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