

of the marshal. He is entitled to a certified copy of the order of the court as the evidence of his authority to procure the requisite books, which forms part, at least, of the papers which vouch for the proper outlay made by him in this particular, and he is required to file with the clerk a duplicate of all vouchers which accompany his account, and hence the need for duplicate copies of the order made.

The total sum sued for is \$714.40. Under the conclusion reached as herein announced, the clerk is entitled to \$666.90, the remainder of the sum total being disallowed; and judgment will therefore be entered for said amount of \$666.90.

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VULCAN IRON-WORKS v. CYCLONE STEAM SNOW-PLOW Co. *et al.*

(Circuit Court, D. Minnesota, Fourth Division. December 30, 1891.)

1. REPLEVIN—ACTION ON BOND—VALUATION OF PROPERTY—ESTOPPEL.

Where the sheriff, in taking a replevin bond under the Illinois statute, adopts the valuation of the property as alleged in the affidavit and writ, both the principal and his sureties are bound thereby, and, in an action on the bond, are estopped to allege a less value.

2. SAME—RECITALS.

The fact that the bond contains no express recital of value is immaterial, as the statute requires a bond in double the value of the property, and the value must be estimated in order to fix the amount of the obligation.

At Law. Action by the Vulcan Iron-Works against the Cyclone Steam Snow-Plow Company and Commodore P. Jones, upon a replevin bond. Heard on motion for a new trial. Denied.

*Keith, Evans, Thompson & Fairchild*, for plaintiff.

*Hunt & Morrill, Hart & Brewer, John D. Smith, and Victor Linley*, for defendants.

NELSON, J. There is a single question only presented for consideration on this motion for a new trial, and that is whether, in an action brought on the replevin bond, the principal and sureties are bound by the value fixed in the affidavit and writ and bond taken by the sheriff under the statute of Illinois before the property could be seized. The weight of authority would seem to decide they are. In some states it is said that in the original suit of replevin, when the value of the property is involved, the plaintiff is not concluded by the value alleged in his affidavit. Cobbey, Repl. § 996, p. 558. However it may be in such a case, I think the Maine and Massachusetts authorities cited with approval by the United States supreme court (*Ice Co. v. Webster*, 125 U. S. 426, 8 Sup. Ct. Rep. 947) and the Indiana supreme court (*Wiseman v. Lynn*, 39 Ind. 259) lay down the true rule, that they are bound by the value fixed in the writ or bond. Such a rule, if law, is in accordance with justice and reason. The allegation of value in the affidavit of the plaintiff is solemnly made and sworn to. The writ is under its control.

It was placed in the sheriff's hands by its procurement. The issuance and service was caused by it as the actor, and the sheriff, in every instance, acted for the company. The bond of the plaintiff and sureties taken by the sheriff, in double the value of the property fixed by the plaintiff, is a judicial admission and a conclusive presumption of law. See 2 Sedgw. Dam. (7th Ed.) p. 431. To hold the plaintiff and his sureties bound thereby is a rule of protection for the general good. The same principle is applied in England. *Middleton v. Bryan*, 3 Maule & S. 155. The Illinois statute did not require the plaintiff, in his affidavit, to fix a value of the property. Still he did so. The sheriff was not compelled to take a bond in double the value alleged by the plaintiff before he executed the writ; yet, in performing his duty under the statute, he appears to have taken the plaintiff's estimate under oath of the value of the property. To permit the principal and sureties, the defendants in this suit, on their bond, who have solemnly fixed the value, to introduce evidence tending to show that the value of the property was less than they placed it when the sheriff seized it, and to show that the plaintiff in this suit has not been injured by the wrongful taking, and that the property is worthless, would enable the principal and sureties to assume a position now in reference to the property inconsistent with that occupied by them when the writ issued and the bond was taken. There is no hardship in holding the plaintiff to the value fixed in his writ, and the sureties in this case have no equities greater than the principal. See *Huggeford v. Ford*, 11 Pick. 222; *Cobbey*, Repl. § 1380, and cases cited.

It is stated by counsel that there are few cases reported upon this question. Undoubtedly true, for upon a forfeiture of a bond the defenses are limited, and a plea or answer is rarely interposed. A demurrer to the declaration or complaint is sometimes interposed. But it is said that there is no recital of value in the bond. The statute requires that the plaintiff, or some one else on his behalf, shall give to the sheriff, etc., a bond with sufficient security in double the value of the property about to be replevied. The plaintiff prepares the bond required by the statute, and in order to comply therewith estimates the value, and gives a bond in double the amount thereof. Such act estops the principal and sureties from denying the truth of the admission. The point argued is more refined and technical than sound. I find no error in excluding the testimony, and the motion for a new trial is denied.

## FULLER v. UNITED STATES.

(District Court, N. D. Iowa, E. D. November Term, 1891.)

## STATUTES—AMENDMENT—WHEN RETROSPECTIVE—DISABLED SOLDIER.

Rev. St. U. S. §§ 4787, 4788, provide that certain ex-soldiers, sailors, etc., shall be entitled to receive from the war department artificial limbs, or a money commutation therefor, from the time of their application therefor, and "at the expiration of every five years thereafter." Act Cong. March 3, 1891, amended the provision by substituting "three years" for "five years." *Held*, that the amendment was not retrospective, so as to entitle a person who had been receiving commutation money at intervals of five years to back pay equivalent to the same sums at three-year intervals.

At Law. Petition by Henry D. Fuller to recover from the United States commutation money for artificial limbs, under Act Cong. March 3, 1891. Heard on demurrer to the petition. Demurrer sustained.

*R. M. Marvin*, for plaintiff.

*M. D. O'Connell*, Dist. Atty., and *D. C. Cram*, Asst. Dist. Atty., for defendant.

**SHIRAS, J.** The petition herein filed avers that the plaintiff, during the war of the Rebellion, was in the service of the United States, as a member of Company F, twenty-eighth regiment of Iowa infantry, and that while in the line of his duty he was severely wounded, losing an arm and foot; that, under the provisions of the acts of congress of 1868 and 1870, he became entitled to receive artificial limbs as therein provided, or to commute the same into money payments at the rate of \$75 for a leg, and \$50 for an arm; that on August 29, 1870, he made his application for the benefit of the act, electing to take the money payments instead of the artificial limbs, and has received five payments of \$125, beginning with the date named; that by the act of congress of March 3, 1891, the period of five years named in the original acts has been changed to three years, and that thereby the plaintiff has become entitled to a restatement of his claim for commutations, and is now entitled to demand the sum of \$125 for every period of three years, beginning with the date of his application, to-wit, August 29, 1870, instead of for the period of five years. A demurrer is interposed to the petition, whereby is presented the question whether the act of March 3, 1891, is to be construed to be retrospective in its operation; so that parties, situated as is the plaintiff, are entitlled to now claim from the United States the sums that would have been payable to them had the original act been the same as the act of March 3, 1891. Under the statutes in force previous to March 3, 1891, the plaintiff was entitlled to receive an artificial leg and arm every five years, beginning with the date of his application for the benefit of the statute, or to commute the same into a money payment. When the revision of the statutes was made in 1873, these statutes became sections 4787 and 4788 of the Revision. The act of March 3, 1891, enacts that section 4787 shall be amended by striking out the word "five" and inserting the word "three," so that after that date the