

**Waters' Ex'Rs vs. Mcclellan**

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**SooperKanoon Citation :** [sooperkanoon.com/78230](http://sooperkanoon.com/78230)

**Court :** US Supreme Court

**Decided On :** 1800

**Appeal No. :** 4 U.S. 208

**Appellant :** Waters' Ex'Rs

**Respondent :** Mcclellan

**Judgement :**

WATERS' EX'RS v. MCCLELLAN - 4 U.S. 208 (1800)

U.S. Supreme Court WATERS' EX'RS v. MCCLELLAN, 4 U.S. 208 (1800)

4 U.S. 208 (Dall.)

Water's Executors

v.

McClellan et al.1.

Supreme Court of Pennsylvania.

March Term, 1800

TRESPASS for goods of the testator, taken and sold by the sheriff, on an execution issued against Dewees. The principal part of the goods were claimed by the testator, under a distress and sale, which he had, also, executed against Dewees; but he had left the goods in Dewees's possession for four or five-years.

The charge contained the following points:

SHIPPEN, Chief Justice.

1st. It is incumbent on the plaintiff, to prove his property in the goods, which were taken by the sheriff; and to do this, he has produced evidence of a former distress and sale, of the same goods, for rent due from Dewees to him. But the defendants answer, that the distress was fraudulent; because (among other reasons) the goods were left in the possession of the debtor. In the case of a voluntary sale of goods, the law, both in Pennsylvania and England, regards the continuance of the debtor's possession, as a badge of fraud. In England, the law is the same, where the sale is made by the sheriff; but in Pennsylvania a different rule, in that case, has prevailed; and where a relation, or friend, after a fair purchase, at public sale, leaves the goods in the occupancy and use of the debtor, it never has been deemed a fraud upon creditors. As, therefore, the purchase, on the present occasion, was not by a private bill of sale; but at an open, public, vendue; the continued possession

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by Dewees does not, in the opinion of the Court, justify the defendant's taking and sale. [ [Footnote 2](#) ]

2d. It has been objected, for the defendants, that the plaintiff was bound to show, that the distress was made on the premises; whereas, at least, a part of the goods appears to have been distrained elsewhere. However available this objection might have been upon a replevin, between the original parties, we do not think, that third persons can take advantage of it.

3d. It is urged, that there were a number of young cattle taken on the distress; and that as these have been fed, and reared, by the care and cost of Dewees, he had acquired a property in their increased value. Of the truth and operation of this allegation, the jury will consider: and, if they are of opinion, that the expense of maintaining, has exceeded a fair compensation for the use of the cattle, they will

make a reasonable deduction from the plaintiff's demand.

Verdict for the plaintiff. Footnotes

[Footnote 1](#) Tried in the Circuit Court, West-Chester, 29th of May 1800, before SHIPPEN, Chief Justice, and YEATES, Justice.

[Footnote 2](#) The defendant's counsel cited the following cases on this point : 3 Co. 81. 2 T. Rep. 594, 5, 6. 1 Wils. 44. But see Levy v. Wallis, ante, p. 167, 8. Chancellor v. Phillips, post. The United States v. Cunningham, post.

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