

SUPREME COURT OF GEORGIA

Fitzgerald v. Adams

9 Ga. 471 (Ga. 1851) · Decided February 15, 1851

SUMMARY

The Supreme Court of Georgia reversed a justice court decision that set aside executions based on parol testimony from a constable who had no recollection of serving summonses. The Court held that the law requires written proof of service and that secondary evidence is inadmissible unless a proper search for the original papers is made.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Lumpkin
JURISDICTION	Georgia
DECIDED	February 15, 1851
DISPOSITION	reversed
PROCEDURAL POSTURE	Certiorari to the Superior Court from a Justice's Court judgment.
PRECEDENTIAL VALUE	Published
PARTIES	Fitzgerald v. Adams

TOPICS

- evidence
- best evidence rule
- civil procedure

PRACTICE AREAS

- Evidence
- Civil Procedure

QUESTIONS PRESENTED

- Whether parol evidence was admissible to set aside judgments when the original summonses were not produced and no search was made for them.

HOLDINGS

- The best evidence rule requires production of the original written process; parol evidence is inadmissible until a proper search is made for the original documents.

KEY QUOTATIONS

“the rule, therefore, is imperative, that no secondary proof can be substituted until it is ascertained by the proper search, that these original documents do not exist, or are not in the power of the party.” (474)

“it would be dangerous, in the extreme, to permit the solemn judgments of a Court of competent jurisdiction to be set aside by the vague and uncertain recollection of the Constable.” (475)

“We are all of the opinion, that the judgment must be reversed, and the certiorari sustained.” (475)

FACTUAL BACKGROUND

In 1842, Philip Fitzgerald obtained nine judgments against Bennet Youngblood and Sandford Adams in a Justice's Court. Executions were issued and later levied on Adams's property in 1849. Adams filed an affidavit of illegality, asserting he was never summoned and no warrants were issued. At trial, the constable, Archibald McEachern, testified he had no recollection of serving Adams. The plaintiff objected to this parol evidence as secondary, but the objection was overruled. The jury returned a verdict for Adams, and the Justice's Court set aside the executions. A certiorari to the Superior Court was dismissed, and the plaintiff appealed.

PROCEDURAL HISTORY

Fitzgerald obtained nine judgments against Adams and Youngblood in a Justice's Court in 1842. Executions were issued and levied on Adams's property in 1849. Adams filed an affidavit of illegality claiming he was never summoned and no warrants were issued. At trial, the constable testified he had no recollection of serving Adams. The plaintiff objected to this parol evidence as secondary, but the objection was overruled. The jury found for Adams. A certiorari was taken to the Superior Court, which dismissed it. The plaintiff excepted.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The judgment of the Superior Court is reversed, and the certiorari is sustained.