

No. 13134

Supreme Court of Illinois

Smith

vs.

Hughes

STATE OF ILLINOIS,

SUPREME COURT.

Third Grand Division.

No. 112.

1160

Smith
vs
Hughes

STATE OF ILLINOIS,
SUPREME COURT,

The People of the State of Illinois,

To the Clerk of the ~~book Court~~ ^{Common Pleas now Superior Court of Chicago} ~~County of Cook~~ ^{County of Cook} Greeting:

Because, In the record and proceedings, as also in the rendition of the judgments of a plea which was in the ~~book County Court of Common Pleas~~ ^{now Superior Court of Chicago} ~~book County~~ ^{book County}, before the Judge thereof, between Marcellus B. Smith, John K. Pollard & A. Judson Smith

plaintiffs, and John Hughes, & Samuel S. Hughes

defendants, it is said manifest error hath intervened, to the injury of the aforesaid plaintiffs

as we are informed by them —
complainants — and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 23 day of March in the Year of Our Lord One Thousand Eight Hundred and Sixty.

L. Leland

Clerk of the Supreme Court.

J. B. Rice Deputy

112

Marcellus B. Smith Atty

No. 3

vs.

John Hughes Atty

WRIT OF ERROR.

FILED

March 23

A. D. 1860

L. Leland

Clerk



United States of America }
State of Illinois, Cook County } ss.

Pleas before the Honorable John M. Wilson,
sole Judge of the Cook County Court of Common
Pleas, within and for the County of Cook and
State of Illinois at a vacation Term of said
Cook County Court of Common Pleas begun and
holden at the Court House in the City of Chicago
in said County, State aforesaid, on the first
Monday before the fifth day of July in the year
of our Lord one thousand eight hundred and
fifty, sixth, year of the Independence of the United
States of America the eighth third.

Present The Hon. John M. Wilson Judge
John L. Wilson Sheriff

Attest

Walter Kimball - Clerk.

180 it remembered that heretofore to wit on the Ninth day of July
in the year of our Lord one thousand eight hundred and fifty
eight, came Marcellus, B. Smith, John H. Pollard and C. Judson Smith
Smith by Gallup & Hitchcock their Attorneys, and filed in the Office
of the Clerk of the Cook County Court of Common Pleas, their certain
declaration of a piece of trespass on the case upon promises: Which
said declaration is in the words and figures following, to wit:—

"State of Illinois)
County of Cook) S. In the Cook County Court of Common
Pleas. Of the July Term in the year of
our Lord one thousand eight hundred
and fifty eight.

Marcellus, B. Smith, John H. Pollard and C. Judson Smith co-
partners in trade under the name, style and description of Smith
Pollard & Co., plaintiffs in this suit; by Gallup & Hitchcock their
Attorneys complain of John Hughes and J. S. Hughes, defendants
in this suit who have been summoned &c to answer the plaintiffs
of a piece of trespass on the case upon promises. FURTHER that the said
defendants heretofore to wit on the twenty second day of July in the
year of our Lord one thousand eight hundred and fifty seven at
Chicago, to wit, at Chicago in said County of Cook, made their
certain promissory Note in writing bearing date the day and year
aforesaid and then and there delivered the same to the plaintiffs in
and by which said Note said defendants by the name style and
description of John Hughes and J. S. Hughes promised to pay to
the said plaintiffs by the name style and description of Smith
Pollard & Co. Six months after date, the sum of One hundred &c

thirty three dollars and eighty four Cents with interest at ten per
cent per annum from date for value received

By means whereof and by force of the Statute in such case
made and provided the said Defendants became liable to pay to
the said Plaintiffs the said sum of money in the said note
specified and in consideration thereof they and there promised the
Plaintiffs to pay them the amount of said Note according to the tenor
thereof.

And for that also the said defendants afterwards to wit, on the
first day of July in the year of our Lord one thousand eight
hundred and fifty eight at the place aforesaid were indebted to the
said Plaintiffs in the sum of Five hundred dollars lawful money
of the United States of America for money before that time lent and
advanced by the said Plaintiffs to the said Defendants and at the
special instance and request of the said defendants. And also in the
like sum for other money by the said Plaintiffs before that time
paid and expended for the said defendants and at the like special
instance and request of the said defendants And also in the like
sum for other money by the said defendants before that time had
and received to and for the use of said Plaintiffs And also in the
like sum for money found to be due from the said defendants to
the said Plaintiffs upon an account then and there stated between
them; And also in the like sum for goods wares and merchandise
before that time sold and delivered by said Plaintiffs to said Defendants
at the like special instance and request; And also in the like sum
for the labor care and diligence of said Plaintiffs before that time done
and performed by said Plaintiffs for said defendants and at the like
instance and request of said defendants, and being so indebted said

defendants in consideration thereof, then and there promised to pay said Plaintiffs said last mentioned sums of money when thereunto afterwards requested.

Yet the said defendants not regarding their said promised and ~~an~~ undertakings, but contriving & although they requested to do so, have not paid said Plaintiffs either of said sums of money above mentioned or any part thereof, but so to do have hitherto wholly neglected and refused, and still do neglect and refuse to the damage of said Plaintiffs of Three hundred dollars and therefore they bring this suit.

Galeys & Hitchcock

Attorneys for Plaintiffs."

And hereafter also on the said ninth day of July, A. D. Eighteen hundred and fifty eight, came the said defendants and filed in the Office of the Clerk of said Court, their certain Warrant of Attorney together with Cognovit; Which said Warrant of Attorney and Cognovit, are in the words and figures following, to wit:

\$133 ⁸⁴/₁₀₀.

Chicago July 22nd 1854

Six months after date for value received We promise to pay to Smith, Pollard & Co. or order the sum of One hundred and thirty three ⁸⁴/₁₀₀ dollars with interest at Ten per Cent per annum from date.

John Hughes

S. S. Hughes."

"Know all Men by these Presents that whereas the undersigned John Hughes & Samuel S. Hughes justly indebted to Smith Pollard & Co.

upon a certain Promissory Note bearing even date herewith for the sum of One hundred thirty three ²⁴/₁₀₀ dollars made payable to the paid Smith, Pollard & Co. or order, and due six months from date.

Now therefore in consideration of the premises and of the sum of One dollar to Smith, Pollard & Co. in hand paid by the paid John Hughes and J. S. Hughes the receipt whereof is hereby acknowledged do hereby make constitute and appoint S. B. Haines our Attorney in any Court of Texas to be our true and lawful Attorney irrevocably for us and in our name please and plead to appear before any Justice of the Peace, or in any Court of Texas in any time or vacation in any of the States or Territories of the United States, at any time after the date hereof to waive service of process and confess a judgment in favor of the paid Smith Pollard & Co. or his or their assignee or assignees upon said Note for the above sum or forasmuch as appears to be due according to the tenor and effect of said Note, with interest thereon, together with Costs also for Five dollars usual Attorneys fees, to be added to the amount due on entering up judgment, also to file a Cognovit for the amount that may be so due, with an agreement therein that no Writ of Error or appeal shall be prosecuted upon the judgment entered by virtue hereof, nor any bill in equity filed to interfere in any manner with the operation of such judgment, and to release all errors that may intervene in the entering up of such judgment, or issuing the execution thereon, and also to consent to immediate execution upon such judgment. Hereby ratifying and confirming all that my said Attorney may do by virtue hereof

Witness our hand and Seal this Twenty second day of

July A.D. 1857

In presence of

John Hughes (Seal)
J. S. Hughes (Seal)

"State of Illinois }
County of Cook }

John Hughes and

S. S. Hughes . . .

— — — — — at & — — — —

Marcus B. Smith, John

H. Pollard and A. L. Ladd

Smith

In the Cook County Court of Common
Pleas Of the July Term in the year
of our Lord one thousand eight hundred
and fifty eight

And the said John Hughes and S. S.
Hughes, defendants, in the above entitled suit by Thos. W. Doggett
their Attorney duly authorized by Power of Attorney to file come
and defend the wrong and injury where to and say that they do
cannot deny the action of the said Plaintiffs nor but that the said
defendants did promise in manner and form as the said Plaintiffs
have above thereat complained against them, nor but that the
Plaintiffs have sustained damages by the nonperformance of the
several promises in the said declaration mentioned to the amount of
One hundred forty six dollars and twenty one cents, together with
Five dollars Attorneys fees and the Costs and charges by them about
their suit, in this behalf expended.

And the said defendants further agree that no writ of error or
appeal shall be prosecuted upon the judgment entered by virtue of
this cognovit, nor any bill in equity filed to interfere in any manner
with the operation of said judgment, and that execution may issue
forthwith.

And the said defendants hereby waived all their right

to turn out that Estate on the execution hereon to be issued,

\$146. ⁴/₁

5.00

\$151. ⁴/₁.

Thos. M. Doggett

Attorney for Defendants."

And afterwards to wit on the said Ninth day of July
(being one of the days of the July Vacation term of said Court)
in the year of our Lord one thousand eight hundred and fifty eight
the following proceedings were had in said cause, and entered of
record in said Court, to wit.

Marcellus B. Smith, John

H. Pollard & A. Jackson Smith

vs

John Hughes & S. S. Hughes

Confession.

This day came the said Plaintiffs by
Galeup and Whitecock their Attorneys who file herein their av-
determination in a plea of Trespass on the Case upon premises and
thereupon also came the said defendants by Theodore M. Doggett
their attorney, in fact who files herein their certain Warrant of attorney
the execution of which being duly proved, and also their cognovit
confessing the action of the said Plaintiffs; and that the said
Plaintiffs have sustained damage by reason of the premises to the
sum of One hundred and fifty one dollars and seventy one Cents.

Therefore it is considered said Plaintiffs do have and
recover of the said defendants their damages of One hundred and
fifty one dollars and seventy one Cents in form aforesaid confessed
and also their costs and charges by them in this behalf expended

\$151. ⁴/₁

and have execution thereon

And thereafter to wit on the second day of July A.D. Eighteen hundred and fifty nine, there issued out of and under the seal of the Superior Court of Chicago (formerly the Cook County Court of Common Pleas) a certain Writ of the People, commonly called a *Fieri Facias*; Which said Writ, with the several endorsements thereon, are in the words and figures following to wit.

"State of Illinois)

County of Cook ..

vs.

The People of the State of Illinois

To the Sheriff of St. Davis County, greeting.

We command you, as we have before commanded you that of the Lands and Tenements, Goods and Chattels of John Hughes and S. S. Hughes, Defendants in your County, you cause to be made the sum of One hundred and fifty one dollars and seventy one Cents which Morellus B. Smith, John K. Pollock and A. Hudson Smith, Plaintiffs, lately in the Cook County Court of Common Pleas of said County, at a term thereof. begun and held at Chicago in said County on the first Monday of July A.D. 1858 recovered against the said Defendants, and which by the said Court was adjudged to the said Plaintiffs for their damages And also the further sum of Five dollars and eighty five Cents which were adjudged to the said Plaintiffs for their Costs and Charges in that behalf expended, whereof the said Defendants were convicted as appears to us of record. And have you these moneys ready to render to the said

Plaintiffs for their damages and costs aforesaid, and make a return of said writ with an endorsement thereon in what manner you shall have executed the same in ninety days from the date hereof.

Witness Walter Kimball, Clerk of the Superior Court
of Chicago and the Seal thereof at the City of Chicago
in said County the 5th day of July A. D. 1859,
Walter Kimball, Clerk.

(Endorsed)

"This execution came to hand for collection this 5th day of July 1859 at 8 o'clock A. M.

J. H. Corlies. Sheriff."

"By virtue of the within execution I have levied on one black horse - One two horse Wagon, 20 acres, more or less of corn, 5 acres of Wheat, more or less, One acre of Potatoes, more or less at the property of John Hughes, defendant, in said execution.
July 6th 1859."

J. H. Corlies. Sheriff

per J. M. Corlies. Deputy."

"This above property is Ordered to be released by order of Plaintiffs Attorney, this 18th day of August 1859.

J. H. Corlies. Sheriff."

"By virtue of the within execution I have this 18th day of August 1859 levied upon the following described Lands described as follows to wit, The East half of the South East Quarter of Section Number Twenty Six in Township Number Twenty nine North of Range Two East of the Fourth principal Meridian in the County of St. Francis and State of Illinois - E. S. Smith

Attorney for Plaintiffs paid some the necessary amount of money to
redeem the said property before sold upon another execution.

J. H. Conley. Sheriff."

"Galena. November 4th 1859. By Order of Walter Kimball Clerk
of the Superior Court of Chicago all proceedings is stayed on the
within execution. and the same is returned to said Court.

And afterwards to wit on the Twenty fifth day of October
(being one of the days of the October Term of said Superior Court)
in the year of our Lord one thousand eight hundred and fifty nine
the following proceedings were had upon the Motion set forth in
the Bill of Exceptions hereto attached, and entered of Record in
said Court, to wit.

Marcellus B. Smith

John H. Pollard and

A.udson Smith

vs

Motion.

John Hughes and
Samuel S. Hughes.

And now again comes said Plaintiffs by
Smith & Dewey their Attorneys and said Defendants by their Attorney,
also come and the Motion heretofore submitted by said defendants
to set aside sale on levy on the execution issued on the judgment

entered herein, now coming on for hearing on the Affidavits filed by said defendants in support of said Motion and counsel being heard and the premises fully understood it is considered by the Court that defendants Motion be sustained it is therefore ordered that the levy made and returned by the Sheriff on the execution issued out of this Court on the judgment entered herein in favor of said plaintiffs and against said defendants in this Court be and the same is hereby set aside.

And thereupon said plaintiffs enter their exceptions, to the ruling and decision of the Court, in allowing said Motion, and it is ordered that Plaintiffs have fifteen days within which to file their Bill of Exceptions herein.

And hereafter to wit on the ninth day of November A.D. Eighteen hundred and fifty nine there was filed in the Office of the Clerk of said Court a certain written consents or stipulations in said cause, in words and figures following, to wit.

"Marcellus B. Smith et al
____ (vs) _____
John Hughes . . . }

Same
____ us _____
Stephenson T. Mapper . . . }

Superior Court
of
Chicago.

The time for the plaintiffs to file their Bill

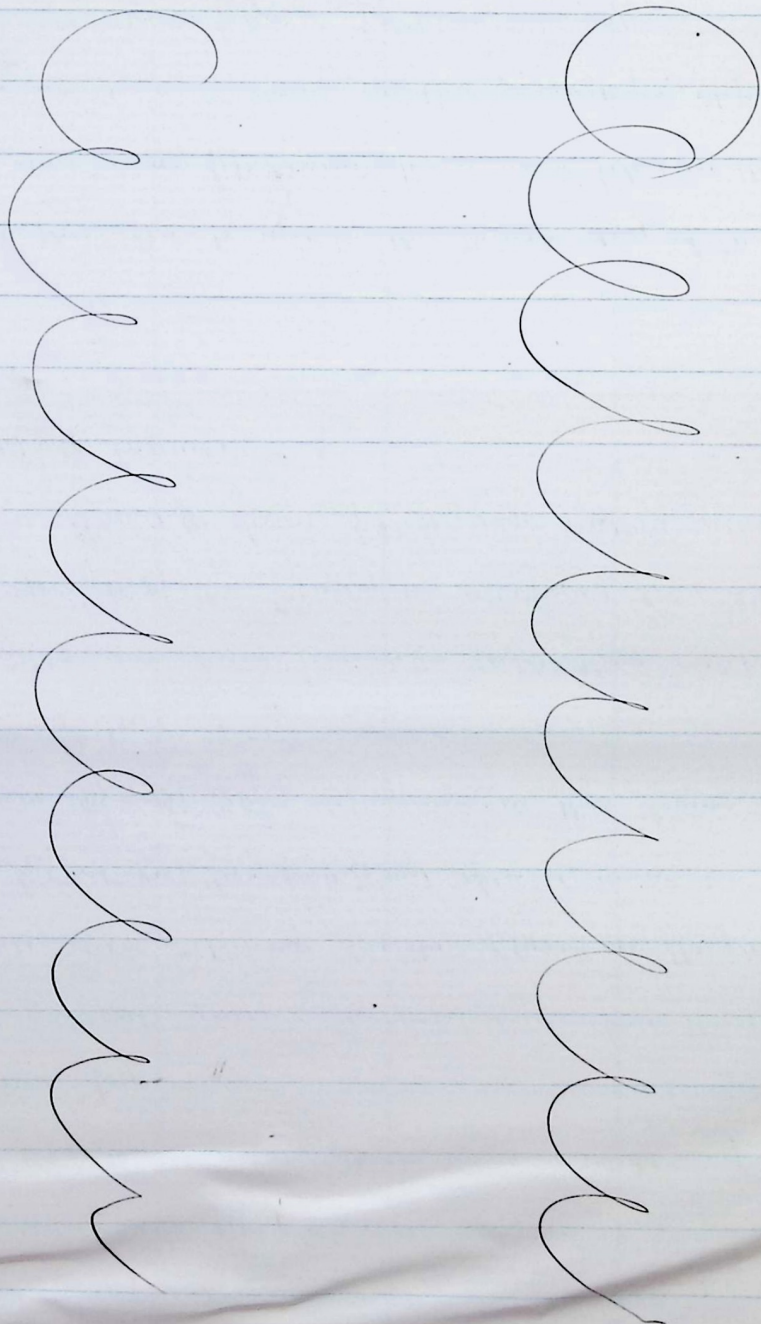
of Exceptions in the above entitled actions and each of them
is hereby extended ten days from date.

Dated Chicago, Nov 8/69.

Seares, McAlister & Bennett
Attys for defts above named."

" Defts may have 5 days longer to file Bils of Exceptions.

- Seares, McAlister & Bennett"



And thereafter to wit on the Ninth day of November A.D.
Eighteen hundred and fifty nine the said Plaintiffs filed in the
Office of the Clerk of said Court their certain Bill of Exceptions in
the words and figures following, to wit.

"State of Illinois } Of the November Term of the Superior
Cook County . . . } Court of Chicago.

Marcellus B. Smith

John K. Pollard Et al

— and —

John Hughes . . .

Motion to set aside and quash a
levy upon Real Estate on execution

No 18211.

"Marcellus B. Smith

John K. Pollard et al

— and —

Stephen D. Wapner

Motion to set aside redemption and
levy of Execution.

No 18211.

Be it remembered that on the trial of these
causes the Defendant to maintain his two Motions offered and
read in evidence the following pleadings and proofs, that is to
say.

First two Notices and Motions in the words respectively as
follows.

"State of Illinois }
Cook County . . . }

Of the September Term of the Superior
Court of Chicago. A.D. 1859.

John Hughes and

Samuel S. Hughes

— and —

Marcellus B. Smith & Pollard

Motion to set aside Redemption and
levy of Execution

Defendants A. S. Hughes by Deacons Mc Alexander & Jewett
come and enter their Motion to set aside the pretended redemption
and levy upon East half of South East Quarter of Section
Twenty six, Town Twenty nine North Range Two East of the
Fourth Principal Meridian lying in the Daviess County Illinois
under and by virtue of two certain executions, One numbered
Four hundred and sixty five (465) issued out of the Superior
Court of Chicago in the above entitled cause and bearing date
the 2nd day of July A. D. 1859 and which said levy is as
follows viz:

"By virtue of the within Execution I have this 18th
day of August A. D. 1859 levied upon the following described
Lands, described as follows to wit. The East half of the South
East Quarter of Section Number Twenty six in Township
Number Twenty nine North of Range Two East of the Fourth
Principal Meridian in the County of the Daviess and State of
Illinois. E. S. Smith. Attorney for Plaintiffs paid to me
the necessary amount of money to redeem the said property
before sold upon another execution.

A. S. Barker. Sheriff."

Also by virtue of another pretended Execution issued
out of the Cook Circuit Court 16th August 1859 in favor of
Samuel S. Street and against said John Hughes, numbered
14,964 which said levy is in the words and figures following
viz:

Said Defendants assign the following grounds of said Motion, that is to say.

1st That said first named Execution was levied upon the growing crops upon said Land, and upon a certain horse and two horse Wagon a copy of which said levy is as follows viz:

"By virtue of the within Execution I have levied upon one black horse, one two horse wagon, 20 acres more or less of Corn, 5 acres of Wheat more or less, One acre of Potatoes more or less, as the property of John Hughes, Defendant in said Execution

J. H. Conlee

July 6th 1859.

"Per J. M. Conlee, Deputy."

The above property is ordered to be released by Order of said Attorney, and which Chattels were surrendered to the same by the Defendant John Hughes since which said property was and is of value sufficient fully to pay and satisfy the debt interest and cost, &c.

2nd Said levy has never been released by said Defendants nor has the same been done with their approbation and consent, but the same remains in full force and binding, until the Sale of said property to satisfy the said Execution.

3rd Said second named Execution was paid and satisfied in full by said Sale of said Land."

Said defendants also enter their Motions in this behalf to stay the Sale of the said tract of Land under the pretended Redemption of the same and levy of said Execution until the final Order of the Court in this behalf.

And therefore said Defendants come and give the Court now here to understand that the said Execution first issued as aforesaid commanding the Sheriff of Jo Dancers County Illinois to make the sum of \$159. 91 cents, of the lands tenements and Real Estate, goods and Chattle of Defendants to be found in his County, was levied upon the growing crops - the horse and two horse Wagon as above stated, and that afterwards the said levy was released or attempted to be released, by the Plaintiffs in the Execution, without the knowledge or consent of the Defendants.

Defendants state that said defendant John purchased the said Crops, horse and wagon to the said Execution - that the title of said Defendant John thereto is perfect and the same is of value sufficient to pay and satisfy the same in full.

Said Land is advertised by the Sheriff of Jo Dancers County for Sale on the 9th day of September 1859 at the door of the Court House in Galena at 2 o'clock P. M., a printed copy of which is hereto attached as Exhibit "A."

Wherefore the pray and move of this Court to stay Sale until a hearing of the Motion in this behalf, and that upon a hearing of said Motion the said pretended Redemption and levy upon said Real Estate may be set aside - and said Plaintiffs compelled to make Sale of the said levy first made upon the growing crops, horse, Wagon &c and as in duty bound Defts will ever pray &c

" Chicago Sept 5th 1859.

Plaintiffs in the above cause will take Notice That we shall on Monday the fifth day of September 1859 or as soon

hereafter as counsel can be heard move the Court to stay said
Sale and set aside said pretended Redemption and levy of said
Execution on said Land.

Then and where you may attend and defend against
said Motion if you think proper.

Scates, McAlister & Jewett
for Defts."

"State of Illinois } Of the September Term of the Superior
Cook County } ss. Court of Chicago W.D. 1859.

Septimus T. Mapper

— as —

Marcellus B. Smith

& Pollock

Motion to set aside Redemption and
levy of Execution,

Plaintiff S. T. Mapper by Scates, McAlister & Jewett
comes and enters his Motion to set aside the pretended Redemption
and levy upon East half of the South East quarter of Section
Twenty six Town Twenty nine North Range Two east of the
Fourth Principal Meridian lying in De Calles County a
Illinois, under and by virtue of two certain Executions, one
numbered Four hundred and sixty five (465) issued out of the
Superior Court of Chicago in the case of M. B. Smith et al
v. John & S. S. Hughes and bearing date the 1st day of
July W.D. 1859 and which said levy is as follows viz

"By virtue of the within execution I have this 18th day
of August W.D. 1859 levied upon the following described lands
to wit, The East half of the South East quarter of Section
number Twenty six in Township number Twenty nine North

Range Two, East of the Fourth Principal Meridian in the County
of the Danvers and State of Illinois.

To S. Smith, Attorney for Plaintiff since some the necessary
amount of money to redeem the said property before sold upon
another execution).

A. H. G. Miller - "H. G. Miller."

And by virtue of another pretended Execution issued out
of the Cook Circuit Court 16th August 1859, in favor of Samuel
S. Street and against said John Hughes numbered 11,964, which
last levy is in the words and figures following viz:

Said Plaintiff assigns the following grounds of said Motion that is to say,

1st That said first named Execution was levied upon the growing crops upon said Land - and upon a certain Horse and Fine Horse Wagon, a copy of which said levy is as follows viz. " By virtue of the within Execution I have levied on One Black Horse, One Fine Horse Wagon, 20 acres more or less of Corn, 5 acres of Wheat more or less, One acre of Potatoes more or less, as the property of John Hughes defendant in said Execution.

July 6th 1859.

J. H. Conley

John H. Conley - Deputy "

The above property is ordered to be released by order of Plaintiff's Attorney.

And which Chastels were surrendered to the same by one of the said Defendants therein, John Hughes - and which said property was and is of value sufficient fully to pay and satisfy the Debt, interest and cost due.

2nd Said levy has never been released by said Defendants therein nor has the same been done with their approbation or consent, but the same remains in full force and binding until the sale of said property to satisfy the said Execution.

3rd Said second named Execution was paid and satisfied in full by sale of said Land.

Said Plaintiff also enters his Motion in this behalf to stay the sale of the said tract of Land under the pretended execution of the same and levy of said Execution, until the final order

of the Court in this behalf.

And thereupon the said Plaintiff comes and gives the Court now here to understand that the said first execution is issued as aforesaid commanding the Sheriff of St. Davids County Illinois to make the sum of \$159.96 out of the Lands, Tenements, and Real Estate, goods and chattels of Defendants therein to be found in his County - was levied upon the growing Crops, the horse and two horse wagon as above stated, that afterwards the said levy was released or attempted to be released by the said Plaintiffs in the execution without the knowledge or consent of the Defendants in execution - And said execution was levied upon the Real Estate above described without the knowledge or consent of Defendants in execution - Plaintiff states that said Defendants, John, surrendered the Crops, horse & wagon to the said execution, that the title of Defendant John thereto is perfect, and the same is of value sufficient to pay and satisfy the same in full - Said Land is advertised by the Sheriff of St. Davids County for Sale on the 9th day of September 1869 at the door of the Court House in Havana at 10 o'clock P.M., a printed Copy of which is hereto attached as Exhibit "A".

Wherefore they pray an Order of this Court to stay said Sale until a hearing of the Motion in this behalf, and that upon a hearing of said Motion, the said pretended redemption and levy upon said Real Estate may be set aside, and said Plaintiff compelled to make Sale of the said levy first made upon the growing Crops, horse, wagon &c. And in duty bound Defendants will ever pray.

"Chicago, Sept 5th 1859.

Plaintiffs in the above Executions will take Notice that I shall on Monday the fifth day of September 1859 or as soon thereafter as Counsel can be heard, move the Court to stay said Sale and to set aside said pretended redemption and levy of said first execution on said land.

When and where you may attend and object against said Motion if you think proper.

Scans. Mo. Clerk of Court
In Resp. in Motion."

Also the following Affidavit of John H. Cortes together with the Exhibits thereto attached, sworn to on the 2nd day of September 1859.

"State of Illinois } Of the September Term of the Superior
Cook County } Court of Chicago A. D. 1859.

John Hughes
— a — } Motion to set aside Levy on the
Marcellus B. Smith } E/s of S. to 1/4 Sec 26, T 29. R. 2 E.
John H. Pollard & al } in De Daviess County.

John H. Cortes being first duly sworn according to law deposes and says that he is the Sheriff of De Daviess County State of Illinois that by virtue of an execution against the Lands Tenements Goods and Chattels of John Hughes T. S. Hughes in favor of Marcellus B. Smith & John H. Pollard & al (a Copy of which execution is hereto annexed) marked Exhibit "A", he levied on the following property of the Debtor, John

Hughes to wit "One black horse, one two horse Wagon, 20 acres
"of corn, 5 acres of Wheat, and 1 acre (more or less) of Potatoes".
That after the said levy was made, the Attorney for the said
Plaintiffs in execution ordered him the said Sheriff to release the
said Levy That the said Chattle & land on were released in
accordance with said order, and on the same day to wit on the
18th day of August he levied upon the following Lands of the
said Defendant John Hughes, to wit, "The East half of the
Southeast Quarter of Section 26 Township 29, N. Range 11, E.
Two (2) East of the 4th P. M. in the County of Jo Daviess
& State of Illinois. That two Copies of the receipts of the said
Execution, the Levy of the said Horse, Wagon, Corn &c, the
discharge of the said Levy and the subsequent Levy upon the
Lands aforesaid, are hereto attached, marked severally Exhibits
"B. C. D and E."

And this Deponent further states that he believes that the
said Horse, Wagon, Corn, Potatoes &c so levied on & released
as aforesaid, if the same were offered at Public Sale would
pay for the full amount of the Debt, costs and charges in the
said execution mentioned And the said St. Louis Sheriff as
aforesaid further deposes and says that on the 18th day of
August A. D. 1859 he received for Collection an execution in favor
of Samuel S. Streeter and against John Hughes for the sum of
Six hundred and eighteen dollars and ninety two cents, that said
execution was issued upon a certain judgment rendered in the
Circuit Court of Cook County Illinois in Vacation after the June
Special Term thereof, to wit, at Chicago in said County on the

5th day of October A. D. 1854 - that a true Copy of said Execution
 is hereto annexed marked "Exhibit F." that by virtue of said
 Execution, the as such Sheriff levied upon Land of the said
 Defendant described as follows, to wit: The East half of the
 South East Quarter of Section 26 in Town 29 North of Range
 Two, East of the 4th P. M. - that a Copy of said levy is
 hereto attached marked "Exhibit G." that afterwards one E. S.
 Smith as attorney for the said Plaintiff in said Execution last
 mentioned, paid this affair a sum of money necessary to redeem
 the said Land and that a return is made in said Execution
 in accordance with said facts that a true Copy of said return
 is hereto attached marked "Exhibit H." and that a Copy of the
 receipt of said Execution is also attached hereto marked "Exhibit I."
 Known to and subscribed
 before us this 2nd day of } John H. Couder
 September A. D. 1854 . . } Sheriff of St. Davides Co.
 Henry C. Park Jr. } Secy.

"State of Illinois }
 St. Davides County } S.

I Richard Seal Clerk of the County Court
 in and for said County do hereby certify that Henry C. Parks
 Esq. whose name appears subscriber to the foregoing and annexed
 instrument, is now, and was at the time of subscribing the
 same an acting Justice of the Peace in and for said County
 regularly commissioned and qualified and that as such Justice
 full faith and credit is due to all his official acts, and that
 I am well acquainted with his handwriting and verily believe

his name subscribed thereto to be genuine. And further that
the annexed said instrument is executed in due form, according
to the Laws of the State of Illinois.

In witness whereof I have herewith set my hand
and affixed the Seal of the said Court at Galena
this 2nd day of September 1859.

Attest: Richard Seal (Seal)

(Copy of Execution)

" State of Illinois)

"Exhibit B"

County of Cook)

The People of the State of Illinois
To the Sheriff of St. Davies County, greeting.

We command you, as we have before commanded you, that of the
Lands and Tenements, Goods and Chattels of John Hughes and
S. S. Hughes, Defendants in your County, you cause to be made the
sum of One hundred and fifty two dollars and seventy one cents
which Marcelus, B. Smith, John, K. Pillarce and C. Jackson Smith
Plaintiffs lately in the Cook County Court of Common Pleas of
said County at a term thereof, begun and held at Chicago in
said County on the first Monday of July A.D. 1858 recovered
against the said Defendants and which by the said Court was
adjudged to the said Plaintiffs for their damages.

And also the further sum of Five dollars and eighty five
cents which were adjudged to the said Plaintiffs for their costs and
charges in that behalf expended, whereof the said Defendants were
convinced as appears to us of Record. And have you these moneys
ready to render to the said Plaintiffs for their damages and costs

aforsaid and make a return of said writ with an endorsement thereon in what manner you shall have executed the same in due duty from the date hereof.

(Seal.)

Witness Walter Kimball, Clerk of the Superior Court of Chicago and the Seal thereof at the City of Chicago in said County the 2nd day of July A.D. 1859.

Walter Kimball - Clerk "

"Exhibit B"

This Execution came to hand for collection this 5th day of July A.D. 1859, at 8 o'clock P.M.

J. H. Conlee, Sheriff "

"Exhibit C"

By virtue of the within execution I have levied on - One Black Horse, one Two Horse Wagon, 20 acres more or less of Corn & acres of Wheat more or less. One acre of Potatoes more or less as the property of John Hughes Defendant in said Execution. July 6th 1859.

J. H. Conlee - Sheriff

J. D. M. Conlee - Deputy "

"Exhibit D"

The above property is ordered to be released by order of Plaintiff's Attorney this 18th day of August 1859.

J. H. Conlee

Sheriff "

"Exhibit E"

By virtue of the within execution I have this 18th day of August A. D. 1859 levied upon the following described Lands described as follows to wit, The East half of the South East quarter of Section Number Twenty six in Township Number Twenty nine, North of range Two East of the Fourth Principal Meridian in the County of St. Davies in the State of Illinois, E. J. Smith, Attorney for Plaintiff paid to me the necessary amount of money to redeem the said property before sold upon another execution.

A. H. Corlee - Sheriff."

"Exhibit F."

"State of Illinois

County of Cook } To

The People of the State of Illinois

To the Sheriff of St. Davies County Greeting
We command you as we have before that of the Lands and Tenements Goods and Chattle of John Hughes, Defendant, in your County you came to be made the sum of Six hundred and eighteen dollars, ninety two Cents, which Samuel. S. Streeter Plaintiff lately in the Circuit Court of Cook County in Vacation after the "June Special term thereof, to wit, at Chicago in said County on the 5th day of October A. D. 1857 recovered against the said Defendant and which by the said Court were adjudged to the said Plaintiff for damages which he had sustained by occasion of the nonperformance of certain promises then lately made by the said defendant to the said Plaintiff And also the further sum of Twenty dollars and two Cents which were adjudged to the said

Plaintiff for damages costs and charges in that behalf expended whereof the said Defendant is convicted, as appears to us of record. And have you these moneys ready to render to the said Plaintiff for his damages and costs aforesaid and make return of this writ, with an endorsement thereon in what manner you shall have executed the same in thirty days from the date hereof.

Witness William L. Church, clerk of our said Court
and the Seal thereof at Chicago, in said County,
this twentieth day of August A.D. 1859.
William L. Church. Clerk.

"Exhibit K"

Received this execution this 18th day of August for collection at 8 1/2 o'clock A.M.

J. H. Conlee. Sheriff."

"Exhibit L"

By virtue of the within execution I have this 18th day of August A.D. 1859 levied upon the following described Lands described as follows, to wit. The East half of the South East Quarter of Section numbered Twenty six in Township number Twenty nine North of range Two East of the Fourth Principal Meridian in the County of St. Davids in the State of Illinois.

E. S. Smith, Attorney for Plaintiff paid to me the necessary amount of money to release said property before sold on another execution.

J. H. Conlee. Sheriff."

' State of Illinois }
Do Danvers County } De

John H. Conlee being first duly sworn &
deposes and says that he is the Sheriff of the said Do Danvers
County, Illinois; that the release of the property hereinbefore
described in "Exhibit C" was made on the 18th day of August
A. D. 1859 by order of the Plaintiffs Attorney, that a true copy
of the said release is hereinbefore described and marked "Exhibit
D:" and that all the erasures, interlineations and changes in the
affidavits & Exhibits hereinbefore described were made at the
Deponents desire and after careful examination by deponent.
Sworn to and subscribed
before me this 10th day of } John H. Conlee - Sheriff."
September 1859 . . . }

Henry G. Park J.P."

Also the Affidavits of John Hughes, Stephenson, J. Napier,
J. M. Conlee, J. H. Vaughn, H. S. Dering and J. C. Mansur
dated the 2nd day of September A. D. 1859.

"State of Illinois } Of the September Term of the Superior
Cook County } Court of Chicago A. D. 1859.

John Hughes } Motion to set aside levy on the East half
— (u) — } 1/2 of the S. E. 1/4 of Sec 26, Township
Marcellus B. Smith et al } 29, N Range 3 East in Do Danvers
County. Ills.

John Hughes being first duly sworn according to law
deposes and says that he is one of the Defendants in a certain

Execution issued upon a Judgment obtained at the Cook County Court of Common Pleas at a Term of said Court begun and held at Chicago, in the County of Cook and State aforesaid on the first Monday of July A.D. 1858, wherein J.S. Hughes was the defendant and Morellus B. Smith, John K. Pollard et al were plaintiffs, that the said Execution was directed to the Sheriff of So. Duane County, Illinois, commanding him to make the sum of One hundred and fifty one dollars and seventy one cents from the Lands, Tenements, Goods and Chattels of the said Defendant and said J.S. Hughes - that the said Sheriff by virtue of said Execution turned out "One Black horse, one two horse Wagon, 20 acres of Corn, 5 acres of Wheat, and 1 acre (more or less) of Potatoes" belonging to this affiant and situated upon the farm of the said affiant on the day and date of the said levy; to wit the 6th day of July A.D. 1859 - Affiant further deposes and says under oath as aforesaid that the said Horse, Wagon, Corn, Wheat and Potatoes were and now are the property of this affiant. That the said Horse, Wagon, Corn &c, were turned out by him the said affiant to the said Sheriff, that the said Sheriff turned upon the said Horse, Wagon, Corn &c, by virtue of the said Execution, and that he the said affiant did not at that time and does not now consent that the said levy shall be released upon the said Horse, Wagon, Corn &c

Subscribed before

me this 2nd day of September

A.D. 1859

John Hughes

Notary Public J.P.

(Seal)

"State of Illinois
In Daviess County } *Ex*

Seppurion J. Waffer being first duly sworn according to law deposes and says that he resides at the Village of Seales Mound, In Daviess County, Illinois, That he is well acquainted with John Hughes and James S. Hughes the defendants in execution in a certain suit, wherein Maresius B. Smith John H. Polara et al are plaintiffs, said execution having been issued upon a certain judgment recovered by the said Plaintiffs against the said defendants in the Cook County Court of Common Pleas at a term thereof begun and held at Chicago in the County and State aforesaid on the first Monday of July A. D. 1858, that the said execution commanded the Sheriff of the said County of In Daviess Illinois to make the sum of One hundred and fifty one dollars and seventy one Cents from the Lands Tenements Goods and Chattels of the said defendants John Hughes and J. S. Hughes - That he, the said deponent knows the "Black Horse" the "Two horse Wagon" the "20 acres of Corn" the "5 acres of Wheat." and the "1 acre of Potatoes more or less" served on by the said Sheriff of In Daviess County, Illinois, on the 6th day of July A. D. 1859, and that the said Horse, Wagon, Corn Wheat and Potatoes were and are amply sufficient to have paid in full the said amount in the said execution mentioned, together with all the Costs, charges, interest &c thereon, and that he the said Deponent would give for the said Horse, Wagon, Corn, Wheat & Potatoes, if the same were offered at public Sale the full sum of debt costs, charges &c in the said Execution mentioned. And

further Dependent faith not,

Subscribed and sworn to before Thompson, J. Napier."

me this 2nd day of September

O. D. 1859

Isiah Conlee J.P. (Seal)

"State of Illinois

In Daviess County, &c

I. M. Conlee being first duly sworn according to law, deposes and says, that he resides at the village of Scales Mound, In Daviess County, Illinois, that he is well acquainted with John Hughes and Samuel S. Hughes the defendants in execution in a certain suit wherein Marcellus B. Smith, John K. Polard et al are plaintiffs, said execution having been issued upon a certain judgment recovered by the said Plaintiffs against the said defendants at the Cook County Court of Common Pleas at a term thereof begun and held at Chicago, in the County and State aforesaid on the first Monday of July A. D. 1858 - that the said execution commanded the Sheriff of the said County of In Daviess Illinois to make the sum of One hundred and fifty one dollars and seventy one cents from the Lands Tenements Goods and Chattels of the said Defendants John Hughes and S. S. Hughes - That the said defendant knows the Black horse, the Two horse Wagon the 20 acres of Corn, the 5 acres of Wheat and the 1 acre of Potatoes more or less, levied on by the Sheriff of In Daviess County, Illinois, on the 6th day of July O. D. 1859 and that the said Horse, Wagon, Corn, Wheat and Potatoes, were and are amply sufficient to have paid in full the said amount on the

said execution mentioned, together with all the costs charges and interest thereon and that the the said ^{Deponent} Defendant, is well satisfied that if the said Acres Hagon Corn Wheat and Potatoes were offered at Public Sale that they would sell for the full amount of Debt and costs charges on the said execution mentioned And further the Deponent says not

Sworn to and subscribed

before me this 2nd day of

September A. D. 1859 . . .

J. M. Corlee

Deputy Sheriff."

Isiah Corlee J.P.

(Seal)."

"State of Illinois

Do Davies County

I Richard Seal Clerk of the County Court in and for said County Do hereby certify that Isiah Corlee is a person whose name appears subscribed to the foregoing and annexed instruments is now, and was at the time of subscribing the same, an acting Justice of the Peace in and for said County, regularly commissioned and qualified, and that as such Justice, full faith and credit is due to all his official acts Also that I am well acquainted with his handwriting and verily believe his name subscribed thereto to be genuine Also further that the annexed said instruments is executed in due form, according to the Laws of the State of Illinois. In witness whereof I have hereunto set my hand and affixed the Seal of the said Court at Galena, this 2nd day of September A. D. 1859.

(Seal)

Witness Richard Seal. Clerk."

"State of Illinois }
In Danvers County } ss.

Atk. Naughton, W. S. Dering, F. L. Maupin being
first duly sworn according to law depose and say that we reside at
the Village of Scales Mound, In Danvers County Illinois, that we
are well acquainted with John Hughes and Samuel S. Hughes the
Defendants in Execution in a certain suit wherein Marcellus B. Smith
John K. Pollard et al are Plaintiffs - Said execution having been
issued upon a certain judgment recovered by the said Plaintiffs against
the said Defendants at the Cook County Court of Common Pleas at Co
lumbia thereof began and held at Chicago in the County and State
aforesaid on the first Monday of July A. D. 1858 - that the said
Execution commanded the Sheriff of the said County of In Danvers
Illinois to make the sum of One hundred and fifty two dollars and
seventy one cents, from the Lands, Tenements, Goods and Chattels
of the said Defendants John Hughes and S. S. Hughes - That the
said Defendants have the Black Horse, the Five horse wagon, the
20 acres of Corn - the 5 acres of Wheat, the 1 acre of Potatoes more
or less owned or by the Sheriff of In Danvers County, Illinois on
the 6th day of July A. D. 1859 and that the said Horse, Wagon
Corn, Wheat and Potatoes were and are amply sufficient to have
paid in full the said amount on the said Execution mentioned
together with all the costs charges and interest thereon and that
the said Defendants are well satisfied that if the said Horse, Wagon
Corn, Wheat and Potatoes were offered at Public Sale that they
would sell for the full amount of debt and costs charges on the
said execution mentioned and further Defendants say not.
Sworn to & subscribed to

before me this 2nd day of
September A. D. 1859 . . .
Josiah Corlies J. P.
(Seal.)

J. H. Naughton
H. S. Doring
F. C. Mansum "

Also the Affidavit of Stephenson, T. Napper dated Sept.
10/59 together with Exhibit "A" attached thereto.

"State of Illinois
Do Daines County, I

Stephenson T. Napper being first duly sworn
according to law deposes and says that the following tract of land
to wit The East half of the South East Quarter of Section number
Twenty six (26) in Township number Twenty nine (29) North of
Range number Two East of the Fourth Principal Meridian in the
Daines County Illinois was on the Eighteenth day of May A. D.
1858 exposed to public Sale to satisfy a Special Writ of Execution
directed from the Clerk's Office of the Circuit Court of the aforesaid
County and State in favor of Richard Howard for the use of the
Deponent and against John Hughes and Thos Hughes - that Simon
H. Miner, at that time Sheriff of said County levied upon and sold
said property on the date aforesaid by virtue of said Special Writ
of Execution, and Deponent having bid for the said tract of Land
the sum of One thousand three hundred and seventy ⁶⁶/₁₀₀ dollars
and said sum being the highest amount bid for said Land, deponent
was declared purchaser and the same was struck off to deponent and
a certificate of purchase for said tract of Land was at the time
delivered to deponent a Copy of which is hereto annexed and marked

"Exhibit A" that said Special writ of Execution was issued upon a judgment rendered in the Circuit Court of Jo Davies County Illinois on the 11th day of March A. D. 1858 upon a foreclosure of Mortgage, said Judgment being recorded in Book "P" of Records page 143 in the Clerk's Office of said County.

Sworn to and subscribed before
me this 10th day of September } Stephenson, J. Napper "
A. D. 1859 }
Henry C. Park C. J."

"State of Illinois
Jo Davies County, } &c

I Richard Seal, Clerk of the County Court in and for said County, do hereby certify that Henry C. Park Esq. whose name appears subscribed to the foregoing and annexed instrument is now, and was at the time of subscribing the same an acting Justice of the Peace in and for said County, regularly commissioned and qualified, and that as such Justice, full faith and credit is due to all his official acts. And that I am well acquainted with his handwriting, and verily believe his name subscribed thereto to be genuine. And further that the annexed said instrument is executed in due form according to the Laws of the State of Illinois.

In witness whereof I have hereunto set my hand and affixed the Seal of the said Court at Galena this
10th day of September 1859.

Attest: Richard Seal.
Clerk "

(True copy of Certificate. "Exhibit A")

"State of Illinois

To Danvers County } Set.

I Samuel H. Minor Sheriff of the County and State aforesaid, do hereby certify that by virtue of a Special Writ of Execution in favor of Richard Powder for the use of Stephen M. F. Mapper and against the Lands and Tenements of John Hughes and Ann Hughes of the County and State aforesaid to me directed from the Office of the Clerk of the Circuit Court of said County I did on the Eighteenth day of May A. D. 1855 expose to Public Sale the following described tract of Land and premises situated lying and being in To Danvers County and State aforesaid to wit The East half of the South East Quarter of Section Number Twenty five (25) in Township Number Twenty nine (29) North of range Two East of the fourth Principal Meridian in To Danvers County in Illinois, and that Stephen M. F. Mapper bid for the said tract of Land and premises the sum of One thousand three hundred and twenty ⁶⁶/₁₀₀ dollars, which being the highest and best bid for said tract of Land the same was struck off to him the said Stephen M. F. Mapper, and that the said Stephen M. F. Mapper will be entitled to a deed of said tract of Land, so sold to him on the Eighteenth day of August A. D. 1854 unless the same shall be redeemed according to law.

Given under my hand and seal at my office in
Galena this 18th day of May A. D. 1855

S. H. Minor

Sheriff

"Seal"

Also the Affidavits of James M. Conlee and John Hughes
dated 16th day of September 1859.

State of Illinois } Of the September Term of the Superior
Cook County } ss. Court of Chicago W. D. 1859.

John Hughes

— (u) — } Motion to set aside levy on the 6th
Marcellus B. Smith } of S. C. & Co. Dec. 24. P. D. R. D. Co.
John K. Pollard et al } in So. Daviess County Mo.

State of Illinois }
So. Daviess County } ss.

James M. Conlee being first
duly sworn deposes and says that he is a Deputy Sheriff of So.
Daviess County, Illinois, that by virtue of an execution, issued
on a Judgment rendered at the Cook County Court of Common Pleas,
of said County at a term thereof begun and held at Chicago in
said County on the first Monday of July W. D. 1858 in favor
of Marcellus B. Smith, John K. Pollard et al & against John
Hughes of the County of So. Daviess, Illinois in the sum of
One hundred & fifty one ⁷¹/₁₀₀ dollars, damages and \$8²⁵/₁₀₀ costs
the said Deponent served upon personal property of the said
defendant Hughes as follows to wit, One Black horse, one two
horse Wagon, 20 acres more or less of corn, 5 acres of Wheat more
or less, and One acre of Potatoes more or less. that the said
levy was made on the 6th day of July W. D. 1859 and were
left by the deponent with the said Hughes for the following
reason viz: the said crop wheat was still growing & standing
at the date of the said levy, and the horse & Wagon were necessary

for the removal and harvest of said Corn, Wheat & Potatoes at the proper time - That Deponent had sufficient confidence in said Hughes to justify him in leaving the said Store Wagon Crops in his (Hughes) charge & for the further reason above stated until the day of Sale should arrive, it being understood at the time of said levy that a reasonable compensation should be paid the said Hughes by Deponent for the removal and harvesting of said Crops, that the subsequent release of said Crop by the Sheriff of said Jo Daviess County, Illinois, prevented any definite arrangements being made with said Hughes with regard to the exact compensation to which the said Hughes would be entitled for the removal of said Crops.

Sworn to and subscribed
before me this 10th day of
September 1859

James M. Corlies
Deputy Sheriff."

Harry L. Park J.P."

" John Hughes being first duly sworn deposes and says that at the time of the levy upon the Store Wagon Crops &c of this Deponent described in the Affidavit of James M. Corlies Deputy Sheriff hereto annexed, he the said deponent asked the said Corlies to leave the said Store & Wagon in his Hughes' possession and for the use of the same he the said Deponent promised to harvest and remove the Corn Wheat & Potatoes as mentioned in said levy for a very reasonable compensation, that the said Corlies then agreed to leave and did leave the said Store Wagon &c in this Deponent's charge with the understanding

that the same was to be delivered up to the said Gault upon his demand for the same, or upon the day of Sale - that subsequently the said levy was released for some cause unknown to this Deponent and without Deponent's consent and that consequently nothing was or since has been paid to this Deponent for removing any portion of said crop. That the value of said crop and harvesting the Wheat was worth the sum of Twenty dollars - that the removal of the Potatoes & Corn and depositing the same in bins would be reasonably worth the further sum of Thirty dollars.

Suore to and subscribed
before me this 10th day of } John Hughes."
September A.D. 1859 . . }

Henry B. Park J.P."

"State of Illinois
to Daviess County } J.C.

I Richard Seal Clerk of the County Court in and for said County do hereby certify that Henry B. Park Esq. whose name appears subscribed to the foregoing and annexed instrument is now, and was at the time of subscribing the same an acting Justice of the Peace in and for said County, regularly Commissioned and qualified, and that as such Justice full faith and credit is due to all his official acts and that I am well acquainted with his handwriting, and verily believe his name subscribed thereto to be genuine and further that the annexed said instrument is executed in due form according to the Laws of the State of Illinois. In witness whereof I have

I do hereby set my hand and affix the Seal of said Court at
Galena this 10th day of September 1859.

(Seal) Attest: Richard Seal. Clerk.

At this point of the Motion Plaintiffs to maintain
their position & issues in their behalf read in evidence the Affidavits
of A. M. Corbo and Ezekiel S. Smith dated 21st day of
September 1859.

"State of Illinois
vs. Danvers Comely } de

This day personally appeared before me J. M. B.
Corbo and made oath in due form of law and deposed as
follows That he is a Deputy Sheriff of said County and that as
such Deputy he levied on July 6th 1859 and execution in favor
of Smith Pollard & Co. - vs - John Hughes, on a certain Horse
& Wagon & the growing crops the property of the said John Hughes
That said property was all left in the possession of the said
John Hughes & no delivery Bond taken therefor. That said affair
is pending in the Town of Seales Monroe & within eight of the
residence of said Hughes. When said property was levied on the
said Hughes was asked by affiant to give him a delivery Bond
& refused and said to affiant "that he (Hughes) would not ask any
one to go on his Bond for him, but that I could take the property
or leave it just as I chose & further said it should be forth-
coming on the day of Sale if left in his hands." That said
property was partly of such a nature that it could not be

taken into possession at that time, the growing crops were not
matured ready for harvesting: The Wheat levied on was afterwards
harvested by the said Hughes but affiant cannot state whether
the same was harvested before or after said property was
released from said levy, or what has since become of said wheat.
Affiant has no knowledge in regard to said property levied on
since the release of said levy except from having seen said
Hughes in possession of the same & from having heard Hughes
say he was in possession & using said property - Hughes told
affiant that a part of the Wagon levied on was in use with a
threshing Machine, which his son was running. The said
Hughes uses the horse & has ever since the release, driving &
working him as his own. As to the growing crops except the
Wheat affiant cannot state whether or not the said Hughes
has harvested the same or any part thereof but the said Hughes
is in possession of the Land where said crops were growing &
exercises acts of ownership & control over the same as he did
before the levy, and further affiant says not.

Sworn and subscribed before
me this 8th Oct: 1859, at
Richard Seal, Clerk of the County
Court in and for said County, and
the seat of said Court, the day
and year aforesaid

L. M. Conlee, "

R. Seal

Clerk "

Clerk's fees \$0 &

Paid by Jeffe Aug: 5

" State of Illinois.

M. B. Smith Et al

— (vs) —

John Hughes . . . }

Superior Court of Chicago,

State of Illinois }

Cook County . . . }

LC

Ezekiel S. Smith being duly sworn does depose and say that on the fourteenth day of August last said this Deponent was at the residence of said Hughes in Seales Mound, and was thus told by said Hughes that the execution in favor of Smith Pollard & Co. had been levied upon growing crops, in the place where he lived and that if the officer should sell them, it would very much distress his family and that some other property had been levied upon which belonged to his Son, that the debt was his to pay, that his Son had signed a Note to them, as his security, and that the property was in their possession, and no part had been taken away by the Officer, and that on the following day, said Hughes, was in Galena where he requested Deponent to make some arrangements if possible so that the property levied upon by the Sheriff might be released.

This deponent further says that he thus told said Hughes that he would see some of the Plaintiffs, and if no one had purchased the judgment, he would do so for Mr. Greter, and put the same upon the farm and release the personal property, Hughes thus requested Deponent to do so, as it would distress his family to lose the crops, that he was unable to work so much and his family would suffer.

Deponent further says that he returned to Chicago and

purchased the judgment for Mr. Street pursuant to such request and notified Hughes of the same, and that on the Eighteenth day of August then next Deponent directed the Sheriff to release the levy on the personal property as said Hughes desired Deponent to do, and directed the Sheriff to levy the execution upon the Real Estate of said John Hughes which he then did and made a Certificate of levy.

Subscribed & sworn to at
Chicago, Illinois, before me

E. S. Smith,

this 21st day of September

A. D. 1859

Philip A. Harper

Seal

Notary Public."

Upon which said Affidavit was endorsed the following
Stipulation.

"The said Plaintiffs hereby stipulate and agree to bid for the Land levied upon in this case the full amount of the Judgment and costs in favor of Smith, Pollard & Co. above the redemption money -

Smith & Devey

September 21st 1859."

Plffs Attys."

The defendant to maintain further his usual place of residence, the following Affidavits of John Hughes, Wm R. Rowley, Thomas A. Mouspin and Richard Seal, all dated the fifteenth day of October 1859.

"State of Illinois }
De Duane County } *Seal*

John Hughes being first duly sworn according to law depores and says that he is the Defendant in a certain suit now pending and undetermined in the Superior Court of Cook County, Chicago, Illinois, in which Smith, Pollard & Co. are Plaintiffs - That his Attorneys in said suit have furnished him with a copy of an Affidavit filed in said suit by E. Smith Attorney for the said Plaintiffs - That he has carefully examined

said Affidavit and referring thereto deposes and says, that it is true that the said Smith was at Seales' Mound on or about the 14th day of August last; it is also true as this Deponent believes that the said Smith "directed the Sheriff to release the land in the personal property, and ordered the said Sheriff, to levy the execution upon the Real Estate of this Deponent; but, this Deponent solemnly deposes and states that with the exception of the above facts, each and every statement in the said affidavit of the said W. Smith Attorney is absolutely and unqualifiedly false & untrue. That the said Smith had but a few moments conversation with this Deponent while at Seales' Mound in August as aforesaid, that the said Smith then enquired what judgments, if any, had been obtained against him, to which this Deponent replied that Smith Pollard & Co. had judgment, and that the said Deponent had turned out his Crops &c to satisfy the execution issued upon said judgment, that he never said to the said Smith that the Sale of his said Crops under said execution, "would distress him", the said Deponent, or any other remark which by any means could be so understood by the said Smith. That the said Smith represented to Deponent that if Deponent would confess judgment in his favor upon two Notes of this Deponent, which had been long before paid and settled in full & which the said Deponent the said Smith had unlawfully detained in his possession; that the said Smith would give this Deponent three years in which to redeem his land and Real Estate, after the same had been sold and redeemed under said fictitious judgment. This Deponent answering further and in detail

the averments in the said Affidavit of the said Smith says that he
did not say to the said Smith that if the "Officer should sell the
said crops &c it would very much distress his (deponent's) family-
he denies also that he stated to the said Smith that "some other
property had been levied upon which belonged to his son;" or "that
the debt was his to pay;" or that the property was in his possession
or "that no part had been taken away," nor that on the day
following this deponent requested the said Smith to "make some
arrangement if possible to release the property levied upon by the
Sheriff" nor that this Deponent asked or received any promise of
assistance in the premises; or that the said Smith "promised to
buy the Smith & Pollard &c judgment for Mr. Street, (or any
one else) and put the same upon Deponent's farm and release the
personal property."

Deponent further states that all the last foregoing alleged
conversation could not have taken place as he purposely avoided
the said Smith after the dishonest overtures of the said Smith in
regards to the aforesaid fictitious judgment, which the said Smith
had requested this Deponent to give him the said Smith
Subscribed to and Swore before

me this 15th day of October 1859

John Hughes."

Lewis Zoeller. J. P. Sw."

"State of Illinois
to Daviess County, }
S.

I Richard Seal Clerk of the County Court in and
for said County, do hereby certify that Lewis Zoeller Esq. whose
name appears subscribed to the foregoing and annexed instrument
is now and was at the time of subscribing the same, an acting

Justice of the Peace in and for said County, regularly commissioned and qualified, and that as such Justice full faith and credit is due to all his official acts And that I am well acquainted with his handwriting and verily believe his name subscribed thereto to be genuine And further that the annexed said instrument is executed in due form according to the Laws of the State of Illinois.

In witness whereof I have hereunto set my hand and
Seal. affixed the Seal of the said Court at Galena this
15th day of October 1859.

Attest: Richard Seal. Clerk."

"State of Illinois.
To Danvers County, Ill."

W. R. Rowley being first duly sworn according to law deposes and says that he is the Clerk of the Circuit Court of the County and State aforesaid - that he has been a resident of said County for 15 years past - that he is well acquainted with John Hughes of Seales Mound in said County and State, that the character of said Hughes for truth and veracity, has never to this deponent's knowledge, been questioned by any one, and that he would give full credit to anything which the said Hughes would state, either under oath or otherwise.

Subscribed & sworn to before me Richard
Seal, Clerk of the County Court, this 15th
day of October A. D. 1859. Witness my hand
and the Seal of said Court the day and
date above written
Seal. Richard Seal Clerk."

W. R. Rowley."

"State of Illinois
In Danvers County } ss.

Thomas J. Manpin being first duly sworn according to law, deposes and says that he is well acquainted with John Hughes of Seales Mound of the County and State aforesaid - that he has known the said Hughes about ten years. that he has entire confidence in the veracity of the said Hughes and firmly believes that the said Hughes could not be induced to make any misstatements whatever, that his character as a man of his word has never been questioned in the community where he resides, that the said deponent has been for more than two years a resident of Seales Mound in the said County State. Subscribed and sworn to before me
this 15th day of October 1859 Richard
Seab, Clerk of the County Court in and
for said County and the State of said
Court, the day and date aforesaid.

Thos J. Manpin. "

(Seab.) Richard Seab. Clerk."

"State of Illinois.
In Danvers County } ss.

Richard Seab being first duly sworn deposes and says that he is the Clerk of the County Court of the County and State aforesaid, that he has been a resident of said County for 22 years past - that he is well acquainted with John Hughes of Seales Mound in said County and State - that the character of said Hughes for truth and veracity has never to this deponents knowledge been questioned by any one, and that he would give full credit

to anything which the said Hughes would state, either under
oath or otherwise.)

Subscribed & sworn to before me
William R. Rowley, Clerk of the
Circuit Court in and for said
County this 15th day of October
A. D. 1859. Witness my hand and
the Seal of said Court the day
and year above written.

Richard Seal."

Attest: W. R. Rowley, Clerk."

And thereupon after arguments of Counsel pro and con
the Court granted the said defendants two motions as will
more fully appear in the records of the said two judgments
herein.

To which decisions of the Court and each of them in
granting said Defendants two motions, Plaintiffs then and
there duly assented - and pray this their Bill of Exceptions
may be signed, sealed and made a part of the records, which
is accordingly done.

Grant Goodrich (Seal.)"

Upon which said Bill of Exceptions is endorsed the following stipulation.

'It is hereby stipulated that both the within entitled causes
may be heard together, and upon the same record which may
be entitled in both.

Nov. 8. 1859.

Seated, Wm. Alister & Lemuel."

State of Illinois }
Cook County } ss.

I Walter Kimball, Clerk of the Superior Court of Chicago (formerly the Cook County Court of Common Pleas) within and for the County of Cook in the State of Illinois Do hereby certify the above and foregoing to be a full true and correct and Transcript of the Declaration, Warrant of Attorney, Copypit, Execution Returns thereto, and Bill of Exceptions, now on file in my Office. together with all orders and Judgments entered of Record in said Court, in a certain suit and Proceedings therein had, wherein Marcellus B. Smith, John K. Polara and A. Jason Smith were Plaintiffs and John Hughes and S. S. Hughes were Defendants.



In testimony whereof I have hereunto set my hand and affixed the Seal of said Court, at the City of Chicago in said County the Seventeenth day of February in the year of our Lord 1860.

Walter Kimball Clerk

Supreme Court

Marcellus B. Smith
Et al
Plffs vs Error
vs

John Hughes
Def't vs Error

112

Assignment of Errors
Filed April 24, 1880
L. Leland
Clerk

Smith & Dervey
Atty for Plffs vs Error

The People
State of Illinois
County of Cook

Superior Court of Chicago

Marcellus B. Smith et al

vs

John Hughes

Same

et al

Stephenson F. Happer

Record.

Filed March 23, 1860
L Leland
Clerk