

No. 13257

Supreme Court of Illinois

Chanute

vs.

Martin

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

1361
No. 170.

Chapute
vs
Marten

861
Rehearing Denied

State of Illinois vs

In the Supreme Court at Ottawa.
Of the April Term A.D. 1861.

Octave Charute

vs David S. Anderson

Garnishes &c.

v.

James A. Martin

Appeal - from
Circuit Court

Terminé et Remandé April Term 1860
Appellee's Petition for Re-hearing -

To the Honorable

the Justices of said Supreme Court.

The Appellee in the above-entitled cause, respectfully represents, that the opinion filed in this cause truly says that garnishes process ought not to be sustained unless a reasonable and bona fide effort has been made to make the debt by process of execution on the original judgment, and the judgment below is reversed because the answers allege that the defendant in the original case offered to turn out real estate to satisfy the execution &c.

It is freely conceded that if the averment in the answer is sufficient under the decision of the Supreme Court of this State in such behalf, the reversal of the judgment for cause not truly shown

that argument is correct; but it is insisted that this case of

Peard v. Freeman - 305 -

Cook v. Scott - 1 Gilman 342 -

Hyder ab v. Buckmaster - 3 Scam. 197.

Gingham v. Macey 15 Ill. 290 -

Conclusively show that the offer to turn out real estate aforesaid was wholly insufficient for any purpose whatever -

To make that offer to turn out real estate, goods, it should appear that immediately on being notified or otherwise apprised of the execution,

1. The defendant promptly and without delay selected such property as he desired to retain under the Statute -
2. That he surrendered all his other property to be sold to.
3. That he gave the officer a sufficient description of the real estate he desired to have first taken in execution, and exhibited reasonable evidence of his title thereto.
4. The property offered must be such as the officer can take by his writ -

If the defendant omits to avail himself at the first opportunity, of the privileges given him by the Statute, he will be deemed to have waived his rights, and the Sheriff may proceed without exemption, except the specific articles named in the Statute.

The offer to turn out real estate, even as stated in the abstract filed by the appellants, contains

only the following points:

1. That original defendants Cruger offered to turn out real estate, to satisfy the execution.
2. That sheriff refused to levy on same, saying he was ordered by original plaintiff's attorney to take personal property.
3. That said real estate is unincumbered, and worth about \$1500. and the title perfect.
4. That garnishee Chanute, as agent of original defendants offered plaintiff's attorney to turn out real estate, which was refused to.
5. That original defendants have always been ready to turn out real estate to be sold to satisfy judgment against them.

But it is not shown

1. When such offer was made - whether before or after the return of the execution - whether before or after the return of the garnishee process -
2. On what State, or County, the real estate was situate - whether within the jurisdiction of the Court - or in reach of the process held by the sheriff
3. Whether said original defendants gave the sheriff any list or description of said real estate.
4. Whether defendant exhibited to the sheriff any evidence of his title to the land offered

At the top of the second page of the appellee's printed Brief the following point is made:
(3) The pretended offer to turn out real estate

"was not made in apt time, nor by the proper person, nor with the necessary certainty, nor to the extent, and in the manner required by Law, and if it were, would not help the case."

Wherefore, and for that there is no error, either in the records and proceedings aforesaid, or in the rendition of the judgment aforesaid, the said appellant prays a re-hearing of this cause and that the judgment aforesaid, in form aforesaid given may be in all things affirmed to.

Charles B. Bonney
attorney for
Petitioner.

Received due notice of the above application - April 3rd 1861

W. Williams
for pliffs

In the Supreme Court

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Chanute et al vs.

v.

Martin

Petition for Rehearing

and Proof of Notice

Filed April 6, 1881
L. Leland
clerk

Donner