

13028

No. _____

Supreme Court of Illinois

Hughes

vs.

Streeter

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 73.

Hughes
vs
Streeter

3028

Supreme Court---Third Grand Division.

APRIL TERM, 1860.

JOHN HUGHES,

vs

SAMUEL S. STREETER.

} *Error to Cook Circuit Court.*

Rec. p. 1 Plaintiff filed his motion at the September term, 1859, to quash an execution issued on a judgment obtained by defendant against him, on the 16th day of August, 1859, for six hundred and sixteen ninety-two one-hundredths dollars and costs.

2 Thereupon, the defendant, by Dewey his attorney, entered his cross-motion, founded upon an affidavit filed 16th August, 1859, for an order setting aside and vacating the sale of certain real estate, made under a former execution, issued 5th Oct. 1857, numbered 8150:—and the return thereon of satisfaction, and defendant offered to stipulate to bid the full amount of the judgment and costs, for the property so levied upon and sold on said former execution.

3 And afterwards, on the 18th Oct. 1849, the court rendered a judgment on said motions, over-ruling the said plaintiff's motion to quash said execution issued 16th Aug. 1859, and also setting aside and vacating the sale of certain real estate, situate in Joe Daviess County, made by the sheriff of said county, on the 27th day of February, 1857, under and by virtue of an execution issued 5th day of October, 1857, upon the same judgment for \$618 92 and costs. And also setting aside and vacating the return of the sheriff endorsed thereon, together with the subsequent entry of satisfaction of the judgment aforesaid.

4 Whereupon the plaintiff filed his bill of exceptions, as follows:

Plaintiff to maintain his motion read in evidence the following pieces of evidence:

5 First. A written notice of this motion—a copy of which was served on defendant's attorney, 3d Sept. 1859.

6 Second. An execution in favor of defendant and against the plaintiff for the sum of \$618 92 and costs, issued out of this court, upon said judgment, and bearing date the 5th day of October, 1857, directed to the sheriff of Joe Daviess
7 County, and by him returned with the following endorsements and returns: "Received this execution for collection this 6th day of October, 1857, at the hour of 10 o'clock, A. M."

"By virtue of this writ I have this 7th day of October, 1857, levied upon the following described tract or parcel of land, to wit: A part of the east half of the south east quarter of section number twenty-six, in township number twenty-nine north range, number two east of the fourth principal meridian, in Joe Daviess County, Illinois, containing seventy-four acres more or less."

"Made six hundred and sixty ten-hundredths dollars, by sale of the property described in the above levy, the amount of the judgment, interest and costs in this execution, and the purchaser being the plaintiff, the same is returned satisfied this 27th February, 1857."

8 Third. Another execution in favor of defendant, and against plaintiff on said judgment, for the sum of six hundred and eighteen dollars and ninety-two cents and costs, out of this Court, and bearing date the 16th day of August, 1859, directed to the sheriff of Joe Daviess County.

Fourth. Affidavit of S. T. Napper.

S. T. Napper being duly sworn, testified and says: That he never saw or knew the plaintiff or his attorney, E. Smith, until about the 7th July, 1856, nor had any communication or correspondence with either of them prior to that time. After that date said Smith called on deponent, and proposed selling him said Street-er's claim on said land; deponent declined buying after investigating said claim; that he never encouraged said Smith to renew said offer, or to expect that said deponent would at any time purchase said claim prior to the expiration of the redemption from said sale; that he never caused said Smith to delay or forbear to redeem said land from the sale to deponent, by any act, word or deed, tending to induce said Smith to believe, or expect that any arrangement could be made with deponent in relation to the redemption of said land on or before

the expiration of the time allowed by law for redemption for said sale; that he never made any arrangement or agreement with said Hughes or Streeter or with his attorney, to take his redemption money on said sale, under the foreclosure, and transfer his claim to said Streeter, or give said Hughes a year to repay it, or to buy said Streeter's claim thereon, as stated by E. Smith, in his affidavit.

That he has made an agreement to sell the premises to said Hughes, or to his family's use, which now rests in parol between the parties; that it was made about the 1st day of July last, after right of redemption of said Hughes, or his grantee had expired.

That sometime in July deponent called on said Smith, at his instance, when deponent offered to sell his claim on the land to said Smith, if he would give enough, but said Smith did not make deponent a definite offer, and no agreement was entered into, verbal or written.

That afterwards, about the 15th August, Smith told deponent he had \$1,600 American gold, and that he would give it to deponent for his claim on the land. Deponent promptly declined to take it. Deponent offered next day to take \$2,500, which Smith declined to give.

That these offers are all the negotiations had between deponent and said Smith, prior to 13th August, 1859.

Defendant then offered in evidence:

Fifth. Affidavit of E. S. Smith.

E. S. SMITH, being first duly sworn, deposes and says: That an execution issued from the Cook County Circuit Court, upon a judgment rendered in favor of the said Samuel S. Streeter, and against the said John Hughes, and directed to the sheriff of Jo Daviess County, and on the 17th October, 1857, the sheriff of said County levied upon certain lands of the defendant, and described them as a *part* of the east half of the south-east quarter of Section twenty, Township Twenty-nine, north of Range Two, east of the fourth principal meridian, containing seventy-four acres more or less.

That on the 27th February, 1858, the sheriff made sale of the property as levied upon, and bid in for the plaintiff on said execution, and no deed has yet been given by the sheriff upon said sale.

That on the 15th March, deponent, for the first time, discovered that the description was imperfect, and that the description set forth in the sheriff's certificate will not convey defendant's property, in a clear and perfect manner, as the

defendant owned the whole of the e. $\frac{1}{2}$ s. e. $\frac{1}{4}$ of said section, except so much as was taken by the rail road passing through the track.

That the plaintiff, S. S. Streeter, resides in Troy, N. Y., and that this deponent had management and control of the judgment and sale, and not being familiar with the property, had supposed that the description as set forth by the sheriff was correct and perfect. (Sworn to 16th Aug. 1859, and filed.)

11 Sixth. Defendant also read in evidence the following notice: That a motion has been made by said plaintiff, before said Court, to set aside the sale made on the execution for the cause that the description of the property as made, is so imperfect that it is impossible to ascertain therefrom what number of acres was sold, and what part of the tract of land was intended to be sold by the sheriff on the execution.

Defendant also read in evidence,

13 Seventh. Affidavit of E. S. Smith. EZEKIEL S. SMITH, being duly sworn, deposes and says: that on the 5th Oct. 1857, judgment was rendered in this Court in favor of said Streeter and against said Hughes for \$624 92, and costs; that execution issued, and was levied, as was supposed, upon Hughes' farm, and sold to plaintiff; that the description of the property by the sheriff was a "Part of the E. $\frac{1}{2}$, S. E. $\frac{1}{4}$ S. 26, T. 29, N. R. 2, E. of the 4th P. M., in Jo Daviess County, containing 74 acres, more or less," which description appears to be incorrect.

That in May or the 1st of June last past, Deponent being informed that Stephenson T. Napper, had foreclosed a mortgage upon the farm of said Hughes, by *scire facias*, without notice to said Streeter, he then wrote to E. Rhodes at New York city, to inform said Streeter, that the claim to said Napper, would have to be paid in order to protect his interest, and that about same time, Hughes applied to Deponent, to have Streeter pay the money due to said Napper, and give said Hughes time to pay the same, so that he might save his farm.

14 That at said Hughes' urgent solicitation, one George Farrington, some time in June last passed, called upon said Hughes to arrange with him for redemption of the farm; and was informed by said Hughes, that said Napper had agreed to take the money due him at any time, and transfer his claim to said Streeter.

Some time in July thereafter, Napper called on Deponent in Chicago, and agreed either to transfer his claim to Streeter, or purchase his claim, and agreed to give said Hughes an opportunity to redeem for one year, or make some mutual arrangement with this Deponent.

That Napper did not call on Deponent afterwards as agreed, and that on or about the 10th August last, Streeter called on Hughes, and that Hughes then urged Streeter to redeem the farm from Napper, if he could do so in any way to save the farm, that he might have an opportunity to pay the debt and retain the place.

15 That on the 14th August last, Deponent called on Hughes, and said Hughes then, and also on the following day, urged Deponent to so arrange with Napper, as to save the farm, and give him or his Son time to pay, which Deponent agreed to do if possible, and did then on the 15th August last, offer to pay said Napper the sum of \$1,542 in gold, that being the full amount due him with ten per cent. interest thereon; and did then tender to said Napper said amount in American gold, which said Napper refused to take, saying he was not in want of money.

That on the 15th August aforesaid, he discovered for the first time that the description of the property as made in the sale of the Sheriff to said Streeter, was imperfect, and did not fully convey the property designed to be sold upon said execution, and then so informed said Hughes, and was informed by him that the property was correctly described in the Mortgage sale to said Napper.

16 That said Hughes requested Deponent to take the necessary steps to redeem said property, and that Deponent that night returned to Chicago, and on the next day being the 16th of August last, he caused an execution to be issued upon the judgment of said Streeter, directed to the Sheriff of Jo Daviess Co., and on the 18th August then next, Deponent paid into the hands of the Sheriff, of said County, \$1,600 American gold for said Streeter, and directed said Sheriff to levy the execution upon the property of said Hughes, and pay the money to said Napper, that the same was to redeem the land from his Mortgage sale, which expired on that day, that the sum of \$1,542, was the amount to be paid to said Napper.

That the Sheriff did then make the proper endorsements and certificates of all of which said Napper had notice.

That he believes that said Hughes has not requested any one to move to vacate the levy, that said motion is in fact made by the procurement of said Napper, as Deponent believes; and that Deponent is informed that said Napper refused the money from the Sheriff, and said *he was going* to set aside the Streeter execution.

That the farm is supposed to be worth at least \$3,500; that said Hughes is entirely unable to pay his debts, that the redemption of the property from the

17 sale of the said Mortgage foreclosure, is the only way Streeter can make his debt. That said Streeter agreed to give said Hughes time to pay the redemption money, together with the amount of his judgment. So that said Hughes might save the farm, which, said Hughes, has been for some time very anxious for said Streeter to do, for his benefit.

That Deponent believes, that said Hughes is anxious to have the redemption as made upon the Streeter execution remain, and forfeited, as requested by him; and that said Hughes has not, nor will he make any other request, unless upon the promise of said Napper; and he has no other intention or wish than to secure the farm to himself, regardless of the rights of Streeter or Hughes, as Deponent believes.

The Plaintiff then read in evidence the following stipulation and powers of Attorney—

20 Eighth. It is hereby stipulated by Defendant in above case, that the endorsement of levy, heretofore made by S. K. Miner, as Sheriff, of Jo Daviess County, on execution No. 8150, issued out of this Court, upon the judgment of said cause, on the 5th Oct. 1857, as follows, viz: "By virtue of this writ I have this 7th day of October, 1857, levied upon the following described tract or parcel of land, to wit: a part of the East half of the South East quarter in section No. twenty-six, in township No. twenty-nine, North range, No. two, East of the fourth principal Meridian, in Jo Daviess County, Illinois, containing seventy-four acres, more or less.

S. K. MINER, Sheriff."

May be so altered and amended as to read after the words "to wit": "all the right title and interest of the said Defendant John Hughes, in and to the East half of the South East quarter of section twenty-six, township No. twenty-nine North range, No. two, East of the fourth principal Meridian in the County of Jo Daviess, and state of Illinois," which is the proper description of the property levied on, or intended so to be under said execution, and I, Jno. Hughes, said defendant, further stipulate that at time of said levy, I was owner of an equity of redemption in said premises, the same having been sold upon a foreclosure of a mortgage given by me thereon. And I, said Hughes, do hereby authorize the clerk of said Court, or W. B. Scates, as my attorney, to so amend the endorsement of levy made as aforesaid upon said execution.

22 I, S. D. Napper, purchaser, under the foreclosure and sale referred to, in the foregoing power of Attorney, do hereby authorize and empower said clerk or said Scates, to make said amendment, as above authorized by said Hughes,

of the levy and description of said Hughes' interest in said land, so levied on as above described.

Defendant thereupon made a cross motion to set aside the levy and sale on the original execution, and to have the same declared of no effect; and thereupon the Court overruled said plaintiff's motion to quash and granted defendants' cross motion.

To which decisions of the Court, Plaintiff then and there excepted.

ASSIGNMENT OF ERRORS.

First. In overruling plaintiff's motion.

Second. In sustaining defendant's motion.

Third. In rendering judgment against plaintiff.

SCATES, McALLISTER & JEWETT,
Counsel for Plaintiffs.

73. - 66

Hughes

vs.

Stratton

Abstract

Filed Apr. 18. 1860

J. L. Stratton

Clerk

STATE OF ILLINOIS,
SUPREME COURT,

ss. The People of the State of Illinois,

To the Clerk of the

Circuit

Court for the County of

Cook

Greeting:

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the *Circuit* Court of *Cook* County, before the Judge thereof, between *her*

plaintiff, and *S. Street*

defendant, it is said manifest error hath intervened, to the injury of the aforesaid plaintiff

as we are informed by *complaint* 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 *17th* day of *November* in the Year of Our Lord one thousand eight hundred and fifty-*nine*
L. Deland

Clerk of the Supreme Court.
J. B. Rice Deputy

John^T Hughes
vs

Samuel S. Struter

Writ of Error

This writ of error is
made a supersedeas
and as such is to
be obeyed by all con-
cerned.

L. Leland
Clerk

W. B. Ke

Filed Nov. 17



Know all Men by these Presents, That
John Hughes, of Lo Daviss County, Illinois,

as principal, and
T. Napper, of same County, Ills. as security, are held and firmly bound
unto

Samuel S. Streeter
in the penal sum of Eight Hundred Dollars
good and lawful money of the United States, for the payment of which, well and truly
to be made, the said

John Hughes & Stephenson T. Napper
bind themselves, their heirs, executors and administrators,
jointly, severally and firmly by these Presents.

Witness, the hands and Seals of the said John
Hughes and Stephenson T. Napper
this Tenth day of November A. D. 1839

The Condition of the above Obligation is such, That, whereas the above named
Samuel S. Streeter
did, at the October Term of the Circuit Court,
held in and for the County of in the
State of Illinois, A. D. 1839 recover a judgment against the above bounden

John Hughes

for the sum of
said John Hughes to reverse which said judgment, the

has sued out a Writ of Error from the Supreme Court, within and for the Third
Grand Division of said State, which Writ of Error is made a Supersedeas. Now if the
said

John Hughes
shall duly prosecute said Writ of Error, and pay, or cause to be paid, the amount of said
judgment, and all judgments, costs, interest and damages which the said Supreme Court
shall adjudge against him, the said John Hughes
and abide the order and judgment of said Su-
preme Court in this behalf, then this obligation is to be void, otherwise to remain in full
force and effect.

John Hughes [SEAL.]
Stephenson T. Napper [SEAL.]

[SEAL.]

[SEAL.]

No. 73

SUPREME COURT,

THIRD GRAND DIVISION.

John Hughes

vs.

Samuel S. Stearns

SUPERSEDEAS BOND.

Filed November 17th 1857

L. Leland Clerk.

the expiration of the time allowed by law for redemption for said sale; that he never made any arrangement or agreement with said Hughes or Streeter or with his attorney, to take his redemption money on said sale, under the foreclosure, and transfer his claim to said Streeter, or give said Hughes a year to repay it, or to buy said Streeter's claim thereon, as stated by E. Smith, in his affidavit.

That he has made an agreement to sell the premises to said Hughes, or to his family's use, which now rests in parol between the parties; that it was made about the 1st day of July last, after right of redemption of said Hughes, or his grantee had expired.

That sometime in July deponent called on said Smith, at his instance, when deponent offered to sell his claim on the land to said Smith, if he would give enough, but said Smith did not make deponent a definite offer, and no agreement was entered into, verbal or written.

That afterwards, about the 15th August, Smith told deponent he had \$1,600 American gold, and that he would give it to deponent for his claim on the land. Deponent promptly declined to take it. Deponent offered next day to take \$2,500, which Smith declined to give.

That these offers are all the negotiations had between deponent and said Smith, prior to 13th August, 1859.

Defendant then offered in evidence:

9. Fifth. Affidavit of E. S. Smith.

E. S. SMITH, being first duly sworn, deposes and says: That an execution issued from the Cook County Circuit Court, upon a judgment rendered in favor of the said Samuel S. Streeter, and against the said John Hughes, and directed to the sheriff of Jo Daviess County, and on the 17th October, 1857, the sheriff of said County levied upon certain lands of the defendant, and described them as a *part* of the east half of the south-east quarter of Section twenty, Township Twenty-nine, north of Range Two, east of the fourth principal meridian, containing seventy-four acres more or less.

10 That on the 27th February, 1858, the sheriff made sale of the property as levied upon, and bid in for the plaintiff on said execution, and no deed has yet been given by the sheriff upon said sale.

That on the 15th March, deponent, for the first time, discovered that the description was imperfect, and that the description set forth in the sheriff's certificate will not convey defendant's property, in a clear and perfect manner, as the

defendant owned the whole of the e. $\frac{1}{2}$ s. e. $\frac{1}{4}$ of said section, except so much as was taken by the rail road passing through the track.

That the plaintiff, S. S. Streeter, resides in Troy, N. Y., and that this deponent had management and control of the judgment and sale, and not being familiar with the property, had supposed that the description as set forth by the sheriff was correct and perfect. (Sworn to 16th Aug. 1859, and filed.)

- 11 Sixth. Defendant also read in evidence the following notice: That a motion has been made by said plaintiff, before said Court, to set aside the sale made on the execution for the cause that the description of the property as made, is so imperfect that it is impossible to ascertain therefrom what number of acres was sold, and what part of the tract of land was intended to be sold by the sheriff on the execution.

Defendant also read in evidence,

- 13 Seventh. Affidavit of E. S. Smith. EZEKIEL S. SMITH, being duly sworn, deposes and says: that on the 5th Oct. 1857, judgment was rendered in this Court in favor of said Streeter and against said Hughes for \$624 92, and costs; that execution issued, and was levied, as was supposed, upon Hughes' farm, and sold to plaintiff; that the description of the property by the sheriff was a "Part of the E. $\frac{1}{2}$, S. E. $\frac{1}{4}$ S. 26, T. 29, N. R. 2, E. of the 4th P. M., in Jo Daviess County, containing 74 acres, more or less," which description appears to be incorrect.

That in May or the 1st of June last past, Deponent being informed that Stephenson T. Napper, had foreclosed a mortgage upon the farm of said Hughes, by *scire facias*, without notice to said Streeter, he then wrote to E. Rhodes at New York city, to inform said Streeter, that the claim to said Napper, would have to be paid in order to protect his interest, and that about same time, Hughes applied to Deponent, to have Streeter pay the money due to said Napper, and give said Hughes time to pay the same, so that he might save his farm.

- 14 That at said Hughes' urgent solicitation, one George Farrington, some time in June last passed, called upon said Hughes to arrange with him for redemption of the farm; and was informed by said Hughes, that said Napper had agreed to take the money due him at any time, and transfer his claim to said Streeter.

Some time in July thereafter, Napper called on Deponent in Chicago, and agreed either to transfer his claim to Streeter, or purchase his claim, and agreed to give said Hughes an opportunity to redeem for one year, or make some mutual arrangement with this Deponent.

That Napper did not call on Deponent afterwards as agreed, and that on or about the 10th August last, Streeter called on Hughes, and that Hughes then urged Streeter to redeem the farm from Napper, if he could do so in any way to save the farm, that he might have an opportunity to pay the debt and retain the place.

15 That on the 14th August last, Deponent called on Hughes, and said Hughes then, and also on the following day, urged Deponent to so arrange with Napper, as to save the farm, and give him or his Son time to pay, which Deponent agreed to do if possible, and did then on the 15th August last, offer to pay said Napper the sum of \$1,542 in gold, that being the full amount due him with ten per cent. interest thereon; and did then tender to said Napper said amount in American gold, which said Napper refused to take, saying he was not in want of money.

That on the 15th August aforesaid, he discovered for the first time that the description of the property as made in the sale of the Sheriff to said Streeter, was imperfect, and did not fully convey the property designed to be sold upon said execution, and then so informed said Hughes, and was informed by him that the property was correctly described in the Mortgage sale to said Napper.

16 That said Hughes requested Deponent to take the necessary steps to redeem said property, and that Deponent that night returned to Chicago, and on the next day being the 16th of August last, he caused an execution to be issued upon the judgment of said Streeter, directed to the Sheriff of Jo Daviess Co., and on the 18th August then next, Deponent paid into the hands of the Sheriff, of said County, \$1,600 American gold for said Streeter, and directed said Sheriff to levy the execution upon the property of said Hughes, and pay the money to said Napper, that the same was to redeem the land from his Mortgage sale, which expired on that day, that the sum of \$1,542, was the amount to be paid to said Napper.

That the Sheriff did then make the proper endorsements and certificates of all of which said Napper had notice.

That he believes that said Hughes has not requested any one to move to vacate the levy, that said motion is in fact made by the procurement of said Napper, as Deponent believes; and that Deponent is informed that said Napper refused the money from the Sheriff, and said *he was going* to set aside the Streeter execution.

That the farm is supposed to be worth at least \$3,500; that said Hughes is entirely unable to pay his debts, that the redemption of the property from the

17 sale of the said Mortgage-foreclosure, is the only way Streeter can make his debt. That said Streeter agreed to give said Hughes time to pay the redemption money, together with the amount of his judgment. So that said Hughes might save the farm, which, said Hughes, has been for some time very anxious for said Streeter to do, for his benefit.

That Deponent believes, that said Hughes is anxious to have the redemption as made upon the Streeter execution remain, and forfeited, as requested by him; and that said Hughes has not, nor will he make any other request, unless upon the promise of said Napper; and he has no other intention or wish than to secure the farm to himself, regardless of the rights of Streeter or Hughes, as Deponent believes.

The Plaintiff then read in evidence the following stipulation and powers of Attorney—

20 Eighth. It is hereby stipulated by Defendant in above case, that the endorsement of levy, heretofore made by S. K. Miner, as Sheriff, of Jo Daviess County, on execution No. 8150, issued out of this Court, upon the judgment of said cause, on the 5th Oct. 1857, as follows, viz: "By virtue of this writ I have this 7th day of October, 1857, levied upon the following described tract or parcel of land, to wit: a part of the East half of the South East quarter in section No. twenty-six, in township No. twenty-nine, North range, No. two, East of the fourth principal Meridian, in Jo Daviess County, Illinois, containing seventy-four acres, more or less.

S. K. MINER, Sheriff."

May be so altered and amended as to read after the words "to wit": "all the right title and interest of the said Defendant John Hughes, in and to the East half of the South East quarter of section twenty-six, township No. twenty-nine North range, No. two, East of the fourth principal Meridian in the County of Jo Daviess, and state of Illinois," which is the proper description of the property levied on, or intended so to be under said execution, and I, Jno. Hughes, said defendant, further stipulate that at time of said levy, I was owner of an equity of redemption in said premises, the same having been sold upon a foreclosure of a mortgage given by me thereon. And I, said Hughes, do hereby authorize the clerk of said Court, or W. B. Seates, as my attorney, to so amend the endorsement of levy made as aforesaid upon said execution.

22 I, S. D. Napper, purchaser, under the foreclosure and sale referred to, in the foregoing power of Attorney, do hereby authorize and empower said clerk or said Seates, to make said amendment, as above authorized by said Hughes,

of the levy and description of said Hughes' interest in said land, so levied on as above described.

Defendant thereupon made a cross motion to set aside the levy and sale on the original execution, and to have the same declared of no effect; and thereupon the Court overruled said plaintiff's motion to quash and granted defendants' cross motion.

To which decisions of the Court, Plaintiff then and there excepted.

ASSIGNMENT OF ERRORS.

First. In overruling plaintiff's motion.

Second. In sustaining defendant's motion.

Third. In rendering judgment against plaintiff.

SCATES, McALLISTER & JEWETT,

Counsel for Plaintiffs.

73-66-67
Hughes
N.

Struter

Abstract

Filed Apr-15-88

L. Leland

Cl

State of Illinois

Supreme Court 3d Div.
April Term 1860

John Hughes }
vs } Error to look circuit
Samuel S. Steeler } Court.

And now comes the said plaintiff in
Error by Scates McAllister & Jewett his
Counsel & says that in the record
and proceedings, and in the rendition
of final judgment in this behalf,
there is manifest error in this
to wit

First The Circuit Court pronounced
the said plaintiff's motion to quash
the said execution issued on the 16th day
August 1859. - and sustained & set aside
said execution

Second The Court sustained the said
defendant's Cross-motion to set aside
& quash the sale & entry of satisfaction
on the former execution issued on said
judgment on the 5th day of October 1857

Third Court rendered a judg-
ment against the plaintiff - and
for the defendant - whereas
judgment should have been
rendered for the plaintiff &
against the defendant

Wherefore for the reasons above
said & others appearing on
the face of the record

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, before the Honorable George W. Manure Judge of the Seventh Judicial Circuit of the State of Illinois and Sole Presiding Judge of the Circuit Court of Cook County, in the State aforesaid, and at a term thereof begun and held at the Court House in the City of Chicago, in said County, on the fourth Monday, (being the 4th day) of September in the year of our Lord one thousand eight hundred and eighty-nine and of the Independence of the said United States the eighty-fourth

Present, Honorable George W. Manure Judge of the 7th Judicial Circuit of the State of Illinois.

Charles Warren States Attorney.

John Lyra Sheriff of Cook County.

Attest, James Church Clerk.

That herefore, to-wit, at the said Court, to-wit, on the fourth day of September in the year aforesaid, the following, among others, were read and entered to-wit:

John Hughes
Samuel S. Strata } Motion to Quash Execution

This day comes the said John Hughes, by W. B. Seale Esq of Counsel, and moves the Court to quash and set aside Execution No 14934 issued on the sixteenth day of August last passed, upon a judgment recovered in this Court against the said Hughes and the said Samuel S. Strata for Eighteen dollars and Ninety

on the fifth day of October 1857
by E. M. Derry Esq his Attorney and
resists the said motion, and also enters therein his
Cross motion founded upon an affidavit filed
August 16th 1857 for an order setting aside and
vacating the sale of certain Real Estate, made by
the Sheriff of Jo Davis County, under and by
virtue of a former Execution issued upon said
judgment on the fifth day of October AD 1857
and numbered (8130) and the said Sheriffs
return thereon, together with the entry of satis-
faction of said judgment

And at the
same term of said Court, to-wit: at the
aforesaid, the following, to-wit: at the
more had and entered of Record to-wit:
John Hughes

(2)

25% 11570

Samuel B. Strater

Medlin & Co

This day comes the said Strater
by E. B. Smith Esq of counsel, and here in open Court
offers to stipulate to bid the full amount of the
judgment and costs rendered in his favor and
against the said Hughes in this cause, for the
property levied upon by virtue of the Execution
heretofore issued on said judgment.

And afterwards, to-wit: at the
October term of said Court, to-wit: on the thirteenth

on the fifth day of October 1857
by E. M. Derry Esq his Attorney and
resists the said motion, and also enters therein his
Cross motion founded upon an affidavit filed
August 16th 1857 for an order setting aside and
vacating the sale of certain Real Estate, made by
the Sheriff of Jo Davis County, under and by
virtue of a former Execution issued upon said
judgment on the fifth day of October AD 1857
and numbered (8130) and the said Sheriffs
return thereon, together with the entry of satis-
faction of said judgment

And at the
same term of said Court, to-wit: at the
aforesaid, the following, to-wit: at the
more had and entered of Record to-wit: at the
John Hughes

(2)

25% 11570

Samuel B. Strater

Medlin & Co

This day comes the said Strater
by E. B. Smith Esq of counsel, and here in open Court
offers to stipulate to bid the full amount of the
judgment and costs rendered in his favor and
against the said Hughes in this cause, for the
property levied upon by virtue of the Execution
heretofore issued on said judgment.

And afterwards, to-wit: at the
October term of said Court, to-wit: on the thirteenth

day of October, in the year last aforesaid, the following,
among other proceedings, were had and entered of
Record therein: to-wit:

John Hughes	}	Motion do
Samuel S. Strater		

(3) This day comes the said parties
by their Attorneys, and the Court having carefully
inspected the affidavits and papers filed therein,
and heard arguments of counsel, as well upon the
Plaintiffs said Motion to quash, as upon the said
Defendants Cross motion to set aside and return
made by Sheriff on fourth day of February 1857,
and having fully advised in the premises, the Court
that said plaintiffs Motion to quash the same
same is hereby overruled, and the Court do hereby
Real Estate situate in Co. Davidson, made by
the Sheriff of said County, on the twenty seventh
day of February 1857 under and by virtue of an Ex-
ecution issued October fifth 1857, upon the judgment
of this Court, rendered on the same day, in favor of
the said Samuel S. Strater and against the said
John Hughes for six hundred and Eighteen dollars
and ninety two Cents and cents, the return of said
Sheriff endorsed upon said Execution, together with
the subsequent Entry of satisfaction of the judgment
aforesaid, by virtue of said Execution, and the same
and the same hereby are, read and returned for

day of October, in the year last aforesaid, the following,
among other proceedings, were had and entered of
Record therein: to-wit:

John Hughes	}	Motion do
Samuel S. Strater		

(3) This day comes the said parties
by their Attorneys, and the Court having carefully
inspected the affidavits and papers filed therein,
and heard arguments of counsel, as well upon the
Plaintiffs said Motion to quash, as upon the said
Defendants Cross motion to set aside and return
made by Sheriff on fourth day of February 1857,
and having fully advised in the premises, the Court
that said plaintiffs Motion to quash the same
same is hereby overruled, and that certain
Real Estate situate in Co. Davidson, made by
the Sheriff of said County, on the twenty seventh
day of February 1857 under and by virtue of an Ex-
ecution issued October fifth 1857, upon the judgment
of this Court, rendered on the same day, in favor of
the said Samuel S. Strater and against the said
John Hughes for six hundred and Eighteen dollars
and ninety two Cents and cents, the return of said
Sheriff endorsed upon said Execution, together with
the subsequent Entry of satisfaction of the judgment
aforesaid, by virtue of said Execution, and the same
and the same hereby are, read and returned for

nothing Estemed; So, all decisions of the Court, the said of his counsel Excepto; And it is further ordered, on motion that all proceedings under and by virtue of the Execution issued on the sixteenth day of August last, be stayed for thirty days, and that the said plaintiff have ten days in which to file his Bill of Exceptions therein -

And afterwards: to wit on the 25 of October in the year aforesaid, said plaintiff by Scates W^c Allister and Garrett his Attorneys - filed his certain Bill of Exceptions which is in the words and figures following -
State of Illinois } ss
Cook County }

(4)

John Hughes

Samuel S. Straler

Of the Court of the Circuit Court of Cook County, Illinois, 1859

Motion to set aside and quash Execution No 14934

Be it remembered, that on the trial of this cause, the plaintiff to maintain his motion offered and read in evidence, the following pleadings and proofs; that is to say.
First a notice and motion, as follows. Viz.
State of Illinois. } ss
Cook County }

Of the September term, of the

nothing returned; So, all decisions of the Court, the said of his counsel Except; And it is further ordered, on motion that all proceedings under and by virtue of the Execution issued on the sixteenth day of August last, be stayed for thirty days, and that the said plaintiff have ten days in which to file his Bill of Exceptions therein -

And afterwards: to wit on the 25th of October in the year aforesaid, said plaintiff by Scots McAllister and Garrett his Attorneys - filed his certain Bill of Exceptions which is in the words and figures following -
State of Illinois } ss
Cook County }

(4)

John Hughes

Samuel S. Straler

Of the Court of the Circuit Court of Cook County, Illinois, 1859

Motion to set aside and quash Execution No 14934

Be it remembered, that on the trial of this cause, the plaintiff to maintain his motion offered and read in evidence, the following pleadings and proofs; that is to say.
First a notice and motion, as follows. Viz.
State of Illinois. } ss
Cook County }

Of the September term, of the

books County Circuit Court. A.D. 1859
 and quasi
 Motion to set aside Execution No. 14934
 as allegedly issued,
 John Hughes
 ad
 Same to Street

(5) The Plaintiff in the above Cause
 will take notice, that I shall on the first day of the
 September term of the Circuit Court 1859, or as soon
 thereafter as counsel can be heard, move the Court to
 quash and set aside the Execution No. 14934. issued in
 this cause, on the 16th day of August 1859 on the ground
 that the judgment had been paid and satisfied in
 full, by sale of the East half of the North East quar-
 ter of section No. Twenty six, T. 36 N. R. 10 E. 1st
 North Range No. 100, East of the 9th Principal
 Meridian, containing 40 acres, the same remains fully satisfied.
 Wherefore the said last Execution, is and was wholly illegal and
 void.

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

Chicago September 3, 1859

John Hughes
 by Deas McAllister & Corbett, his Atys,

We need a copy of foregoing notice of motion this
 3^d day of Sept 1859
 Attorneys for Street

books County Circuit Court. A.D. 1859
 and quasi
 Motion to set aside Execution No. 14934
 as allegedly issued,
 John Hughes
 ad
 Same to Street

(5) The Plaintiff in the above Cause
 will take notice, that I shall on the first day of the
 September term of the Circuit Court 1859, or as soon
 thereafter as counsel can be heard, move the Court to
 quash and set aside the Execution No. 14934. issued in
 this cause, on the 16th day of August 1859 on the ground
 that the judgment had been paid and satisfied in
 full, by sale of the East half of the East quarter
 of section No. Twenty six, in the North Range No. One, East
 Meridian, containing 40 acres, more or less, of the
 same remains fully satisfied. Wherefore the
 said last Execution, is and was wholly illegal and
 void.

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

Chicago September 3, 1859

John Hughes
 by Deas McAllister & Corbett, his Atys,

We need a copy of foregoing notice of motion this
 3^d day of Sept 1859
 Attorneys for Street

Also the following

ements

herein, namely
State of Illinois }
County of Cook }

The People of the State of Illinois,
to the Sheriff of Co. Cook County. Greeting;

(6) We Command you, that of the
Lands and Tenements, Goods and Chattels of
John Hughes Defendant in your County, you cause
to be made the sum of Six hundred and Eighteen
dollars and ninety two Cents, which Samuel S.
Streeter Plaintiff, lately in the County Court of
Cook County, in vacation of said Court, and
Term thereof, to wit, at Chicago, Ill. on
the 5th day of October A.D. 1880, and in and to
the said Defendant, and in satisfaction of the sum
more adjudged to the said Plaintiff for damages
which he had sustained by occasion of the non per-
formance of certain promises, then lately made by
the said Defendant to the said Plaintiff, And
also the further sum of Ten dollars and fifty
Cents, which more adjudged to the said Plaintiff
for damages, Costs and charges, in that behalf ex-
pended, 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

with an Endorsement thereon, in what manner
you shall have Executed the same, in ninety days
from the date hereof—

(Seal)

Witness. William L. Church, Clerk
Of an said Court, and the Seal
thereof at Chicago, in said County
this 7th day of October AD 1857
Wm L Church clerk

Read this Execution for Collection this sixth day of
Oct AD 1857. at the hour of 10 O'clock Am
S. H. Meiner, Sheriff of Cook County, Ill.

(7)

this 7th day of October 1857, I have
described track of parcel of land
part of the East half of Section number twenty
of Section number twenty, Range number two East of
the fourth Principal Meridian in Cook County -
Illinois, Containing seventy four acres.
More or less,

S. H. Meiner. Sheriff

Meade Six hundred and Sixty ¹⁰/₁₀₀
dollars, by sale of the property described in the above
levy, the amount of the judgment interest and costs in
this Execution, and the purchaser being plaintiff
in the Execution, the same is returned and paid this
27 Feb 1857. S. H. Meiner Sheriff

Also the following
documents, issued the 16th day of
State of Illinois } ss
County of Cook }

The People of the State of Illinois, to
the Sheriff of J. Davis County. Greeting;

We command you as before, that of
the Lands and Tenements, Goods and Chattels of John
Hughes defendant in your County, you cause to be
made the sum of Six hundred Eighteen dollars and
ninety (99) Cents, which Samuel S. Straus, plaintiff
lately in the Circuit Court of Cook County, in vacation
after the June Special Term, at Chicago, in said County, on October
AD 1854, recovered against said defendant, and
which were by the said Court, awarded to said
plaintiff for damages which he sustained by
occasion of the non performance of certain promises,
then lately made by the said defendant to the said
plaintiff. And also the further sum of Twenty
dollars and (20) 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

(8)

in ninety days from the date hereof -

Witness, William E Church, clerk

(Seal)

Of and said court, and the seal thereof, at Chicago, in said County - this Sixteenth day of August A.D. 1857

Wm E Church Clerk

Defendant also read in Evidence an affidavit of E. B. Smith, as follows; namely. Cook County Circuit Court -

Samuel S. Strater

John Hughes

(9)

State of Illinois
Cook County

Ezekiel [unclear] of Chicago, being duly sworn doth depose & say, that an Execution issued from this Court upon a judgment rendered in favor of the said Samuel S. Strater and against the said John Hughes and directed to the Sheriff of ~~the~~ the County of Jo Daviess, and on the Seven tenth day of October Eighteen hundred and fifty-seven, the Sheriff of said County of Jo Daviess, levied upon certain lands of the defendant and described them as a part of the East half of the South East quarter of section twenty Township number twenty nine North [unclear] in [unclear]

Each of the four principal meridia
four Acres, more or less,

only

Deponent further says that on the twenty
seventh day of February, Eighteen hundred and fifty
Eight, the Sheriff made sale of the property as levied
upon & bid in for the plaintiff on said Execution; and
no deed has yet been given by the Sheriff upon said sale

(10) Deponent further says, that on
the fifteenth day of August, this deponent for the first
time discovered that the description of the property
was imperfect; and that the description as set forth
in the Sheriff's certificate will not describe the property
of the defendant in a clear manner,
as the defendant owned the south East quarter of section 36
of the South East quarter of township 36 N. Range 10 E. so
much as was taken by the Railroad crossing through
the track.

Deponent further says that the
Plaintiff Samuel S. Straker, resides in Troy, NY
and that this deponent had the management and
control of the judgment and sale, and that not
being familiar with the property, had supposed
that the description as set forth by the Sheriff was
correct and perfect.

E. S. Smith

Subscribed & sworn to before
me this 16th day of August 1859

J. S. Church
clerk

6

Defendant also read in evidence, the following Notice and Motion. namely;

State of Illinois
Circuit Court.

Samuel S. Straler

John Hughes

(11)

To John Hughes the defendant in the above Entitled cause, you will take notice that a motion has been made by the plaintiff Samuel S. Straler by his Attorney E. M. Dorrsey said Court at the Court Room in the City of St. Louis, Mo. to set aside the sale made on the 1st day of September 1859 in the cause that the description of the land made is so imperfect that it is impossible to ascertain from what number of acres and that it is also impossible to ascertain what part of the tract of land was intended to be sold by the Sheriff on the Execution.

You will therefore take notice that said motion so made will be called up for argument on the Eighth day of September instant, at the going in of the Court in the morning of that day, at which time & place you will appear and show cause, if any you have, why the motion should not be granted.

E. M. Dorrsey

Dated Sept 5th 1859

At St. Louis

State of Illinois }
of Cook County } ss

This day personally appeared
before me A. O. Cummings & made oath in due form
of Law & depose as follows, that he has this day
served the within notice by delivering a true copy
thereof to the said John Hughes, and also reading
the same to him at his request. Sworn & subscribed
before me this 4th day of
September A.D. 1859 at
my Office in the City of Galena =
as witness my hand & Seal
hereto affixed (Seal)
A. O. Cummings

(12)

The defendant also made the following Affidavit of E. B. Smith, Clerk of the Court,
State of Illinois
Cook County Circuit Court

Samuel B. Straub }
John Hughes }
v

State of Illinois }
Cook County } ss

Ezekiel B. Smith being duly sworn
doth depose and say, that on the fifth day of October

Eighteen hundred & fifty seven. judgment was rendered in this court, in favor of said Street and against the said John Hughes, for six hundred and twenty-four dollars & ninety-two cents, and costs ^{that} afterwards - Execution issued and was levied as supposed upon Hughes' farm and sold to plaintiff, that the description of the property as set forth by the Sheriff was a "Part of the East half of the south East quarter of section number twenty six, in Township number twenty-nine, North of Range number two East of the fourth principal meridian in J. Davis County, containing seventy-four acres more or less, which description appears to be incorrect.

(13)

This deponent was in May, or the first of June last, being informed that Stephen P. Happer a Mortgage upon the farm of said Street by Sheriff Scruvins without notice to said Street, he then wrote to E. Rhodes at New York City to inform West Street that the claim of said Happer would have to be paid in order to protect his interest, and that about the same time said Hughes applied to this deponent to have said Street pay the money due to said Happer and give said Hughes time to pay the same so that he might save his farm.

This deponent further says that at said Hughes urgent solicitation, one George Harrington some time in June last passed call on said Hughes

Eighteen hundred & fifty seven. judgment was rendered in this court, in favor of said Street and against the said John Hughes, for six hundred and twenty-four dollars & ninety-two cents, and costs ^{that} afterwards - Execution issued and was levied as supposed upon Hughes' farm and sold to plaintiff, that the description of the property as set forth by the Sheriff was a "Part of the East half of the south East quarter of section number twenty six, in Township number twenty-nine, North of Range number two East of the fourth principal meridian in J. Davis County, containing seventy-four acres more or less, which description appears to be incorrect.

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This deponent further says that at said Hughes urgent solicitation, one George Harrington some time in June last passed call on said Hughes

to arrange with him for the redemption of the farm and then was informed by said Hughes, that said Happer had agreed to take the money due him at any time and transfer his claim to said Struter, some time in July thereafter. Said Happer called on this deponent in Chicago and agreed to either transfer his claim to said Struter or purchase his claim and agreed to give said Hughes an opportunity to redeem for one year, or make some mutual arrangement with this deponent.

(14) This deponent further says, that said Happer did not call on this deponent thereafter as he had agreed, and that on or about the first day of August last past, said Struter called on said Hughes at his place of residence in Illinois, as he said, and that said Hughes told him that said Struter to redeem the farm if he could do so in any way to save the farm, and that he might have an opportunity to pay the debt and retain the place.

This deponent further says that on the fourteenth day of August last passed this deponent called upon said Hughes at his residence in Deales mound in Jackson County, and said Hughes then, and ^{also} in the following morning days urged deponent to so arrange with Happer as to save the farm and give him or his son time to pay, which deponent agreed to do if possible, and did then on the fifteenth day of August last passed offer

to arrange with him for the redemption of the farm and then was informed by said Hughes, that said Happer had agreed to take the money due him at any time and transfer his claim to said Struter, some time in July thereafter. Said Happer called on this deponent in Chicago and agreed to either transfer his claim to said Struter or purchase his claim and agreed to give said Hughes an opportunity to redeem for one year, or make some mutual arrangement with this deponent.

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This deponent further says that on the fourteenth day of August last passed this deponent called upon said Hughes at his residence in Seales mound in Jackson County, and said Hughes then, and ^{also} in the following morning days urged deponent to so arrange with Happer as to save the farm and give him or his son time to pay, which deponent agreed to do if possible, and did then on the fifteenth day of August last passed offer

to pay to said Happer the sum of fifteen hundred and forty two dollars in gold, that being the full amount due him, with ten percent interest thereon and did then tender to said Happer the amount due him being fifteen hundred and forty two dollars in Coin American Gold, which said ^{Happer} refused to take saying, he was not in want of money.

(15) This deponent further says that on the said fifteenth day of August, for the first time he discovered the description of the property as made in the sale by the Sheriff to said Streeter was imperfect and that it did not fully convey the property designed to be sold. ^{Ex-} Execution, and then so informed ^{and} was informed by him that ^{correctly} described in the Mortgage ^a copy thereof and of the Sheriff's return Streeter is hereto attached, which deponent then procured from the Clerk -

This deponent further says that said Neagus requested deponent to take the necessary steps to redeem the said property, and that deponent ^{and on} that might return to Chicago, the next day, being the sixteenth day of August last passed, he caused an Execution to be issued upon the judgment of said Streeter directed to the Sheriff of Jo. Davies County and on the Eighteenth day of August ten next, ~~this~~ this deponent paid into the hands of the Sheriff of

to pay to said Happer the sum of fifteen hundred and forty two dollars in gold, that being the full amount due him, with ten percent interest thereon and did then tender to said Happer the amount due him being fifteen hundred and forty two dollars in Coin American Gold, which said ^{Happer} refused to take saying, he was not in want of money.

(15) This deponent further says that on the said fifteenth day of August, for the first time he discovered the description of the property as made in the sale by the Sheriff to said Streeter was imperfect and that it did not fully convey the property designed to be sold. ^{Ex-} Execution, and then so informed ^{and} was informed by him that ^{correctly} described in the Mortgage ^a copy thereof and of the Sheriff's return Streeter is hereto attached, which deponent then procured from the Clerk -

This deponent further says that said Neagles requested deponent to take the necessary steps to redeem the said property, and that deponent ^{and on} that might return to Chicago, the next day, being the sixteenth day of August last passed, he caused an Execution to be issued upon the judgment of said Streeter directed to the Sheriff of Jo. Davies County and on the Eighteenth day of August ten next, ~~this~~ this deponent paid into the hands of the Sheriff of

I, David Leach, ditto Leach, American
Gold coin for said Struter, and directed the Sheriff
to levy the said Execution upon the property of said
Hughes & pay the money to said Happer, that the
same was to redeem the land from his Mortgage sale
which Expired on that day, that the sum of fifteen
hundred and forty two dollars was the amount to be
paid to said Happer.

This deponent further says that the
Sheriff did then make the proper Endorsements and
certificates all of which said Happer had notice.

(16)
This deponent further says that he
has reasons to believe and does believe that Hughes
has not requested any one to set aside the Execution, or
to set aside the Execution, that the facts
made by the proceedings of the Court in this
deponent believes, and that this deponent is informed
that said Happer refused the money from the Sheriff
and said he was going to set aside the Struter
Execution -

This deponent further says that the farm
is supposed to be worth at least thirty five hundred
dollars, that said Hughes is entirely unable to pay
his debt, that the redemption of the property from the
sale ~~of~~ from the said Mortgage foreclosure, is the
only way the said Struter can make his debt.
that said Struter agreed to give to said Hughes
time to pay the said redemption money, together with

the amount of his judgment. and Hughes might have an opportunity to save the farm, which said Hughes has ^{been} for some time very anxious to have said Struter do for his benefit.

This deponent further says, that said Hughes is now, as deponent believes anxious to have the redemption as made upon the Struter Execution remain and perfected as requested by him and that said Hughes has not nor will he make any other request unless it is upon the promise of said Tapper & he has no other intention or wish than to secure to himself the farm regardless of the rights of the said Struter or Hughes, as deponent believes.

(17)

Subscribed & sworn to before me this 7th day of September

Wm. S. Church, Clerk

Plaintiff also used in Evidence the following affidavits of S. H. Tapper, namely:

State of Illinois }
Cook County } ss.

John Hughes
Ad.
Samuel S. Struter

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

} Motion to set aside Verdict
or Sale

S. D. Hayes, just duly sworn, deposes and says, that he never saw or knew the plaintiff, nor did he ever see or know his attorney E. Smith until about the 7th day of July 1859 nor had he any communication or correspondence with them or either of them prior to that time. After the date above, said Smith called on deponent and proposed selling him the claim of said Streeter on said land. Deponent declined buying after investigating said claim. Deponent states that he never encouraged said Smith to renew said offer or to expect that said deponent would at any time make a purchase of said land or of any portion of the redemption.

(18) Deponent states that he never caused said Smith to delay or forbear to bid for said land from the sale to deponent, or any offer, or any act word or deed tending to induce said Smith to believe or expect that any arrangement could be made with deponent in relation to the redemption of said land, on or before the expiration of the time allowed by law for redemption from said sale.

Deponent further says that he never made any arrangement or agreement with said Hughes or said Streeter or with his attorney to take his redemption money on said sale under the foreclosure, and transfer his claim to said Streeter, or give said Hughes, a year to redeem or to buy said

111
Streeter claim there~~as~~ as stated ^{said} Smith in his
Affidavit.

Depo^{nt} says he has made an agreement
to sell the premises to said Hughes, or to his family's
use, which now rests in parol between the parties,
It was made about the first day of July, last,
after the right of redemption of said Hughes or
his grantee had expired.

(19)
Some time in July deponent called
upon said Smith, at his instance, when deponent
offered to sell his claim in the land to said Smith
if said Smith would give enough, but said Smith
did not make deponent a definite offer, and no
agreement was entered into.
Afterwards on or about the 1st of August, 1859, deponent
told deponent he had been offered American Gold - & that he
for his claim on the land, deponent promptly
declined to take it, deponent offered next day, to
take \$25000 - for his title to the land, which
said Smith declined to give. These offers so
made by deponent to said Smith & declined by
him, and by said Smith to deponent & declined by
him and about the times herein stated - are all the
negotiations had between deponent and said Smith
prior to 18th August, 1859 & further said not
Subscribed & sworn to before Stephen H. Pappas
this 14th day of September
1859 Wm Schuch

The plaintiffs ~~and~~ in Evidence
the following power of Attorney, namely;

State of Illinois, County of Cook, ss
In the Circuit Court of said County
Samuel B. Streeter
John Hughes
Judgment in said Court

It is hereby stipulated and
agreed by the defendant in the above case, that the
endorsement of levy heretofore made by B. R. Menier as
Sheriff of Jo. Davis County, Illinois, in and to the premises
No. 8150 issued out of said Court, in and to the premises
of said lease on the 5th day of October, 1837, is
as follows: ~~that is to say,~~

(20)
" By virtue of this writ, on the 5th
" day of October 1837, levied upon the following descri-
" bed Tract or Parcel of Land, to-wit: A part of
" the East half of the South East quarter of Section
" number Twenty Six in Township number Twenty nine
" North Range number Seven East of the fourth prin-
" cipal meridian in Jo. Davis County Illinois, con-
" taining Seventy four acres more or less.

" B. R. Menier, Sheriff
may be so altered and amended as to read, after the
words "To-wit:" in said endorsement - "All the right
Title and Interest of the said defendant John Hughes
in and to the East half of the South East quarter

of Section Twenty Six, Township Twenty-nine
North range number Two, East of the Fourth
Principal meridian, in the County of Jo. Warren
and State of Illinois; which as the said Defen-
dant is advised, is the proper description of the
property levied on, or intended so to be under and
by virtue of said Execution, on the 7th day of October
1857. And I the said defendant John Hughes do
further stipulate that at the time of said levy, I
was the owner of an Equity of redemption in the
premises above described, the same having been
previously sold upon a foreclosure of a Mortgage
given by me thereon -

(21)

And I do hereby authorize the Clerk of the
County of Jo. Warren Illinois or his Attorney
to so amend the endorsement of said
said Execution, as is heretofore stipulated
Witness: my hand and Seal this 10 day of September
AD 1859. "John Hughes." seal

Subscribed & sworn to before me
this 10th day of Sept AD 1859
John Moore. J.P.

J. B. T. Happer the purchaser under the
foreclosure sale referred to in the foregoing power
of Attorney from John Hughes to the Clerk of the
Circuit Court of Jo. Warren or Walter B. Seales

do hereby Authorize and Empower said clerk or
said Deeds to make said amendment as above
authorized by said Hughes, of the levy and description
of said Hughes's interest in said tract of land, so
levied upon as above described -

Given under my hand and seal this
14th day of September A.D. 1859
"Stephen S. Hopper Seal"

And defendant thereupon made a cross motion
to set aside the levy and sale and the original Execution
and to have the same declared null and void, and
thereupon after argument and the court overruled
the said plaintiff's motion and granted the said
defendant's motion, a more fully appears in the record
herein.

(22) In which decision of the court in over-
ruling the plaintiff's said motion, and in sustain-
ing the defendant's said motion &c. plaintiff
then and there excepted, and prays that his
Bill of Exceptions may be signed sealed and
made a part of the Record which is accor-
dingly done.

George Manum Seal
Judge of 1st Judicial
Circuit Ills

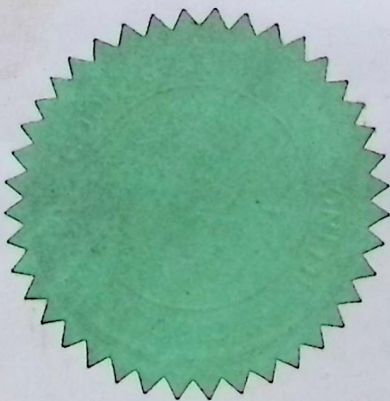
(23)

I, WILLIAM L. CHURCH, Clerk of the Circuit Court of Cook County, in the State aforesaid, do hereby certify the above and foregoing, to be a true, perfect and complete copy of Order papers and affidavits in a certain ~~cause~~ ^{motion} lately pending in said Court on the low bar side thereof, wherein John Hughes was plaintiff and Daniel S. Street Defendant.

In Witness Whereof, I have hereunto set my hand, and affixed the Seal of said Court at Chicago, this 27th day of October

A. D. 1859

Wm L Church Clerk.



Let a supersedeas issue for the sum
 of Eight hundred dollars. Stephenson
 J. Happer surety
 Nov 10, 1839, J. D. Catron

78
 Circuit Court, books, 60

John. Hughes
 —v—

Samuel B. Butler

Record of
 Case before

Proo taken
 Paid

Filed Nov. 17.
 L. Catron
 60

5.00
 1.00
 67.50