Butler, John, for the use of Houts, C. G. v. Johnson, Richard C., sheriff 1827 4th D. New Madrid 152/12

(7)

Debt

Rev/Rend; Houts cannot claim to collect sheriff's execution

Sheriff

Pleas at the Circuit Court held at New Madrid Within and for the County of New Madrid in the Fourth Judicial Circuit of the State of Missouri of the Term of June in the Year of our Lord one thousand Eight hundred and twenty Seven

Before the Honorable

John D. Cook Judge of the Circuit Courts of the Fourth Judicial Circuit aforesaid.

Be it Remembered that at a Circuit Court held at the Town of New Madrid in the County aforesaid on the first Monday in June in the year of our Lord one thousand eight hundred and twenty Seven before the Judge aforenamed the following Proceedings were had between John Butler for the use of Christopher G. Houts Plaintiff Versus Richard C Johnson Sheriff of the aforesaid County Defendant in the following Words and figures to wit:

„John Butler for the use of Christ.r G. Houts
„ Versus
„ Richard C Johnson Sheriff.
„ This day the Plaintiff by his attorney came and moved
„ the Court, pursuant to his notice Executed and filed, to
„ Order the Sheriff to pay over money made on Executions in
„ the name of the Plaintiff against James Evans = (Which
„ notice is in the following words and figures to wit: „)
„ To Richard C Johnson Sheriff of New Madrid County in
„ the 4th Judicial Circuit of the State of Missouri
„ Sir, take notice, That I shall on Wednesday the third
„ day of the present (June) Term of the New Madrid Circuit
„ Court, move against you as Sheriff aforesaid for the amount,
„ (or so much thereof as has not been paid over) of two Executions
„ Which issued from the office of the Clerk of the Circuit for
„ the County aforesaid dated the twenty fourth day of February
„ Eighteen hundred and twenty Seven in the name of John Butler
„ Versus James Evans, one for the Sum of three hundred and Seventy
„ three Dollars Eighty four and one half Cents on which Execution
„ there was an Endorsement of Seventy Dollars twenty Cents, Which
„ Was enjoined; and one for twenty two Dollars twenty Seven
„ Cents together with such per Centum as the law authorizes and
„ the Court may adjudge. John Butler by
„ New Madrid 4th June 1827. Watkins his Atty
„ personally appeared before me the undersigned a Justice of
„ the peace Within and for the Township of New Madrid in
„ the County of New Madrid & State of Missouri William

on Motion

" orr and made oath that he delivered to the within named —
" Richard C Johnson a true copy of the within notice on this
" 4th day of June 1827.
" Sworn & Subscribed to the 4th June 1827 Wm Orr
" Alpse DeLaroderie Justice of the Peace. "

and afterwards, on the fourth day of the term of said Court and the 7th day of the month.

" John Butler for the use of Christr G. Houts
" Versus
" Richard C Johnson Sheriff } on motion

" On motion of the Plaintiff's attorney, it is ordered that the
" Sheriff of this County produce in Court Instanter the Executions
" to him delivered in said Cause, or Shew Cause, if any he hath
" Why he does not return the Same, and the said Sheriff
" appeared, and is ready to answer. "

and he Sheweth for Cause as follows to wit:

" In obedience to an order of this Court requiring me to appear
" & Shew Cause why I have not returned an Execution to me
" Directed & delivered in a Suit in the New Madrid Circuit Court
" between John Butler plaintiff and James Evans Defendant, I
" answer & Shew for Cause that I have had the Execution in Court
" at this term & put it into the hands of the Judge of this
" Court with the Plaintiff's endorsement on it that he had recd
" on the Execution $ 184. 87½ that said Execution was handed
" to My Counsel G. A Bird with a Power of attorney from said
" plaintiff to Christopher G. Houts to enable my attorney to
" advise me how to return said Execution said Bird in Court as
" I Believe handed me back the Execution & power of attorney
" two days past, since which I have seen neither, I have made
" diligent Examination among my papers & have enquired of
" my Counsel & all others who I thought might get possession
" of said Execution & power of attorney & I have been unable
" to find or know where to find said Execution or power of
" attorney. it is therefore not in my Power to return said Execution
" because the same is lost or mislaid in such a way that I have not
" been able to find it, & the paper annexed is a Statement of the
" proceedings had on the said Execution & which I had made out
" for a return thereto before I knew that it was lost.
" June 8th 1827. R. C. Johnson Sheriff N. M. C.
" The said Richard C. Johnson being sworn saith that the
" foregoing is a true Statement of the facts.
" Sworn to in open Court June 8th 1827.
Alpse DeLaroderie Clerk

And afterwards on the said fourth day of the term of said Court.

" John Butler for the use of Christ.r C. Houts
" Versus } on motion
" Richard C. Johnson Sheriff
" This day the Sheriff of this County by his attorney came, and moved the Court on reasons filed for an order to have a New Execution issued in this Cause. "

Which reasons are as follows to wit:

" State of Missouri } Circuit Court Fourth Judicial Circuit
" New Madrid County S.s
" To the Honorable John D. Cook Judge of said Court; your Petitioner Richard C Johnson States to your Honour that Some time after the last term of the New Madrid Circuit Court an Execution was put into his hands as Sheriff of New Madrid County issued from said Court in a Cause wherein John Butler Was Plaintiff and James Evans was Defendant Which Execution Commanded me to make $ 255." Debt $ 105. 52 Damages & $ 13. 32 for Costs deducting $ 70. 20. which had been Enjoined I made a levy on the property of the Defendant by virtue of the Execution. Soon after the Execution came into my hands, a power of Attorney, or a Copy of one was put into my hands from said Plaintiff to Christopher C. Houts Which Power of attorney was Dated as I believe a Short time after Commencement of the Suit on Which the Judgement was Recovered on Which said Execution issued, & Expressed that said John Butler had made said Houts his attorney in fact for the purpose of prosecuting in the name of said Butler said Suit on Which said Execution issued to final Judgement & that one half of the Judgement on Which the Execution issued was thereby declared to be for the use of said Houts, the other half for the use of said Butler. your Petitioner further States that Soon after making said levy said Evans Showed me a Release of said Execution & the Judgement on Which it issued from said Butler to said Evans & an order in Writing that I Should return said Execution Satisfied. Said Butler Came to me & told me he had given said Release & demanded of me to restore to Evans the property I had levied on & return the Execution Satisfied. I was not Sufficiently advised — Whether the Release from Butler was or was not good as he had given the Power of attorney aforesaid as I believe, or Whether I was or was not bound to restore the property. I was told by Houts & Johnson Ramey & Nathaniel W. Watkins attornies for said Butler that he Butler had no Controll over one half of said Judgement

" & that I must disregard said Release & Order, proceed to make the
" amount of said Execution or I would be moved against by said Houts
" for neglect of my Duty in not making the money. I was threatened
" with a Suit of trespass by Evans if I proceeded to sell the property
" after said Release & order. having placed confidence in the legal
" Intelligence & the honesty of said Ramey & Watkins I sold the
" property levied on which bro. the amount of the Execution with
" Costs. Said Butler bid off property at the sale to the amount of
" $ 184. 87½ & gave me a receipt for this amount on the Execution
" the rest of the money I retained in my hands. Said Evans has
" Sued me for selling said property illegally. I told said Houts at this
" term of the Court that I was ready to pay him the money in my
" hands acquired by the sale of said property if he would give me
" bond with good security to indemnify me against said Evans for
" selling said property. Said Houts refused & threatened to move
" against me if I would not pay him the money * made
" a Statement to the Court. I was willing to do what was my duty.
" I consulted my Counsel we differed in opinion from the attorneys
" of the Plaintiff - they thought that the power of attorney was
" void for Champerty & maintainance & that if it was not
" I was bound by the Instructions of the plaintiff in the Execution
" & was to take no notice of Houts in relation to the Execution. I
" am now ordered not to pay the money on said Executions to said
" Houts by the Plaintiff. on the 5th day of June Instant I handed
" the Execution to the Court & made as Correct a Statement of
" my proceedings on it as I could. on the sixth day of June
" Instant I wished my attorney to look at the Execution & papers
" that he might advise what return to make on the Execution.
" the Execution & power of attorney was handed by the Judge of the
" Court to my Counsel to Mr. Bird who he says handed them to me
" & I believe did so. the last time that I recollect of having said
" Execution was on the morning of the sixth Instant when I think
" I sat down to the Clerk's table with the Execution before me
" with an intention of making a return on it. the next time when
" I looked for the Execution I could not find it. this was on thursday
" last. whether I took the Execution from the Clerk's table or not
" I do not recollect. When I sat down to make the return as
" aforesaid I was about that time very busy having a Suit in Court
" & was very much annoyed by demands on me to serve Subpeanas
" & other process. I have ever since thursday morning last used
" every Exertion in my power to find said Execution. I have inquired
" of all the attorneys & the Clerk of this Court to see if any one of

* two words illegible

" them had it thinking that some one might have taken the Execution
" by mistake & put it with his papers, I have requested them to search
" their papers for the Execution, they have informed me that they
" have done so & that they have it not. the said Execution is
" lost so that I despair of finding it & I do not believe it can
" be found. I have not destroyed it nor permitted any other person
" to destroy or conceal it as has been insinuated. it has been my wish
" to find said Execution & return it to Court, but it has been impossi-
"-ble for me to do. your petitioner therefore prays that a new
" Execution may be made out from the records of this Court nunc
" pro tunc, to supply the one that is lost, your Petitioner is
" then ready to make his return without any delay & to pay the
" money in his hands to whoever is entitled to it.

R. C. Johnson Sheriff
N. M. C.

" The above named Richard C. Johnson sworn says the facts in
" the above Petition are true.

R. C. Johnson

" Sworn to and subscribed before me Alpre Delarodeire Clerk of
" the Circuit Court of New Madrid County this 9th day of June
" A. D. 1827.

Alpre Delarodeire Clerk

and afterwards on the 6th day of the term of said Circuit Court
and on Saturday the 9th day of the month.

" John Butler for the use of Christr G. Houts Pltff
" Versus
" Richard C Johnson Shff Defend. } on motion for an order on the Sheriff to return Execution.

" The Arguments on the motion being heard and considered it is now
" ordered that the Sheriff do return into Court Instanter the said Execution.

and afterwards on the same day of the term of the aforesaid
Circuit Court.

" John Butler for the use of Christr G. Houts Pltff
" Versus
" Richard C. Johnson Defend. } on motion for an order on the Sheriff to return an Execution

" The Arguments on the motion being heard and considered
" it is ordered that an attachment issue against the said Sheriff
" returnable to the next term of this Court, and also that the
" Clerk issue a new Execution to supply the former Execution in
" this Cause alledged to be lost.

and afterwards on the same day of the Term aforesaid.

" John Butler for the use of Christr G. Houts
" Versus
" Richard C. Johnson Sheriff } on motion.

" it is ordered by the Court that Richard C Johnson Sheriff
" of this County retain in his hands the money collected on
" a Execution against James Evans in favour of John Butler
" to be subject to the subsequent order of this Court. "
and Now, at the same term of the said circuit Court
and on the said Saturday the 9th day of the month.
" John Butler for the use of Christ. G. Houts Pltff
" Versus } on Motion
" Richard C. Johnson Sheriff ... Defend.
" The proofs and allegations of the parties being heard and
" considered, it is now ordered by the Court that the said Sheriff
" pay over to Johnson Rauney and Nathaniel W. Watkins
" who acknowledge themselves to be attorneys of record for
" said Plaintiff, the sum of One hundred and Nineteen
" Dollars forty three and one half Cents, the balance remai-
" -ning in his hands on an Execution in favour of the Plaintiff
" against James Evans, to be subject to the future order of
" this Court. Whether the same shall be paid to the said
" John Butler or Chr. G. Houts. from which Judgement of
" the Court the said Richard C. Johnson prays an appeal, and
" having filed his affidavit, the said Richard C. Johnson
" Nelson D. Walling and Wiley B. Nicholas came to Court
" and acknowledged themselves to owe and to be indebted
" to John Butler the above Plaintiff in the sum of Two-
" hundred Dollars to be levied of their respective goods and
" chattels land and tenements, but on the following condi-
" -tion, that if the said appellant Richard C. Johnson shall
" prosecute his appeal with effect and pay and satisfy the
" condemnation money and all costs, or otherwise abide the
" Judgement of the Supreme Court in this appeal, then this
" Recognizance to be void otherwise of force. Which Recognizance
" and Securities is approved by the Court, and the appeal is
" Granted. and the Defendant file his Bill of Exceptions
" Which is signed sealed and made part of this record;"
and is in the words and figures following to wit:
" State of Missouri
" John Butler } In the New Madrid Circuit Court
" Versus } New Madrid County
" James Evans } June Term A. D. 1827. on Motion against

" Richard C. Johnson to pay over to the plaintiff for the
" use of Christopher G. Houts the money in his hand.
" Be it remembered that on the hearing of this motion
" an Execution was produced in Evidence issued out of the
" office of the Clerk of said Court on a Judgement rendered
" in said Cause on the 9th day of June A. D. 1826 in
" favour of said Plaintiff against said Defendant commanding
" the said Defendant to make by virtue of said Execution
" the Sum of three hundred & three dollars & Sixty four
" Cents Debt Damages & Costs. Teste February 24th A. D.
" 1827 returnable to the June term of said Court then
" next. on a paper attached to said Execution said Sheriff made
" the following return to wit:
" By virtue of the annexed Execution I made a levy on the
" goods of the Defendant sufficient to satisfy the same. I received
" what was told me was the copy of a Power of attorney from
" the Plaintiff to a certain Christopher G. Houts which stated
" that said Houts was constituted the attorney in fact of said
" Butler to prosecute the Suit on which the Judgement was
" Recovered on which said Execution issued to final Judgement
" & that said Houts was to apply to his own use the one half
" of what should be Recovered. the Defendant James Evans after
" said Power of attorney was shewn to me, shewed me a
" Release of the Judgement on which the Execution issued &
" of the Execution from the Plaintiff in the Execution to the
" Defendant, & an order to return the same satisfied. said
" Butler afterwards ordered me to proceed & make the money
" mentioned in the Execution which I did. said Butler the
" Plaintiff bid off property sold under said Execution to the
" amount of one hundred eighty four Dollars & eighty seven
" & a half cents. I have thought proper to take no notice
" of the power of attorney to said Houts nor of the release
" from said Butler to Evans as I was after that release ordered
" by the Plaintiff to make the money I have made the amount
" of the Debt Damages & Costs & I have settled with the
" Plaintiff John Butler the full amount of the Debt &
" Damages & taken his Receipt therefor, & I have paid all
" the Costs to those who were entitled to receive them & taken
" Receipts therefor the Execution is therefor satisfied in full "
R. C. Johnson Sheriff N. M. C.

" The said Johnson then produced in Evidence a Receipt from said
" Butler in the following words to wit: (the Receipt here alluded
to was not on file in the Records of said Court, but retained
by the Defendant Richard C. Johnson.) The Execution of this
" Receipt was proved & that it was given under the following
" circumstances, that said Johnson told said Butler that he
" Johnson ~~told Butler~~ was sued by Evans for selling the property
" of said Evans on said Execution after said Butler had released
" the Judgement on which it issued & ordered it to be returned
" Satisfied; that he was willing to pay it to him Butler if
" Butler would indemnify Johnson against against Evans
" that he had offered the money in his hands to said Hoots on
" the same terms but that said Hoots had refused to comply
" with them, that said Butler said he was unable to indem-
" -nify against Evans, that he Butler said he had received
" $ 134. 87½ cents on said Execution & was willing to give
" a receipt in full of the Execution & leave the money in the
" hands of said Johnson which was to be considered as Butler's
" money & liable to be paid to Butler on demand unless
" said Johnson should be compelled to pay it by the
" Court to said Hoots. this Conversation was proved to
" have been had a short time before the Execution of the
" Receipt; the power of attorney of which the following is
" a copy from said Butler to said Hoots was then proven
" & read in Evidence to wit:

" Know all men by these presents that I John Butler of
" New Madrid for divers good causes me thereunto moving
" have this day nominated and appointed and by these
" presents do nominate constitute C. G. Hoots of the same
" place my true and lawful attorney in fact irrevocable to
" superintend conduct and manage a certain Suit at law
" now depending in the New Madrid Circuit Court in my
" name against James Evans for a debt of about three hundred
" Dollars, and to employ if my said attorney shall think fit
" other agents or attorneys at law to prosecute said Suit, and
" my said Attorney is hereby invested with full power and
" authority to do and perform every thing in the premises in
" as full and ample a manner as I myself could do in order

" " to the obtaining of a Judgement for said Debt and to carry
" " into full Effect the said Judgement when obtained, to receive and
" " Receipt for the said Judgement one half of which to the proper
" " use of him my said attorney the other half for my own use
" " and benefit. Witness my hand and Seal this 29th day of
" " May 1826.

John Butler (Seal)

" " Test. William Long

" " State of Missouri
" " County of New Madrid } ss.

" " Be it Remembered, that on this day the twenty fourth
" " day of February in the year of our Lord Eighteen hundred and
" " Twenty Seven, before me a Justice of the peace within and for the
" " County of New Madrid aforesaid Came William Long of the
" " aforesaid County, who is personally known to me to be the person
" " whose name is Subscribed to the foregoing Instrument of writing
" " as a Subscribing Witness, and made oath that John Butler
" " whose name is Subscribed to the said Instrument of writing as
" " Grantor is the real person who Executed the Same, and that he
" " the said William Long Subscribed the Same as a Witness in the
" " presence of the said John Butler.

" " Taken and Certified the day and
" " year aforesaid

William Long

Alpe. Delaroderie Justice of the peace.

" " The Plaintiff Butler was then sent for into Court who said he
" " Was willing mr. Houts should have the money which was in the
" " hands of said Johnson; it was objected that said Butler was
" " intoxicated to such a degree as to be unable to give any assent
" " in this affair. said Butler, on being asked by the Court if he had
" " drunk to excess replied no, that he had not drunk much. Frederick
" " Butler the Son of said John was offered as a witness by said Johnson
" " and Sworn & testified that he lived with his father the Plaintiff
" " was well acquainted with his habits & he knew said John was
" " very much intoxicated so much that he came to prevent his
" " father from coming into Court because he thought he was not
" " fit to go into Court. he thought his father entirely unfit to
" " transact any business. Witness further testified that said Houston
" " had led his father there by the arm that his father could not
" " walk without staggering unassisted, and that said Johnson
" " on seeing said Houts start with said Butler towards the Court
" " house had informed the Witness of it & advised him to prevent

" his father from going, & that he did at the suggestion of
" said Johnson endeavor to dissuade his said father from going
" with said Houts.

" On this State of facts the Court ordered the said
" Johnson to pay over to the attornies of the plaintiff the sum
" of one hundred Nineteen Dollars forty three ½ cents to be retained by them
" Either for said John Butler or Houts as the Court should hereafter
" Direct by order. to this opinion of the Court the said Johnson
" Excepts & tenders this Bill which he prays may be signed and
" Sealed by the Court & made a part of the record in this proceeding
" which is done accordingly. "

John D. Cook (Seal)

and afterwards on the same day of the said Term of the aforesaid Circuit Court.

" It is ordered that the rule for an attachment against the
" Sheriff for failing to return an Execution therein mentioned
" be discharged, the said Execution having been found. "

Fee Bill.

Clerk's fees	$7. 72½	
Serving notice (Wm. orr)	" 50	
affidavit of service (A. Delaroderie)	" 25	$ 12. = 10c
Coroner's fees	3 62½	

I Alpn. Delaroderie Clerk of the Circuit Court for the County of New Madrid in the Fourth Judicial Circuit of the State of Missouri do Certify that the foregoing is a full and Complete Transcript of the Proceedings had in the aforementioned Cause as fully as the same now remains of record in my office.

In Testimony whereof I have hereunto set my hand and affixed the Seal of said Court, at office this Fourth day of September in the year of our Lord one thousand Eight hundred and twenty Seven.

Alpn. Delaroderie Clerk

Costs of this Transcript.

Copying 4041 words at 10 ⅞ ‰	$ 4. 00.
Certificate and Seal	" 50.
Tax on Seal	1 "
	$ 5 = 50.

138. (7)

New Madrid circuit court.

5345a

John Butler for the use of C. G. Houts
versus
R. C. Johnson Sheriff

Transcript on appeal to Supreme Court.

Richard C Johnson Sheriff appellant
versus
John Butler (for the use of C G Houts) appellee

Filed 12 Novem. 1827

C. S. Thomas
Clerk
S C U S

New Madrid Circuit Court June Term 1827.
Saturday the 9th day of the month.

John Butler for the use of C G Houts Plaintiff
Versus
Richard C. Johnson Defendant
on Motion

The Defendant in this Cause took an appeal from the Judgement of the Circuit Court, and I made the transcript of all the original papers and Record in Said Cause Which I forwarded to the Clerk of the Supreme Court Where the appeal was taken. after the transcript was made I found in my office amongst some useless papers a receipt which had been Called before by the Defendants' attorney and Which I was not then able to find; Said Receipt had not been filed by Which it Could be positively Known to be the Same referred to in the Defendant's Bill of exceptions; but Supposing it to be the Same a Copy of it is herewith Sent, in the Words and figures following to wit:

" John Butler
" Vs.
" James Evans
Action of Debt in the New Madrid Circuit Court, Missouri
" Rec of Richard C Johnson the full amount of the Debt &
" Damages & my Costs on an Execution issued in this Cause Which
" is three hundred & Six Dollars 62 Cents John Butler
" June 9th 1827. "

I Alpse Delaroderie Clerk of the Circuit Court for the County of New Madrid in the State of Missouri do Certify that the foregoing is a true and Correct Copy of the Receipt alluded to in the foregoing Statement as the Same Was found and is now in my office.

In Testimony Whereof I have hereunto Set my hand and affixed the Seal of Said Court, at Office this 16th day of November in the year of our Lord one thousand eight hundred and twenty Seven.

Alpse Delaroderie Clerk

Filed Dec 7. 1877

In prime court
Richard C Johnson
vs
John Butler for the use of
Christopher G Houts

On appeal from the New Madrid Circuit on an order against the Sheriff to pay over Money to Walkins & Ranney

And said appellant by his attorney comes & says that in the Record & proceedings aforesaid & in making the order aforesaid there is manifest error in this that the Motion made in behalf of said Butler for the use of said Houts was sustained & said Johnson ordered to pay the attorneys of the plaintiff $119 forty three cents when by the Law of the Land the Motion should have been overruled—

2 There is also error in sustaining the motion on the application of said Houts who in prosecuting the suit on which the execution issued & in making said Motion was guilty of both Champerty & Maintainance

3 — There was also error in ordering said money to be paid to plaintiffs attorneys

4 — The Court erred in acting upon the admissions of a drunken man for the errors aforesaid & other errors apparent in the record & proceedings aforesaid the appellant prays that the order aforesaid may be annulled

G & Bond Atty for apt

There is no error in the record and proceedings aforesaid

Attys J Ranney & N Watkins for Butler

Assignment of Errors
Johnson
vs
Butler

Filed
Decem. 3d 1827
C. S. Thomas
H. Ch

John Butter for the use of C G Hants vs R C Johnson Shff } On Appeal from the Circuit Court of New Madrid County.

This was a motion against the Sheriff to compel him to pay over money collected on execution. The Circuit Court looking into the whole matter ordered the Sheriff to pay over the money to the Attorneys of the plaintiff, subject to the further order of that court, from which order the Plaintiff appealed to this Court.

The facts as they are preserved by a Bill of exceptions are, that Butter gave Hants a power of Attorney to sue for & recover a debt due to said Butter from one James Evans & when recovered "to "receive & receipt for the said Judgment one "half of which to the proper use of him said "Attorney the other half for the use & benefit of "said Butter". Hants was styled in the power of Attorney, "the true & lawful Attorney in fact irrevocable" of said Butter. — Suit was instituted in the name of said Butter against said Evans & shortly thereafter a copy of the aforesaid power of Attorney from Butter to Hants was placed in the hands of the Sheriff in order to prevent him from paying over the

money when collected to the Plaintiff Butler.
After Judgment was obtained & soon after making a levy of the execution, said Evans showed to the Sheriff a release of said execution & of the judgment on which it issued, from said Butler to said Evans, & an order in writing that said Sheriff should return said Execution satisfied; and said Butler went in person to said Sheriff & told him he had given said release to said Evans & directed him to restore to Evans the property he had levied on & to return the Execution satisfied". 6 The Sheriff doubting the authority of Butler to give the release & order aforesaid, retained the property he had levied on & was afterwards ordered by Butler to sell the same; which was done accordingly. At the sale of the property taken in execution Butler purchased to the amt of $184.87½ & gave the Sheriff a receipt on the execution for that sum. The balance of the Judgment with the costs was raised by the sale of other property to different persons. The costs were paid over to those entitled to receive them & the balance of the judgment of $119.43, was ordered by the circuit court to be paid over to the Attorneys of the plaintiff, to be by them retained until the further order of said court. 6 The Sheriff appealed from this

order & assigns for error amongst other things — that the circuit court erred in ordering said sheriff to pay over the money to the attorneys of the plaintiff. — On this point the law is with the Appellant & the judgment or order of the circuit court must be reversed & the cause remanded. The proper disposition of the money is a matter of more difficulty. From the whole record we think that Hoots cannot claim to have it paid over to him. His authority under the Power of Attorney, was to sue for & collect. He had no such title or interest as made it the sheriff's duty to pay over the money to him, though he might perhaps have been justified in so doing. If the truth be, that the Power of Attorney was intended as an assignment of one half of the debt due from Evans to Butler & was made for a good or valuable consideration & that known to Evans, it ~~might~~ make a pretty strong case for the equitable interference of the circuit court — with that at present, we have nothing to do. — Butler, (if the fact be that he executed the release & gave the direction to the sheriff to ~~return~~ the property levied on & return the Execution satisfied) has certainly

no right to call upon the sheriff now, to pay over the money to him. — Upon the whole matter, the circuit court is directed to permit the sheriff to retain the money until that fact be ascertained.

Mathias McGirk
G Tompkins
R Wash

Judges

138
Opinion

Johnson
&
Butler

534

Filed 6 Decem 1837

C. S. Thomas
Dec'd
Sec'y

Wash
Ord

State of Mississippi
In Supreme Court
Richard C. Johnson
vs
John Rutter for the use of
Christopher G. Watts

on appeal from
the order of the
New Madrid Circuit
Court —

Statement Brief & Points relied on by the appellants

Some time before the judgment was obtained
on which said Execution issued said —
Rutter pretended that James Evans was indebted
to him in a sum $200 Watts agreed with
said Rutter to employ attorneys prosecute
a suit against said Evans for said debt
in the name of said Rutter for one half of
which Watts he recovered. To carry this agreement
into effect Rutter gives Watts a power of
attorney irrevocable to prosecute said litigation
suit to judgment in the name of Rutter
for which the judgment so him recovered
was to be one half of it for the use of Watts
judgt was recovered execution issued &
the money was made & paid to the —
plaintiff. Notice was given to the Sheriff
that Watts claimed one half of the judgt
before the money was paid to plaintiff
A Motion was made against the Sheriff Johnson by
Watts in the name of Rutter to compel him to
pay one half of the amt of the judgt to Watts
the Motion was in a manner sustained

& the Sheriff Johnson was ordered to pay a part of the money which the plaintiff had by special agreement left with Johnson & for which the plaintiff had recorded to Johnson on the Execution to the attorney of the plaintiff — From this order of the court the said Johnson appealed and assigns for error

1 A general assignment of Error

2 That the order was made on the application of one who had no legal interest in the Execution & who in making the Motion was guilty of both champerty & maintainance

3 — That it was Error to order the Sheriff to pay the money to the plaintiffs attorneys

4 That the court acted upon the admissions of a drunken man who was incapable transacting business —

Points relied on

1 — The Sheriffs return is conclusive of the facts stated & if he made a false return the remedy was by action for false return —

2 That the proceedings show that the motion was made by ~~the~~ a stranger to the judgment against the will & the interest of the plaintiff & that sustaining the motion was encouraging the crime of champerty & maintainance

P 4 Blackstone 134, 135

3 That the Court acting in a summary way under the statute had no authority to make the order as made Laws Mo Revised Code Cal 1845 371—372

Richard C. Johnson
vs
John Butler

Statement Brief &
Points relied on
by appellants
G A Bradley
for Apts