Coy, Collins et al vs. Dunnica, William F; 1858 Chariton Co. #11 Cir. 233/14

81/6

. Voiding of sale and trusteeship
· CC owes D $100
· Affirmed

1 Pleas before Hon James A Clark Judge of the eleventh Judicial Circuit at a court continued and held for the County of Charlton in the State of Missouri at the court house in the town of Keytesville on Friday being the 19th day of November A D 1858 Present Hon James A Clark Judge Benjamin F Crawley Sheriff and Thomas T Elliott clerk —

State of Missouri, County of Charlton Sct:

Be it remembered that heretofore to wit: on the 27th day of April A D 1857 there was filed in the office of the Clerk of the Circuit Court within and for the County of Charlton aforesaid a Petition which is in the words and figures following To wit:

Petition

"In the Circuit Court of Charlton County May Term 1857.

William F Dunnica Plaintiff

against

John Coy. Elizabeth Coy
Collins Coy & John Prewitt } Defendants

The plaintiff states that on or about the 12th day of February A D 1853 the Defendant John Coy executed to him a promissory Note

for the sum of one hundred and eighty 38/100 Dollars or thereabouts bearing date as aforesaid due twelve months after date that after the execution of said Note the said John Coy became entitled to an interest in some slaves and other personal property as one of the Children of Frances Coy deceased = that his said interest was worth as the plaintiff is informed and believes about the sum of four hundred dollars. That the said John Coy was at the time of the execution of said Note and at the time he became entitled to an interest in said slaves & other personal property wholy insolvent and had no visible property whereby his creditors could by process of law obtain satisfaction of their debts -

That in order to defraud hinder and delay his creditors he being at the time indebted largely to other persons as well as to this plaintiff as aforesaid as the plaintiff is informed and believes and so charges sold his interest in the said estate of his mother to the defendant Collins Coy who had full knowledge of the fraudulent intent and purpose of said John Coy who was his brother

That as a part or whole consideration of said sale the said Collins Coy sold to said John Coy the following described real estate lying and situated in the County of Chariton and State of Missouri to wit= The South West quarter of the North West quarter of section No twenty six (26) Township No fifty three (53) of Range No Eighteen (18) also the North West quarter of the South West quarter of Section No twenty six (26) in Township No fifty three (53) Range eighteen (18) That the said Collins Coy for the purpose of aiding and assisting the said John Coy to defraud hinder and delay his creditors made a title bond or conveyance for said property or real estate to the defendant John Prewitt expressing therein that the same was to be held in trust for the defendant Elizabeth Coy and her children as this plaintiff is informed and believes and so charges. The plaintiff asks the Court to compel said Prewitt to produce said paper writing or deed of conveyance on the trial of this cause and that the defendants be required to disclose the names of the children of said Elizabeth Coy or such as may be beneficiaries

in said instrument, That the said Children are unknown to the Plaintiff and he cannot make them parties by name to this petition. The Plaintiff believes and so charges that said defendant Prewitt accepted said trust well knowing that the consideration for the same passed from John Coy as aforesaid and that the said conveyance was made for the purpose of defrauding the creditors of the said John Coy, The plaintiff further states that he believes and so charges that the making and executing the said agreement was contrived and entered into between the said defendants by a fraudulent combination and collusion in order to defraud the creditors of said John Coy and to prevent them from obtaining their just debts from him by process of law. The plaintiff further states that on the 24th day of March A.D. 1854 he obtained a Judgment in the Circuit Court of Charlton County against the said John Coy that the note above described was the foundation of the action on which said Judgment was obtained and that the said Judgment was for the sum

of one hundred and Eighty one & 58/100 dollars or thereabouts for his debt and the sum of six dollars and sixty cents damages and the sum of Sixteen & 20/100 dollars for his costs which said Judgment is herewith presented to the Court and asked to be taken as part of this petition that on the first day of April 1854 a writ of Execution was issued on said Judgment directed to the Sheriff of Chariton County who levied the same on the above described real estate as the property of John Coy who was then & still is in possession of the same and that at the September Term 1854 of said Court the said land was offered by the Sheriff at public sale according to law, At which public sale the plaintiff became and was the highest bidder for the same and was the purchaser of said land for the sum of fifteen & 50/100 dollars that under and by virtue of said sale Robertson Moore the Sheriff of said County made executed and delivered a deed of conveyance according to law conveying to said plaintiff all the right title and

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interest of the defendant John Coy in and to the aforesaid real estate which said deed is filed herewith and asked to be taken as a part of this petition. The plaintiff says he is the rightful owner of said land by virtue of the premises and is legally entitled to the possession thereof. The plaintiff asks that the defendants answer the allegations set forth and that said Collins Coy be compelled to disclose the consideration paid for said land and whether the contract was not made with the said John for the purposes aforesaid and the amount of the purchase money how much has been paid and how, and what amount if any is still due. The plaintiff asks the Court to set aside and annull the pretended contract with John Prewitt in trust as aforesaid that the said Collins Coy be compelled to convey to plaintiff the said tracts of land, and the said John Coy give possession of the said land to the plaintiff and for a judgment also against the said John Coy for the sum of forty dollars per year for the use and occupation of said land from

the time of the sale as aforesaid and that he have such other and further relief & on such terms as the Court may direct & for costs

Shackelford
Atty for Plaintiff

William F Dunnica the Plaintiff being duly sworn says that the above Petition and the matters therein as stated he believes to be true W^m F Dunnica

aff. to Pt.

Subscribed & sworn to before me this 25th April A D 1857. Witness my hand & official seal J Shackelford
Notary Public
Howard Co Mo

(L S)

On which foregoing Petition there was issued from the office of the Clerk of the Circuit Court in and for the County of Charlton aforesaid a Writ of summons which is in the words and figures as follows to wit:

Wrt of Summons

" State of Missouri, County of Charlton, S.S.
State of Missouri. To the Sheriff of the County of Charlton - Greeting:
We command you to summon John Coy. Elizabeth Coy. Collins Coy and John Prewitt of the County of Charlton if they be found in said County that they

be and appear before the Judge of our Circuit Court at the next term thereof on the first day of said term to be begun and held at the Court house in the town of Keytesville within and for said County of Chariton on the 3rd Monday in May next it being the 18th day of said month A D 1857 then and there to answer the petition of the plaintiff William F Dunnica in a civil action and have you then and there this writ.

Witness Thomas T Elliott Clerk
(L S) of the said Court at office
this 27th day of april A D 1857
Thomas T Elliott Clerk

On the foregoing petition and writ is the Sheriffs return in words and figures following to wit:

Shffs return "Executed the within petition and writ by delivering a copy of the same to John Coy and by delivering a copy of the same to Elizabeth Coy, and by delivering a copy of the same to a white member of the family of Collins Coy over the age of fifteen years at his usual place of abode, and by delivering a copy of the same to a white member of the family

of John Prewitt over the age of fifteen years at his usual place of abode all done on the first day of May A D 1857. in Chariton County Mo

Robertson Moore Sheriff

Shffs fees $4.00. of Chariton County Mo"

And afterwards to wit: at a Circuit Court continued and held for the County of Chariton in the State of Missouri at the Court house in the town of Keytesville on the 18th day of May A D 1857. an order was made by said Court in said cause which is in the words and figures following to wit:

or. fil. Dem. "This day comes the defendants by their attorney and presented their Demurrer to the petition of the plaintiff which on motion is ordered to be filed"

The Demurrer referred to in the foregoing order is in the words and figures following to wit:

Dem.r "William F Dunnica Plaintiff

against

John Coy Elizabeth Coy Collins Coy & John Prewitt Defendants

In the Circuit Court Chariton County

The Defendant Collins Coy comes & demurs to the plaintiffs petition and specifies the following grounds of objection thereto.

1st That several alleged causes of action have been improperly united therein to wit: an alleged cause of action against John Coy alone for the use & occupation of certain lands and an alleged cause of action against the other defendants alone to acquire the title to said land and also an alleged cause of action against the said John alone for the recovery of the possession of said land:

2d That John Coy is not a necessary party to a complete determination of the aforesaid alleged cause of action against the other defendants; nor are the other defendants necessary parties to a complete determination of the afm-said alleged cause of action against said John.

3rd That said petition does not state facts sufficient to constitute a cause of action for the relief sought

J V Turner
Atty for Collins Coy

And afterwards to wit: at same term of said court on the 19th day of May AD 1857 an order was made by said Court which is in the words and figures following to wit:

or. overly. Dem.

"This day comes the parties aforesaid by their attorneys and the Demurrer filed in this cause coming on to be heard by the Court and argued by Counsel on consideration whereof it is ordered that said Demurrer be overruled"

And afterwards to wit on same day last aforesaid an order was made by said court in said cause which is in the words and figures following to wit:

or. fil. answer.

"This day comes the defendant Collins Coy by his attorney and presented his answer to plaintiffs Petition which on motion is ordered to be filed"

The answer referred to in the foregoing order is in the words and figures following, to wit:

| | |
|---|---|
| "William F Dunnica Plaintiff against John Coy. Elizabeth Coy, Collins Coy & John Prewitt Defendants | In the Circuit Court Charlton County |

ans.

Defendant Collins Coy for his separate answer says his co-defendant John Coy did not after the execution of the note mentioned in plaintiffs petition become entitled to an interest in the Slaves alluded to in said Petition or any of them either as one of the Children of Frances Coy dec^d or otherwise, but that all the interest he ever had in said slaves he acquired before that time and before that time for a fair & valuable consideration conveyed to said Collins; that in the year 1828 John Page Sen^r (now deceased) by a Deed a copy of which is herewith filed as a part hereof marked (B.) gave one of said slaves to wit, Betty and her then future increase to said Frances Coy and the "heirs natural of her body" and that the rest of said slaves are children of said Betty, born after the execution of said deed; that the said John & Collins Coy were two of the heirs natural of the body of said Frances, that neither the said Frances nor the said John Coy ever had any interest in said slaves except what they acquired by virtue of said deed;

that the interest which the said John
Coy so acquired in said slaves was
by him as aforesaid conveyed to
said Collins before the death of said
Frances and before the alleged execu-
-tion of said Note to wit, on or about
the 22nd day of January A D 1851

as to plaintiffs allegation that the
said John Coy sold his interest in
the property alluded to in plaintiffs
petition in order to defraud hinder
and delay his creditors he the said
Collins says he has no knowledge
thereof sufficient to form a belief, but
he says that whether the said John
Coy had any such fraudulent intention or
not, he the said Collins did not have
full knowledge nor any knowledge
whatever, of the alleged fraudulent
intent or purpose of the said John
Coy, that at the time of the alleged
transaction the said Collins & John
Coy resided at a distance from each
other the former in the County of
Chariton & the latter in the County of
Howard & State of Missouri - and
had but little intercourse with each
other; so that the said Collins then

knew but little of the circumstances of the said John and did not know of his alleged insolvency; that he the said Collins already having an interest in said slaves by virtue of the aforesaid deed and desiring to procure the other interests therein he in good faith with a fair and valuable consideration without any intent to defraud hinder or delay the creditors of said John and without any knowledge of any fraudulent intent of the said John Coy, purchased the interest of said John Coy in said slaves prior to the alleged execution of said Note. He the said Collins denies that as a part or whole consideration of the alleged sale of said John's alleged interest in the estate of his Mother he by writing sold to said John Coy the land mentioned in plaintiffs petition or any part thereof, but he admits that in pursuance of a verbal agreement made with the said John & Elizabeth Coy for the benefit of said Elizabeth & her minor children he in consideration of the said

John's interest in the aforesaid Slaves & some other property conveyed to him by the said John executed the bond herewith filed marked exhibit (A) which is made a part hereof and he denies that he ever executed to the said Prewitt any other bond or instrument of writing, or to the said John Coy any instrument of writing whatever for the conveyance or in any wise affecting the title of the aforesaid lands or any part thereof. He denies that he executed the alleged title bond or any other bond to John Prewitt in trust for Elizabeth Coy and her minor children for the purpose of aiding or assisting the said John Coy to defraud, hinder or delay his creditors. He states that the said John Coy represented to him that he had received certain money belonging to his wife the said Elizabeth to be laid out in land for the use of her & her children & assigned that as the reason for having the aforesaid bond made to the said Prewitt as trustee to the use of said Elizabeth & her minor children and said bond executed by said

Collins as aforesaid was executed under the full belief on his part that said representation was true and without his having any knowledge or belief of the alleged fraudulent intent of the said John Coy but with the full belief that said transaction was fair & honest. He therefore insists that whether the said John had the alleged fraudulent intent or not he the said Collins ought not to be prejudiced thereby

The said Collins further says that the aforesaid sum of two hundred dollars has never nor has any part thereof nor any interest thereon been paid to him, and that the said Prewitt and all others having wholly failed to pay the same, the said Collins before the commencement of this suit, without any intent to defraud hinder or delay the creditors of said John Coy & without any knowledge of any such intent on the part of said John, but under a full belief that the aforesaid transaction was fair & honest and that the said John Coy had no

interest in the title to said lands agreed to receive back & cancel the bond executed by him as aforesaid and repay to the said Elizabeth the estimated value of the part of the Consideration that he as aforesaid had received for the land and thereupon with the approbation of the said Elizabeth he paid to her, or to the said John Coy for her, & in her presence & with her approbation the amount so agreed to be repaid to him & received back the said bond to be cancelled.

The said Collins denies that the alleged agreement was contrived or entered into between him & the other defendants by a fraudulent Combination or collusion in order to defraud the creditors of said John Coy or to prevent them from from obtaining their just debts from him by process of law and says that whatever may have been the intent of the other Defendants he acted in good faith & without any knowledge of any fraudulent Combination or collusion by or

between the other defendants.

The said Collins also denies that said John Coy is or was at the commencement of this suit in possession of the aforesaid lands or any part thereof

Clark, Herndon & Turner

Collins Coy one of the defendants makes oath that he believes the foregoing answer & the matters therein as stated are true

Collins his × mark Coy

Subscribed & sworn to before me this 19th May 1857 T. T. Elliott Clerk

The exhibit (A) referred to in the foregoing answer & made a part thereof is in the words and figures following to wit:

"Know all men by these presents that I Collins Coy of the County of Chariton and State of Missouri am held and firmly bound to John Prewitt of the County and State aforesaid for the benefit of Elizabeth Coy and her minor children of Howard County and State aforesaid in the full and just sum of fourteen hundred dollars current money of the United States for

the payment of which I bind myself my heirs executors administrators and assigns by these presents signed and sealed this twenty second day of January AD 1851. The conditions of the above obligation are such that the aforesaid John Prewitt as trustee for the aforesaid Elizabeth Coy and her minor children has this day purchased of the above named Collins Coy the following tracts of land lying and being in Chariton County and State of Missouri The South east quarter of the South east quarter of section twenty seven in Township fifty three North of the base line of Range Eighteen west of the principal Meridian, also the South west quarter of the North West quarter of section Twenty six in Township fifty three of Range Eighteen Containing Eighty acres more or less. for which the said Prewitt has paid and is to pay Seven Hundred Dollars, Tat is he has paid five Hundred dollars and is to pay two hundred on the first day of March 1853

On the payment of the two hundred dollars the said Collins Coy is to deliver to the said John Prewitt possession of said land and tenements

and give to him a general warranty deed for said land as trustee for the benefit of Elizabeth Coy and her Minor children then this obligation or Bond is to be null and void otherwise to remain in full force and virtue

Given under my hand and seal this twenty second day of January A D 1851 Collins his x mark Coy (Seal)

Test Jas G Vincent "

The exhibit marked (B) referred to and made a part of the foregoing answer is in the words and figures following to wit:

" Know all men by these presents that I John Page Senior of the County of Howard, and State of Missouri for and in consideration of the natural love and affection which I have and do bear towards my Daughter Frances Coy and for the further Consideration of the sum of two dollars to me in hand paid by the said Frances Coy the receipt whereof I do hereby acknowledge hath given granted bargained sold and conveyed and by these presents doth give grant bargain sell and convey to the said Frances Coy and to the heirs natural of her body only one certain

Negro woman Slave named Betty and all her future increase forever, provided however that the said Frances Coy shall not be entitled to the possession of said Woman Slave until after my death To have and to hold the said Negro woman slave named Betty and all her future increase subject however to the reservation aforesaid to the only proper use benefit and behoof of her the said Frances Coy and the heirs Natural of her body forever, and I the said John Page senior doth further warrant to the said Frances Coy and to the heirs Natural of her body the right to the above described Negro and all her future increase forever free from the ( If she should die the Negro to stay in the family till the youngest child comes of age) Claim of myself my heirs and free from the Claims of all and every other person or persons whomsoever. In testimony whereof I the said John Page senior hath hereunto set my hand and affixed my seal this 24th day of January in the year of our Lord one thousand Eight hundred and twenty eight. The word

"my" interlined before assigned and the words "of said" interlined before assigned

Signed Sealed and acknowledged in presence of Peter Ford — John Page (Seal)

State of Missouri
County of Howard } S.S. Be it remembered that on the third day of May in the year of our Lord one thousand eight hundred and Twenty eight before the undersigned Clerk of the Circuit Court within and for said county personally came John Page Senr. who is known to me and acknowledged the within instrument of writing to be his act and deed for the purposes therein mentioned

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at office the day and year aforesaid

(L S)

Gray Bynum Clerk

State of Missouri
County of Howard } ss The foregoing instrument of writing was delivered to me for Record on the 3rd day of May 1828.

Gray Bynum Clerk

State of Missouri } Sct
County of Howard } I Andrew Cooper
Clerk of the Circuit Court within and
for the County and State aforesaid do
certify that the within is a true and
perfect Copy of a Deed of Gift from
John Page Sr to Frances Coy and also
the Clerks Certificate of acknowledgment
as well as the Certificate of Record
as truly and perfectly as the same
now remains on record in my office

Given under my hand and
(L S) the seal of said Court at
office in Fayette on this 17th
day of November 1855.

Andrew Cooper Clk
By C H Stewart D.C.

and afterwards to wit: on the 20th day
of May A D 1857 an order was made
by said Court in said cause which is
in the words and figures following to wit

or grntg leave to fil. amd. Pet. & ansr. -

"This day comes the parties aforesaid
by their attorneys and on motion of the
Plaintiff by his attorney leave is granted
plaintiff to file amended petition in
sixty days after this term, and on
motion leave is granted defendant to
file amended answer at the next term of this Court"

And afterwards to wit on the 22nd day of May AD 1857 an order was made by said court in said cause which is in the words and figures following to wit:

or. contc. "This day comes the parties aforesaid by their attorneys and on motion it is ordered that this cause be continued until the next term of this court"

And afterwards to wit: on the 13th day of June AD 1857 an entry was made by the clerk of said court in vacation in words and figures following to wit

or file amd. Pet. "This day comes the plaintiff aforesaid by his attorney and presented his amended petition in this cause which is ordered to be filed"

Which amended petition is in the words and figures following to wit:

"In the Circuit Court of Charlton County

Amended Pet. William F Dunnica Plaintiff

against } amended Petition

John Coy Elizabeth Coy

Collins Coy & John Prewitt

The plaintiff states that on the 30th May 1857 the defendant executed his promissory note to William F Dunnica & co a firm composed of William F Dunnica

& George Collier That on or about the year 1838 the said Dunnica the present plaintiff, purchased out the entire interest of George Collier in the Concern of William F Dunnica & Co including Bonds Notes and accounts due the firm. That subsequently from time to time the plaintiff renewed the Note executed by John Coy until about the 12th day of February 1853 the defendant John Coy executed to Plaintiff his promissory Note for about the sum of one hundred and eighty 8 38/100 dollars the consideration of which was the original indebtedness on account of the Note made 30 May 1837 which having been renewed from time to time and interest added amounted on 12th Feb 1853 to the said sum of one hundred and Eighty 8 38/100 Dollars for which he executed his note bearing date as aforesaid due twelve months after date The plaintiff states that the said John Coy as one of the Children of Frances Coy became entitled to a reversionary interest after the death of his mother to some slaves held by said Frances Coy by deed from her father John Page, that said

interest in said slaves was worth four or five hundred dollars as this plaintiff is informed and believes. The plaintiff alledges that at the time of the execution of the original note, to wit in the year 1837 and ever since that time the said John Coy was and still is insolvent and had not then & since & still is without visible property by which his creditors could obtain their just demands by process of law. That the defendant John Coy being largely indebted to other persons as this plaintiff is informed and believes as well as to this plaintiff as aforesaid did on or about the 22nd January 1851 sell his interest in the said slaves for about the sum of five hundred dollars to said Collins Coy and as part or whole consideration for said sale he purchased of said Collins Coy the following discribed real estate in Charlton County Missouri to wit = The South west quarter of the North west quarter of section No twenty six (26) also the North West quarter of the South west quarter of section No Twenty six in Township No fifty three

(53) Range eighteen (18) containing about eighty acres. The sale of his said reversionary interest in said negroes was made to defraud, hinder and delay his creditors and the said Collins Coy for the purpose of aiding the said John Coy to defraud his creditors made a title bond for said real estate to the said John Prewitt as trustee for the use of the said Elizabeth Coy & her children. That the said John Coy, Collins Coy and John Prewitt were all aware of the fraudulent intent of said John Coy and the said Collins made said title bond or conveyance with full knowledge of the fact that the consideration for the purchase of said land was paid by said John Coy and not by said John Prewitt. The plaintiff says that he is unable to make the minor children of said Elizabeth Coy parties to this petition for the reason that they are unknown to him but he asks that their names may be disclosed by defendants. He asks also that the said Collins Coy be compelled to disclose the contract made for sale of said land and the amount if any that is yet due him, and

and from whom passed the consideration already paid. The plaintiff charges that said contract was made by a fraudulent combination between said defendants in order to defraud hinder and delay the creditors of said John Coy, The plaintiff further states that on the 24th March 1854 he obtained a Judgment in the Circuit Court of Charlton County against the said John Coy, that the note above described was the foundation of the action in which said Judgment was obtained and that said Judgment was for the sum of one hundred and eighty one & 38/100 dollars or thereabouts for his debt and six dollars & sixty cents damages & also sixteen & 20/100 dollars costs, which said Judgment is herewith presented to the Court and asked to be taken as a part of this petition. That on the 1st april 1854 a writ of execution was issued on said Judgment directed to the Sheriff of Charlton County who levied the same on the above described real estate as the property of John Coy who was then in possession of the same and that at the September Term 1854 of the said Court the said

land was offered by the Sheriff at public Sale according to law at which public Sale the plaintiff became and was the purchaser of said land for the sum of fifteen $\frac{50}{100}$ dollars, and that afterwards the said Sheriff of said County by his Sheriffs deed herewith filed & asked to be taken as a part of this petition made a conveyance of all the right title and interest of said John Coy to the plaintiff, the plaintiff therefore and by virtue of the premises became legally entitled to possession of said premises. The plaintiff further alledges that after his said purchase of the interest of John Coy, the said Collins Coy with full notice of the claim of Plaintiff in said land in order to further aid in defrauding the Plaintiff made a pretended Cancellation of the original Contract with John Coy and retook and still has the possession or control of the premises purchased by plaintiff.

The plaintiff therefore ask the Court that the defendants be compelled to answer said alleyations and the said Collins Coy be compelled to

disclose the consideration for the sale of said land & whether the contract was not made with said John Coy and also to disclose the consideration of the same and how much has been paid on same and by whom and what amount is still due, and the plaintiff asks the Court to set aside the pretended conveyance to said John Prewitt, and that said Collins Coy be compelled to convey to plaintiff the tracts of land as aforesaid and that said Collins Coy be required to give possession of the land to plaintiff and that he be made to account to plaintiff for the rents and profits thereof since he retook possession or control of the same which said plaintiff says amounts to about forty Dollars per year, that he also disclose when he took possession or control of the same and that the said rents and profits be applied to payment of any balance of purchase money if any that may be due on said land and that this Court grant him such other and further relief as the nature of his case may demand

Shackelford for Plaintiff

W F Dunnica the plaintiff herein duly affirmed says that he believes the above petition & the matters therein as stated are true W F Dunnica

Subscribed & affirmed to before me this 11th June 1857 Witness my hand & official seal

F Shackelford
Notary Public
Howard Co

(L S)

The Sheriffs Deed referred to, and made a part of the foregoing amended Petition is in words and figures following to wit:

Shff's Deed

" This Indenture made and entered into on this eighteenth day of January A D eighteen hundred and forty five between Robertson Moore Sheriff of Chariton County in the State of Missouri of the first part and William F Dunnica of the County of Howard and State aforesaid of the second part; Witnesseth: That whereas on the twenty fourth day of March 1854 at the March Term of the Circuit Court begun and held at the Court house within and for the County of Chariton William

F Dunnica by the consideration of
said Court did recover Judgment
against John Coy for the sum of one
hundred & Eighty one dollars and fifty
eight cents for his debt and the sum
of Six dollars and sixty cents for
his Damages with Six per cent per
annum interest from the date aforesaid
till paid together with all his costs
by him about his suit in that be-
-half expended. And whereas on the
first day of April A D 1854, was duly
issued out of the office of the Clerk of
the Circuit Court of said County of
Charlton a writ of fieri facias
directed to the Sheriff of Charlton
County commanding him that of the
goods and chattels and real estate
of the said John Coy he cause to be
made the debt damages and costs
aforesaid and whereas on the first day
of April A D 1854. said writ of fieri
facias was delivered to Henry A Davis
former Sheriff. and whereas the said
Henry A Davis as Sheriff as aforesaid
levied the aforesaid writ of fieri
facias on the following described
real estate situated in the County of

Charlton aforesaid as the property of John Coy to satisfy the aforesaid writ of fieri facias viz: The South West quarter of the North West qr of Section No twenty six (26) Township fifty three (53) Range Eighteen (18) also the North West quarter of the South West quarter of Section No twenty six (26) Township fifty three (53) Range Eighteen, and whereas the said Robertson Moore as Sheriff as aforesaid having first given at least twenty days notice of the time place and terms of sale of the aforesaid de-scribed real estate by at least six written hand bills containing a description of the real estate aforesaid and where situated and the time place and terms of sale posted up at public places in different parts of said County of Charlton said written hand bills signed by said Robertson Moore as Sheriff as aforesaid. The said Robertson Moore as Sheriff as aforesaid by virtue of said writ of fieri facias and in pursuance of said hand bills so posted up as aforesaid on the twentieth day of September 1854 before the Court house Door of the

County of Charitan aforesaid at the September Term AD 1854 of the Circuit Court of said County of Charitan during the sitting of said Court between the hours of Nine O'Clock in the forenoon and five O'Clock in the afternoon of said day did expose to sale publicly at auction for ready money to the highest bidder the aforesaid described real estate situated in said County of Charitan and State of Missouri. And whereas the said William F Dunnica at said sale became the purchaser of said real estate for the sum of fifteen & fifty hundreds dollars he then and there being the highest and best bidder therefor to wit: The South West quarter of the North West quarter of Section No twenty six (26) Township fifty three (53) Range Eighteen (18) also the North West quarter of the South West quarter of Section No Twenty six (26) Township fifty three in Range Eighteen (18)

Now therefore in consideration of the premises and also for the sum of fifteen & fifty hundreds dollars paid by the said William F Dunnica

to the said Robertson Moore as Sheriff as aforesaid the receipt whereof is hereby acknowledged. The said Robertson Moore Sheriff as aforesaid doth hereby bargain sell and convey unto the said William F Dunnica all the right title interest and claim that the said John Coy had in or to the foregoing described real estate at the time of the rendition of the aforesaid Judgment or which he may have acquired since that time. To have and to hold the same to himself his heirs executors administrators and assigns forever.

In testimony whereof I the said Robertson Moore as Sheriff as aforesaid of said County of Charlton have hereunto set my hand and seal on the day and year first above written

Robertson Moore Shff (Seal)
of Charlton County

Shff fee $2.00

State of Missouri, County of Charlton } ss.
In Charlton Circuit Court May 26th AD 1855

"This day came Robertson Moore Sheriff of Charlton County into open Court and who is personally known to the Court to be the same person whose name is subscribed to an instrument

of writing here produced and shown to the Court purporting to be a Deed of Conveyance from him as Sheriff as aforesaid to William F Dunnica for certain real estate situated in the County of Chariton in the State of Missouri and designated as follows to wit: The South west quarter of the North West quarter of section No 26 Township 53 Range 18 also North West quarter of South West quarter of Section 26 Township 53 Range 18 Sold by him as Sheriff as aforesaid by Virtue of a writ of fieri facias issued by the Clerk of the Chariton Circuit Court as the property of John Coy to satisfy said writ in favor of Wm F Dunnica and against said Coy and acknowledged the same to be his act and deed for the uses and purposes therein contained which is ordered to be Certified accordingly.

A true copy attest Thomas J Elliott Clerk of said Court under his hand and the seal of said Court at office on this day and date aforesaid

(S S)

Thomas J Elliott Clerk

State of Missouri County of Chariton } ss.

I Thomas J Elliott Clerk of the Circuit Court and Ex-Officio Recorder for the County aforesaid do hereby certify that this Deed was filed in my office for Record June 11th AD 1855 and duly recorded in Deed Book "O" pages 510, 11 & 12

In testimony whereof I hereto sign my name and affix the seal of said Court at office this 20th day of July AD 1855

(L S)

Thomas J Elliott Recorder

And afterwards to wit at a Circuit Court continued and held for the County of Chariton in the State of Missouri at the Court house in the town of Keytesville on the 17th day of November AD 1857 an order was made by said Court in said Cause which is in the words and figures following to wit:

or fil ans to Am.d Pt.

" This day comes the defendant Collins Coy by his attorney and presented his separate answer to the amended petition filed in this cause which on motion is ordered to be filed"

said answer is as follows, to wit:

"William F. Dunnica Plaintiff
against
John Coy Elizabeth Coy, Collins Coy & John Prewitt Defendants
} In the Circuit Court Charlton County

The defendant Collins Coy for his separate answer to plaintiffs amended petition says as to whether defendant John Coy on the 30th May 1837 executed his promissory note to Wm F. Dunnica & Co & as to whether plaintiff purchased out the interest of George Collier in the concern of Wm F. Dunnica & Co as alleged & whether subsequently from time to time the plaintiff renewed said note as alleged & as to whether the consideration of the note alleged to have been subsequently executed on or about the 12th day of February 1853 was the alleged original indebtedness on account of the note alleged to have been made on the 30th May 1837 he has no knowledge thereof or of any part thereof sufficient to form a belief; that he admits that the defendant John Coy on or about the 22nd day of January 1851 conveyed his interest in the slaves alluded to in said amended petition to the said Collins

He denies that said John Coy purchased of him the real estate mentioned in said amended petition or any part thereof otherwise than as hereinafter stated. He says that in consideration of said interest in said slaves & of the said John's supposed interest in some other property & of the sum of two hundred dollars to be paid to said Collins on the first day of March 1853 (which sum of money was through an oversight omitted to be stated as a part of such consideration in said Collins' answer to plaintiffs original petition) he the said Collins in pursuance of a verbal agreement made with said John & Elizabeth Coy for the benefit of said Elizabeth & her minor children executed the bond referred to in his original answer & now on file in this cause marked (A).

He says that except the bond aforesaid he has never signed or executed either to the said John Prewitt or to the said John Coy any deed note or other writing whatsoever for the sale or conveyance or in any wise

affecting the title of the land or any part of the land specified in plaintiffs amended petition. as to whether the sale of the reversionary interest of said John Coy in said Negroes was or was not made to defraud hinder or delay his the said John's creditors the said Collins says he has no knowledge thereof sufficient to form a belief. He says that at the time of the alleged sale of said interest in said slaves he & the said John Coy resided at a distance from each other the former in the County of Charlton & the latter in the County of Howard & that he had but little intercourse with the said John & knew but little of his circumstances or business & if the said John had the alleged fraudulent intent he the said Collins was wholely ignorant thereof. He says that already having an interest in said slaves he desired to purchase the other interest therein & did as aforesaid purchase the said Johns interest therein, fairly & honestly & without any intent to defraud hinder or delay the

the creditors of said John & without any knowledge of such intent on the part of said John. He denies that he made the alleged title bond for the purpose of aiding said John Coy to defraud his creditors. He says the aforesaid bond marked (A) is the only title bond made by him to said Prewitt for said real estate or any part thereof & that said title bond was made by him without any fraudulent intent whatsoever on his part & that at the time of said transaction he was not aware & does not believe that said Prewitt was aware of the alleged fraudulent intent of said John Coy even if such fraud-ulent intent on the part of said John Coy existed. He denies that the consideration of the purchase of said land was paid by said John Coy, but admits that he had knowledge of the fact that a part of the consideration for the execution of the aforesaid title bond was in the manner herein before stated paid by said John Coy; but he says

the remainder of such consideration to wit: the aforesaid sum of two hundred dollars & the interest thereon has not, nor has any part thereof been paid either by said John Coy or by said Prewitt or by any other person or persons. He further says that the said John Coy as well as the said Elizabeth prior to the execution of said title bond represented to him that the said John had received certain money belonging to said Elizabeth to be invested in land for the use of said Elizabeth & her children & the said John assigned that as the reason for having the said bond made to said Prewitt as trustee to the use of said Elizabeth & her minor children & said bond was so made under the full belief on the part of said Collins as he still believes & so charges that said representation was true. He therefore insists that whether the said John had the alleged fraudulent intent or not he the said Collins ought not to be prejudiced thereby. He denies

the alleged fraudulent combination
He denies that at the time specified
in said amended petition or at
any other time the aforesaid land
or any part thereof was offered
by the Sheriff of Charlton County
at public Sale according to law
or that said Sheriff by his Sheriffs
Deed filed with said amended
petition made a conveyance of all
the alleged right title & interest
of said John Coy to the plaintiff
although it may be true that
said Sheriff attempted so to do:
the said Collins insisting that the
alleged sale & deed are irregular
& void He denies that by virtue
of the premises set forth in either
the original or amended petition
of plaintiff became legally entitled
to possession of the aforesaid lands
or any part thereof He denies that
he made a pretended cancellation
of the alleged original contract
with John Coy in order to aid
in defrauding the plaintiff or that
he, for that purpose retorts or
holds possession or control of

said lands; but he says that the said Prewitt & all others having wholly failed to pay him the aforesaid sum of two hundred dollars or any part thereof or any interest thereon he the said Collins without any intent to defraud hinder or delay either the plaintiffs or any of the creditors of said John Coy but under a full belief that the aforesaid transaction was fair & honest & that the said John Coy had no interest in the title to said lands agreed to receive back & cancel the aforesaid title bond & repay to said Elizabeth the estimated value of the part of the consideration that he as aforesaid had received for the land & thereupon with the approbation of said Elizabeth he paid to her husband for her & in her presence the amount so agreed to be repaid to her & received back said title bond to be cancelled. He denies that the rents & profits of said land have amounted to forty dollars or thereabout per year since he

retook possession of said land but on the contrary he says the fencing on said lands during that time required repairing & he did such repairing in value about equal to the value of such rents

Collins his x mark Coy

Collins Coy one of the defendants makes oath that he believes the foregoing answer & the matters therein as stated to be true Collins his x mark Coy

Subscribed and sworn to before me on this 12th day of November A D 1857. Thomas T Elliott Clk"

and afterwards to wit at same term of said Court last aforesaid on the 19th day of November A D 1857 an order was made by said Court in said cause which is in the words and figures following to wit:

Or. Contd "This day comes the parties aforesaid by their attorneys and thereupon issue was joined and on motion this cause is continued until the next term of this Court"

And afterwards to wit on the 19th day of May A D 1858 an order was made by said Court in said cause

which is in the words and figures following to wit:

Indgt default vs Ino Coy Eliz. Coy John Prewitt &

or grtg leave to file 2d amd Pet

&

or contce

" This day comes the plaintiff aforesaid by his attorney, & the defendant Collins Coy by his attorneis, and the other defendants although duly served with process and solemnly called came not but made default it is therefore considered by the Court that the petition of the plaintiff be taken as confessed as to them, and this cause coming up for hearing and neither party requiring a Jury the cause was submitted to the Court, and the evidence being heard, it was on motion of the plaintiff ordered by the Court that leave be granted to plaintiff to file an amended petition in this cause, the plaintiff thereupon presented his amended petition in this cause which is ordered to be filed and on motion leave is granted to defendants to file their answer to said amended petition at the next term of this Court and it is further ordered that said cause be set for trial at said next term until which time on motion it is ordered that this cause be continued"

The amended petition referred to in the foregoing order is in the words and figures following to wit:

Am^d Pet

" William F Dunnica & others

vs

John Coy & others

The plaintiff asks to amend his petition for the purpose of substantial Justice as follows after the word Children on third page where there are two crosses thus = The plaintiff alledges that by mistake a wrong description of one of the aforesaid tracts was put in said title bond that is to say The South east quarter of the South east quarter of section twenty seven, Township fifty three Range 18 was inserted in said bond instead of the North west quarter of the South West quarter of section twenty six Township 53 Range 18 which said last mentioned tract of land was the one sold and and not the first which was inserted by mistake the said Collins Coy not being the owner & having no interest in the same but that he put the defendant John Coy in possession of the said last mentioned tract which

was the tract sold by the Sheriff as mentioned in said petition, the plaintiff asks that said mistake be corrected & that said Collins Coy be compelled to convey the tract actually sold & intended to be put in said title bond

Shackelford
Attorney for Plaintiff

Thos. Shackelford attorney for Plaintiff being duly sworn says that he believes the above amended petition & the matters therein as stated are true

T Shackelford

Sworn to & subscribed before me on the 29th day of May 1858

T T Elliott Clerk

and afterwards to wit: at a circuit Court continued and held for the County of Charlton aforesaid on the 16th day of November AD 1858 an order or decree was rendered by said court which is in the words and figures following to wit:

Decree.

" Now at this day comes the said Plaintiff by his attorney and the said defendant Collins Coy by his attorneys and this cause came on for trial before the court and the

court after hearing the allegations and proofs of the plaintiff and the Defendant Collins Coy, The other Defendants John Coy and Elizabeth Coy and John Prewitt having failed to answer said petition the same was taken as confessed as to them & Judgment by default rendered at last term a-gainst them, The Court is therefore satisfied from the evidence introduced and the admissions of defendants that prior to the 1st day of January 1851 the defendant John Coy was indebted to the plaintiff by a prom-issory note and said note was renewed from time to time till about the 12th February AD 1853, the note and interest amounted to about the sum of one hundred and Eighty one & $\frac{38}{100}$ dollars for which a new note was given the consideration of which was the original indebtedness due by a note made 30 May 1837 The Court further is satisfied that on or about the 1st January 1851 the Defendant John Coy was indebted to other persons as well as the plaintiff and that he was insolvent and unable to pay

his debts, That he became entitled to a reversionary interest after the death of his Mother in some slaves formerly owned by her father. That the said John Coy sold his interest in said slaves to the Defendant Collins Coy, and as a consideration for said sale he purchased of defendant Collins Coy the following described tracts of land in Chariton County in the State of Missouri to wit The South west quarter of the North West quarter of Section No twenty six also the North West quarter of the South West quarter of section No twenty six in Township No fifty three of Range No Eighteen (18) That the price of said land was estimated at seven Hundred dollars and as a part consideration for the same the said Collins Coy received the interest in the Negroes at five hundred dollars. leaving balance due on the land of two hundred dollars. The court further finds that the said John Coy for the purpose of defrauding hindering and delaying his creditors caused the

said Collins Coy to make a title Bond for said land to the Defendant John Prewitt in trust for the use of the Defendant Elizabeth Coy & her minor children but that by mistake one of the tracts of land was misdescribed in said title bond and described as the South East quarter of the South East quarter of Section (27) instead of the North West quarter of the South West quarter of Section 26 in Township No 53 Range 18 which said last mentioned tract was the one sold & intended to be conveyed. The Court further finds that the plaintiffs on the 24th March 1854 obtained a Judgment against Defendant John Coy on said Note in the Circuit court of Charlton County, That execution was issued on said Judgment and at the September Term 1854 the Sheriff of Charlton County sold all the right title and interest of John Coy in the land first described and that the plaintiff William F Dunnica became the purchaser and received a Deed from the Sheriff for said land

that said Collins Coy had due notice of said sale, The Court finds that said John Coy at the time of the sale had an equitable interest in said land which was subject to execution and that the defendant Collins Coy has a lein on same for the balance of his purchase money to wit the sum of two hundred dollars with six per cent interest from the 1st day of March 1853 and the plaintiff having deposited in Court for the use of the said Collins Coy the sum of two hundred and sixty eight $\frac{50}{100}$ dollars the full amount of the said balance of purchase money

It is therefore considered by the Court that the agreement between Collins Coy & John Prewitt be set aside, annulled & held for nought and that the said Collins Coy be required to make a conveyance of said land described as the South West quarter of the North west quarter of Section No twenty six (26) and the North West quarter of the South West quarter of Section No twenty six (26) in Township No 53 Range No 18. in Charlton County to the plaintiff William T Dunnica and that this

decree operate to divest him of all title to the same, and it is further adjudged and decreed that said defendant Collins Coy give to the plaintiff the possession of said land and that the Plaintiff recover of defendants his costs in this behalf expended & that he have execution therefor — to which the defendant Collins Coy by his attorney excepts"

And afterwards to wit: on the 19th day of November A D 1858 an order was made by said Court in said Cause which is in the words and figures as follows. to wit:

or fil. Mo to set aside & overruling or fil Bill of Ex- & Mo for appeal

"This day comes the defendant Collins Coy by his attorney and presented his motion in writing praying the Court for reasons in said motion set forth to set aside the decree rendered in this cause and grant him a new trial which said motion coming on to be heard and argued by counsel it is considered by the Court that said motion be overruled to which opinion of the Court in overruling said motion, and refusing to grant a new trial the said defendant excepts and tenders his bill of exceptions which are signed and sealed by the Court

and ordered to be filed, and made a part of the record in this cause and also presented his motion in writing praying the Court for reasons in said motion set forth to grant him an appeal to the supreme Court which is ordered to be filed. and it is further ordered that said appeal be granted"

The Bill of Exceptions, together with the motions referred to in the foregoing entry are in the words and figures following to wit:

Bill of Exceptions

" William F Dunnica Pltff against Collins Coy, John Coy & others Dfts } In the Circuit Court Chariton County

Be it remembered that on the 16th day of November A D 1858 this cause coming on to be heard by the Court without a Jury the plaintiff introduced and gave before the Court on such hearing evidence that the note specified in his petition was given for a Debt that existed previous to the 25 day of January A D 1851 & read in evidence papers in the words and figures following

William F Dunnica } Garnishment on

vs

Collins Coy

Execution against
John Coy

The said plaintiff exhibits the following interrogatories against the said Defendant 1st. at the time of the service of the Garnishment had you in your possession or under your Control any money goods or effects of the defendant? If so state what property, how much and of what Value and what money or effects

2nd. at the time of the service of the Garnishment did you owe the defendant any money or do you owe him any now If so how much on what account and when did it become due if not yet due when will it become due

The plaintiff makes the following allegations as to the grounds of indebtedness of the defendant to the defendant in the execution and as to the property in his hands

That some time in the fall or summer of 1853 Frances Coy died in the County of Charlton and that she was the mother of the said John Coy and Collins Coy and held a life

interest in a number of Slaves which at her death descended and belonged in common to her children. That said John Coy was entitled to an interest in the said Slaves worth about three or four hundred dollars that since the death of Frances Coy the said Collins Coy has purchased or contracted with said John Coy for the purchase of his interest in said Slaves for about the sum of three or four hundred dollars and which at the time of the service of the garnishment was still due to the said John Coy. That the said Collins Coy owned a tract of land of about 80 acres in the County of Chariton which it was agreed by a verbal contract that said Collins Coy should convey to said John Coy on full payment ~~on free payment~~ of the contract price and that the amount due to said John Coy on the purchase of his interest in the said Slaves should be applied in part payment of said land. That said contract was never completed or put into writing and the said Collins holds still the title to said

land and now repudiates said Con-
-tract and is therefore indebted to
said John Coy for the sale of his interest
in the Slaves to the amount of three
or four hundred dollars and the
said Plaintiff therefore asks a Jud-
-gment for the amount of the balance
still due on his execution and costs

Shackelford
Atty for Plaintiff

Wm F Dunnica
vs
Collins Coy

Garnishe on Execution
against John Coy

Defendant being sworn states on
oath in answer to plaintiffs interroga-
-tories filed in this cause that according
to the best of his knowledge and belief
he at the time of the service of the Garnish-
-ment had not in his possession nor
under his control any money goods
or effects of John Coy the defendant
in the execution & that he did not then
owe said John Coy any money & that
he does not owe him any now.

Defendant denies that he owes said
John Coy any thing whatever on account
of the slaves mentioned in the Statement
of Plaintiff accompanying the aforesaid

interrogatories. He states that he agreed with said John Coy & his wife Elizabeth Coy to sell them certain tracts of land & to take the said Johns' interest in said Slaves & certain other property in part payment for said lands which lands they wished to purchase for the use of said Elizabeth & her minor Children, they representing that said John had received from Kentucky money belonging to said Elizabeth to be appropriated in lands for her & her ~~xxxxx~~ Children; that in pursuance of said agreement & at the instance of said John & Elizabeth he executed to John Prewitt for the benefit of said Elizabeth & her minor children a bond binding him the defendant to convey said lands to said Prewitt as trustee for the benefit of said Elizabeth & her minor children on the payment of the balance then remaining due affiant for said lands, which balance then amounted to two hundred dollars & which balance & interest thereon still remains due affiant; that he has not yet made a deed to said Prewitt to the use aforesaid for said lands

because the said two hundred dollars have not yet been paid him, but that he is willing to make such deed when said sum of money & interest thereon shall have been paid him

Collins his X mark Coy

Subscribed & sworn to before me on this 21st day of September 1854

Thomas T Elliott Clerk
Charlton Circuit Court

and thereupon the plaintiff closed his evidence and there being no other evidence offered or introduced on either side and this being all the evidence before the Court except such as is furnished by the admissions in the pleadings the defendant Collins Coy by his counsel insisted that without evidence of the alleged fraud the finding ought to be in favor of the defendants and asked the Court so to declare the law to be, but the Court refused so to declare the law ~~to~~ to be but rendered the following Judgment -

"In the Circuit Court of Charlton County
November Term 1858

William F Dunnica Plaintiff
against
John Coy and others defendants

Now at this day comes the plaintiff by his attorney and the said Defendant Collins Coy by his attorneys and this cause came on for trial before the Court and the Court after hearing the allegations and proofs of the plaintiff and the defendant Collins Coy the other defendants John Coy and Elizabeth Coy and John Prewitt having failed to answer said petition the same was taken as confessed as to them and Judgment ~~by default~~ rendered at last term against them The court is therefore satisfied from the evidence introduced and the admissions of defendants That prior to the 1st day of January 1851 the defendant John Coy was indebted to the plaintiff by a promissory note and said note was renewed from time to time till about the 12th February 1853 the note and interest amounted to about the sum of one hundred and Eighty one & 38/100 Dollars for which a new note was given the consideration of which was the original indebtedness due by a note made 30 May 1837 The court further is satisfied that on or about the 1st

January 1851 The defendant John Coy was indebted to other persons as well as this plaintiff and that he was insolvent and unable to pay his debts That he became entitled to a reversionary interest after the death of his mother in some slaves formerly owned by her father That the said John Coy sold his interest in said slaves to the defendant Collins Coy and as a consideration for said sale he purchased of defendant Collins Coy the following described tracts of land in Chariton County in the State of Missouri to wit, The South West quarter of the North West quarter of Section No twenty six also the North west quarter of the South West quarter of Section No twenty six in Township No fifty three of Range No Eighteen (18). That the price of said land was estimated at Seven Hundred Dollars and as a part consideration for the same the said Collins Coy received the interest in the negroes at five Hundred Dollars leaving a balance due on the land of two hundred dollars. The court further finds that said John Coy for the purpose

of defrauding and hindering and delaying his creditors caused the said Collins Coy to make a title bond for said land to the defendant John Pawitt in trust for the use of the de-fendant Elizabeth Coy and her minor children but that by mistake one of the tracts of land was misdescribed in said Title Bond and described as the South east quarter of the South east quarter of section (27) instead of the North West quarter of the South West quarter of Section (26) in Township No 53 Range (18) which said last men-tioned tract was the one sold and intended to be conveyed. The court further finds that the plaintiff on the 24 March 1854 obtained a Judgment against defendant John Coy on said note in the Circuit Court of Charlton County. That execution was issued on said Judgment and at the September Term 1854 the Sheriff of Charlton County sold all the right title and interest of John Coy in the land first described and that the plaintiff William T Dunnica became the purchaser and received a deed from the Sheriff

for said land that said Collins Coy had due notice of said sale. The Court finds that said John Coy at the time of the sale had an equitable interest in said land which was subject to execution and that the Defendant Collins Coy has a lien on same for the balance of his purchase money to wit, the sum of two hundred dollars with six per cent interest from the 1st day of March 1853, and the plaintiff having deposited in Court for the use of the said Collins Coy the sum of two hundred and sixty eight 50/100 dollars the full amount of the said balance of purchase money. It is therefore considered by the Court that the agreement between Collins Coy & John Prewitt be set aside annulled and sued for nought and that the said Collins Coy be required to make a conveyance of said land described as the South West quarter of the North West quarter of Section No twenty six (26) and the North West quarter of the South West quarter of Section No twenty six in Township No 53 Range No 18

in Charlton County to the plaintiff William F Dunnica and that this decree operate to divest him of all title to the same and it is further adjudged and decreed that said defendant Collins Coy give to the plaintiff the possession of the said land and that the plaintiff recover of defendants his costs in this behalf expended and that he have execution therefor, to which the defendant Collins Coy by his attorney excepts"

to which opinion of the court in refusing to declare the law to be as so asked by said defendant and in rendering the said judgment the said defendant then excepted and afterwards to wit, on the 19th day of November AD 1858 the said defendant Collins Coy filed his motion asking the Court to set aside said judgment which motion is in the words and figures to wit

"Dunnica Pltff
vs
Collins Coy & others Defts
} In the Circuit Court, Charlton County

The defendant Collins Coy moves the court to set aside the judgment

rendered in this Cause and grant him a new trial
1st Because said Judgment is Contrary to law and equity
2d Because said Judgment is contrary to the evidence
3rd because said Judgment is unsupported by the evidence
4th Because there was no evidence introduced on the trial to authorize such Judgment J V Turner atty for Deft Collins Coy

which motion coming on to be heard was overruled by the Court to which opinion of the Court in overruling said Motion the said defendant then excepted and still excepts and tenders this his bill of exceptions and prays that the same may be signed and sealed by the Hon Judge of this Court and made a part of the record in this Cause which is accordingly done on the day month and year last aforesaid James A Clark (Seal)

The motion for appeal referred to is in the words and figures following to wit:

Wm F Dunnica Pltff } In the Circuit Court
against } Chariton County
Collins Coy & others Defts }

The defendant Collins Coy comes & makes his appeal from the Judgment & decision of the Court rendered in this Cause to the Supreme Court & prays that such appeal be allowed

J V Turner
Atty for Collins Coy.

State of Missouri, County of Chariton, &c
I Thomas T Elliott Clerk of the Circuit Court in and for the County of Chariton aforesaid do certify that the foregoing pages from 1 to inclusive contain a true full and perfect transcript of the record and proceedings had in said court in the cause wherein Wm F Dunnica is Plaintiff and John Coy et al are Defendants as fully as the same remains of record and on file in my office.

In testimony whereof I hereto sign my name and affix the seal of said Court at office in Keytesville on this 21st day of December

A D 1858

Thomas S Elliott Clerk

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## Costs

| | | |
|---|---|---|
| T. T. Elliott | clerk | $55.04 |
| R Moore | Sheriff | 6.35 |
| B F Crawley | " | .60 |
| S C Hutcheson | Witness | 2.86 |

10 ~~44~~

Wm F Dunnica

vs

Collins Coy John
& Elizabeth Coy and
John Prewitt appts

filed Dec 31st 1858

Wm E Dunscomb

Clk

Chanton
11th

In Supreme Court - on
a Appeal from Circuit
Court of Charlton County.

Wm. F. Dunnica Pltff/Respondent

vs.

John Coy, Collins Coy, Elizabeth Coy & John
Prewitt, Defendants

And the said Collins Coy, by his
attorney, comes and says that in the re-
cord and proceedings aforesaid and in
giving the judgment aforesaid there is
manifest error in this that the court
as appears by said record and proceedings,
overruled the said Collins objections to the
reading in evidence the plaintiff's deed offered
in evidence by plaintiff & in permitting
said deed to be read in evidence, whereas the
court ought to have sustained such objections
and refused to permit said deed to be read
in evidence; and also in this that as ap-
appears by said record and proceedings, the
court, at the close of the evidence on the trial
refused to declare the law to be that without
evidence of the alleged fraud the finding
ought to be in favor of defendant, whereas
the court ought to have so declared the law
to be; and also in this that the said judg-
ment, as appears by said record and proceed-
ings, was given for the plaintiff against
the said Collins Coy, whereas the said judg-
ment ought to have been for said Collins Coy

against the plaintiff; and also in this that as appears from said record & & proceedings, the said Collins Coy's motion to set aside the said Judgment and grant him a new trial was overruled, whereas it ought to have been sustained. And he, the said Collins, prays that the said Judgment for the errors aforesaid, and for other errors in said record and proceedings, may be reversed, annulled and altogether held for nought, and that he be restored to all things that he has lost by occasion of said Judgment.

J. V. Turner atto for Collins Coy the appellant

44

Dominica vs. Coy &c.

Assignment of Errors

filed Feby 8th 1859
Wm E. Dunscomb
Clerk

In the Supreme Court of Missouri

William H Dunnica Plaintiff & respondent.

vs. } appeal from Chariton Cir Court.

John Coy Collins Coy Elizabeth Coy & John Prewitt. defendants & appellants.

The respondent by his attorney comes & says that in the record and proceedings aforesaid and in the giving the judgment aforesaid for the plaintiff there is no error, and the plaintiff denies that said judgment is erroneous or that the same by the law of the land ought to have been given for the defendant Collins Coy & he prays that said judgment may be affirmed

Shackelford.
Atty for Plff.

William F. Dunnica

vs.

John Cary & others

Joinder of Errors

filed July 14th 1859

Wm E Dunscomb

Clerk

44 Dunnica vs Coy et al

It is recited in the sheriff's deed under which the plaintiff claims, that the execution was issued on the first day of April 1854, directed to the sheriff of Charlton County, and delivered to Henry H. Davis who was at that time sheriff of the county — that Davis levied the writ on the land in controversy but that Robertson Moore the successor in office of Davis advertised the land for sale, conducted the sale and made the deed to the plaintiff.

The defendant insists that the deed is void for the reason that the execution was delivered to and levied by one sheriff, and the sale was made ~~another~~ by his successor.

It does not appear, how the sheriff who first received the writ had levied it. He did not advertise the land for sale, and as he was not required to make an actual or symbolical seizure of it (Wood vs Colvin 5 Hill 228) it is difficult to perceive how he had made a levy at all, and it may be inferred from the circumstances that he did nothing more than indorse on the writ that he had levied it on the land in dispute. The writ then, was not executed within the meaning of the statute, but was in a condition that authorised the sheriff who received it to deliver it to his successor, as provided by the 52nd section of the execution law of 1845 which declares that "Whenever the term of office for which any sheriff shall have been elected has expired, or he shall have resigned, or removed without the county, or be removed from office, it shall be his duty to deliver over all writs of execution, not executed, to such person as may have been elected, or appointed and qualified to discharge the duties of sheriff, and such new sheriff shall receive all such writs, and proceed to execute the same, in the same manner, as if such writs had been originally directed to him".

the right of the plaintiff to recover upon proof of the allegations in his petition was established by the principle decided in the case of Rankin vs Harper 23 Mo. 579. and we think the evidence was sufficient to warrant the decree. The judgment will therefore be affirmed. ~~with~~ the other Judges concurring

McCrichard Jr

44
Copied for Bank
Dunnica
Cycled
Opinion of the Court
Affirmed

filed Oct. 12th 1859
Wm E Dunscomb
Clerk

Richard Jr

Wm. F. Dunnica, Pltff. & Respondent

against

John Coy, Collins Coy, Elizabeth Coy,

& John Prewett, defendants

The appellant Collins Coy, by his attorney, comes and says that in the record and proceedings aforesaid and in giving the judgment aforesaid there is manifest error in this that the said judgment, by the said record appears to have been given for the plaintiff against said Collins Coy; whereas by the law of the land the said judgment ought to have been given for the said Collins Coy against the plaintiff. And the said Collins Coy prays that the said judgment, for the error aforesaid, and for other errors in the said record and proceedings, may be reversed, annulled and altogether held for nought, and that he may be restored to all things which he hath lost by occasion of said judgment.

J. V. Turner Atto. for
Appellant

Dunnica
vs
Coyle

Assignment
of Errors

W. F. Drummond Pltff.

vs.

John Collins & Elizabeth Coy & John Prewitt, Defts.

Appeal from Chariton Circuit Court.

The plaintiff, in an amended petition, alleges, substantially, that John Coy, while insolvent & indebted to plaintiff, acquired an interest in some slaves, & to defraud his creditors sold such interest to Collins Coy, & received in payment certain land, taking Collins title bond stipulating that the title of the land should be conveyed to John Prewitt for the use of Elizabeth Coy & her children; that the title bond was so made in order to defraud creditors, & that Collins was privy to the fraud; that plaintiff obtained a judgment for his debt, against John Coy, had John Coy's interest in the land sold under execution, became himself the purchaser & obtained a Sheriff's deed; that Collins Coy, with ~~intent~~ notice of plaintiff's claim on the land, in order to further aid in defrauding plaintiff, made a pretended cancellation of his contract with John Coy, & took back & still holds the land. He prays

that the Conveyance to Prewett be set aside; that Collins Coy be required to convey the land to plaintiff & to account for rent &c. Collins Coy answers denying any fraudulent intent on his part, & any knowledge of the alleged fraudulent intent of the other defendants, & assigns as the reason for making the title bond to Prewett for the use of Elizabeth Coy & her children that John Coy represented that he had received in Kentucky some money belonging to his wife, the said Elizabeth, to be invested in land for the benefit of her & her children, & therefore he, John Coy, wanted to procure this land for her & children, & he, Collins, believing (as he still believes) that such representation was true, made the title bond as desired, without any fraudulent intent; that according to the agreement he was to receive $200 in addition to the interest in the slaves, for the land, but the money not being paid him & he having no other way of getting it he cancelled the trade & took back the land, not to defraud plaintiff but to save his own debt. He also denies the regularity of the Sheriff's sale. The other defendants filed no answer.

On the trial plaintiff introduced evidence tending to show that the note on which his judgment was based was given for a debt that existed at the time of the alleged transaction between defendants. He also offered in evidence the Sheriff's deed,* to which defendant, Collins Coy, objected on the ground that it appears from the recitals in the deed that the execution was delivered to & levied by one Sheriff & that the sale was made by his successor, but the objection was overruled & the deed was read. This was all the evidence & thereupon the Court decreed the title of the land to plaintiff, from which decision Collins Coy (the only defendant that appeared to the action or that appears from the pleadings to have any interest in the suit) appeals to this Court, having regularly saved exceptions on the points ruled against him & having made a motion for a new trial which was overruled.

* See paper filed, marked (A.)

J. V. Turner for appellant.

I. If, as alleged, the exchange of John Coy's interest in the slaves for the land, was fraudulent & void as to creditors, the title remains as before - unaffected by this void transaction; and a creditor in whose favor the contract is declared void can only subject to the payment of his debt the part of the property that would have been subject thereto had the exchange not been made. It would be unjust to let this creditor take the land & leave the others at liberty to take the slaves. This objection, going to the plaintiff's right of action, is not waived by a failure to raise it on demurrer. R.S. 1855 - p. 1231 §10; Andrews v. Lynch 27 Mo. R. 167.

II. If this position be not sustained, it is still insisted that the court erred in giving the judgment,

1st because there was no proof of the alleged fraud. The failure of the other defendants to answer did not, as against Collins Coy, obviate the necessity of such proof - especially as they were not, in any view of the case, interested in the suit, and were unnecessarily joined as defendants: John Coy's supposed in-

terest being divested by the Sheriff's sale, & the interest of Prewitt & Mrs. Coy being divested by the Cancellation. Even had they answered, expressly admitting fraud, such admission would be no evidence against Collins Coy. 1st Stark. Ev. 332; Clark's Ex'rs v. Van Riemsdyk 9 Cranch 153; ~~1 Gre~~ 1 Greenl. Ev. § 178.

2d because there was no ~~regular~~ lawful Sheriff's sale & conveyance of the land to plaintiff. Only the Sheriff that levied the execution was authorized to make the sale: R. S. 1845 p. 257, § 55. Executions that are levied are not unexecuted, within the meaning of the 52d Sec. of this act. It could not have been intended to require the former Sheriff to deliver such executions to his successor & thus deprive him of authority to sell as required by the 55th Sec. The sale by the successor was therefore void, for want of authority in him. Pether v. Commonwealth 6 Monroe 32

Dunnica

vs

Coy &c.

Appellant's Brief

In the Supreme Court of Missouri. July Term 1859.
William F Dunnica Plaintiff & respondent.

vs. } Appeal from Charlton Circuit Court.
John Coy Collins Coy Elizabeth Coy & John Prewitt defendants

This is an appeal from the Charlton Circuit Court and the facts of the case are in substance as follows.
The plaintiff alleges in his petition & amended petitions that John Coy one of the defendants being indebted to plaintiff and other persons and notoriously insolvent ~~and~~ becoming possessed of an interest in some slaves, sold the said interest to his brother Collins Coy ~~[illegible]~~ and purchased in exchange two tracts of land in Charlton County leaving ~~with~~ a balance due to said Collins Coy. That in order to defraud hinder and delay his creditors he caused the said Collins Coy to make a title bond for the land to defendant John Prewitt in trust for the use and benefit of defendant. Elizabeth Coy wife of said John & her children That said title bond was so made by collusion and fraud for the purpose aforesaid, that John Coy was afterwards put in possession of the land, when plaintiff brought suit on his demand obtained a judgment against John Coy and levied executions on the

land & sold the interest of John Coy in the same = at which sale Plaintiff became the purchaser & received a deed for the same from the Sheriff. The Plaintiff asks in his petition that the contract with John Prewitt as trustee be set aside and that Collins Coy be required to make a conveyance of the land to Plaintiff on the Plaintiff payment of balance of purchase money. The facts stated in the petition are admitted by all the defendants except Collins Coy who alone makes defence. He denies all knowledge of fraudulent intent of the other parties and claims to have rescinded his contract with Elizabeth Coy and now claims to hold the land himself. He also denies that the Sheriffs deed to Plaintiff was regular on the ground that the land was levied upon by Henry Davis former Sheriff & sold by Robertson Moore his successor in office, by whom the deed was made = The Plaintiff on the trial proved the existence of his debt at time of contract and in order to prove that consideration of the sale of land hafed from John Coy & that Collins Coy had knowledge of Plaintiffs claim, introduced in evidence the answer of Defendant Collins Coy to a garnishment under the identical

execution by which the sale of land was made against John Coy. This being all the evidence the Court decreed that said Collins Coy convey the land to Plaintiff on his paying the balance of purchase money and the Plaintiff having deposited the money in Court the decree was made final

Against this decree of the Court the defendant Collins Coy objects first on the ground of the want of knowledge on his part of the fraud having been proven sufficiently, secondly that he cancelled the contract with Elizabeth Coy because she nor her trustee did not pay the balance of purchase money, thirdly that the Sheriffs deed confers no right on the Plaintiff=

In answer to the first objection it is submitted that even if a knowledge on the part of Collins Coy ~~which we deny~~ of the fraud were necessary (which we deny) yet it was abundantly proven by his subsequent acts in endeavoring to aid his brother to defraud his creditors and in the further fact that his insolvency was notorious and that after this proceeding was commenced against him & the balance of the purchase money offered him, he then made a pretended cancellation of his contract with Elizabeth Coy with a full knowledge that Plaintiff had purchased

the land, It is however denied that it is important or material whether the defendant Collins Cog was privy to the original fraud or not. All that he is interested in is to get the balance of the purchase money which has been tendered him by plaintiff. And if this is not paid his only remedy would be to subject the land to its payment by a proper proceeding to which the plaintiff is a necessary party. & he can not by making a new contract after the plaintiffs equity intervenes deprive plaintiff of his right to the land — This position answers also the second objection,

The third objection relied upon is that the sheriffs deed was invalid, In answer to this we submit that this objection can not be made available in this suit even if any objection did exist as it is a collateral proceeding so far as defendant is concerned But as a further answer we contend that the deed is valid and in support of our position offer the following considerations,

As to whether the deed is valid or not depends on the proper construction of sections 52. 53. 54, 55, 56. Rev Statutes 1845 title Executions

Section 52 requires that the sheriff whose term of office has expired shall deliver all units unexecuted to his successor to be

by him executed, section 55 provides that in the event of the term of office of a Sheriff expiring after he shall have levied on property and before a sale, he shall have power to complete the sale & make a deed, There is an apparent inconsistency in the two sections but it is submitted as to whether section 55 is not merely directory giving the privilege to the old Sheriff either to deliver all unexecuted writs to his successor & thereby discharging himself & securities or at his election retain such as are levied & not fully executed and proceed to execute them by sale &c. The deed is however prima facie regular and the law presumes that the Sheriff in office had a right to sell & make a deed, and for aught that appears by the record the old Sheriff was under disqualification, in which event the predecessor is authorized by section 56. to complete a sale & make a deed when land is levied upon by predecessor who is disqualified or dead, we think thus it is not necessary that the particular disqualification should be stated in the deed, nor do we think it a subject of enquiry in a collateral proceeding.

To sustain the judgment of the Court below the plaintiff by his attorney makes the,

following points.

1st = The evidence clearly shows that defendant Collins boy was cognizant of the fraud, and if he was not it is clearly unimportant whether he was a party to the fraud or not =

2. The doctrine upon which the plaintiff bases his right to recover in this proceeding has been settled by this Court, in Rankin vs. Harper 23 Mo. 579. and by this same case heretofore before this Court. Damuco vs Coy 24 Mo. 167.

3. The deed made by a sheriff in office for land sold by him although levied upon by his predecessor is valid in law and the statute authorizing former sheriff to complete the sale after his term expires is merely directory

4. Erroneous or irregular acts of sheriffs in office do not affect the title to land sold under a valid ~~execution~~ judgment. A sheriff in office and having possession of a writ is presumed to be the proper person to execute it. and the doctrine is well established that if an officer ~~can~~ justify under a writ he can pass the title to property by a sale under it, 1 Monroe 94. Cox vs Nelson 154 Smith vs Moseman 3 Monroe 272, 4 Monroe 465; 474 Saunders heirs vs Norton.

5 = The validity of an execution can not be questioned in a collateral proceeding, The same doctrine is settled in accordance with rule by this Court

in regard to Judgments. 8 Mo. 208.

6th The defendant Collins Coy could make no contract with Elizabeth Coy a married woman to cancel a contract with her trustee. especially after Plaintiff right accrued of which he had knowledge.

7 Facts which are necessary to give an officer authority to make a deed for land sold med not be recited in the deed Welch vs Joy. 13. Pick 477.

Shackelford for Plaintiff.

William H Dunnica

vs.

John Coy & others.

Plaintiffs Brief

In the Supreme Court of
Missouri, on appeal from
the Chariton Circuit Court.

William F. Dunnica, Plaintiff
against
John Coy, Collins Coy, & others, Defendants.

The appellant and respondent admit that on the trial of the above entitled cause in the circuit Court, the plaintiff offered in evidence the Sheriff's deed referred to in his petition, to which defendant Collins Coy then objected on the ground that the Successor of the Sheriff who made the levy was not authorized to make the sale, and that his sale was therefore void, which objection was overruled & the deed was permitted to be read in evidence, to which said Collins then excepted. And they consent that these facts (which were casually omitted to be stated in the bill of exceptions) may be considered, and request the Court to consider them, as if embodied in the bill of exceptions. T. Sackelford atty for Plfg.

J. V. Turner atto. for
appellant

(A).

Dominica

vs } Admission of
} parties

Coy &c.