Jamison, John v. Glascock, French 1859 Ralls 431/7

Old Box 606/3

F 59
O 59
RdK
~~Scott~~

29
191

bill for redemption of mortgaged property

O: errors in mtg.
shouldn't have execution issued upon judg. & purchased at sale when was POA to dispose of land

J = collector of county of Ralls
J wants reconveyance of prop. held in trust
G = security on official bond of J
J defaulted & G assumed debt to Co. $608.82
G got judg against J bond to Co. paid by both
J gave G poa when went to TX
G purchased lots
Lozey had judg. against J also & levied lots; paid by G so relinquished bid
Abner Smith had mortgage on lots; paid by G
G sold all but one of lots
J took nonsuit

The State of Missouri, ss.

The State of Missouri, to the Honorable the ~~Hannibal~~ Ralls Circuit Court **in said State—Greeting:**

WHEREAS, In the record and proceedings in a certain cause lately pending in the Circuit Court held in and for the ~~City and~~ County of Ralls ~~Hannibal~~.

wherein John Jamison was plaintiff, and French Glascock was defendant

in a civil action manifest error hath intervened, to the great damage of said plaintiff as by his complaint we are informed.

NOW, being willing that the error, if any there be, should be corrected, and full and speedy justice done to the parties aforesaid, in that behalf, COMMAND YOU, that you send to us, certified under your seal, the record and proceedings in the cause aforesaid, as fully as the same remain of record before you in said Court, so that we may have them before us at our Supreme Court, to be begun and held in the City of St. Louis, in the County of St. Louis, in said State, on the third Monday in October next, so that our Judges of our Supreme Court, on inspecting the record and proceedings aforesaid, may cause to be further done therein, for correcting the error, what of right, and according to law, ought to be done.

WITNESS, WILLIAM S. GLANVILLE, Clerk of our said Supreme Court, at office in the City of Saint Louis, the sixth day of September in the year of our Lord one thousand eight hundred and fifty-nine

Wm S. Glanville
CLERK.

Received of Messrs. Porter & Harrison the fee of $10.00 for docketing of the case of John Jamison vs. French Glascock.

Wm S. Glanville
By: A. Rose.

State of Missouri }
County of Rules } ss.

The service of this writ appears by the full and complete transcript of the record and proceedings in the within entitled cause hereto attached,

Witness my hand as clerk and the seal of said Court, done at Office at New London in said County this 19th Day of September 1859.

Sam K Caldwell Clerk

State of Missouri } In the Rails Circuit Court
County of Rails } ss. Be it remembered that heretofore To wit, On the 7th Day of August AD 1857. John Jamison filed in the Office of the Rails Circuit Court, his petition against French Glascock which petition is in the words and figures following To wit

" State of Missouri
County of Rails

John Jamison Pltff
against } Circuit Court of Rails Co
French Glascock Deft } Augt Term 1857.

The Plaintiff states that on the 11 Day of February 1848. he was indebted to the County of Rails in the sum of five hundred and four dollars & 11/100, And on the 30th day of March 1848. a judgment was rendered against him in the Circuit Court of said County in favor of the State of Missouri, suing to the use of the said County of Rails, for the sum of five hundred and four dollars and 11/100 debt, and thirty three 18/100 dollars damages,

The Plaintiff says that in the years he was Sheriff of said County of Rails, and by virtue of his said Office of Sheriff was the Collector of the Revenue of said County, that said Defendant was one of the securities of Plaintiff on his bond executed to the State of Missouri, for the

use of the said County, and as such security became and was liable to said County of Pulaski for the default which the Plaintiff might make in the payment of any portion of said revenue which might be collected by Plaintiff as collector as aforesaid,

The Plaintiff says he did, as collector of said County, collect of the revenue of said County a large sum of money which he did not pay over, and which said Defendant became and was liable to pay as his security on said bond, which said sum it was ascertained on a settlement with said County amounted to said sum of five hundred and four 11/100 Dollars, as before stated, and for which sum with the damages above named the said County obtained the judgment aforesaid in the Circuit Court of Pulaski County,

The Plaintiff further says that afterwards to wit on the 27th day of August 1849, the said Defendant assumed said debt to the said County, and obtained for this Plaintiff a discharge of said debt to said County, by giving his own bond to said County, and that on the 28th day of August 1849, he confessed a judgment in the said Circuit Court of Pulaski County in favor of Defendant for the sum of six hundred and eight dollars and Eighty two cents, the full amount of his said debt to said County to that date

The Plaintiff says that at the time of said last Judgment so confessed by him in favor of Plaintiff, it was agreed and understood by himself and Plaintiff, that said Judgment was to be and stand as a means of security to said Glascock (Defendant) to secure him in the payment of said sum of six hundred and Eight 11/100 Dollars, and was by the agreement of said Defendant with Plaintiff to have only the force and effect of a Mortgage,

The Plaintiff says that at the time he confessed said Judgment in favor of said Glascock he was the owner of Certain real Estate in the County of Ralls, viz,

and also Certain other real Estate in the County of Marion viz, Lot No 6 in Block No 16. 28/142 feet, Lot No 7. in block No 18. Lots No 1.2.3 and 4 in block No 100. and Lot No 2 in Block No 50, all in the City of Hannibal, worth at that time the sum of twenty five hundred dollars, That he had also a considerable sum of Money due him in said County of Ralls and in other portions of the State of Missouri. That being about to remove from the State of Missouri, to the State of Texas with the view of Making said latter State his home, he died on the day of June 1850. by his

certain writing therefor constitute said Glascock his agent and attorney in fact, in company with Robert B Caldwell, Samuel K Caldwell and John Ralls, and did give to said Glascock full authority to receive all moneys due to him Plaintiff from every person, and full authority to sell and convey certain real estate in said writing named to wit, all the said real estate herein before set forth in Ralls County and in said City of Hannibal The Plaintiff avers that said Glascock accepted said agency or attorneyship, and did afterwards proceed to collect and receive moneys belonging to Plaintiff and to do other acts as his attorney under and by virtue of said power,

The Plaintiff says that it was understood and agreed between said Glascock and himself that said Glascock should by virtue of said power proceed to sell said real estate to the best advantage at such time as his discretion might suggest, and should out of the proceeds of it, pay himself the balance of said debt of six hundred and eight 22/100 dollars, which then amounted to about three hundred and twenty dollars and all costs, and hold the remainder for the use and benefit of Plaintiff, and that with this understanding he Plaintiff in a few days after said Power of Attorney was executed left the State of Missouri for said State of Texas, leaving his

property and effects under the control of said Glascock and the other attorneys. That before leaving however, to wit on the 6th of June 1850. he paid on account of said judgment the sum of three hundred and twenty six dollars, &

The Plaintiff says that after he had left the State of Missouri, to wit on the 10th day of September 1850 The said Glascock in violation of his said agreement, caused an execution to issue on said judgment, directed to the Sheriff of Marion County, by virtue of which said Execution, said Sheriff levied on the said real Estate herein named in said City of Hannibal, and on the 12th Day of March 1851. sold all aforesaid real estate, and said Glascock became the purchaser at the nominal value of one hundred and seventy five dollars, which Plaintiff avers was not the one tenth of its real value in the Market, that said Glascock did afterwards cause to be made to himself by said Sheriff a deed for all of said real estate which is duly of record in said County of Marion

The Plaintiff further says that in the year 1852. said Glascock sold a portion of said real estate which he had bought at said Sheriff's sale to wit, the Lot 6 in Block No 16 for the sum of five hundred dollars, and the 28 by 142 feet of Lot No 7 in Block No 18 for the sum of three hundred

Dollars, and in the year 1857. he sold the 4 lots in Block 106 for the sum of $ as Plaintiff is advised and believes, & charges.

The Plaintiff says that at the time he made the power of Attorney to said Glascock and Others as above named it was agreed that said Glascock only should give his attention and supervision to the real estate and other business of the said Plaintiff in Marion County, and says that said Glascock was the only one of said agents or Attorneys who did give any attention thereto, the remaining attorneys having confided to him the sole management of Plaintiffs matters in said County

The Plaintiff says that in the month of July 1849. he was indebted to one Abner Smith in about the sum of two hundred and seven dollars, and that at said time he executed to said Smith a Mortgage to secure him in the payment of said debt, on lot 6 in Block 16 and on lot 2 in Block 50 in said City of Hannibal, that he is advised that said Glascock paid off said Mortgage debt, and if so Plaintiff says he owes him the sum paid whatever may the amount, that he owed him the sum of about $320. on account of said Judgment in June 1850., he says that said Glascock may have paid some other small sums such as taxes &c for his account, of

which this Plaintiff has no account,

Plaintiff says that said Glascock did after his appointment as Attorney of Plaintiff, under said Power collect from various persons, moneys due to Plaintiff which he has not paid over that he holds in his hands as the proceeds of the sales of the lots in Hannibal as he believes about the sum of Twenty hundred dollars, which added to the amount collected for Plaintiffs account will largely overpay Plaintiffs debt to him, that he now holds in his own name the lots in Hannibal which were not sold by him as above set out, Viz, Lot No 2 in Block 50 — which the Plaintiff says is in right and equity his property

The Plaintiff says he has called on defendant and demanded from time to time the amount due him on a settlement, and that Defendant has refused to settle with him or pay him said balance or any part of it, that he has demanded of him a release of said real estate remaining unsold, and said Glascock has refused to release the same, that by agreement between himself and Defendant, the matters of difference were submitted to arbitration and an award had in his favor, but said Defendant refused to abide by said award, and that now defendant holds his money and property and refuses to pay or surrender the same

or any part of it,

The Plaintiff therefore prays that said Defendant, be required to render an account of the amounts received by him as Plaintiffs agent. and also an account of the money received by him for the real Estate in Hannibal sold as above named, and that after deducting from same the sum that Plaintiff owes him Defendant, this Plaintiff may have a judgment for the remainder, He further prays that said Glascock may be required to release to him the Lot No 2 in Block No 50. remaining undisposed of by him, and for all such other and further relief in the premises as may be just and right

Southworth,
Porter & Harrison
Attys for Plff.

E W Southworth one of the Attorneys for the Plaintiff on his oath says that the foregoing petition and the matters therein as stated he believes to be true E W Southworth

Sworn to & subscribed before me this 7th day of August 1857.

Sam'l K Caldwell Clerk

Upon which said petition the following Summons was issued, To wit.

"County of Ralls

The State of Missouri,

To the Sheriff of Ralls County, Greeting,
We command you to summon French Glascock, to appear before the Judge of Our Circuit Court, on the first day of the next term thereof to be held at New London within and for said County of Ralls on the fourth Monday of August 1857. then and there to answer the complaint of John Jamison in a civil action as set forth in the annexed petition, And have you then and there this writ, Witness Samuel H Cardwell Clerk of our said Court, and the seal thereof hereto affixed at Office at New London this 7th Day of August in the year of our Lord Eighteen hundred and fifty seven.

{ S S }

Sam H Cardwell Clerk

Upon the back of said Summons is the Sheriffs return in words and figures following, To wit,

"Executed the within petition and summons by delivering a certified copy of the same to a free white member of the family of the within named French Glascock, over the age of 15 years at his residence in Ralls County Missouri this 11th day of August AD 1857.

R B Cardwell Sheriff
Ralls County Mo.

And afterwards, To wit, On the 25th Day of March

1858. it being during the regular March Term of the Ralls Circuit Court, begun and continued at the Courthouse in the Town of New London in said County of Ralls, before the Hon John T Redd Judge of said Court, among other proceedings the following were had To wit

John Jamison Plaintiff
vs
French Glascock Defendant
} Civil action,

Now at this day comes the said Defendant by his attorney, and files his motion to rule Plaintiff to security for costs in this cause, and also files his answer herein, ~~and cause continued~~,

Which said motion is in words and figures following To wit

John Jamison Pltff
vs
French Glascock Deft
} Ralls Circuit Court
March Term 1858.

Deft moves the Court, to rule the Plaintiff to give security for costs in this cause,
Because said Plaintiff is not a resident of the State of Missouri,

Pratt & McCabe
attys for Deft,

Which said answer is in the words and figures following To wit,

11

John Jamison Pltff
against
French Glascock Deft

Deft states for answer, that Pltff did confess a judgment to him as stated in the Ralls Circuit Court the 28th August 1849. and afterwards paid upon said judgment. June 6th 1850. the sum of three hundred twenty six dollars, which was credited upon the Exn by the Clerk, which Exn was issued on the 16th day of September 1850. & directed to the Shff of Marion County & by him on the 8th day of February 1851. levied upon Lot 6 Block 16. Lot 2 Block 50. N½ Lot 7, Block 18. in the city of Hannibal, also Lots 1.2.3 & 4 in block 106. in South Hannibal, and on the 12th March 1851. said lots were offered to the highest bidder according to law & the Defendant was the highest bidder, To wit, for Lot 6 in block 16. 20 dollars, Lot 2 in block 50. twenty dollars, the N½ Lot 7 Block 18 at twenty dollars, Lot No one Block 106 thirty dollars. Lot 2 in Block 106. twenty one dollars, Lot 3 in Block 106 twenty two dollars, Lot 4 Block 106 forty two dollars, and became the purchaser and received the sheriffs deed for said lots, under which Deft claims said lots,

Deft states that he as security for said Pltff paid upwards of three hundred dollars, and the said Pltff is still indebted to him on said judgment, more than one hundred dollars

Deft denies that there was any contract or agreement between him and Pltff that said judgment was to

stand as a security to Deft, he denies that it was agreed between them that was to have only the force & effect of a Mortgage,

Deft says that on the contrary the judgment was confessed in good faith by Pltff. Deft cannot say as to the sums due Pltff in Missouri, but defendant denies that he was constituted agent & Attorney in fact, or that he ever accepted such agency or attorneyship, or in any way accepted or acted under such power or authority, but utterly declined acting in any manner as such agent or Attorney in fact, and he denies that he accepted said agency or attorneyship & he denies that he collected or received Money belonging to said Plaintiff, & he further denies that he ever did any acts under any power or for said Jamison

Defendant denies that it was understood & agreed between himself & Pltff. that he should proceed to sell said Estate as his discretion might suggest to pay the balance due on said judgment,

Deft admits that he had an execution issued to Marion, & that the property was sold to the highest bidder at a public sale after public notice, & that he became the purchaser of the property to save himself from loss, by reason of his having become security as aforesaid,

Deft avers that the property then purchased was sold at its fair value in the market, it was encumbered, with a mortgage & with suits called the 'Vail claim' & that no one would bid more, nor would

any of the Friends of Pltff for Friendship or Speculation, It was further encumbered by judgment Execution, levy and sale in Marion,

Deft denies that he made any agreement to give his attention or supervision to the real estate of Pltff & other business of Pltff in Marion County, ~~or~~ nor did he give any attention thereto in any manner in said County,

Deft says that he was compelled to make further advances in order to save himself, To wit, to pay off a Mortgage to one Abner Smith for upwards of two hundred dollars, and Eighty dollars and sixty five cents to release a sale under judgment in Marion,

Deft denies that there was any submission to arbitration, or that any award was made, Deft denies that he has received any money for Pltff

Deft admits that January 21st 1851 there was paid to him by Marshal Jamison for Plaintiff the sum of forty five dollars which is to be credited upon the Judgt,

Deft in conclusion avers that he purchased without any agreement the lots specified, upon which he realised about 160 Dollars after paying costs which was duly credited upon the Ex.n & returned

Deft denies all the allegations of Pltff in any way affecting his rights to the lots specified & he avers that he in good faith signed the bond of said Pltff as collector, and that he was compelled to pay

as security for the Default of the Collector in the discharge of his duty & that Pltff left the Country in debt & with property encumbered, & that Deft was then compelled to pay the money, and save himself as he could, and now when property in Hannibal has advanced, Pltff returns & offers to take the property from Deft to which he objects,

Deft states that Pltff is indebted to him upon the Judgment rendered August 28th 1850. + 608 11/100 Dollars subject to a credit June 6th 1850 of 326 dollars January 21st 1851 forty five dollars and on the 12th March 1851 the sum of 165 dollars, which leaves due to him after allowing all just credits and offsets, the sum of One hundred & fourteen dollars & interest from the 12th March 1851 amounting to forty seven dollars & Eighty eight cents, in all the sum of One hundred & sixty one dollars & Eighty eight cents for which he asks judgment,

Pratt & McCabe
Attys for Deft,

French Glascock on his oath states the matters & things in his above answer as stated, are true to the best of his knowledge & belief,

French Glascock,

Sworn to & subscribed before me this 23 day of March 1858.

Sam K Caldwell Clerk

And afterwards To wit. On the 25th Day of

March 1858. the following Order is found To wit,

John Jamison Plaintiff
vs
French Glascock Defendant } Civil action,

Now at this day come the parties aforesaid by their respective attorneys, and the Motion heretofore filed to rule said Plaintiff to security for costs is seen and considered by the Court and sustained, It is ordered by the Court that said Plaintiff file his bond with security for costs on or before the 1st day of next term and cause continued,

And afterwards, To wit, on the 11th Day of June 1858 the following order is found To wit,

John Jamison Plaintiff
vs
French Glascock Defendant } Civil action

Now at this day comes the said Plaintiff by his attorney and files the bond of William M Jamison as security for costs in this cause,

Which said bond is in words and figures following To wit,

John Jamison Plaintiff
vs
French Glascock Defendant } Civil action in the Rules Circuit Court

I William M Jamison a resident of the County of Rales in the State of Missouri, do hereby acknowledge myself bound to pay all the Costs that have accrued or may accrue in the above entitled cause, Witness my hand this 11th Day of June 1858

William M Jamison

And afterwards To wit, On the 27th Day of August 1858 The following order is found To wit,

John Jamison Plaintiff
vs
French Glascock Defendant
} Civil action,

Now at this day come the parties aforesaid by their respective Attorneys, and by agreement this Cause is Continued,

And afterwards To wit on the 31st Day of March 1859 The following proceedings were had To wit,

John Jamison Plaintiff
vs
French Glascock Defendant
} Civil action

Now at this day come the parties aforesaid by their respective Attorneys, and on Motion of said Plaintiff, It is ordered by the Court that this Cause be continued at the costs of said Plaintiff, It is therefore considered by the Court, that the

17 said Defendant, do have and recover against the said Plaintiff his costs and charges in this cause at this term incurred and that he have execution therefor,

And afterwards To wit on the 25th Day of August 1859. the following proceedings were had To wit;

John Jamison Plaintiff
vs
French Glascock Defendant } Civil action,

Now at this day come the said parties by their respective attorneys, and neither party requiring a jury, submit this cause to the Court without a jury, after hearing the evidence in the cause and the argument of the Counsel, the cause is taken under advisement by the Court,

And afterwards To wit on the 29th Day of August 1859. the following proceedings were had To wit,

John Jamison Plaintiff
vs
French Glascock Defendant } Civil action,

Now at this day come the said parties by their respective attorneys, and the said Plaintiff says that he will not further prosecute this suit, but take a non suit with leave to move the

Court to set the same aside which leave is granted by the Court, It is therefore considered by the Court that the said Plaintiff take nothing by his writ, that said Defendant go hence of without day, and that he have and recover against said Plaintiff his costs and charges in this cause incurred and that he have execution therefor, Whereupon the said Plaintiff files his motion to set aside the judgment of non-suit rendered in this cause and grant him a new trial, which motion is seen and considered by the Court and overruled, to which decision and order of the Court in overruling said motion, the said Plaintiff by his attorney excepts, and tenders here in Court his Bill of Exceptions, and prays the Court, to allow and sign the same, which is done accordingly, and ordered to be made a part of the record in this cause,

Which said motion to set aside non suit and grant a new trial is in the words and figures following, To wit,

John Jamison Plaintiff
v
French Glascock Defendant

Circuit Court Pulaski Co.
Augt T 1859.

Plaintiff moves the Court to set aside the non-suit herein and grant him a new trial for reasons To wit,

(19

1st Because the Court refused to declare the law to be as asked by Plaintiff in his instructions,

G Porter & W P Harrison
for Pltff

Which said Bill of Exceptions is in the words and figures following to wit,

John Jamison Plaintiff } In Ralls Circuit Court
v } August Term 1859.
French Glascock Defendant }

Be it remembered that on the hearing of this cause, the following evidence was given,

1st On behalf of Plaintiff, Plaintiff read a power of attorney from John Jamison to French Glascock & others,

Eli W Southworth was introduced, testified that Jamison went to Texas in 1850. that he (witness) on yesterday examined in the Recorder's office for the power of attorney, but could not find it, Jamison the Pltff was also introduced who swore that he filed the original of the said Power of Attorney in the Ralls County Recorder's Office, saw it there once or twice, but has not seen it since, last time he saw it in said office, does not know where it is, whereupon it was read,

Said Power of Attorney is in words and figures following to wit,

"Know all men by these presents that I John Jamison of the County of Ralls in the State of

Missouri, do hereby nominate, constitute and appoint French Glascock, Robert B Caldwell, Samuel H Caldwell and John Rales, jointly and severally my true and lawful Attorney or Attorneys, for me and in my name, to ask for, demand & receive from all and every person or persons in the State of Missouri, all debts, dues and demands, now due or becoming due to me from all and every ~~person~~ source whatever, and when received by either or all of my said Attorneys, they shall severally or jointly as may be best suit the convenience of the parties, execute and deliver all necessary receipts and acquittances in my name, and such receipts so shall be binding upon me or my heirs, My said Attorneys are required to keep an account of their respective proceedings under this authority, and account to me or my order for any amount either or all may receive, I hereby authorize one or more of my said Attorneys to sell and convey by proper deeds duly executed the following real Estate, To wit, Lot No sixty six in block No 15 situate in the Town of New London in the County of Rales, Missouri, Four lots in the City of Hannibal Marion County Mo. To wit Lots number one, two, three and four, Block Number one hundred and six in South Hannibal, being 50 feet in width by 140 in length as represented on the recorded plat of said City of Hannibal, also the piece or

part of the Northerly half of Lot number Seven in block number eighteen in the said City of Hannibal 28 feet in width and 142 feet in length bounded by parallel lines running with the street at one end of said lot, and with the alley at the other end of said lot, Also lot number six, in block number Sixteen, Lot No two, in block number fifty with a front of 60 feet on Craigs alley and extending back eastwardly to the Mississippi river, according to said plat of the City of Hannibal, the undivided equal half of the west half of the N E quarter of Section two in Township fifty five and Range five, supposed to contain 81 acres, And when any portion of said real Estate or the whole thereof may be sold by either or all of my said attorneys, upon payment of the purchase money according to the terms of said sale, my said Attorneys, or a portion of them as may be convenient. shall execute and deliver proper deeds of conveyance therefor, with such covenants of Warranty as they or either of them may deem proper and necessary As it is intended that one or more of my said attorneys may sell and convey said real estate, or any portion thereof, hereby giving and granting to my said attorneys as aforesaid my full power and authority in the premises ~~aforesaid~~ as fully in every respect as if I were present to transact the business in proper person hereby ratifying and confirming whatever my attorneys may lawfully do in the premises aforesaid

Witness my hand and seal the 12th day of June AD 1850.

John Jamison (Seal)

State of Missouri }
County of Ralls } Set. Be it remembered that on this 12th Day of June AD 1850 before me William O Young Clerk of the County Court within and for the County of Ralls aforesaid, personally appeared John Jamison, who is personally known to me to be the person whose name is subscribed to the within and foregoing power of attorney or instrument in writing, as a party thereto having executed the said instrument, and acknowledged the same to be his hand and seal act and deed, for the purposes therein mentioned, In testimony whereof I have hereunto set my hand and affixed the Judicial seal of the said Court, at Office in New London, the same day and year first above written

(SS)

William O Young Clerk

In 7th line of deed from bottom, the word "his" 1st line of same the word "attorney" interlined

Received for record June 13th AD 1850. Recorded June 27th AD 1850.

Sam K Cauldwell Recorder

Plaintiff read original Confession of Judgment in case of French Glascock vs John Jamison dated August 28th 1849

Which confession of Judgment is in the words and figures following to wit,

"State of Missouri. In the Circuit Court for Rails County August Term 1849.

John Jamison states, That he is indebted to French Glascock the sum of Six hundred and eight dollars and Eighty two cents, the same being for so much money by the said Glascock assumed for me to the County of Rails & paid off by his bond and security which the said County accepted and discharged the Judgment held by said County against me, and said sum of Six hundred & eight dollars & eighty two cents is by me justly due & owing, and I do hereby authorise the Circuit Court of Rails County to enter Judgment for the said sum against me in favor of French Glascock

John Jamison

John Jamison being duly sworn says the matters & things in his above statement are true.

Subscribed in Open Court this 28 day of August 1849. } John Jamison

Sam'l E Southworth Clerk }

Said E W Southworth further states that Jamison (Plff) and Glascock (Deft) came to him and spoke of having agreed that Jamison should give Glascock Judgment to secure him as security for Jamison as Collector for Rails County, Witness heard no agreement as to how the judgment was to be managed by Mr Glascock, they brought to Witness a paper, the nature of which was a Confession of

of judgment, thinks paper shown to him the same (that already read) It was also stated that at the time that Jamison was to give power of attorney, to sell Hannibal lots & other real estate to raise money to pay Jamisons debts,

Jacob Losey sworn states that he knew Francis Glascock the Pltff - Execution shown him in the Case of Losey vs Jamison, he states he signed the writing endorsed on the same, Which Execution & endorsements are as follows,

State of Missouri }
County of Marion } The state of Missouri

To the sheriff of Marion County Greeting

Whereas Jacob Losey, on the first day of January 1850 before William H Claggett, Esq. a Justice of the peace within and for Liberty Township in the County of Marion, recovered against John Jamison for Deblt the sum of Seventy two dollars and 20 cents, and also his costs, which have been taxed at the sum of, three dollars and five cents which appears to us from a transcript of the judgment aforesaid, filed in the Office of the Clerk of the Circuit Court for said County on the 18th Day of February AD 1850. and it appearing that said Defendant is not a resident of the County of Marion, These are therefore to Command you that of the goods and chattles, lands and tenements of the said John Jamison, you cause to be made the debt and costs aforesaid, and that you have the same before the judge of our said Court on the first

Monday in March next, then and there before our said Judge to satisfy the said Jacob Josey of his debt and costs aforesaid, And have you then and there this writ.

Witness my hand and the seal of our said Court

SS

Done at Office at Palmyra in the County aforesaid on the 19th Day of February AD 1850.

Tho E Thompson Clerk

By his Deputy Benj F Hayden

Attached to and on the back of said Execution are the following endorsements To Wit,

Jacob Josey vs John Jamison, Execution, Debt $72.20. W H Claggett 1.25. P C Sand 50. Tho E Thompson 1.30. $75.25. Judgt 1st January 1850. The fee of Clagget & Sand are to be paid to Pltff. Test Tho E Thompson Clerk"

Recd this Writ Feby 21st 1850

King Shff.

Sheriffs Sale

In virtue and by authority of an Execution issued from the Office of the Clerk of the Circuit Court of the County of Marion, Missouri, to me directed in favor of Jacob Josey against John Jamison I have levied upon and seized all the right, title, interest and claim of the said John Jamison, in and to the following described real Estate To wit. Lot No 1.2.3 & 4 in Block No 106 in South Hannibal, and pt of Northerly half of Lot No 7 in Block No 18. in the City of Hannibal said pt of Lot being 28 feet wide & 142 feet long, bounded by parallel lines running with street at one end of

said lot, and with the alley at the other end of said lot. all in the County of Marion and State of Missouri, Together with all the buildings and improvements thereunto belonging, and will sell the same (subject to all prior liens and judgments) to the highest bidder for ready money, at the Courthouse door in the Town of Palmyra, in the County and State aforesaid, on Monday the 18th day of March next, between the hours of nine and five o'clock of that day to satisfy said Execution and costs

Febry 21st 1850. B B King Sheriff of Marion County "

" The Sheriff will postpone the sale under this Execution until the August Term AD 1850, as by request of Defendant March Term 1850. Jacob Losey,

Sheriffs Sale,

By virtue and authority of an execution issued from the Office of the Clerk of the Circuit Court of the County of Marion Missouri, and to me directed in favor of Jacob Losey against John Jamison, I have levied upon all the right title, interest and claim of the said John Jamison in and to the following described real Estate To wit, Lots No 1.2.3 & 4 in Block No 106, in South Hannibal, and pt of the Northerly half of Lot No 7 in Block No 18 in the City of Hannibal said pt of lot being 28 feet wide and 142 feet long, bounded by parallel lines running with Street at one end ~~and~~ of said lot and with the alley at the other end of said lot, all in Marion County and State of

Missouri, Together with all the buildings and improvements thereunto belonging, and will sell the same (subject to all prior liens and judgment, to the highest bidder, for ready money at the Courthouse door in the Town of Palmyra in the County and State aforesaid on Tuesday the 13th Day of August next between the hours of nine and five o'clock of that day to satisfy said Execution and costs

B B King Sheriff
of Marion County"

This is to certify that on the 22d day of July AD 1850. I levied this Execution on the property mentioned in the foregoing advertisement as the property of the within named Defendant John Jamison, which is to be taken as a part of my acts and doings under this writ, and on the 13th Day of August AD 1850. I exposed the same for sale at public auction at the Courthouse door in the town of Palmyra, Marion County Missouri, and during the sitting of the Circuit Court for said County, after having given at least twenty days notice of the, time, place and a description of the property to be sold, by at least six hand bills signed by me as sheriff and posted up in public places in said County, and Jacob Josey being the highest for the following described lots of land, to wit Lots No 1.2.3 & 4 in block No 106 in South Hannibal and pt of the Northerly half of Lot No 7 in Block 18 in the City of Hannibal (said pt Lot being 28 feet wide and 142 feet long, bounded by parallel lines running

with the street at one end and with the alley at the other) became the purchaser thereof at the sum of Three 55/100 Dollars, with which this execution is to be credited, no money paid over, No other property found in Marion County Missouri, out of which to satisfy the balance of this Execution, or any part thereof. All done in Marion County, State of Missouri the day and date above

Levy $1.00 — B B King Shff Marion
Com 12 — County Missouri"
$1.12

"Recd of Jacob Josey Pltff herein five 05/100 Dollars in full of Mino & Thompson's costs in this case.
Sept 21/50 — B B King Shff Marion Co Mo"

"Recd of John Jamison per French Glascock Eighty One 60/100. in full of Debt, Int and Costs on this Execution and I hereby relinquish my bid for property herein named as bot by me this Sept 21 1850. to John Jamison Deft herein,

Jacob Josey"

Witness stated he bought the Hannibal under said Execution. & relinquished them to French Glascock as the agent of Jamison, witness was unwilling to relinquish to Glascock or any one but Jamison, and so told Glascock, and he said to me he was Jamison's agent, otherwise I should not have relinquished said lots, all witness got for his relinquishment was his debt, the relinquishment was made at the time

rd

29.

29

& delivered to Glascock,

Abner Smith states he knows Glascock the Deft, he came to witness one day in this Town and asked him if he had a Mortgage on John Jamison's Hannibal property, Witness told him he had, he said Jamison told him there was a Mortgage but he had never seen it but he would go to Palmyra & see, he said he was Jamison's lawfully authorised agent, After he had gone to Palmyra and seen the Mortgage he asked me how it would suit me to take his (Glascock's) note for my debt & interest & to release the Mortgage to him as agent of Jamison, I assented & released it to Jamison It was some 5 or 6 years ago. Cant say how long it was after Jamison gave the Mortgage, Witness acknowledged satisfaction of the Mortgage on the Record at Palmyra, It was some 5 or 6 years ago, Note was shown Witness says it is the Jamison note to him, and his hand writing on the back, Which note is as follows To wit,

"Six Months after date for value received I promise to pay to Abner Smith two hundred and six dollars and 60 cents with interest thereon from the present date at the rate of six per cent until paid May 2d 1849. John Jamison,

Endorsed on the back as follows,

Received October the 7d day 1851 of French Glascock the amount in full of the within note or claim

30

and all the benefit of a Mortgage which John Jamison executed to me to secure the said debt is transfered to French Glascock

Test William O Young, Abner Smith

William M Jamison states he is a Brother of Plff. Witness states he paid French Glascock some 40 odd dollars he owed his brother, thinks in 1849. or 1850. He (Glascock said he was acting as agent for his brother (the Plff) that he was collecting money to pay Plff's indebtedness to Deft for money paid to Mr Posey — Witness's Brother left some horses with him to sell and directed him to pay the money to Glascock the Deft, who (he said) was his agent & would act as such in paying debts,

Plff read the execution of Glascock vs Jamison as follows.

State of Missouri }
County of Ralls } Set,

The State of Missouri, To the Sheriff of the County of Marion, Greeting, Whereas French Glascock, on the 28th Day of August AD 1849 at our circuit Court for said County of Ralls, hath recovered against John Jamison the sum of Six hundred and Eight dollars and Eighty two cents for debt, together with his costs and charges in this Cause incurred, taxed at One dollar, These are therefore to command you that of the goods and chattles and real Estate of the

31

said John Jamison, you cause to be made the debt and costs aforesaid, and that you have the same before the Judge of our said Court, at the Courthouse in the Town of New London on the fourth Monday of March next to satisfy said debt and costs, and have you then and there this writ certifying thereon how you have executed the same,

Witness Samuel K Caldwell Clerk of our said Court and the Judicial Seal thereof affixed, Done at Office at New London this 16th Day of September 1850. Sam K Caldwell Clerk

SS

This Execution is entitled to a credit of three hundred and twenty six Dollars June 6th 1850.

Sam K Caldwell Clerk

On the back of said Execution and attached thereto are the following endorsements to wit,

"Came to hand this 13th Day of October AD 1850.

B B King Shff Marion County Mo

By D H Jackson Deputy,

Sheriffs Sale

In virtue and by authority of an execution issued from the Office of the Clerk of the Circuit Court of the County of Ralls Missouri, and to me directed in favor of French Glascock against John Jamison, I have levied upon and seized all the right, title, interest and claim of the said John Jamison, in and to the following described real estate, to wit, Lot 6

in Block 16, Lot 2 in Block 50. N½ Lot 7 in block 18 in the City of Hannibal, also Lots 1.2.3 & 4 in Block 106 in South Hannibal all in Marion County Missouri Together with all the buildings and improvements thereunto belonging, and will sell the same (subject to all prior liens and judgments) to the highest bidder for ready money, at the Courthouse door, in the Town of Palmyra in the County of Marion and State aforesaid, On Wednesday the 12th day of March next between the hours of nine and five Oclock of that day to satisfy said Execution and Costs,

February 8th AD1851. B B King Sheriff of Marion County,

This is to Certify that on the 8th Day of February AD1851. I levied this execution upon the property recited in the within advertisement, which is to be taken as a part of my act and doings under this writ, as the property of Defendant John Jamison, and further that on the 12th day of March AD1851, after having given twenty days notice immediately previous to the day of sale, of the time, place and property to be sold by six hand bills signed B B King Sheriff Marion County and posted up in different places in said County, I exposed the same for sale at public auction for ready money, at the Courthouse door in the Town of ~~New London~~ Palmyra Marion County Missouri, and during the sitting of the Circuit Court for Marion County, and that French Glascock

being the highest bidder for Lot 6, in Block 16 and Lot 2 in Block 50. and the N½ of Lot 7 in Block 18 in the City of Hannibal, at the sum of twenty dollars each, also for Lot 1 in Block 106 the sum of thirty dollars. Lot 2 in Block 106 at the sum of twenty one dollars. Lot 3 in Block 106 at the sum of twenty two dollars & Lot 4 in Block 106 at the sum of forty two dollars (the last named four lots being in South Hannibal) & all in Marion County Missouri, Amounting in all to the sum of One hundred and seventy five dollars, with which this Execution is to be credited, No other property found in Marion County out of which to satisfy this execution or any part thereof All done in Marion County Missouri. date as above

B B King Shff
Marion County Mo
By D H Jackson Deputy

Shff fee Serv. 1.00
Comr. 6.12
$7.12

All costs paid up to this March 12th 1851.

165.88. Received of B B King Shff Marion County One hundred & sixty five 88/100 Dollars in full of Amt paid on my bid on sales of land under this Execution this 28th day of April AD 1851 French Glascock

Pltff read a Deed from Glascock to Gilden R Selmes in words & figures following To wit

" This Deed made on the twenty fifth day of September Eighteen hundred and fifty two by and between French Glascock of the County of Ralls

& State of Missouri party of the first part, and Gilden R Selmes of the City of Hannibal & State aforesaid party of the second part, Witnesseth, That the said party of the first part, in consideration of the sum of three hundred dollars to him paid by the said party of the second part the receipt of which is hereby acknowledged, does by these presents, grant, bargain and sell, convey and confirm unto the said party of the second part the following real Estate or part of Town Lot to wit The North Twenty eight feet front on Fourth street and running back one hundred & forty two feet to the alley, being part of Lot number Seven in Block number eighteen, lying and being in the City of Hannibal County of Marion & State of Missouri, To have and to hold the same with all the rights, immunities, privileges and appertinances hereunto belonging unto the said party of the second part, his heirs and assigns forever The said Glascock hereby covenanting that he his heirs Executors and administrators shall and will warrant and defend the title to the said premises, unto the said party of the second part, his heirs and assigns forever against the lawful claims and demands of all persons whomsoever, In Witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written

signed sealed and acknowledged in presence of the Undersigned } French Glascock (Seal)

State of Missouri }
County of Marion } ss. Be it remembered that on this twenty fifth day of September eighteen hundred & fifty two, before me the undersigned one of the Justices of Marion County Court, personally came French Glascock, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing as party thereto and acknowledged the same to be his act and deed for the purposes therein mentioned, Taken and certified under my hand the day & year aforesaid,

Zachariah G Draper
Justice of M C C.

State of Missouri }
County of Marion } In the Recorder's Office

This Deed was filed for record on the 4th of October 1852 in said Office, & with the certificate thereon is duly recorded in said Office in Deed Book I at pages 32 & 33. Given under my hand and Official seal at Office in Palmyra this 5th of October 1852. Thos S Thompson Recorder

(Seal)

By his Deputy Winfield S Means

Plaintiff also read the bond of Glascock to John Conlon in words and figures as follows Towit:

36. State of Missouri }
County of Marion SS } Know all men by these Presents that French Glascock of Rails County Missouri by John R Flowerree his attorney in fact is held and firmly bound unto John Coulow of the City of Hannibal in said County of Marion in the penal sum of two thousand four hundred dollars, for the payment whereof well and truly the said French Glascock binds himself his heirs Executors and administrators jointly and severally firmly by these presents, As Witness the hand and seal of the said Glascock by his said Attorney in fact, this the second day of June AD 1857.

The Condition of the above Bond is such that whereas, the said French Glascock has this day sold unto said John Coulow four certain lots in South Hannibal, To wit Lots known on the recorded plat of the said City of Hannibal as lots One, two, three and four (1.2.3 & 4) in Block one hundred and Six (106) for the price of twelve hundred dollars, three hundred dollars of which are paid cash in hand, and for the remaining nine hundred dollars the said Coulow has this day executed unto the said Glascock three notes of even date herewith, one payable in eight months, one in Sixteen months and the third in twenty four months after date, bearing ten per cent interest from date, Now if on the payment of the

amount in full of the said three notes the said French Glascock shall make, execute and deliver unto the said John Coulon a good and sufficient General warranty deed for said four lots in Hannibal aforesaid, then said Bond is to be void Otherwise to be and remain in full force & virtue in law,

French Glascock
By John R Howerne (Seal)
French Glascock Seal.

State of Missouri County of Marion,
City of Hannibal SS.

I Charles D Bourne Clerk of the Hannibal Court of Common Pleas at the City of Hannibal in the said County of Marion, hereby certify, that French Glascock who is personally known to me to be the same person whose name is subscribed as a party to the above and foregoing instrument of writing personally appeared before me this day in said City and acknowledged that he executed the said instrument of writing as his act and deed for the purposes therein mentioned, In Testimony Whereof, I hereto set my hand and affix the seal of said Court at Office in Hannibal the 6th day of November 1857

(SS)

Ch D Bourne Clerk,

$220. Recd in Hannibal City November 6th day 1857, of John Coulon two hundred and twenty dollars which is credited on his bond or note

executed to me on the 2d Day of June 1857 as part of payment towards the sale of lots herein described French Glascock,

State of Missouri
County of Marion } In the Recorder's Office,

The foregoing instrument of writing with the certificate thereon was filed for record in said Office on the 7th January 1858. and the same is duly recorded therein in Book A No 2 on pages 420 & 421

Witness my hand and seal of Office,
Done at Office in Palmyra this 20th January 1858.
Thomas E Thompson Recorder
By Notley W Thompson Deputy,

Also a deed from Glascock to John Coulon for the same lots, as follows To wit,

This Deed made on the Seventh day of June Eighteen hundred and fifty nine, by and between French Glascock of Ralls County of the State of Missouri, party of the first part and John Coulon of the City of Hannibal party of the second part, Witnesseth, That the said party of the first part, in consideration of twelve hundred Dollars to him paid by the said party of the second part, the receipt of which is hereby acknowledged, do by these presents grant, bargain and sell convey and confirm unto the said party of the second part the following lots of ground, To wit Lot number One (1) Two (2), three (3) & four (4) lying in

the addition to the City of Hannibal called South Hannibal, To have and to hold the same with all the rights, immunities, privileges and appurtenances hereunto belonging, unto the said party of the second part and his heirs and assigns forever, the said lots One, two, three & four in block number One hundred and Six in South Hannibal, hereby covenanting that himself, heirs, Executors and administrators shall and will warrant and defend the title to the said premises unto the said party of the second part, his heirs and assigns forever, against the lawful claims and demands of all persons whomsoever, In witness whereof the said party of the first part hath hereunto set his hand and seal the day and year first above written

French Glascock (Seal)

State of Missouri }
County of Marion } ss. Be it remembered that on this seventh day of June eighteen hundred and fifty nine, before me the undersigned Recorder of the City of Hannibal and Exofficio a Justice of the peace within and for the County of Marion and State of Missouri, came French Glascock whose name is subscribed to the foregoing deed as a party thereto this day appeared before me and acknowledge that he executed and delivered the same as his voluntary act and deed, and is known to me to be the same person whose name is subscribed

to the foregoing instrument of writing as a party thereto and acknowledged the same to be his act and deed for the purposes therein mentioned, Given under my hand this 7th day of June 1859.

John S Lacy R.C.H.

State of Missouri }
County of Marion } In the Recorder's Office.

I Thomas E Thompson, Clerk of the Circuit Court and ex officio Recorder within and for the County of Marion do certify that the ~~annexed~~ instrument of writing hereto attached, with the certificate thereon was filed for record in said office on the 23d Day of July 1859, and that the same is duly recorded in said Office in Deed Book D No 2, at pages 263 & 264.

In Witness whereof I have hereunto set my hand and affixed the seal of said Court, Done at Office at Palmyra this the 5th day of August 1859

Thos E Thompson
Recorder"

Also a deed from Glascock to Jonathan Gore dated May 4th 1852, in words and figures following to wit,

" This Deed made and entered into this 4th Day of May in the year of our Lord One thousand Eight hundred and fifty two, between French Glascock of the County of Ralls in the State of Missouri, of the first part and Jonathan Gore of Marion County in the same State of the second part, Witnesseth that the said party

of the first part, for and in consideration of the sum of five hundred dollars to him paid by the said party of the second part the receipt of which is hereby acknowledged, do by these presents give grant, bargain and sell unto the said party of the second part, A certain Town Lot situated in the City of Hannibal, Marion County and State aforesaid, which said lot is known, on the plat of said Town as Lot numbered Six, in Block number Sixteen, To have and to hold the same together with all the rights immunities, privileges and appurtenances to the same belonging, unto the said party of the second part and to his heirs and assigns forever, The said party of the first part hereby covenanting, that he and his heirs, Executors and administrators, shall and will warrant and defend the title to the said premises to the said party of the second part and to his heirs and assigns forever against the lawful claims of all persons whatsoever claiming or to claim the same, In Witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written,

Francis Glascock (Seal)

State of Missouri }
County of Marion } ss. I Charles D Bourne Clerk of the Hannibal Court of Common Pleas at the City of Hannibal in said County do Certify that Francis

Glascock who is personally known to me to be the person whose name is subscribed to the above and foregoing deed as a party thereto, personally appeared before this day in said City and acknowledged that he executed the said deed as his voluntary act and deed for the uses and purposes therein mentioned —

In Testimony whereof I have hereunto subscribed my name and affixed the seal of said Court at Office in Hannibal the 4th Day of May AD 1852.

(S)

Ch D Bourne Clerk

State of Missouri }
County of Marion } ss In the Recorder's Office,

This Deed was filed for record on the 6th of September 1852 & with the Certificate thereon is duly recorded in said Office in Deed Book S at pages 507 & 508. Given under my hand and Official seal at Office in Palmyra this 8th of September 1852

(S)

Tho E Thompson Recorder
By his Deputy Winfield S Means."

Alfred W Samb states he was residing in Hannibal in 1857. was familiar with the cash Market Value of Hannibal property in Hannibal in the vicinity of the property in question, thinks in that year Lot 6 in Block 16 would have been worth not under $600. cash, N½ of Lot 7 in Block 18 was then worth ~~not~~ $250 or $300.

John D Dowling knew the value of South Hannibal property in 1851. Knows Lot 1.2.3.4 in Block 106, they were worth from $75 to $100. each. Lot 2 in Block 50 was worth in cash $500 in 1851.

2d. The Defendant in evidence read the note of Jamison to A Smith and receipt thereon endorsed, which are as follows

"Six months after date for value received I promise to pay to Abner Smith Two hundred and six dollars and 60 cents, with interest thereon from the present date at the rate of six per cent until paid

May 2d 1849. John Jamison

Rec'd October the 7th day 1851. of French Glascock the amount in full of the within note or claim and all the benefit of a mortgage which John Jamison Executed to me to secure the said Debt is transfered to French Glascock,

Test William O Young, Abner Smith

Also Sosey's deed of release to Jamison, as follows To wit

"Whereas in the month of August in the year 1850 at Sheriff sale in Marion County, Missouri State, and during the siting of the Circuit Court in the County & State aforesaid, there was some Several Town lot ~~[illegible]~~ situate in Hannibal City in the County & State aforesaid sold by the Sheriff of said County as the property

of John Jamison, and I became the purchaser of said lots which were sold as aforesaid, and to satisfy an execution in my favor and for my benefit. And Whereas French Glascock has this day paid to me the full amount of said Execution, debt ~~and~~ interest and costs, which amounts to the sum of Eighty dollars and 60 cents which is in full, Now these presents witnesseth, in consideration of the sum aforesaid, I have this day relinquished to John Jamison all right and title which I have in ~~any~~ way of had to any of said lots purchased as before mentioned,

Given under my hand this day of September 1850.

Jacob Josey (Seal)

State of Missouri }
County of Marion } Be it remembered that on this 7th Day of May 1853. before me Thomas E Thompson Clerk of the Circuit Court within and for said County personally Came Jacob Josey who is personally known to me to be the person whose name is subscribed to the foregoing instrument of writing as a party thereto and thereupon he acknowledged the same to be his act and deed for the uses and purposes therein expressed, Given under my hand & Official Seal at Office at Palmyra this the date aforesaid

(SS)

Thos E Thompson Clerk

State of Missouri }
County of Marion } In the Recorder's Office
This instrument of writing was filed for

record in said Office on the 7th May 1853, & with the Certificate thereon is duly recorded in said Office in Deed Book I at page 414. Given under my hand & Official Seal of Office in Palmyra this 7th May 1853.

(SS)

Thos E Thompson Recorder

Deff also read note of Glascock & others to the Treasurer of Rails County & receipt thereon as follows To wit,

"One day after date for value received we French Glascock as principal and William Cornett, James S Dimmitt as his securitys promise to pay to the Treasurer of the County of Rails for the use and benefit of the inhabitants of said County the just sum of Six hundred and eight dollars and eighty two cents

Given under our hands and seals this 27th day of August 1849.

French Glascock (seal)
William Cornet (seal)
James S Dimmitt (seal)

Recd August 30th 1849. of French Glascock One hund dollars as per receipt of same Brown

Hanceford Brown T R C,

Recd. January 1st 1850 of French Glascock Two hundred dollars as per receipt for the same amount,

Hanceford Brown T R C

Received of John Jamison Three hundred & twenty six dollars in full of the above note June 6th 1850.

G C Hays

E G Prall testified that he wrote the Confession of Jamison to Glascock. Mr Glascock was security to the County for Jamison & had assumed the debt,

This was all the evidence given in the Cause (on either side) Plaintiff then asked the Court to give the following instructions Towit,

" John Jamison Plaintiff
vs
Henry Glascock Defendant } In Ralls Circuit Court August Term 1859.

The Plaintiff asks the Court to decide the law of the case to be as follows,

1st If it appears from the evidence in the Cause that the Plaintiff (Jamison) gave to the Defendant (Glascock) the judgment by confession given in evidence for six hundred and eight dollars and Eighty two cents ($608.82) to indemnify the said Defendant as to his liability for that amount as security for said Plaintiff in his bond as Collector of the revenue in and for ~~said~~ Ralls County, Missouri, and that it was then understood & agreed by & between said Plaintiff and said Defendant, that said Plaintiff intending to leave the State (soon thereafter) should give the Defendant a power of Attorney, authorising him to settle up Plaintiffs business and sell the real estate (now in question) And that in pursuance thereof Plaintiff gave

47

Defendant the power of Attorney read in evidence and Defendant accepted the agency and trust created thereby, And that Defendant instead of selling and disposing of said lots under said power of Attorney, sued out an execution on his said judgment, and caused the same to be levied on and sold under said judgment and execution, and bought them in at greatly less than their value, all after Plaintiff had left the state, in the absence of the Plaintiff and without any notice to him, - Then the finding should be for the Plaintiff,

3d. If the defendant confessed the said judgment in Plaintiffs favor, in consequence of an agreement between the Plaintiff and the Defendant to the effect, that the judgment should be an indemnity to the Defendant as to his liability as Plaintiffs security in his bond as collector and for no other purpose, then the said judgment was in the nature of a Mortgage, and the lots purchased under the same, and bought in by Defendant are subject to redemption by the Plaintiff, and the finding should be for the Plaintiff."

Which the Court refused, to the refusal of the Court to give said instructions Plaintiff at the time excepted, Whereupon Plaintiff took a non-suit and filed a motion to set aside said non-suit, which motion is as follows, To wit

John Jamison
vs
French Glascock

Circuit Court Rales Co
August Term 1859

Plaintiff moves the Court to set aside the non suit herein and grant him a new trial for reasons to wit.

1st Because the Court refused to declare the law to be as asked by Plaintiff in his instructions

G Porter &
Wm P Harrison for Plff.

Which motion the Court overruled to which action of the Court in refusing to set aside said non-suit Plaintiff excepts and prays that this his bill of exceptions may be signed & sealed and made a part of the record in this cause which is done accordingly

John T Redd (Seal)

State of Missouri }
County of Ralls } ss. I Samuel H Blackwell Clerk of the Circuit Court in and for said County of Ralls do hereby Certify that the annexed and foregoing pages contain a true and correct transcript of the record of said Court in the Case of John Jamison against French Glascock, with all things relating thereto as full and complete as the same are now remaining of record and on file in the Office of said Court, Witness my hand as Clerk and the seal of said Court. Done at Office at New London in said County this 19th Day of September 1859.

Sam H Blackwell Clerk

Index

Petition	Page	1
Affidavit to same		8
Summons & Sheriff's return thereon		9.
Motion for security for costs		10
Defendants answer		11
Affidavit to same		14
Order for security for costs & Bond for costs		15
Judgment vs Plff for costs of term		16
Trial, submission, taken under advisement		17.
Nonsuit. Judgment for costs		17
Motion for new trial		18
Bill of Exceptions		19
Power of Attorney Jamison to Glascock		19
Confession of Judgment Jamison to Glascock		22
E W Southworth's Testimony		23
Jacob Josey's Testimony		24
Execution Josey vs Jamison		24
Abner Smith's Testimony		27
Jamison's Note to A Smith and endorsement		27.
Wm M Jamison's Testimony,		30
Execution Glascock vs Jamison		30
Deed from Glascock to J R Selmes		33
Bond from Glascock to John Coulon		36.
Deed from same to same		38
Deed " same " Jonathan Gore		40
A W Lamb's Testimony		42
John D Dowling's testimony		43

Jamisons Note to A[illegible]ith	43
Deed of release Sosey to Jamison	43.
Glascock's Note to Ralls Co	45
G E G Bratts testimony	46
Plaintiffs Instructions	46
Motion for new trial	47.

Bill of Costs on Writ of Error.

To Sam K Caldwell Clerk

To appearance parties 15.	30
" filing & entering Motion for new trial	30
" Submission 25. Order overruling Motion 50	75
" Filing & entering bill of Exceptions	30
" Motion 25. Order to make same part of record 50	75
" Copying 10,000 Words at 10ct per 100 words	15,00
" Certificate & seal to same,	50
" Certificate & seal to Writ of Error.	50
	$18,40

Teste Sam K Caldwell Clerk

25

(3)

Oct 2. 1859

John Jamison
Pltff. in Error

v.

French Glascock.
Deft. in Error.

Error to Ralls Circuit Court.

Filed 26 Sept. 1859.
Wm L Glanville Ck.

Porter & H. for P. E.
E. G. Pratt - D. E.

Copyright & J. / stat & bf for opp. / res. bf. / notice /
Reversed & remanded 14 Dec 1859 C. p. 22

John Jamison plaintiff
against
French Glascock - deft.

In Supreme Court
Oct. Term 1859

And now comes the said plaintiff John Jamison and says that in the record & proceedings of the Court below in the above entitled cause there is manifest error & for error said plaintiff assigns the following -

1st That said Court refused to declare the law of the case to be as asked by the plaintiff in his instructions.

2. That said Court refused to give the instructions asked by the plaintiff

3d That said Court ~~re~~ erruled the plaintiffs motion to set aside the nonsuit taken by plaintiff and refused to set the same aside and grant the plaintiff a new trial -

Porter & Harrison
attys for pltff

And now comes the Deft in Error & for Joinder says that there is no Error in the record & proceedings in the above Entitled cause

Pratt & McCabe
attys for Deft.

25

John Jamison
vs
French Glascock

Assignment of errors

Filed 18 Oct. 1859.
Wm S Glanville
Ck

1 Hovender Frame
4 Eng & Ralls
9 Clark & Finnely

In Supreme Court, Oct Term 1859

John Jamison ~~Plaintiff~~ Plaintiff in error
vs } Error to Rails Circuit Court
French Glascock defendant in error }

Statement of case by Plaintiff in error

The Plaintiff in error prior to the year 1849 was Sheriff and ex officio Collector of the revenue of Rails County Missouri and the Deft. Glascock one of his securities in his bond as Collector - The Plaintiff being in arrears to said County to the amount of about $608.82 by an arrangement with said Glascock ~~got him to~~ said Glascock assumed said indebtedness ~~which he did~~ on the 27th day of August 1849 by executing his bond with two securities payable to the Treasurer of Rails County for the use & benefit of the inhabitants of said County - for that amount payable one day after date. And to indemnify said Deft Glascock (said Plaintiff ~~on the premises~~ (Jamison) on the 28th of August 1849, confessed, in the Rails Circuit Court, a judgment for the amount of the said note $608.82 - ~~upon & solely~~ on account of the amount so assumed by said Glascock for him, - in the manner above stated - (See p 23 of the record) Said note so given by Deft Glascock was subsequently paid off as follows: One hundred dollars by said Glascock August 30th 1849 Two hundred dollars by same - January 1st 1850 and the balance of Three hundred and twenty six dollars by said Jamison - on the 6th of June 1850 When said transactions took place it was understood between the parties that the Plaintiff Jamison was about to leave this State & emigrate to Texas, & it was also understood & agreed that said Jamison was to appoint

Glascock his Agent and empower him to sell his lots in Hannibal (now in question) & other real Estate (See Evidence of E. W. Southworth p 24 of the record) to raise money to pay Jamisons debts. ~~Such~~ A power of Attorney was given by said Jamison authorizing said Glascock and two others jointly or severally to collect said Jamisons debts and sell said lots - & some other property in Ralls County - with authority to make deeds &c (see p. 19 of the record) said Power of Attorney bore date June 12th 1850 - Soon thereafter said Plaintiff Jamison left for Texas (See Evidence of E. W. Southworth p 19) it would seem leaving said Glascock his Agent and attorney - that he was such see the said power and the evidence of Southworth and also of J. Losey, Abner Smith and Wm. M. Jamison (p 28, 29 and 30 of the record) and said Glascock on the 16th of September 1850 sued out an execution for the amount of said judgment - less the $326 paid by said Jamison June 6th 1850 - with which it was credited. ‡ from the office of the Clerk of Ralls Circuit Court - directed to the Sheriff of Marion and caused it to be levied on the six and a half lots in Hannibal said Jamison owned & had empowered said Glascock to sell for him - and bought them in for about $175. to wit at Sheriffs Sale March 12th 1851 Said lots were then worth from $1600. to $2000 Cash (see the evidence of A. W. Lamb and John D. Dowling p. 42 of the record) - J. Losey a creditor of Jamison (by judgment) to the amount of some $80 had previously levied on & sold a portion of said lots & bought them in

(see p. 31 of record)

Glascock had applied to him to have his title released to him Losey was willing to release his title on obtaining his debt & provided it should enure to Jamisons benefit. Glascock assured him he was Jamisons agent & he made & delivered him deed of release to Jamison's favor (See Losey's evidence p. 28 of record) After his purchase at Sheriffs Sale in 1857 of the lots in question Glascock paid off Abner Smith's debt against Jamison, secured by Mortgage (for some $206.60) representing himself to Smith as Jamisons agent & took a release from Smith to himself subsequently, said Glascock has sold & conveyed 5½ of said lots for about the sum of $2000 retaining the title of one of them & the most valuable worth in 1857 not less than $500. (see deeds & evidence at pages 33 to 42 of the record) At this stage of the matter Jamison returning from Texas demanded a settlement & account with Glascock of his agency & the transactions growing out of the same & especially a reconveyance of the remaining lot which Glascock refused - & claimed as his own the whole of said lots & their proceeds respectively. For his relief in the premises in August 1857 Jamison instituted his suit against Glascock which being at issue at the March Term 1859 came on for trial before the Court. After hearing the evidence in the cause the Court intimating his opinion that Plaintiff was entitled to no relief upon the case made by the pleadings & evidence the Plaintiff asked the following instructions as to the law of the case to wit:

"1 If it appears from the evidence in the cause that the Plaintiff (Jamison) gave to the Defendant Glascock the judgment by confession given in evidence (for $680.82,) to indemnify said Defendant as to his liability for that amount as security for said Plaintiff in his bond as Collector of the revenue in and for

Rolls County Missouri, and that it was then understood & agreed by and between said Plaintiff and said Defendant, that Plaintiff intending to leave the State (soon thereafter) should give Plaintiff a power of Attorney authorizing him to settle up Plaintiffs business and sell the real estate now in question And that in pursuance thereof - Plaintiff gave Defendant the power of Attorney read in evidence, and Defendant accepted the agency and trust created thereby. And that Defendant instead of selling and disposing of said lots under said power of attorney, sued out an execution on his said Judgment, and caused the same to be levied on and sold under said judgment & execution, and bought them in at greatly less than their value, all after Plaintiff had left the State, in the absence of Plaintiff, and without any notice to Him - then the finding should be for the Plaintiff"

2 If the Defendant confessed the said Judgment in Plaintiffs favor, in consequence of an agreement between the Plaintiff and the Deft. to the effect that the Judgment should be an indemnity to the Defendant as to his liability as Plaintiffs security in his bond as Collector, and for no other purpose, then the said Judgment was in the nature of a mortgage, and the lots purchased under the same, and bought in by the Deft. are subject to redemption by the Plaintiff, and the finding should be for the Plaintiff

The Court having refused said instructions. Pff excepted, And took a non suit with leave to move to set the same aside - which motion was filed & by the Court overruled. & exception duly taken - & Plaintiff brings his

Case here by writ of error. To reverse the decision of the Court below. Plaintiff makes & insists upon the following —

Points: & Authorities

1. Glascock being appointed and having assumed to act as Agent for Jamison in 1850 in taking care of & selling the lots in question for Jamison — cannot be permitted to so use his judgment by Confession obtained prior thereto to wit: in 1849 — against his said Principal — together with the redemption of the said lots from Josey's execution which he was enabled to effect and did effect through his said Agency — as to sacrifice his said Principals interests — for his (said Agents) own advantage — But standing as he did in a fiduciary relation to said Jamison — all the benefits of said redemption and sale of said lots — after the reimbursement of his advances and payments for Jamison — should enure to said Jamisons benefit. The Court should have declared the law to be as assumed in said Plaintiffs first instruction & granted the Plaintiff proper relief as against said defendant. On this point Plaintiff cites Story on Agency Chap. 210 - 211 - 212. 213 - 214 - 215 and 217 also 1 Story's Equity sec 321 to 323 inclusive and authorities cited in note 1 — resorting to Jeremy's Eq Jur. p 395 — 6 also W. Hill on Trustees Side p 157 to 160 inclusive also Chap 3 Side p 535 et ultra of the same work —

2dly If it be contended that Glascock was a judgment creditor of Jamison — when he was appointed his Agent and sold the property as such — we reply — he is not therefore

less an Agent & trustee for him - and as his character and position as judgment Creditor - of an absent debtor - who had thus reposed confidence in him - "put it in his power" (in a secret manner or a manner unknown to his "fide-commissary") to act for his own advantage & to the sacrifice of his Principals interests - the reasons in equity are still stronger than they otherwise would be - why he should not be permitted to hold the advantage thus acquired - Besides - the fact of the parties assuming the fiduciary relation towards each other which they did, in 1850 - under the circumstances proved - imports an agreement that Glascock should pursue that course which would be most promotive of & least prejudicial to Jamisons interests - that is Equity will imply such an agreement - tho in point of fact was undoubtedly expressly made in this case, but from the confidential relations existing between the parties and other circumstances complained of could not clearly & distinctly show it - and grant relief accordingly (See 1 Story's Equity Jur. Sec. 322) to wit an agreement that Glascock should act throughout under his Power of Attorney - and Agency - and not use his Agency for Jamison where it would promote his own (said Glascocks) views & interests - and abandon it where it might militate against or come in conflict with his interests - and views of policy.

3. If delay on Jamisons part in asserting his rights against Glascock (in the premises) be relied on as an objection to the relief prayed

it is insisted in reply that no such time has elapsed after (there is any indication that) Jamison was apprized of Glascocks designs - as ~~now~~ recently disclosed - of appropriating the whole benefits of his Agency to himself without regard to Jamisons interests Jamison having gone to a distant State trusted all to his agent Glascock.

- What length of acquiescence will bar relief is matter of Equitable discretion - depending on all the circumstances (See Hill on Trustees Side p. 169 - 170 -) The circumstances and situation of these parties abundantly explain & account for any apparent tardiness on Jamisons part - in claiming an account with and demanding his rights ~~(as his Principal)~~ at the hands of Glascock - his Agent -

4. If it be objected that the parol evidence tending to show the agreements & understandings of the parties as to the property in question is not admissible - Plaintiff refers to the action & decision of this Court in the Case of Rose vs Bates 12 M R p 51 also "Hill on Trustees" side p 50 as to the admissibility of parol evidence in such cases -

besides that evidence was admitted without objection, and its legality can not now be enquired into.

Porter & Harrison
Attos. for Plff in error

5. The lots in question lay in Marion County and the confessed judgment of Glascock (under which they were sold) was in the Circuit Court of Ralls County - consequently said judgment was no lien on them (Rev Stats 1845 See 2 of the act concerning "Judgments".)

P. H. F. D.

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Jamison

vs "

Glascock

Statement of case

&

Points & Authorities by

Plaintiff in error

Authorities cited:

Story on Agency

Secs 210-~~[illegible]~~ 217 (inclusive)

1 Story's Eq Jur Secs 321-2-3

Jeremy's Eq Jur p ~~147-8 & 151~~ 395

1 Hov on Fr Ch 6 p. 147-8

Hill on Trustees side

p. 153-157 158 160 &

528

Filed 20 Oct. 1859

Wm S Glanville

John Jamison Pltf in Error
vs
French Glascock Deft in Error } Error to Ralls County

Supreme court October Term 1859

The court properly refused to declare the Law to be, as prayed for by the Pltf. because if the facts were found as the Pltf desires, he ought not to recover in this action.

Glascock had procured the absolute discharge of the Pltf, & his judgment was not to secure him against a contingent liability but to satisfy so far as the Plts property would go, a debt which the Pltf owed the Deft.

In the Power of attorney executed by the Pltf to Glascock & others no allusion is made to the debt which ~~Deft~~ Plaintiff says was secured by the confession of judgment. This judgment was had more than a year before the Power of atty was executed.

The object of this instrument seems to have been to enable the Plts attorneys to pay off other debts.

The judgment under which the sales were made were totally disconnected with the objects which Jamison had in view when he created the pretended agency, & as a consequence no trust could arise.

On this point see Storys Equity Jurisprudence (vol 1) side page 313, & cases there cited.

2nd. The confession of judgment gave to Glascock a lien on the Real Estate of the P. Ltd." & even if a subsequent arrangement had been made between the parties, the lien of his judgment could not have been disturbed, unless the evidence of the agreement was of as high a nature as the record of the judgment.

Glascocks title is in virtue of the several judicial sales recited, & the evidence is altogether insufficient to clothe the land with any kind of trust. For where land is purchased at a judicial sale, & the money paid by the same person, it is not competent to show that he agreed by parol, with the former owner of the land to permit him to redeem.

On this point see Murphy vs. Hubert by Bash 420 & 6 Do 393. & cases cited in Wharton's Digest Vol 2, page 784.

3rd G

To warrant the court in decreeing the Ex=Ecution of a parol declaration of trust the evidence should be plain & unambiguous.

See Peebles vs. Reading 8. S. & R. 492.

4th G

The court of Equity is not warranted in interfering between parties situated as these were alleged to have been, unless it is apparent from the relation of the parties, that the trustee either did or might have taken advantage of the "Cestui que trust." Glascock never was in a position to [illegible]

taken advantage of the Pltf. & it is very apparent that he got no advantage because the entire property of Farnsworth was insufficient to pay the debt. & on the whole it seems, that Glascock was actuated by friendly motives.

5th Q If the Court should be satisfied that there was a parol agreement, to the effect as alleged the the Pltf. unless there is also found to be something more in the transaction than is implied from the violation of a parol agreement, Equity will not decree the purchaser to be a trustee.

See 9 Wendell page 36, & Haines vs. Ocon on 10 Do. 313.

6th Q If it be true that Glascock declared that he was acting for the Pltf. in the matters mentioned, or even if he had declared that he purchased the property for the Pltf. his mere declaration without proof of any previous agreement or advance of money ~~by~~ by the Plaintiff, ~~[illegible]~~ would not be such a transaction as raises a trust which Equity would enforce.

See Sidle vs. Walters 5 Wendell 389.

7th. A purchaser at Sheriffs sale who has paid his money can only be held a trustee on the ground of fraud.

Glascock procured Josey's release fairly & for a valuable consideration. The object of which was doubtless to prevent the Hannibal property from being sacrificed, so that he might eventually make good his debt. This Hannibal property was also encumbered by the lien of Smith's mortgage, & for the same purpose the Deft paid this also. In conclusion it is submitted that there is nothing to distinguish this case from many others in which courts have refused to interfere. It is apparent that the proceeding would not have been instituted, if the lots in Hannibal had not greatly risen in value, & to confirm this it must be thought singular that the Pltf did not proceed also for the lands in Ralls county where the bulk of the Pltfs property was.

~~Pratt & McCabe,~~
~~Attys for Deft in Error.~~

8th In this case there is no allegation of the payment of money by Jamison. Nor is there any averment of fraud, whereby a resulting Trust might arise. & it would be a violation of the Statute of frauds & perjuries, to understate to create an interest in these lands by proof of a parol agreement that hold for Jamison's benefit.

Pratt & McCabe
Att'ys for Deft in Error

25

John Jamison

v

Ferrer Glascock

Brief for

Deft's error

Filed 20 Oct. 1859

Wm S. Glanville ck

Pl att & McCabe

for Deft.

John Jamison, pltff } State of Missouri
against } Circuit Court
French Glascock } Ralls County.

The defendant is hereby notified that in the above entitled cause a writ of Error has been sued out by the plaintiff from the Supreme Court of Missouri returnable to the next term of the said Supreme Court to be begun & held at the city of St Louis in ~~the~~ State aforesaid on the 3d Monday in October next.

Gilchrist Porter &
Wm P Harrison
attys for pltff.

Served Sept 10th

Served the within notice on French Glascock the within named Defendant by Delivering to him a true copy of the Same Done in Marion County Missouri on the 10th day of September A.D. 1859

Sheriffs fee 50 cts

Robert Shackletts Shff M Co

By A. McKey Depy

Jamison
v
Glascock

Notice of Writ
Error

25

Jamison
v.
Glascock

Notice of Writ
of Error

Filed 20th Oct. 1859
W. S. Glanville
Ck

Jamison
vs
Glazebrook

Supreme Court
October Term 1859

Statement of Case by
Deft in Error.

John Jamison being Sheriff of Bates County & ex-officio collector of the revenue thereof executed his bond to the County in which Deft entered as surety. Jamison being indebted to the said county beyond his means of payment viz: in the sum of $604.82 for which a judgment had been rendered against him procured the Deft in Error to pay to the County the debt so due, & immediately thereafter confessed a judgment in the Bates circuit court in his Glazebrooks favor for the sum so paid, whereupon Jamison was discharged from all liability to the county.

Payment to the county was made by Defts bond with sufficient sureties which bond was duly discharged according to its terms & effect.

Three Hundred & sixty dollars on said bond was paid by Jamison with which Deft credited him.

At the time of this transaction Jamison was insolvent, & all the property owned by him was of but little value. Soon thereafter he set out for the State of Texas, but before

leaving the State made a power of attorney constituting the Deft" & ~~other~~ others his attys to sell certain property therein mentioned, & to apply the proceeds to the payment of other debts which he owed.

The property which the Pltf" owned in Rales county was insufficient to pay his debts, & the property in Marion County was encumbered with the Lien of a certain mortgage held by one Abner Smith to secure the payment of $206.60. All but 2 of the Hannibal Lots had been sold by Jacob Losey ~~to secure~~ under a judgment obtained against Jamison for the sum of $ & the costs of suit, & at the said sale Losey became the purchaser. Glascock procured of Losey as the only means of saving his debt a release of his interest in a conveyance thereof, & he also on the 16th of Sept" 1850. sued out an execution on his judgment, (less the amount which Jamison had paid,) directed to the Shff" of Marion county, & levied it on the property described in the petition which property was duly advertised, & at the sale thereof he became the purchaser being the highest bidder. All of the said property was insufficient to pay the debt

Pltf owed him, & left the Pltf in-
debted to him in the sum of over
$114.00. The Deft never acted
or professed to act as the agent
of Jamison in the purchase of these
Lands, but having paid his
own money for them bought them
at Sheriffs Sales as aforesaid.
In the only case in which he
rec'd money or property for the
Pltf he credited him with it
& he took upon himself no trust
for the Pltf.

25

Jamison
v
Glascock

Defts —
Statement

Filed 20 Oct. 1859
Wm. S. Glanville Cc

John Jamison
vs
French Glasscock } Error to the Ralls Circuit Court

This case turns on the propriety of the instructions asked by the plaintiff and refused by the Court: ~~If either of the two instructions was improperly refused the judgment will be reversed~~ ::

If the substantial facts ~~xxxx~~ ~~xxx~~ ~~xx~~ whose existence is assumed by the first instruction asked by the plaintiff, are proved and in the hearing of this writ of error we must take them to be true, we do not see how the conduct of the defendant can be reconciled ~~to~~ to those principles ~~of~~ which have been established by Courts of equity, for the government of the conduct of trustees: The office of a trustee is one of confidence, and he is watched with the greatest vigilance ~~[illegible]~~ lest he should abuse the confidence reposed in him: As he voluntarily assumes the trust, the law will not permit ~~in~~ him in the management of it, to make to himself any profit or advantage at the expense of the cestui que trust: ~~As far as this [illegible]~~ ~~[illegible]~~ He cannot become the purchaser of the trust ~~fund~~ property but at the option of those for whom he acts as he thereby unites in himself the opposing characters of seller & purchaser, ~~as~~ the interest of ~~one~~ the former of which ~~is~~ ~~is~~ to sell for the highest price that can be obtained, while that of the latter, is to buy for the least sum at which ~~it~~ the property can be ~~had~~ acquired. In such cases equity does not examine for fraud on the part of the trustee who attempts to purchase the subject of the trust, but takes away the temptation, by holding him incapable of making a purchase which shall bind those for whom he is entrusted,

and it gives them the option to vacate or affirm the purchase of their trustee. The rule prevents a conflict between the interests and the duty of the trustee, and shuts out a difficult and embarrassing enquiry into his motives: It is necessary for the security of those whose property is held in trust, and promotes integrity in the dealing of the trustee with the property that has been entrusted to his care and management

The defendant having a confession of judgment against the plaintiff, law would have given him a right to enforce the judgment by execution & also to become a purchaser at the sale under it. But there was nothing to prevent the defendant from deserting himself of this right if he thought proper to do so: Having it in his power to collect his judgment at any time, as both he and the plaintiff knew, what could have been his motive in acting under a power of attorney which authorized him to sell the very lots, which were afterwards sold under the judgment. The power of attorney was executed after the confession of the judgment. What hopes must have been excited in the plaintiff by the defendants accepting the power of attorney authorizing him to sell the land. It must have allayed his apprehensions respecting the security of his property under the judgment which had been confessed. How naturally would the thought occur to the plaintiff, that the defendant would not use his judgment, as he had a power of attorney to sell: Could the plaintiff have supposed that after this, the judgment would have been enforced, until he at least had notice of a failure to raise money under the power of attorney? It may be said that the defendant had a right to issue

The exception & to become a purchaser under it: But would not the acceptance of the power of attorney be an abandonment of this right, after consenting to sell the ~~lands~~ lots under a power of attorney & thus placing himself in a fiduciary relation to them, which prevented his becoming a purchaser, he could not use his judgment in such a way, ~~he could not~~ as to relieve himself from the incapacity to which he had voluntarily subjected himself: As his rights as a creditor were in conflict with his duties as an agent the former must yield to the latter. By taking upon himself the office of agent, he waived his right as a creditor, so far that he ~~[illegible]~~ could not become a purchaser.

The case of Rogers vs Rogers in Hopkins Chancery Reports 515 is very similar to that before us. There a person by his will appointed an executor: Between the time of making the will and the death of the testator, the person named as executor became a judgment creditor of the testator, and after ~~the~~ his death ~~of the testator~~ ~~he~~ qualified as executor. The testator left debts unpaid and an estate consisting of personal and real property. The personal estate was insufficient to pay the debts. The executor caused all the lands of the testator to be sold, under an execution issued upon the judgment held by himself, as a creditor, and he became a purchaser. The sale & purchase were vacated, at the instance of other persons interested in the estate of the testator. ~~In~~ The Chancellor remarked, if the executor had not accepted the trust, he would have been at full liberty, to pursue all his remedies, for the satisfaction of his judgment; and if loss to others had followed the exercise of his rights

ing with the estate of their testator, or commissioners, agents or solicitors of a bankrupt or insolvent estate purchasing any portion of the assets, or the agent of the trustee who becomes the purchaser of the trust property or a governor of a charity taking a lease of the lands of a charity; or an agent for buying or selling property, buying or selling ~~to himself~~ for or to himself. In none of these instances will the transaction be suffered to prevail against the equitable rights of the cestuis parties. Hill on Trustees 223.

We deem that most of the grounds taken by the defendant in support of the judgment, have been answered in what has been already said: We do not see what the statute of frauds has to do with this controversy. If the case is as stated in the first refused instruction, then it is within the statute of frauds, ~~the~~ so are all the cases in which a trustee becomes a purchaser of the trust fund, for ~~it~~ this suit can be maintained on no other ground, than that a trustee charged with a trust in relation to property, has become the purchaser of that property.

Why does the defendant ~~here~~ attempt here to explain the object of the power of attorney, after having so emphatically denied, that he ever accepted any agency under it? He asserts here, that the bulk of the plaintiffs property was in Ralls county, this may be probable, as he took a conception of judgment ~~there~~ ~~which we may suppose he deemed a suffi~~ there, the lien of which

we may suppose he thought would be a suffe cient security for his debt, but this fact is not in the record. We may not know how the facts are in relation to this matter, but we know the lien was only such, in the county in which the judgment was confessed: assum ~~ing~~ing that the bulk of the property was in Ralls ~~& that~~ the plaintiff asks why this suit was not brought for the lands in Ralls County :: This enquiry implies that lands were sold in that county to pay the defendant's debt: But if the bulk of the property was there, why would he go to Marion County when his judgment was no lien, and seize property to satisfy his debt unless he would tell us that all the property in Ralls had been exhausted. If he would ~~overlook~~ turn away from prop erty in that county subject to his execu tion, and go into Marion in search of Town lots, it would certainly be a cir cumstance against him: We do not know how this matter is, but we think it very singular that it was not fully explain ed in the court below

We are of the opinion that there was no error in refusing the second in struction as there was no evidence to warrant it.

Reversed & Remanded The other judges concur

W Scott

25.

Jamison
vs.
Glascock

Opinion

Reversed & Remanded

Filed 14 Dec. 1859.
Wm. S. Glanville
Clk