Detchemendy, John L. et al v. Sarpy, John B. et al 1860 St. Genevieve 9th 461/7

Old Box 614/43

31
196

set aside default sale
judge failed to appear term elapsed
LC = sale set aside

F60
060
aff
Scott

O = sale should be set aside

State of Missouri
County of Ste Genevieve } Sct

Pleas and Proceedings in the Circuit Court, in and for the County of Ste Genevieve aforesaid, in the Ninth Judicial Circuit of the State of Missouri, at the May Term of said Court, A D 1860, before the Hon John A Stone, Judge of said Court -

Among the proceedings the following were had - in the matter of

John B Sarpy et als
v
John L Detchemendy et als } motion to set aside sale -

Be it remembered that on 3d day of the May Term (1860) of said Court, being the 9th day of May 1860 the following motion was filed in said Court which is in words and figures as follows, to wit:

Motion to set aside sale

State of Missouri } In the Circuit Court for
County of Ste Genevieve } the County of Ste Genevieve
On petition to foreclose Mortgage

John B Sarpy Executor of the last will and Testament of

Pierre Choteau deceased = Julia Cabbanne administratrix of the estate of J.B. Cabbanne deceased = Isaac Baker = The unknown heirs Personal and Legal Representatives of Robert Jones deceased = The unknown Personal and Legal Representatives of John Rice Jones deceased = Louis Griffard surviving Executor of Peter Paquet deceased = Lewis V. Bogy administrator of Joseph Bogy deceased = Felix Valle surviving Executor of John B Valle, deceased, spigner of Menard Valle = Benjamine G Amoureux Executor of Marie Laporte deceased = Francis Ferdinand Rozier Senr. = Mary Ann Valle the Administratrix of Francis Valle deceased = The unknown Personal and Legal Representatives of Francis Duchow deceased = The Unknown Personal and Legal Representatives of Charles Sarr deceased = The unknown Personal and Legal Representatives of the President and directors of the Bank of Missouri =

against.

John L Detchemendy administrator of Paschal Detchemendy deceased = John Benelier = Francis Burlando = Meanane Maller = Francis X Dahman and the heirs of Paschal Detchemendy viz:= Saurier Detchemendy Edward Detchemendy John L Detchemendy = Jules Detchemendy = Justine Detchemendy = Jos Moreau and Louisa his wife = John P Boyer and Marie his wife = John Bacye Jr and Juliett his wife = John Brevie and Clementine his wife = John D. Boyce and Emily his wife = James H Carlisle and Constance his wife = John J. Detchemendy = Miller and Juliette his wife + Emile F. Pratte + Mary his wife + Mary Detchemendy administratrix of Clement Detchemendy =

In this case Judgement was rendered at May

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Term 1859, for the sum of fourteen thousand six hundred and seventy eight dollars /14600-78/ and costs and a decree of foreclosure and an order of sale of the Mortgaged premises = and thereupon a Fiere facias was issued and delivered to the Sheriff of Ste Genevieve County on the 15th of July 1859 as by the files of Court will appear, who levied and seized the premises in the said Petition and decree mentioned of four thousand four hundred and twenty six arpents of land /4426/ which he duly and regularly advertised for sale at the November Term of the Circuit Court of said County of Ste Genevieve according to law = But there was not any court holden at the time appointed by law in November 1859 Nevertheless the said Sheriff proceeded to, and did sell at Public outcry and auction the said premises, when and where the same was struck off to one John Lee and John le Brickey for the inadequate, insufficient and nominal price and sum of Fifty dollars, as by the return of the Sheriff made on the premises will fully and at large appear, reference being thereto made had =

Wherefore your petitioners being the persons who are interested, and the parties to the original suit or petition on which the Judgment was rendered, and the decree of foreclosure and order of sale foresaid come and say that the whole proceedings from the Judgment and rendition of the order of sale aforesaid is and was Irregular contrary to law, unjust, void, and of no force or effect, that the lien of the said mortgagees was not divested by the sale so made as aforesaid but remains in full force and effect, nor did the purchaser acquire any title to the premises =

4 - and they ask and move the court to set aside, vacate and declare ~~null~~ null and void the said sale and restore the parties to their rights and remedy for the following reasons viz:—

1 That there was no court in sesion at the time and place of making said sale,

2 That the price bid for and accepted, and for which the lands were struck off was Totally inadequate

3 That the sale was forbid by parties and persons who pretended to lay claim to the premises and Interested therein for the purpose of detering bidders, and keeping down opposition

4 ~~osition~~ Collusion and a false claim set up by the very person or persons who became the purchasers for the purpose of keeping down bidding or competition

5 That the lands were susceptible of division and was not devided into parcels to suit purchasers, but sold in Bulk

6 and other reasons to be presented on the hearing =

Wherefore the petitioners pray, and move the Court to examine into the premises, and to adjudge declare and decree that all the proceedings and acts subsequent be the ~~off~~ ipuing the fierie facias be declared and held for naught, null and void and that the sale so by the sheriff made be decreed and adjudged fraudulent null and void, and of none effect and that the said sale be set aside, and the proceedings quashed and the sale and returns of the sheriff made on said Scire facias be held for naught and set

5 aside = And that another, or alias Scire Facias be awarded to carry out and into effect the Judgment and decree of foreclosure and order of sale of said premises so manifestly unjust and destructive ——— of the rights and interests of your petitioners, who, have no other remedy or resource from which to ~~allow~~ obtain their Just dues but from the fair and bona fide sale of the lands on said mortgage and decree mentioned and stated as the said mortgager is dead and his estate entirely insolvent,

Scott & Watkins for Petitioners

And afterwards on the 6th day of the Term of said Court being the 12th day of May 1860 the following proceedings was had = viz:=

Judgment John B. Sarpy etal
vs
John L. Detchemendy etal

Judgment

Now at this day come the parties aforesaid by their attornies, and the motion to set aside the sale made at the November Term of this Court 1859 of certain real estate in said Mortgage & motion fully set forth and described made in pursuant of a Fiere Facias directed to the sheriff of Ste Genevieve County on the 15th day of July 1859 coming on to be heard and the court having heard the allegations of the parties, and the arguments ~~fully understood~~ do sustain said motion and set aside and hold for naught the said sale made by said sheriff and do restore the parties plaintiffs to their rights and remedy under the Judgment of this Court rendered at the May

Term 1859 =

Afterwards to wit on the same day of the said Term the following was had =

The following motion was filed viz :-=

Motion to review & arrest Judgment of Court

Darby et als pltff
against
Detchemendy et als defts

In the Ste Genevieve Circuit Court May Term 1860

Motion to set aside Sheriffs sale =

Now this day comes John Lee by his attorney and asks the court to review its finding upon said motion and to overrule the same for the following reasons viz :=

1 Because sufficient facts are not stated in said motion, Showing that the same should be sustained -

2 Because facts are stated in said motion that are not true - viz That L. F. St James was the attorney for plaintiff and being denied was not proven -

3 because the sale was legal and valid

L. F. St James atty for
John Lee

Darby et al
v
Detchemendy et al
civil Action

motion Denied

Now at this day come the defendants the parties aforesaid, and file their motion to review the finding of the Court and to overrule the same

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which being by the Court seen, heard and fully understood, is by the Court overruled, to which overruling of said Motion, the defendant objects and excepts and tenders this bill of Exceptions, which is signed by the Court, and ordered to be made a part of the Record -

which said Bill of Exceptions is in words and figures as follows viz =

Bill of Exceptions -

Bill of Exceptions -

Sarjey et al
v
Detchemendy et al } Motion to set aside Sheriffs sale -

In the Circuit Court May Term 1860

Be it remembered that plaintiff to sustain their motion to set aside the Sale ~~the sale~~ of the Sheriff, read their motion (See page 1 =) and gave evidence as follows, the Execution and the return thereon which is in words and figures as follows viz =

Execution

State of Missouri
County of Ste Genevieve } Set

The State of Missouri!
To the Sheriff of Ste Genevieve County

9

Greeting :-

Whereas John B Sarpy, Executor of the last will and testament of Pierre Chouteau deceid, Julia Cabanne administratrix of the estate of J B Cabanne, deceased, Isaac Baker, the unknown personal and legal representatives of Robert Jones deceid; the unknown personal and legal representatives of John Rice Jones, dec; Louis Griffard, Surviving Executor of Peter Daggett deceid; Louis V Bogy Administrator of Joseph Bogy deceid; Felix Valle, Surviving Executor of John B Valle deceid, assignee of Menard & Valle; Benjamin C Ammoneau Executor of Marie La Porte deceid; Ferdinand Rozier Sen; Mary Ann Valle Administratrix of Francis Valle deceid; The unknown personal and legal representatives of Francis Arbuckle, deceid; The unknown personal and legal representatives of Charles Low deceid; The unknown personal and legal representatives of the President and Directors of the Bank of Missouri; on the 6th day of May A D 1859, at the

9 circuit court of Ste Genevieve County, in the State of Missouri recovered against John L Detchemendy Administrator of Pascal Detchemendy, decd. John Boulier, Francis Burlando, Mariano Mallet, Francis X Dahmer and the heirs of Pascal Detchemendy by Sanvoir Detchemendy, Edward Detchemendy, John L Detchemendy Jules A Detchemendy, Justine Detchemendy, Joseph Moreau and Louise his wife, John P Boyer and Marie his wife, John Cayce Jun, and Juliette his wife, John Boverie and Clementine his wife, John D Boyce and Emely his wife, James H Carlisle and Constance his wife, John S Detchemendy, Miller and Juliette his wife, Emile F Kraft and Mary his wife, and Mary Detchemendy Administratrix of Clement Detchemendy upon the foreclosure of a Mortgage, the Sum of Fourteen Thousand and Six Hundred and Seventy Eight Dollars, for their damages thereon together with thirty two Dollars and Ten cents which were adjudged to be

taxed as appears of Record =

These are therefore to command you that the Mortgaged property as described in said Mortgage and in the petition mentioned viz: All that certain parcel of land situate, lying and being in the County of Ste Genevieve, in the State of Missouri, on the River Establishment containing four thousand four Hundred and twenty six arpents being part of that certain large Survey of said Pascal Detchemendy on the said river, and is that part of said Survey which he the said Pascal Detchemendy reserved to himself after his sale to Clement Detchemendy by his Deeds bearing date the twentieth day of July and twenty first day of September 18[illegible] You cause to be made the damages and costs aforesaid and that you Sell the said Mortgaged premises to Satisfy the said debt and costs, as aforesaid, So that you have the Same before the Judge of our Circuit Court on the first Monday of November next 1859, to render unto the parties first aforesaid the Same

11 and in what manner you execute this writ you will certify endorsed hereon to our said Circuit Court —

Witness Charles C Rozie, Clerk of our said Circuit Court hereto set my hand and affixed the Seal of said Court at office in City of Ste Genevieve 15th day of September 1859

Charles C Rozie Clerk

Sheriffs Return —

Executed the writ hereto attached in the County of Ste Genevieve and State of Missouri, by levying upon and seizing as the property of the within named defendants the following described real estate, situate in the County of Ste Genevieve, as follows, to wit. " All that certain parcel of land Situate, lying and being in the County of Ste Genevieve, in the State of Missouri, and the Rived Establishment containing four thousand four hundred and twenty Six arpents, being part of that certain large Survey of said Pascual Detchemendy on the said river, and is that part of said Survey which he, the said

Paschal Detchemendy reserved to himself after his sale to Clement Detchemendy by his Deeds bearing date twenty third day of July and the twenty first day of September 1851, and having given notice of the Sale as required by law, by an advertisement published in the "Missouri Citizen" a weekly newspaper published in said Ste Genevieve County at least twenty days before the day of sale hereinafter mentioned, same advertisement containing the time, terms and place of Sale, as hereinafter mentioned, particularly describing the real estate to be sold and where situated and on the 8th day of November 1859, and between the hours of 9 o'clock in the forenoon and 5 o'clock in the afternoon of that day, at the Court House door in the city of Ste Genevieve during the November Term of the Ste Genevieve Circuit Court, I proceeded to expose the said real estate to Sale at public auction as out-cry for cash in hand pursuant to said notice and after crying the same for a long time and John Lee and John C

13 being the highest last and best bidder thereof at the sum and price of ($50) fifty Dollars the same was struck off and sold to them for that sum; and having applied the same in part payment of the costs, of the annexed writ, this re- turned not satisfied, Done at the County of Ste Genevieve in the State of Missouri this the 8th day of November 1859

Jacob Boos Jr
Sheriff

Agreed State of facts

Also agreed state of facts. viz;
When this case was called on to be heard the plaintiffs & petitioners were about to introduce witnesses to prove what occured and passed at the time of the sale of the premises and when made whereupon it was agreed by the said John Lee and his counsel that when the Sheriff was about to proceed to make the sale that J F St James as his counsel and agent appeared and then and there openly & publickly declared and gave notice that he on the part and in behalf of the said John Lee forbid the sale,

14 that the premises about to be sold belonged to said John Lee, and that after the Sheriff had proclaimed the sale and waited for some time and there being a bid of five Dollars the said Lee said, Well to save all trouble and difficulty I will give you fifty Dollars, and that after sometime had elapsed and no person bidding more for the property the same was stricken off to him the said Lee for the sum of fifty Dollars so bid by him, there was ten or fifteen. It is further agreed that there was no court in session at the time, the Judge being absent in Franklin County sick, and that the sale was held during the Regular Term of the Ste Genevieve, by Law - That Lee's agent stated that he claimed under Burlands, Dahmers, Boulied and others

Agreed upon by Counsel

Scott & Watkins for plff

J F St James for John Lee

this being all the evidence produced the court after hearing the arguments

15 of Counsel, of plaintiff, and the pur-
chaser of said Sale John Lee, respect-
fully rendered Judgment and sus-
tained the motion set the Sale aside-
thereupon John Lee by his attorney moved
the Court to set its Judgment aside
and arrest its Judgment in sustain-
ing the motion, and filed their reas-
ons therefor, (for Reasons see page 6)
the motion being seen and heard
and fully understood, the motion
was overruled and the attorney for Lee
excepted to all which actings and
doings and decisions and opinions the
said John Lee by his attorney objected
and excepted and asks that this his
bill of Exceptions may be signed
sealed and incorporated into the
record of said Cause which is done

John H Stone (Seal)

And afterwards to wit on the
same day of the said Term the fol-
lowing was had — viz —

Appeal granted

John B Sarjay et als
&
John L Detchemendy et als

Appeal Granted

Now again came said
parties and the Defendant John Lee

16 by his attorney files his affidavit
for an appeal to the Supreme Court
and the Court grants the same and
orders that the Records in said
case be forwarded to the said
Supreme Court —

copy of Affidavit

Affidavit John B Saizey et als
for Appeal against
John L Detchemendy et als

J F St James Atty & agent
for John Lee makes oath and says that
the appeal taken in the above case
is not made for vexation or delay
but because the Defendant John
Lee believes that he is injured
and agrieved by the decision of
the Court —

J F St James agt
& Atty for John Lee —

Sworn to & subscribed before me this
12th day of May 1860 —

C C Rogers
Clerk

State of Missouri
County of Ste Genevieve } Set

I Charles C Rogers Clerk

of the Circuit Court in & for Said County and State do certify that the above is a true full and correct copy and transcript of the Record, Pleas and Proceedings in the case of John B Sarpy et al vs John L Detchemendy et als —

In witness whereof I hereto set my hand and affix the Seal of Said Court at Office this 23d day of August 1860

Charles C Rogin
Clerk

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October Term 1860

John B. Sarpy & als,
respondents

v.

John L. Detchemendy
& al.
appellants

Appeal Ste. Genevieve Circuit Court.

Filed 21st Septr. 1860.
W. S. Glanville,
Clerk.

Cf. 4-6 Tr.

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cpr'f / (aiment) res. bf. / apts bf. /

Affirmed 20 Decr. 1860. C. p. 111 /

John B Sarpy executor of Pierre Chouteau and others Respondents

vs

John L Detchemendy and others with John Lee appellants

Originally on petition to foreclose a Mortgage in the Ste Genevieve Circuit Court = Judgment and decree of foreclosure, and order of Sale, and Special Fi. Fa issued thereon, Sale made, Sale set aside and appeal taken by the Purchaser =

This Case is the third time, and the third Investigation that has been had in the Supreme Court, Predicated on the Same Mortgage made by Paschal Detchemendy in his life time to Pierre Chouteau of whom the said John B Sarpy is Executor, and others, in Each of the Validity and Subsisting force of the Mortgage was Sustained by the Supreme Court = and Ultimately Carried out, and a Judgment and decree of Sale made by the Circuit Court of Ste Genevieve and a Special Fi. Fa issued for the Sale of the Morgaged premises =

The Court will see the Cases alluded to in the 18th Volumn of Missouri Reports page 522 Moreau and others appellants, against Detchemendy and others Respondents - and

In the 20th Vol. Missouri Reports page 482, Entitled Chouteaux Executors and others against Burlando, and others where all the facts, titles, and Interests of the Respective parties are stated and set forth

And finally at the May Term of the Circuit Court at St Genevieve in 1859 Judgment was rendered for about $14670 and Costs, and a decree for the Sale of the Mortgaged premises made, and a Special Fi. Fa issued made returnable to the November Term of said Court in 1859 =

The Lands Morgaged and ordered to be Sold was 4426 arpents being a part, and parcel of three Several Tracts of Land that was Confirmed to said Paschal Detchemendy in 1810, amounting in the agregate to 10256 arpents, = See the Cases in the

over

18, and 20 Volumes of Louisiana Reports, to which the Court is Respectfully referred for the facts =

At the time fixed by Law for the holding of the Circuit Court in the County of Ste Genevieve, to wit November Term 1859, the Judge of the Circuit having failed to attend, the Court was never opened, or in Session but was adjourned from day to day for three days and the Term Lapsed, under the Law in such Cases made and provided

But the Sheriff nevertheless proceeded and Sold the Mortgaged premises in Bulk (4426 or 100 of Land) for the paltry Sum of $ 50 = But there being no Court in Session, no and was made for the premises =

At the May Term of the Circuit Court 1860 the Plaintiffs and petitioners in the Circuit Court filed their Motion and reasons, and moved the Court to Set aside, vacate, and declare Void the Sale which reasons are in the Record, to which the Court is referred, and which Motion was sustained by the Court, after hearing the Testimony, and Examining the agreed Statement of Facts, and the Sale was Set aside and Vacated =

The Appellants, John Lee, who purchased for himself and one Brushey, then moved for a Rehearing which was overruled, and then filed their Bill of exceptions which is in the Record and took an appeal without giving any Bond as required by Law = now on the part of I B Darby executor as aforesaid, and the other Respondents we contend that there was no Error in the Judgment, or Irregularity in the action of the Court, in Setting aside said Sale on the Reasons filed, and declaring it Void, and restoring the Parties Plaintiffs to their rights and another Sale =

1. This was a proceeding, or Judgment and decree for the foreclosure of a Mortgage, on which a Special Fi. Fa was issued and Levied by the Sheriff, Wherein, and Whereon the Whole proceedings and Sale is to be made as on the Levy and Sales under ordinary Executions = See the Law in relation to the Sales under a Fi Fa issued under the Law of Mortgages 1 Vol Code 1855 page 1090 Section 13 =

and the Act Regulating executions and Sales of Real Estate, Code of 1855 page 746 Section 45 = and if not sold the first Term then the Execution to Continue in force till the next Term page 748 Sect 54 =

and the officer shall divide the property to be sold, see Code of 1855 page 744 Section 23 =

And all such Sales of the Realty is to be made at the Court house door, on same day during the term of the Court. See Code of 1855 page 746 Sect 45 =

And we Contend that the Court must be in actual Session or open to make such Sales Valid, for that the Word Term means the actual Session, or Sitting of the Court, for which see Walkers dictionary and others, the Word Term "In Law means the time in which the Tribunals, or places of Justice are open =

See also Bouviers Law Dictionary 2 Vol page 579, that the Word Term "In practice means the Space of time during which a Court holds a Session &c" according to the Constitution of the Court as to time = and the whole Term is Considered as one day, and see the same Book and page and authorities there referred to

And if the Court is not held the first day, It is to stand adjourned for three days and then the term is Lapsed. See Code of 1855 page 539. Sections 44 & 46 =

now suppose a Sale was advertized for the 4th or 5th day of the Term and no Court was held, Could the Land be sold, for the Sheriff has the whole Term to advertize and sell by Law, = See Code of 1855 page 746 Section 45

But there is to be no discontinuance, or abdement by the failure of the Term or Session, but all matters are to be Continued Code 1855 page 541 Sec' 56 =

And the Courts are to call over the Execution Docket at Every Term, Code of 1855 page 537 Section 23 = =

This shows that the Word Term means the Court to be in actual Session and open

The law has made a great distinction between the mode, manner and time of the Sales of Personal and Real Estate (except only as to Slaves). for Personal property ten days notice is only required Code 1855 page 744 Sect 35

and he is to make the Sale if he has time fifteen days before the return day of the Execution Code 1855 page 746 Sect 43 =

But for the Sale of Lands twenty days notice is necessary Code of 1855 Sect 45 and to be made in Term Time, that from the quantity of People at Court the debtors property may not be sacrificed =

By Code of 1855 Sections 69-70 any person under Execution may apply for an Injunction to the Judge or Court, which could not be done unless the Court was in actual Session

2 That the Price Bid for and for which the Land was sold was totally Inadequate = Here the the Land sold was 4426 arpents, confirmed in 1810 and was a Substantial and Subsisting Lien & Mortgage, and a Pinery near Saw Mills, no outstanding or Conflicting Claim thereon or produced = this point is so Clearly Self Evident we will not trouble the Court with many authorities = But See 23 Mission Rept 13 = Wilson vs Brown

3 & 4 Collusion and Contrivance and Combination to keep down Bids or Sales, renders such Sales Void -

16 M Reports 225 = Dallam vs Bowman

12 M Rept 528 = Turbner vs Mollor

25 M Rept 309 = Stewart vs Wilson

20 M Rept 290 Wooton & Wooton vs Hinkle

Revised Code of 1855 page 752 order B

22 M Rept 333 = Hook vs Turner

1 M Rept 754 fraud in Sales

10 M Rept 237 " "

5. That the Lands were susceptible of partition for Sale and not divided, and real Estate sold on Execution is to be divided Code of 1855 page 744 Sect 23

If more Land is sold than sufficient the Sale is void =

See 7th M Rep 346 = Hicks & Hammond vs Perry

8 M Rep. 448 Rector vs Hart

and we contend that those Lands being heavy Pine groves near saw Mills were worth from five to ten dollars per arpent =

all of which is Respectfully Submitted to the Court

By Scott and Watkins

attorneys for Respondents

October 16th 1860

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J. B. Sarpy & others
Respondents
at Suit of
J. L. Delahamay & others
Appellants

Brief and argument of
the Respondents.

John B Sarpy Exor and others = Respondents
at Suit of
John L Delchomedy and others = Appellants
Addition to Respondents Brief and argument

In making out, and Copying the Brief and argument for the Court under the 2d point, viz Inadequacy of Price The following Remarks were omitted to be put in or Copied into it = viz

" Only remarking that the price Bid was Less
" than one Cent per arpent = and a false and unfounded
" Claim set up by the very man and his agent
" Who purchased, and for the Clear reason and purpose
" to Keep down Bidding and Competition "

William S Glanville Esqr

Dear Sir

Please add to and hand to the Court the above addition to our Brief for the Court with the original and oblige

yours obediently

Octr 17th 1860 Scott and Wilkins

J. B. Sarpy & al.

(3).

J. Le Detchmendy & al.

Respondents Brief by.

Scott & Watkins

Filed 23d October 1860.
W. S. Glanville
Cl.

John B Sarpy et al Respts
v
Jno L Detchemendy et al Applts

} Appeal from St Genevieve Circuit Court

John W Noell for John Lee

Comes and says that in the record and proceedings and judgment of the Court below there is manifest error in this to wit

1. The Court erred in setting aside the Sheriffs sale
2. The Court erred in overruling appellants motion for review
3. The Court gave judgment for the wrong party

Jno W Noell atty for
John Lee Applt

39

John B Sarpy et al

vs

J L Detchemendy

Jno Lee et al

Assignment of

Errors

Filed 23d October 1860.
W. L. G Carroll
Cl.

John B Sarpy Executor of Pierre Chouteau deceased and others } Respondents on appeal

at the Suit of John L Dolchemendez and others } Appellants

} Joinder in Error

And now at this day the Respondents come here into Court and says that there is no Error Either in the decision, Record and proceedings aforesaid or in Giving the Judgment, or Making the decree aforesaid, and they pray that the Supreme Court for the State of Missouri now here may proceed to Examine as well the Record and proceedings aforesaid as the Matters aforesaid for Error assigned and pray that the Judgment, orders, decissions and decree in form aforesaid given and Rendered may be in all things affirmed, and that the Court will award to those Respondents their Costs and charges and such damages on the amount of the Judgment as the Court shall deem Just

Scott and Watkins
Attys for Respondents

October 16th 1860

39

John B Sorby Exr and others
Respondents
at the Suit of
John L Delahaudy & others
Appellants

Joinder in Error

Filed 25th October 1860.
W. S. Glanville
Ck

John B Sarpy et al Respt
vs
John Lee applt

} Appeal from St Genevieve

This was a proceeding or motion to set aside a sale under execution the appellant being the purchaser at such sale. There are only two facts in the Case that have any bearing upon the questions involved

1. The sale was made during the first three days of the November term of the Circuit Court. The Court did not actually sit: but the sale was made before the term lapsed by law

2 John Lee the purchaser on the day of sale gave notice that he was the real owner of the land and after giving that notice bid it in for fifty Dollars as he said to save all further trouble

Jno W Noell

Jno W Noell for Appellant insists that a Sheriffs sale of real estate is good if made during the first three days of the term although no Court is actually held Revised Code 1855 page 539. Sec 44, 45 & 46
Do Do " page 746. Sec 45

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Jno B Sanpy et al

vs

Jno Lee

Statement &
Brief for appltts

Jno W Noell

Filed Oct. 24. 1860.
W L Glanville

J. B. Sarpy & als
vs.
J. L. Delchemendy & others

Appeal from the St Genevieve Circuit Court.

This is a motion to set aside a sheriffs sale under the following circumstances: A large tract of land containing upwards of 4000 arpens was advertised to be sold during the Nov Term ~~of the~~ 1843 of the St Genevieve Circuit Court: The land was exposed to sale & bid off at fifty dollars during the first three days of the ~~Term~~ week during ~~of~~ which the Term was to be holden. The Judge of the Court failed to ~~hold~~ appear & the Term lapsed: The sale was made during one of the three days from which the Court ~~stood~~ adjourned from day to day in pursuance to law. The land was claimed by others than the defendants in the execution & was bought ~~it~~ by them

The sale was set aside

This is the first instance in which real estate in Missouri has been sold by a sheriff under such circumstances. Our books of reports furnish no case in which such a sale has been made, nor do our memories recal any such proceeding. Had the opinion prevailed that such sales were authorized by law, they would have been made as the lapse of a Term of the circuit court is a thing of no unusual occurrence. If such a ~~thing~~ sale was tolerated it would ~~be to~~

lead to a great many abuses: The law directs sales of real estate to be made during the terms of the circuit courts, because on such occasions the people of the county are assembled or at least more of them than ~~on any other occasion~~ at any other time with the view of remaining together & transacting their business. The absence of the judge is frequently anticipated it is known that a court will not be held. The people may assemble on the first day of the term and learning that there will be no court, they will disperse immediately. Now if a sale should be advertised to take place on the third day, what a door under these circumstances would be opened ~~for~~ to trick & management for sacrificing men's estates. Nothing is gained by such a sale time as the court will not sit, no deed can be made & purchasers at Sheriffs sale do not usually pay the purchase money before they receive a deed. A sale under such circumstances would be so novel a thing, that the mistrust of the ~~no~~ legality of it would damp the ardor of bidders & cause a sacrifice of the property: A court would be warranted in setting aside a sale when it appeared that ~~the~~ it was made under circumstances that produced a sacrifice of the estate sold

The other judges concur Aff'd W. Scott

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Sarpy Pal
vs
Detchmendy

opinion

Filed 20 Decr. 1860.
Wm J Glanville Clk.