Franciscus, James M. v Vogel, John C., Sheriff

495/8

625/17

St Louis, CO

April: 1863

App

Franciscus

Moody

Resp

~~J. C. Moody~~

Plaintiff agreed to
buy land seized by
Sheriff
- recover dd
+ costs

Judgment: Dismissed

The State of Missouri, ss.

The State of Missouri, to the Honorable the St Louis Circuit Court **in said State—Greeting:**

WHEREAS, In the record and proceedings in a certain cause lately pending in the said Circuit Court

wherein James M. Francicus was plaintiff and John C. Vogel 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.

Andrew O'Mead

WITNESS, WILLIAM S. GLANVILLE, Clerk of our said Supreme Court, at office in the City of Saint Louis, the 21st day of April in the year of our Lord one thousand eight hundred and Sixty Three

A. W. Mead

CLERK.

State of Missouri }
County of St Louis } ss. In Audience to the
Within Writ I herewith send Certified
under my hand and Official Seal
the record and proceedings in the within
named Cause, as the same remain of record & on file
in my Office Given Under my hand and
Seal of the St Louis Circuit
Court, the 18 day of April
1863 J Rice Cl

State of Missouri }
County of St Louis } ss Be it remembered that at
the February Term of the St Louis Circuit
Court for the year eighteen hundred and
sixty three to wit On the Thirteenth day of
March eighteen hundred and sixty three
there was filed in said Court a petition
in the words and figures following to wit:

Petition

James M. Francis and }
vs } To the St Louis
John C Vogel Sheriff } Circuit Court
of St Louis County } February Term 1863

Plaintiff States that on February
13. 1860 he recovered a judgment in this Court
against Peter M. Papin for $ 6333.98 which
was entered on the Abstract record in the
St Louis Land Court Clerks Office on the
18 of February 1860. On the 14 February
1860 one Rollin Richmond obtained a
Judgment in said Court against said Papin
for $ 474.55 which was abstracted on said
record on February 18. 1860 after plaintiffs
judgment and below it on said record
On December 23. 1862 Plff issued an execu-
tion pursuant to his judgment aforesaid. On
February 6. 1863 said Richmond issued
an execution pursuant to his judgment
aforesaid. On January 12. 1863 said Vogel

2. as said Sheriff levied by virtue of Plffs execution on the land described in the Advertisement here annexed and made part thereof And advertised it for sale on February 6. 1863. On February 6. 1863 pursuant to said Advertisement which was published for the time and in the way required by law said Vogel Sheriff offered said land for Sale and sold it to plaintiff for $375. He being the highest bidder. Plaintiff has offered to pay said Vogel the costs due on said execution and Sale and to receipt to him on said execution for the venture of said purchase Money and demanded a deed pursuant to said Sale and he was offers to pay and receipt as aforesaid. But said Vogel refuses to accept such payment and receipt and to make such deed Plaintiff prays that a Mandamus be issued by this Court ordering said Vogel as such Sheriff to receive from Plaintiff said Costs and receipt and to make him a deed pursuant to said Sale.

James C Moody atty for Plff

James C Moody attorney for Plff on oath says he believes the foregoing petition and the matters therein as stated are true

James C Moody

Subscribed and Sworn to before me March 13. 1863 S. Rice Clk.

Whereupon on the 16th day of March in the year eighteen hundred and Sixty three the said Vogel filed his Answer to said petition in the words and figures following to wit:

State of Missouri

Answer Ex rel J M Franciscus } The respondent in this case for an-
John C. Vogel. } Swer to the alternative Mandamus directed to him ex Rel J M. Franciscus States that an execution issued out of the St Louis Circuit Court an ajudgment rendered by said Court on the 13th day of February 1860 in favor of James M Franciscus the relator against Peter M Papin came into the hands of this respondent as Sheriff of St Louis County on the 23d day of December 1862. This respondent by direction of the plaintiff in said execution levied upon the Real Estate described in the Notice annexed to the Relators petition. This respondent further States that he fixed the day for selling said Real Estate for the 6th day of February 1863 and this respondent gave due Notice of the said Sale as required by the Statutes & as appears by said notice

This respondent further States that on the 6th day of February 1863 and before the hour

3.

for Selling Real Estate had issued and before this Respondent Commenced crying the Sale of Said Real Estate Another execution issued out of Said Circuit Court on a judgment in favor of Rollin Richmond against Said Peter McPapin was plused in the hands of this respondent and he had Said last mentioned execution in his hands at the time of the Sale of Said Real Estate, on said 6th day of February 1863. This respondent further States that he made the Said Sale on the day and for the amount Stated in his return endorsed on the execution in favor of Said James McFrancisous, who became the purchaser of said Real Estate for the Sum of $775. he being the highest & best bidder therefor. The Costs and Commissions properly chargable thereon Said levy and Sale Amount to $66.90 Leaving a balance of $708.10 to be applied and appropriated to one or both of Said Executions as the Court may order and direct whenever Said James McFrancisous Shall pay the amount of his Said Bill Viz. $775. to this respondent. This respondent further States that immediately after Said Real Estate had been Knocked down to Said James Mc. Francisous at Said Sale, The Said Rollin Richmond Served on this respondent the written

Notice annexed to the return of this respondent endorsed on said execution in favor of said Franciscus, which Notice this respondent makes a part of his Answer

This respondent further States that said James M Franciscus did Not pay and has Not paid to this respondent the amount bid by him at said Sale

This respondent admits that said James M. Franciscus offered to pay the Costs and tendered his receipt to this respondent at the time and in the manner stated in his petition exhibited herein

This respondent prays that he may have the direction and order of this Court as to the manner he shall execute and discharge his duty in the premises

John C Vogel

By Krum & Decker.

And afterwards to wit: On the fourteenth day of April eighteen hundred and sixty three the following further proceedings were had in said Cause in said Court to wit:

Judgt & Order. Now Come the parties by their attorneys and after hearing the proofs of the parties the Court finds That plaintiffs and said Richmond are entitled to a pro rata share

of the proceeds of said Sale It is therefore Ordered that the petition of plaintiff be dismissed And that the said Vogel Sheriff pay the proceeds of said Sale, after paying the Costs of suit & Sale and of this suit to plaintiff and Said Richmond pro rata according to the amount of their respective judgments.

Motion for New Trial Overruled

Whereupon the plaintiff filed his Motion for a New trial, Which being heard and fully Considered by the Court is Overruled. And thereupon the plaintiff files his Bill of exceptions in the words and figures following to wit.

James M Franciscus
v
John C Vogel

Bill of Ex.

St Louis Circuit Court
February Term 1863.

Best remembered that on the hearing of this Cause Plaintiff and Said Vogel gave evidence Shewing that the facts Stated in the plaintiffs petition & said Vogels answer are true,

Defendant introduced as a Witness Charles Levy who testified as follows

Test of C. Levy

I have been for Six years a Clerk in the Clerk's Office of the St Louis Land Court and made entries of judgments from other Courts and generally all abstracts filed in any day were brought in in one bit, I Never Knew in Said Six years but one

or two lists coming from the same Court in one day And those instances were when Plffs had directed some particular judgment to be sent down out of its order. To this evidence of said Levy plaintiff on the ground that it was not material to the cause. The Court overruled this objection and admitted said evidence And to this ruling of the Court plaintiff at the time excepted, And the Court ordered and adjudged that the said petition be dismissed And that said Vogel pay the proceeds of said sale to said Franciscus & said Richmond prorata To which decision of the Court plaintiff at the time excepted. And in due time the plaintiff filed his motion for a new trial as follows.

Motion for New Trial

"Plaintiff moves for a New Trial because the decision and order of the Court are not in accordance with the law and with the evidence

2nd Because the Court erred in giving improper evidence offered by defendant."

James C. Moody for Plff"

Which motion was overruled by the Court And to this ruling plaintiff at the time excepted.

He now asks that this his Bill of

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Exceptions designed and made a part of the record. Which is done

S M Breckinridge Seal

State of Missouri }
County of St Louis } ss. I the undersigned Clerk of the St Louis Circuit Court Certify that the foregoing is a true Transcript of the record & proceedings of said Court in the Matter of the application of James McFranciscus for a Mandamus. as the same remain of record and on file in my office

In Witness Whereof I hereto set my hand and affix the Seal of said Court at Office in St Louis the 15th day of April AD 1863. S. Rice Clk.

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(17) ~~230~~ 38

October Term 1863

Jas M Franciscus P.E.

John C. Vogel D.E.

Error to Circuit Court

Transcript

J. C. Moody
atty for Pltff

Krum & Decker
atty for Deft

Filed April 21. 1863
A W Mead
Clerk

$10 paid by J. C. Moody
Deo

1863 May 7. Apriment filed
1863 Dec 14th Dismissed by Appl't Dp 213

[10]

Franciscus
v.
Vogel

Supreme court
settled & to be dismissed
Oct 23 1863 —

Jas. W. Franciscus