WOOD, FREDERICK W. V HICKS, SAMUEL L. OCTOBER 1865 JEFFERSON COUNTY
580/5

OLD 6660 / NO #
(?7)
-AFFIRMED
-INVOLVED
• EVIDENCE - HEARSAY
• FRAUD - JUDGEMENT

The State of Missouri, ss.

The State of Missouri, to the Honorable the Judge of Ninth Judicial Circuit **in said State—Greeting:**

WHEREAS, In the record and proceedings in a certain cause lately pending in the Jefferson County Circuit Court wherein

Frederick W. Wood was plaintiff, and

Samuel L. Hicks was

defendant, in a civil action, manifest error hath intervened, to the great damage of said Defendant 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 the 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, ANDREW W. MEAD, Clerk of our said Supreme Court, with the Seal thereof hereunto affixed, at office in the city of St. Louis, the 22nd day of June, in the year of our Lord one thousand eight hundred and sixty-four

A. W. Mead, *Clerk.*

STATE OF MISSOURI, }
County of Jefferson } ss. I, Elias F. Honey,

Clerk of the Circuit Court within and for the County aforesaid, in obedience to the mandate of the within writ, herewith transmit to the Honorable Supreme Court of the State of Missouri, held at St. Louis, a full, true and complete transcript of the record and proceedings in the within entitled cause, as fully as the same remain of record ~~in my office.~~ and on file in my Office

In Testimony Whereof, I hereto set my hand and affix the Seal of said Court, at office in the Town of Hillsboro this 29 day of July 1864.

JEFFERSON COUNTY CIRCUIT COURT SEAL

Elias F. Honey, *Clerk.*

First page State of Missouri } ss
County of Jefferson } Be it remembered that on the Sixteenth day of August 1862 there was filed in the office of the clerk of the Circuit Court for said County of Jefferson, a Petition in words and figures as follows, Viz

Frederick McWood Plaintiff
against
Samuel L. Hicks Defendant

In the Circuit Court
of Jefferson County
Missouri

Petition The Plaintiff States that he and H. A. Mueller recovered judgment against Andrew H. Downing at the June Term of the Circuit Court of Jefferson County Mo for 1860, on which execution issued returnable to the December Term 1860 of said court, That the same was levied by the Sheriff of Jefferson County Mo. on the 20th of July on the following property of Andrew H Downing to wit: The South East frl. 1/4 of the North East frl quarter of Section 24. Township 41. Range 5 E

2nd page ast. containing 40 acres, and the South East quarter of Section 24 Township 41 Range 5 East. containing 16 10/100 acres of land. Situate in Jefferson County Ohio That at the December Term 1860 the Sheriff of said County Sold said tracts of land to plaintiff. and executed to him a deed conveying the right & title of said Downing to plaintiff. The Plaintiff States that said Downing was the owner of said tracts of land at the time of rendition of the Judgment. and that by virtue of the Sheriffs Deed plaintiff became the owner there of. Plaintiff therefore States that on the 12th day of December 1860. he was entitled to the possession of the above described premises. and being so entitled to the possession there of that the defendant afterwards to wit on the 1st day of January 1861. entered into such premises and unlawfully withholds from the plaintiff the possession there of to his damage of One hundred dollars Plaintiff further avers that Defendant has cut and appropriated to his own use, a large lot of the timber growing upon said land

Wherefore plaintiff demands Judgement for the recovery of the premises and $100 damages, and for whatever sum he may establish for cutting & appropriation of the timber upon said land & for further proper orders & Judgments as may be right

Frederick M Wood
Plaintiff
By J. A Beal Atty

State of Missouri } ss
County of Jefferson } J. A. Beal Atty for plaintiff states the foregoing petition & the matters as therein stated he believes to be true

J A Beal Atty
for plaintiff

Subscribed & sworn to before me this 16th day of August 1862
Elias F. Honey clerk

Endorsed "Filed Aug 16th 1862
Elias F. Honey clerk

State of Missouri } ss
County of Jefferson }

Summons

To the Sheriff of the County of Jefferson Greeting
We command you that you Summon Samuel. L. Hicks, if he be found

nd page in your County, that he be and appear before the Hon. Judge of our Circuit Court on the first day of the next term thereof to be begun and held at the town of Hillsboro, within and for the County of Jefferson on the second Monday after the fourth Monday of November next, then and there to answer unto Frederick McWord, upon his original petition, a copy whereof is hereunto annexed and accompanies this writ, and have you then there this writ

L S

Witness Elias F. Kinney, Clerk of aforesaid Circuit Court, with the seal thereof hereunto affixed at office in Hillsboro this Sixteenth day of August A D. 1862

Elias F. Kinney
Clerk Circuit Court.

Endorsed.

I executed the within Writ in the County of Jefferson State of Missouri on the 25th day of August 1862 by delivering Samuel L Hicks a true copy of the within writ annexed, petition as furnished to me by the Clerk

Jas. C. Power Sheiff

2

Fred. M. Wood Plaintiff
against
Saml. L Hicks defendant

In the Circuit Court for the County of Jefferson State of Missouri

June Term 1863

Answer

Now at this day comes the defendant in the above entitled cause, and states for answer, that it is true as stated in the plaintiffs petition that plaintiff and obtained judgment against Andrew H. Downing at the June Term of the Circuit Court 1860 that Execution was issued and levied on the tracts of in Plaintiffs petition described, that a Sale was had & that Plaintiff became the purchaser and obtained a deed from the Sheriff, as stated in his petition. But defendant denies that plaintiff acquired any title to said lands by virtue of said Sale, because he says that a long time before plaintiff and obtained judgment against said Downing, to wit, on the Ninth of March A.D. 1859 he defendant purchased said Tracts of land from said Downing for the

pag 4

sum of Two hundred and fifty dollars which sum he paid the said Downing at the time of making the purchase and received from Downing at the same time the title deeds which he held for sd lands, that a short time afterwards & long before plaintiff &
obtained judgement, he took possession of the lands by Downings consent, and made lasting and valuable improvements thereon, that at the time of making the purchase Downing promised to make this defendant a good and sufficient deed to said lands in a few days, which however he failed and neglected to do &, that defendant instituted suit against him in this court & obtained a decree of title of said lands from said Downing to this defendant at the Term 18. Defendant therefore claims title to said lands by virtue of his purchase from Downing as aforesaid. Defendant states that the Sheriffs deed to Plaintiff conveyed no title to said land. Defendant denies that Downing was the owner of said land or, that he has any right or, title to said land when Plaintiff &. obtained

Judgment against Dunning. Denies that that plaintiff on the 12th day of December 1860 was entitled to the possession of said land or that he has at any time since been entitled to the possession of the land. Denies that he has at any time since the 12th day of December 1860, unlawfully with held the possession of the premises from the plaintiff. Denies that the plaintiff is damaged in the sum of One hundred dollars or any other sum.
Defendant States that he has been in possession of said lands since a short time after his purchase from Dunning in March 1859. That Plaintiffs claim and for judgment for the recovery of the premises & for $100. damages ought not to be granted & that plaintiff is not entitled to any relief whatever, defendant asks to be discharged

Hendrickson for Defendant.

State of Illinois
County of Jefferson } Saml. C. Hendrickson atty for defendant makes oath & says that the above answer, and the matters therein as stated he believes to be true

Sworn to & Subscribed before me this 4th day of Apr. 1863 Elias. J. Honey } Sam. C. Hendrickson

Clerk Circuit Court

Endorsed,

Filed April 4th 1863

Elias J. Honey clerk

Monday June 8th 1863

Record

Fred Mc Wood vs Saml. L. Hicks } Amended petition of Plaintiff filed by leave of the court.

Amended Petition

J. Mc Wood vs Samuel L. Hicks } In the Circuit Court of Jefferson County Missouri

Amended Petition by leave of court, The Plaintiff States that in the year 18. one A. H. Downing was indebted to Muller & Wood in the sum of $ on which Muller & Wood brought Suit in the Jefferson Circuit Court and at the June term 1860 obtained Judgment against said Downing for $138 74. that execution issued on said Judgment to the Sheriff of Jefferson C. Mo

sold to plaintiff on the 12th day of December 1860. the following real estate as the property of. A H. Downing. situate in Jefferson County Mo. viz: The South East fl quarter of the North East fractional quarter of Section 24. Township 41. Range. 5 East containing forty acres and the South East frl quarter of Section 24 Township 41. Range 5 East containing Sixteen 100 acres.

Plaintiff further states that previous to the sale of said lands by the Sheriff to plaintiff, Samuel Hicks pretending to have verbally bought of said Downing the lands in controversy, had instituted suit against said Downing in the Jefferson Circuit Court for obtaining title to the said lands, that said Hicks set up in his petition a verbal sale of said lands by Downing and alleged that he had made valuable and lasting improvements on said land and had paid the purchase money, that defendant Downing filed an answer to said suit, denying that said Hicks had paid the purchase money and denied that said Hicks had taken possession of the lands in controversy

page 6 and denied that said Hicks had made lasting & valuable improvements on said lands, and charged that said Hicks had damaged the land by taking off the timber & set up the statute of fraud. Plaintiff further states that that suit was set for trial at the December Term of the Circuit Court of Jefferson County 1860. that Downing had subpoened Charles S Rankin & several other witnesses to prove his answer, that before the trial was taken up or the case was reached on the Doc set, the lands in controversy were sold to Wood by the Sheriff of Jefferson County on Execution from said Court, on judgment of Mueller Wood aforesaid that Downing then had no further object in view to defeat said Hicks in his suit for recovery of the title that in case he defeated said Hicks the title of Downing was conveyed to Wood by vertue of said Execution sale & he would gain no advantage from the suit being conducted successfully. Plaintiff states that said Downing & Hicks, then combined and confederated to defraud and

cheat said Wood out of the land he had bought under said executor and to succesfully accomplish that object Hicks agreed with said Downing to pay him what sum was due on said verbal sale of said land and said Downing agreed with Hicks to withdraw his answer, and let judgment be rendered by said court in favor of said Hicks and against said Downing, decreeing the title in said Hicks. that said Hicks promised Downing then to pay to said Downing the purchase money or balance of it and Downing withdrew his answer that judgment was rendered in favor of said Hicks against Downing for the title of said lands on the day of December 1860. without any proof or evidence being made to the court, to sustain the charges in Hicks's petition. This Plaintiff charges that Hicks had not paid the purchase money to Downing before the commencement of his suit, that he had not taken the actual possession of the lands in controversy and made valuable and lasting improvements

that all that Hicks had done to the land, before the commencement of suit was to strip the land of the wood & had appropriated the proceeds of sale to his own use, that he combined & confederated with said Downing after sale of the said land to Wood by the Sheriff to cheat and defraud said Wood out of the title to the same by agreeing & paying to said Downing the balance of the purchase money that said Downing, to effect that fraudulent object, agreed & received the money and withdrew his answer to said suit and consented to a decree of title in favor of said Hicks without any proof or evidence to sustain the charges in the petition. Plaintiff further charges, that said Hicks knew at the time he so confederated with said Downing that the land had been sold to said Wood on said execution, and it was with the intent to defeat and defraud said Wood out of the title acquired by said execution sale that he promised to pay to said Downing a certain sum of money to withdraw

his answer & suffer a Decree to be ren
dered in his favor. Plaintiff states
that there was never at any time
a written contract of sale for said
lands on the part of Downing that
the sale was verbal and null accor
ding to the Statute of frauds. that there
was no past performance on the part
of Hicks, that all Hicks did was to
cut the timber off of the land & sell
the wood. that he made no perman=
ant & valuable improvements thereon
such as building houses & making
enclosures before commencement
of his suit against Downing, that
Hick's sole object was to cut the tim=
ber for cord wood & for no other pur
pose

Plaintiff charges that the Decree
in favor of Hicks against Downing of
December 1860. vesting title
of Downing in Hicks is a fraudu=
lent one and obtained by a fraud
ulent combination with said
Downing, to cheat defraud, hinder
and delay said Wood out of his
demands and out of title to the
lands purchased by him aforesaid

page 8 Plaintiff prays the court to set aside the Judgment and Decree aforesaid and for Judgment of recovery of the possession of the lands purchased by him at said Sheriffs Sale on the 12th of December 1860 and for all other & further orders, Judgments & decrees as may be proper & necessary

J. A. Beal
Atty for Plaintiff

J. A Beal, States on oath, that the foregoing petition and the matters therein as stated he believes to be true

J. A. Beal

Subscribed & Sworn to before this day of 1863.

Endorsed " Filed June 8th 1863
Elias. F Honey Clerk

F. M. Woods. plff.
vs
Samuel L Hicks Deft

In the Circuit Court of Jefferson County Dec. Term 1863.

Amended Answer

Amended answer

Now at this day comes the Defendant, and for answer to the amended petition of Plaintiff says it is True as

charged that Muller & Wood obtained judgment against A. H. Downing at the time stated by plaintiff and for the said sum that on said judgement Execution was issued and was levied by the Sheriff on the Real Estate in plaintiffs petition mentioned that said land was sold by the Sheriff at the time stated by plaintiff and that said Wood became the purchaser at said sale it is also true that Defendant commenced suit against said Downing previous to the sale of said Land to Wood by the Sheriff to obtain title to the same. and Defendant says that all the allegations made by him in said petition were true. Defendant denies that said Downing ever filed any answer to his petition in said cause. But states the truth to be that allhough an answer was filed by an Attorney for said Downing said Downing Really took no interest in the matter and that he did not verify said answer by affidavit wherefore in point of Law there was no vaild answer in said cause. It is true that said cause was set for trial at the time stated. but defendant has no

knowledge and not sufficient to form a belief that said Downing had any intention to defend the same before said sale by the Sheriff.

Defendant denies that after the plaintiff had purchased said land at the Sheriff sale or at any other time he combined and confederated with said Downing to cheat or defraud said Wood out of said Land, he denies that he ever did at any time combine or confederate with said Downing for any fraudulent purpose whatsoever, he denies that he paid Downing any sum by way inducing him not to defend said case, but states the truth to be that he paid to said Downing in the month of March 1859. Two hundred and fifty dollars as the purchase was made by him in good faith and all the purchase money paid in March 1859. and that before he instituted suit for the title he had taken actual possession of said lands and made valuable and lasting improvements thereon. Defendant denies that the sale of the lands from Downing to himself was void by reason of the Statute of Frauds, by reason of the contract of sale being verbal, that he performed his part

of the contract in every part and that Downing was to make him a Deed forthwith, but failed to do so. Defendant says that plaintiff purchased at the said sherriff sale with notice of his contract with Downing and with a knowledge that suit was then pending for the Title of the same, he denies that the decree in his favor against Downing was procured through fraud or collusion, and states it ought not to be disturbed, that said Downing has since the rendition of the judgment aforesaid left this county and is insolvent so that a judgement against him would be unavailing. he says therefore that in equity and good concience he is entitled to a decree for said lands and having fully answered asks to be discharged.

Henrickson & Williams
for defendant

S.C. Hendrickson Atty for Defendant says that he believes the foregoing answer is just and true

Sam. C. Hendrickson

sworn to and subscribed before me Oct 3 1863. Samuel A Reppy Clerk

Endorsed filed Oct 3d 1863

E. F. Honey clk.

Monday December 7th 1863

Record — F. M. Wood. vs Samuel L. Hicks } Amended answer filed

Which answer is as follows.

2nd Amended Answer — F. M. Wood vs Samuel L Hicks. } In the Circuit Court of Jefferson County

amended Answer.

The Defendant for answer to the amended petition of plaintiff filed on the 8th day of June 1863 says it may be true as stated by plaintiff that A H Downing was at the time stated indebted to Muller & Wood in the sum of — Dollars and that suit was commenced by them (Muller & Wood) and judgment rendered for the amount stated and at the time stated, and that the sheriff of Jefferson County sold the land in said petition mentioned to the plaintiff as the property of said Downing at the time mentioned. It is true that Defendant commenced suit against Downing in the Circuit Court of Jefferson County previous to the sale of said lands to Wood by the Sheriff to obtain a Decree

of Title to the same. It is True that said cause was set for Trial at the time stated but defendant has no Knowledge that said Downing had any intention to defend said suit before the sale of the land to Wood by the Sherriff.

Defendant denies that after plaintiff had purchased said land at the Sherriff sale or at any other time he combined or confederated with said Downing to cheat or defraud said Wood out of the Land, he denies that he ever did at any time combine & confenerate with said Downing for any fraudulent purpose whatever either in regard to cheating or defrauding Wood or for any other purpose. denies that he said Downing any thing by way of inducing him not to defend said suit although said Downing may have had no interest in the event of said suit after the sale of the land to Wood under the execution. Yet Defendant denies that he agreed to pay to said Downing the Ballance of the purchase money for the land by way of inducing him not to defend the same, and denies that he had at any time any conversation with Downing

 in regard to the matter. he denies that Downing ever at any time withdrew his answer to the suit between this Defendant and himself. But as the land had been sold by the Sherriff to Wood. Downing really had no interest in defending the suit and could not have been expected to expend money in defending a suit that could not in any way benefit him, and his failing to defend said suit was no fraud, nor was it any evidence of Fraud. It is True that defendant obtained a decree of Title for said Lands on the-day of December 1860 But denies that the decree was made by the Court without proof or evidence being offered to sustain the charges & allegations in his said petition. But stats the Truth to be that said judgement was rendered by the Court upon satisfactory evidence and that no fraud was practiced in obtaining said judgement and that the matter having been fully adjudicated is not open for investigation but is binding on the plaintiff. Downing and all others having notice and that the plaintiff bought said land well knowing that the said suit of Hicks vs

Downing was pending, for the Title to the land that he was present in Court when the decree aforesaid was rendered against Downing & in favor of Hicks for title and therefore he is estoped by said decree from claiming title. Defendant says that all the allegations in his petition in said Cause were true, he denies the allegation to the effect that he had not paid the purchase money for said land to Downing, and states that he made a verbal purchase of said land about the month of March 1859. and paid to Downing all the purchase money at the time he made the contract with him the amount being Two hundred and fifty dollars, and Defendant says that he took possession of the premises under said verbal sale from Downing to him & made valuable and lasting improvements thereon he denies therefore that the said contract was void by reason of the Statute of Frauds. he therefore says. that the decree vesting Title in him should not be disturbed. But that the same relates back to the time when he made the purchase from Downing and that his Title dates

page 12 from the time said Contract for the land was made

Green Henrickson & Williams
for Defendant

Samel L Hicks defendant in the above cause makes oath and says the above answer and the matters therein as stated, he believes to be true.
Sworn to and subscribed before me this 8th day of December 1863 } S L. Hicks

E. F. Honey. clk.

Endorsed Filed Dec. 7th 1863.
Elias F Honey

Thursday Feb. 11th 1864

Frederick M Wood
vs
Samuel L. Hicks. } Decree

Record and now again at this day come the parties aforesaid by their respective attornies and neither party requiring a jury the matters at issue between said parties are submitted to the Court and the Court setting as a jury after hearing the Petition, answer, pleadings, and evidence submitted by the parties respectively, doth find, that the allegations in plaintiffs petition mentioned are true and that in equity

and good concience he should have his prayer granted. It is therefore considered by the Court that upon said Plaintiffs paying to the said defendant the sum of One hundred and Eighty dollars the amount paid by said defendant to A. H. Downing for said land, hereinafter described. It is ordered decreed and adjudged by the Court that all the right title and interest of the said de-fendant of in and to the following de-scribed land situate in the County of Jefferson and State of Missouri, to wit: The South East fractional quarter of the North East fractional quarter of Section Twenty four Township forty one range five east containing forty acres. And the South East quarter of Section Twenty four Township 41. Range five east, containing $16\frac{10}{100}$ acres be divested out of the said defendant Samuel L. Hicks and that all right and title thereto be fully and completely vested in said plaintiff, and it is further considered by the Court that said plain-tiff have and recover of and from the said Defendant his costs and charges herein expended, and have therefor ex-

page 13 -ecution, and writ of possession.

Friday February 12th 1864

Record

Frederick M. Wood
vs
Samuel L. Hicks } Motion for new trial filed and by the Court overruled and Bill of exceptions filed

Bill of Exceptions

F. M. Wood
vs
S. L. Hicks } Be it remembered that on the day of February 1864 it being the day of the adjourned Term of the Jefferson Circuit Court held in Feb 1864. the above cause came on for trial & neither party requiring a Jury, all and singular the matters in controversy were submitted to the Court. The Plaintiff to sustain the issue on his part introduced John L Thomas, who testified that he was attorney for A. H. Downing in the case of S. L. Hicks vs Downing in the Jefferson Circuit Court in 1860: that at the December Term for 1860 of said Circuit Court Mr. Downing came to court; that he came to witness in the Court & informed him that he had compromised the case he had

J. L. Thomas

with Hicks - which suit was for the same land which is in controversy in this suit that Downing stated that Hicks was to have a decree for said land & he Downing was to make no further defence to said action: that witness asked Downing if Hicks & himself had agreed upon what amount was coming to the former Down=ing, said no - that he would risk Hicks for that. at this term Hicks came up & the substance of of the above conversation was repeated by Downing - Downing also stated in the presence of Hicks that he & Hicks were to meet at Manchester in St Louis Co in a short time to make a settlement of their affairs - that whatever was found to be due would be paid over that in accordance with the directions of said Downing, witness on the same day of this conversation went into Court & consented to a decree to Hicks for said land. Witness heard nothing said about Wood's claim to the land in this conversa=tion reported above. No evidence was given by Hicks to sustain his petition: witness understood from Downing that he claim=ed a balance due from Hicks to Downing that at this Dec Term 1860. he had subpoened

page 14 witnesses for Downing to meet his defense,
Plaintiff then offered the deposition of A H. Downing in evidence, to the introduction of which Defendant then & there excepted & objected as incompetent, but the Court overruled Defendant's objection & permitted Plaintiff to read the same as follows

F. M. Wood, plaintiff
vs. } In the Circuit Court
Samuel L. Hicks defendant } of Jefferson County Mo

To Samuel L. Hicks, you are hereby notified that depositions of witnesses to be read in evidence in the above cause on the part of the plaintiff, will be taken at the office of the County clerk, in the City of St Charles, St Charles County Missouri on the 22d day of October 1863, between the hours of 8 O'clock in the forenoon and six o'clock in the afternoon and if not completed on that day, they will be continued from day to day at the same place and between the same hours till completed

Depositions of Downing

J. A. Beal Attorney for
F. M. Wood,

It is hereby agreed by the plaintiff Wood and defendant that the depositions of the within notice may be taken at the

office of Joseph A Weidner justice of the peace of the City of St Charles. Mo. instead of being taken at the County Court Clerks office and will not object to it being read on that account Oct 22nd 1863.

J. A. Beal, Atty for Wood.
S. C. Hendrickson Atty for deft.

Deposition of witnesses produced. sworn and examined on the 22d day of October 1863. of our Lord between the hours of eight O'clock. in the forenoon and six O'clock. in the afternoon of that day at the of Joseph A Weidner J. P. by consent of parties at St Charles in the County of St Charles and State of Missouri before me Jos A. Weidner Justice of the peace. in a certain cause now depending in the Circuit Court of Jefferson County State of Missouri between F. M. Woods. plaintiff and Simon L Hicks defendant on part of the plaintiff; Andrew H Downing of lawful age being produced on the part of the plaintiff deposeth and says that he was living in Jefferson County Mo 1859 that he owned a tract of land in that County. bought it of James Bower gave Bower $250 cash down. after he

Swearing Evidence

page 15 bought it he cut about 150 cords of wood on the land. It cost affiant about $1.25 per cord for cutting. Here plff. offered to prove a verbal sale of the land to Hicks defendant objected to plff. evidence on that sale as incompetent. The land lays adjoining the land of Estates of Gary Ellis & Horines and James L Dunklin. that witness made a verbal sale in 1859. of the these two tracts to Samuel L Hicks Hicks promised to pay witness $250 for the land and to pay witness for the wood cut & them on the land what it cost witness in addition to the 250. the price of the land. It cost witness $1.25 cord to cut the wood. he paid Hicks $40 or $60 for boarding hands in cutting wood. Hicks paid witness on the wood & land. one yoke of oxen. one odd steer and perhaps an old waggon not certain of waggon. H. represented to witness that one yoke of oxen were match but when he got them they were all off cattle. Witness got no money from Hicks on the sale of land and wood all that Hicks ever let witness leave on the sale of the land & wood was the yoke of oxen. odd ox and an old waggon (if he is correct as to a waggon) that the

value of the property got from Hicks about paid Witness for the cost of the cutting of the wood and the surveyor's fee which Hicks also to pay. Hicks never paid witness any part of the $250. the purchase money of the land. This $250 is still due from Hicks. Hicks sued Witness in the circuit of Jefferson County Mo for a decree of title of said lands alledging in his petition that he had paid Wit the full Amt of the purchase money Defendant filed an answer denying that Hicks had paid him the purchase money for said land. He went to the Circuit Court at Hillsboro Mo. at the Term that Muller & Wood had the same land advertised by the Sheriff of said County for sale under execution from the Jefferson Circuit Court of Jefferson Co Mo in favor of Muller & Wood against Witness. Witness went to the circuit court at that term to defend the suit Hicks had pending against witness aforesaid for recovery of title to said land. Witness and Hicks made a compromise of the suit that Hicks had against him. Hicks by the terms of compromise, agreed to come to the house of Witnesses father in law at Webster Station

page 16 in a few days & pay witness the balance due witness on the sale of said land & wood. Witness agreed to withdraw his defence to the suit of Hicks. Witness left the court and instructed his counsel to withdraw his defence. Hicks did not come to Webster Station and pay witness as he agreed but has wholly refused to pay any part of the balance due witness aforesaid. When witness went to the said Circuit Court to defend suit of Hicks. he witness talked with Hicks who told witness if Witness defeated him (Hicks) in his suit Muller & Wood would sell the land on their execution & Witness would lose the land & for that reason it was better to compromise with Hicks & get the money due on it & let Hicks have the land. It was for these reasons that witness compromised & withdrew his defense to Hicks' suit. He does not remember stating that Hicks had paid him all the money. He may have stated that Hicks had paid him. if he did it was to blind persons for fear that Muller & Woods might garnishee or get what Hicks owed him (Defendant objected to the whole of witnesses evidence as incom-

petent) Cross Examination
States that if he ever did say that that Hicks had paid the whole of the purchase money for the land wood. it was for the purpose of of preventing Wood & Muller from Garnishing the Money in Hicks' hand cannot say when he made this statement if at all, & that if he ever did make the above statement don't recollect whether he made it before the the said compromise or afterward. my object in making the statement was to defeat Wood and Muller. don't know what effect the statement would have, on the suit between Wood & Hicks if made.
2 Which of the parties in this cause do you want to succeed. Wit refuses to answer says that he paid the hands for cutting the wood mentioned in the examination in chief. one dollar per cord & board them which made the wood cost Net. about $1.25 cents per cord. that he cut between 140 and 160 cords of wood. Wit. says he never conspired and confederated with Hicks to defraud Muller and Wood or either of them. I think I sold the land to Hicks in the Spring of 1859. is not positive. I do not recollect whether or not I ever said to any one immediately

after to sale of the land & wood to Hicks. that he (Hicks) had paid me the full consider-ation for it but I may have made such statement between the time of selling the land & wood to Hicks, and his institu-ting the suit against for specifit perform-ance.

Question have you always made true and correct statements. in regard to the sale of the said land and wood to Hicks.

(Plff. here objects to this question and an-swer for the reason that it does not confine statement to any particular time occa-sion, or person) A. dont recollect the sale of the land to Hicks was in good faith.

Reexamination

Witness explains that when he speaks of not confederating with Hicks to defraud Muller & Wood, his object was to get from Hicks what was due. If witness did state to any one that Hicks had paid him all the pur-chase money. it was not true that Hicks did pay him all the purchase money but the witness had an object in view to so state it. Andrew H. Downing.

Subscribed & sworn to before me on the day at the place & within the house first

aforesaid. and I Joseph A Weidner Justice of the peace within and for St Charles County Missouri, do hereby certify that in pursuance of the within notice came before me at my office, (by consent of parties) in the city of St. Charles. St. Charles County Missouri. Andrew H Downing who was by me sworn to testify the whole truth of his knowledge touching the matter in controversy and that he was examined and his examination reduced to writing & subscribed by him respectively in my presence on the 22d day of October 1863. between the hours of 8 O'clock in the forenoon and six O'clock. in the afternoon & at the place first aforesaid & his deposition is now herewith returned & I further certify Andrew H Downing resides in the city of St. Charles. Given at St. Charles County Mo. this 22d day of October 1863.

Jos. A Weidner
Justice of the Peace

to which ruling of the Court Defendant then and there excepted and objected

The Plaintiff read in evidence Judgment of Muller & Wood vs. A. H. Downing in words & figures. as follows.

Wednesday June 13th 1860

page 18 Henry A. Muller and
Fred M. Wood
vs
Andrew H. Downing } Action on a Note

Record Now at this day come said plaintiffs by their attorney and the said defendant being three times solemnly called comes not neither has he answered the petition of the plaintiff whereby the same remains wholly undefended, and the Court proceeding to hear the cause upon the petition of the plaintiff doth find that said defendant is indebted to said plaintiffs in the sum of One hundred and thirty eight dollars and seventy four cents. It is therefore considered by the Court that said Plaintiffs have and recover of and from said defendant the aforesaid sum of One hundred and thirty eight dollars and seventy four cents. the debt aforesaid and also their costs herein expended, and that they have execution thereof.

Also Sheriff's deed under said judgment for said land in words & figures as follows.

To all to whom these presents shall come J. Oscar Dover Sheriff of the County of Jefferson State of Missouri Send Greeting Whereas on the thirteenth day of June in

Sheriff deed to F. M. Wood

the year of our Lord one thousand eight hundred and sixty. a judgment was rendered in the Circuit Court of the County of Jefferson in favor of H. A. Muller and Fred M Wood, and against Andrew H Downing for the sum of one hundred and thirty eight dollars and seventy four cents for their debt and damages and also seven dollars and forty cents costs upon which judgment an Execution issued from the Clerks office of the Circuit Court in favor of the said H. A Muller & Fred M. Wood and against the said Andrew H Downing dated the Twelfth day of July A.D. 1860. directed to the Sheriff of the County of Jefferson and the same was to me delivered on the Twentieth day of July A.D. 1860. by virtue of which said Execution I the said Sheriff did on the same day levy upon and seize all the right title interest and Estate of the said Andrew H. Downing of in and to the following described Real Estate situate in my said County To Wit: The south East fractional quarter of North east fractional quarter of section Twenty four in Township number forty one Range Range number five East containing Forty one acres and the south

page 19 East fractional quarter of section Number Twenty four Township number forty one of Range five containing Sixteen acres and ten one hundredths of an acre and having previously to the day of sale hereinafter mentioned given at least twenty days notice of the time and place of sale and of the Real Estate to be sold and where situate as the law directs by advertisement in the Jefferson County Herald or newspaper printed in my said County by virtue of which said execution and advertisement. I did on the twelfth day of December AD 1860 between the hours of Nine O'clock in the forenoon and Five O'clock in the afternoon of that day agreeable to said advertisement at the Court House door in my said County of Jefferson. and during the session of the Circuit Court of my said County at the December Term thereof for the year one thousand eight hundred Sixty expose to sale, at public Auction for ready money. all the right title interest and Estate of the said Andrew H. Downing of in and to the above described Real Estate and Frederick M Wood being the highest and last bidder for

the first above described tract of ground being the South East fractional quarter of the North east fractional quarter of section number twenty four Township Forty one Range five containing Forty one acres at and for the price & sum of Twenty dollars. Also for the second described tract of land being the south East fractional quarter of section Twenty four Township Forty one Range five East containing Sixteen acres and ten one hundredths of an acre at the price and sum of three dollars the same having been put up separately and were severally stricken off and sold to him the said Frederick M. Wood, for said sums making in the aggregate the sum of twenty three dollars. Now Therefore in consideration of the premises and of the said sum of Twenty three dollars to me said Sheriff in hand paid by the said Frederick M. Wood, the receipt whereof, I do hereby acknowledge and by virtue of the authority in me vested by law. I Oscar Dover Sheriff as aforesaid do hereby assign transfer and convey to the said Frederick M. Wood, all the right, title, interest and Estate of the said Andrew H.

 Downing of in and to the above described property that I might sell as Sheriff as aforesaid by virtue of the aforesaid Execution and advertisement. To have and To hold the right title interest and estate hereby conveyed unto the said Fred=rick M Wood his heirs and assigns forever with all rights & appurtenances thereto belonging. In Witness Whereof I Oscar Dover Sheriff of the County of Jefferson have hereunto set my hand and affixed my seal this the Fourteenth day of December A.D. 1860.

Oscar Dover Sheriff (Seal)

State of Missouri
County of Jefferson } In the Circuit Court December Term 1860. Be it remembered that on this Twentieth day of December AD eighteen hundred and sixty in open Court appeared Oscar Dover Sheriff of Jefferson County and acknowledged the Execution of the foregoing instrument of writing to be his act and deed as such Sheriff for the uses and purposes therein mentioned which acknowledgment is entered on the record of said Court of that day. In Testimony whereof I hereto set my hand and affix the

(Seal) seal of said Court the day and year last aforesaid

Elias F. Honey. Clerk.

Filed and Recorded Feby. 27th. 1861.

Elias F. Honey. Recorder.

Plaintiff read decree in case of Hicks vs Downing. in words and figures as follows.

Monday Dec. 17th 1864

Samuel Hicks
vs. } For title to land,
Andrew H Downing

Decree for title to land

Now again at this day come the parties aforesaid by their respective attornies. and the said defendant by his attorney says that he has nothing to say why Judgment should not be rendered against him, the Court after hearing the Petition of said Plaintiff doth find that the plaintiff is entitled to have his prayer granted. It is therefore ordered, adjudged and decreed by the court that the defendant, be divested of all the title and interest he may have in the following described land in the petition of Plaintiff described Viz: The South East fractional quarter of the North East fractional quarter of Section No Twenty four in Township No forty one of range No five East containing

page 21 Forty one acres more or less, also the South East fractional quarter of Section No Twenty four in Township No forty one of Range No five east, containing Sixteen acres and ten hundredths of an acre, and that all the right and title of said defendant of in and to the said land and premises be vested in the plaintiff, provided however that the same shall in no wise prejudice the claim of Frederick M. Wood of in and to said lands; and further that said plaintiff recover of said defendant his costs herein and have therefor execution

The Plaintiff here closed his case Defendant on his part offered Elisha Ellis who testified that Downing sold Hicks the land in controversy about the year 1858, for $250 including some cord wood which was still standing on the land there was about 100 cords of wood which cost 75 cents per cord for chopping, and which he got from Downing in cords: that Hicks paid Downing for said land two yoke of Oxen, one wagon, one cow and calf & some hogs. Downing said this sum was in full of the purchase of the land & that he drove off the stock. Downing left his title deed to said

land with Hicks. & promised when convenient to make Hicks a deed to the land that Hicks took immediate possession of the land. Cleared & fenced a field of a few acres not certain when also built a stable on it 2 years ago. The oxen were worth $75.00 each yoke - the wagon worth $50.00 - the cow & calf was worth $20. & the hogs $20.00 that Downing boarded with Hicks for one month - also kept several hands there for one month Downing was absent 1 week during this time, dont know that Downing had paid Hicks for the board. Defendant then offered J. C. Power to prove the declaration of Downing about the payment of the purchase money of this land. but upon objection of Plaintiff the court excluded the testimony of the said Powers to which ruling of the Court in excluding such testimony the Defendant objected & excepted. Defendant offered to read the petition & answer in the suit of S. L. Hicks vs A. H. Downing. in words and figures as follows.

Samuel L Hicks plaintiff }
against

page 22 Andrew H Downing defendant }
{ In the Circuit Court
{ Jefferson County Missouri.

Petition of Hicks vs Downing

The Plaintiff states that some time in March 1859. he purchased of the Defendant the following described Two Tracts of land, situate in Jefferson County Missouri. To wit. the South East fractional quarter of the North East fractional quarter of Section No Twenty four in Township No Forty one of Range no five East containing Forty one acres. more or less. Also the South East fractional quarter of section No Twenty four in Township No Forty one of Range No Five East containing sixteen acres. and Ten hundredths of an acre. for the sum of two hundred and fifty dollars which was paid to defendant in property at the time the contract was made. By the terms of said contract (which was not in writing) the Defendant agreed to let Plaintiff have about one hundred & thirty cords of wood. then lying on the land. in addition to the land, for the sum aforesaid; not having a convenience for writing at the time the money was paid by the plaintiff as aforesaid. the defendant promised to make Plain=

=tiff a good and sufficient title to said Land in a few days - Plaintiff took possession of said Land soon after the contract aforesaid, by the consent of De=
=fendant and received from him the deed he held for the land. Plaintiff states he has made lasting and valuable improve=
=ments on said land, by cutting and clearing about ten acres of ground, and commencing some buildings, under the expectation that defendant would ex=
=ecute said contract specifically, according to its terms, by conveying to Plaintiff the title to said Land. But although Plaintiff has paid to defendant the full consideration for said Land and the cord wood thereon, according to the terms of said contract, yet the defendant though often requested, has neglected and still neglects and refuses, to make Plaintiff a deed for the same. Plaintiff therefore asks that the defendant be compelled to convey said Land to Plain=
=tiff, or that the court will do it for him

Abner Green.
Attorney for Plaintiff

Samuel L Hicks, plaintiff, makes oath and says the above petition and the mat=

page 23 =ters therein as stated, he believes to be true.

Sworn to before me
May 7th AD 1860
Elias F Honey clerk.

Saml L Hicks

Endorsed Filed May 7th 1860
Elias F Honey. clerk.

Samuel L Hicks
against
Andrew H Downing

In the Jefferson circuit court Dec Term. 1860

Now at this day comes said defendant & for answer to Plaintiff's petition heretofore filed in this behalf admits that in the year 1859 there was an understanding between Plaintiff & Defendant with regard to the sale & purchase of the land described in said petition for the sum of Two hundred and fifty dollars. Defendant admits that said contract was not reduced to writing & avers for that reason if for no other that he is not bound to convey said land to Plaintiff Defendant denies that he was to let Plaintiff have about 130 cords of wood in addition to the land: denies that Plaintiff has paid him, the said Two hundred and fifty dollars: denies that Plaintiff

answer of Downing

has at any time taken actual possession of said land; denies that Plaintiff has made lasting or valuable improvements thereon; but avers that Plaintiff has damaged the value of said land by cutting the timber off of it & hauling the same away. Defendant therefore denies that Plaintiff has any right of action against him

Thomas Atty for Deft

A. H. Downing makes oath & says that he believes the above answer is true

Sworn to & subscribed before me this day of 1860

Endorsed Filed September 1st 1860
Elias F. Honey, clerk

but upon objection by Plaintiff the Court excluded said petition & answer to which ruling of the Court in excluding them defendant then & there objected & excepted. Defendant here closed his evidence. The Defendant asked the Court to declare the law of the case as follows.

F. M. Wood
vs
S L Hicks

The Defendant asks the

Court to declare the law of the case as follows.

1. F. M. Wood having purchased the land in controversy during the pendency of the suit between Hicks Plaintiff vs A. H. Downing he took the title of Downing only affected by all the equities existing between Hicks & Downing at the time of the purchase

Declaration of law

2. That Wood by his purchase stepped in the place of Downing & if the proof shows that Hicks should have succeeded in the case between him and Downing, then the Defendant ought to recover in this case.

Which the Court refused to give to which ruling of the Court, Defendant then & there excepted and objected.

That Plaintiff asked the Court to declare the law as follows.

1. If the Jury believe that Hicks knew of the

in favor of Muller & Wood and he made an agreement with Downing for Dow. to withdraw his defence to the suit of Hicks vs Downing & confederated with D obtain the decree of title

for the land so as to place it beyond the reach of the execution sale. that his judg=ment is fraudulent as to Wood's confers no title & will find for plff.

Which the Court gave to which ruling of the court defendant then & there ob=jected & excepted. the Court then gave judgt. for Plaintiff. That afterwards to Wit: on the 12th day of February 1864. De=fendant filed his motion for a new trial in words & figures as follows.

F. M. Wood.
vs
Samel L Hicks } In the Circuit Court for Jefferson County Mo

Motion for New Trial

Now at this day comes the defendant in the above cause and asks the court to set aside the decree made in the above cause for the following reasons.

1. That the Court erred in giving the instructions asked by the plaintiff. and in refusing. instructions asked by the defendant

2. The Court erred in setting aside the judgment or decree heretofore rendered in favor of this defendant against A. J. Downing.

3. The Court erred in rendering a decree for Plaintiff

page 25 4. The finding of the Court is contrary to evidence

5. The Court erred in admitting the deposition of Andrew J. Downing.

6. That the judgment or decree of the Court is contrary to law

7. The Court should have admitted the testimony of J. C. Power.

Green, Thomas, Williams & Hendrickson
Attorneys for Defendant.

Endorsed Filed Feb. 12th 1864
Elias F. Honey

Which motion the Court overruled to which action of the Court in over=ruling said motion a new trial Defendant then & there objected and excepted. Where tenders in open Court his Bill of Exceptions & prays that it may be signed sealed & made a part of the record in this cause which is accordingly done

Jas. W. Owens. Seal

Endorsed Filed Feby 12th 1864.
Elias F Honey clerk.

State of Missouri } ss.
County of Jefferson } I the undersigned Clerk of the Circuit Court within and for the County aforesaid, hereby Certify that the foregoing is a full and true Transcript of the record, proceedings and files in my Office in said cause

In Testimony whereof I hereto set my hand and affix the seal of said Court at office in Hillsboro July 29th 1864.

Elias F. Honey Clerk

Honey clerk. Fees.

Transcript 10752 words @ 10¢	$110.75
Cert and Seal	50
U.S. Rev. Stamps	5
Postage –	40
	$11.70

The above fee not being paid the clerk will tax them with the other costs of Supreme Court

Index

Petition	page	1	to	2
Summons	"	2	"	3
Answer	"	3	"	5
Amended Petition	"	5	"	8
Amended Answer	"	8	"	10
2nd Amended Answer	"	10	"	12
Bill of Exceptions	"	13	"	25
Evidence of L. L. Thomas		13		
Depositions of Downing	"	14	"	17
Sheriff deed to F. M. Wood.	"	18	"	20
Decree for title to land	"	20	"	21
Petition of Hicks vs Downing.	"	22	"	23
Answer of Downing	"	23	"	
Declarations of law	"	24		
Motion for New trial	"	24	"	25

Oct T. 1865
No. 10 (?)

Fred M. Wood
Defr in Error

vs

Samuel L. Hicks
Pffr in Error

Error to Jefferson Circuit

Filed Sept 15. 1864
A. M. McCady
Ck

J. A. Realpose
Green Thomas Williams
Hendrickson P.E.

$10.00/100 dust

1864 Oct 20 Continued by consent

1865 " 18 Submitted on briefs 30 Affirmed Dp 350

F M Wood Deft in error
vs
S L Hicks Plaintiff in error

In the Supreme Court.

Statement of one point of the case omitted by Pltff in error in his statement

1. On the 7th day of May 1864, plaintiff below paid to S L Hicks $180 the amount of the decree ordered to be paid in the above cause to said Hicks

Since the payment of $180, Hicks has sued out a writ of error

Wood filed the receipt of Hicks with the clerk of Jefferson Circuit Court in case of Wood vs Hicks, it not being copied by the clerk in the record, the parties have filed a written agreement here in this Court that Wood may use before this Court the original receipt of Hicks, which is here filed as a part of the record

J A Beal
Attorny for F M Wood

Rec'd of J. A. Willis, Clerk, the original receipt referred to above.
Nov 10 1865

J A Beal Atty
for Wood

27 13

Receipt of $180

F M Wood
vs
S L Hicks

Admissions of Pltff in error of payment
$180 Receipt
Statement of case by Deft in error

Filed Oct 17. 1864
A. W. McCall
Clk

F. M. Wood D.E.
vs
Saml. L. Hicks, P.E.

On the 7th day of May 1860, Plaintiff in Error Saml. L. Hicks instituted suit against one A. H. Downing for the recovery of the land in controversy, the plaintiff alleging in his petition that he had made a verbal agreement with Downing in 1859 for the purchase of said land, had paid in full the purchase money, had made valuable and lasting improvements upon it and had received the title deeds from Downing for the purpose of drawing a deed ~~and by way of lien~~. Downings atty went out an answer to this petition denying all the material facts except the depositing of the title papers, filed the same without its having been sworn to. At the Trial term court in December 1860 Muller & Wood had said lands levied upon & sold under a judgment in their favor against Downing & F. M. Wood D.E. became the purchaser. Afterwards but at the same term of the Jefferson Circuit Court Downing made an agreement with Hicks that the latter should take a decree for the land according to the prayer of his petition. It was also agreed between Downing & Hicks that they would in the future settle up their accounts including the purchase money of this land and whomever the balance was found against should pay over to the other. This settlement never took place, but the

decree was duly entered vesting the title to said land in Hicks Plaintiff in Error.
Wood D.E. instituted this suit against Hicks to set aside that decree and vest the title to said land in him.
On the trial Defendant in Error introduced against the objection of Hicks the deposition of A.H. Downing.
S.L. Hicks offered to prove the declaration of Downing before the execution sale to the effect that he had received the purchase money of said land in full but the Court excluded the testimony. Plaintiff in Error then offered to read the Petition & answer in the case of Hicks vs Downing but the Court excluded the same.
The Court on application of Defendant in Error gave the following instruction
1 "If the jury believe that Hicks knowing the _____
in favor of Muller & Wood the made an agreement with Downing for Downing to withdraw his defence to the suit of Hicks vs Downing & confederate with D. to obtain the decree of title for the land to place it beyond the reach of the execution sale that his judgment is fraudulent as to Wood & Cowles no title will find for Plaintiff" (D.E.)
The Plaintiff in Error asked the Court to declare the law as follows which it refused to do.
"1. F. M. Wood having purchased the land in controversy during the pendency of the suit between Hicks Plaintiff & A.H.

Downing Defendant, he took the title of Downing only, affected by all the equities existing between Hicks & Downing at the time of the purchase.

2. That Wood by his purchase stepped into the place of Downing if the proof shows that Hicks should have succeeded in the case ~~of~~ between him & Downing then the Defendant (P.E.) ought to recover in this case". The Court then gave Judgment for the Defendant in Error. Plaintiff in Error after an unsuccessful motion for a new trial, brings the case to this Court by writ of Error.

John L. Thomas
Atty for P.E.

13.

J. M. Wood, D. E.
vs
S. L. Nicks P. E.

Statement of the Case by D. E.

Filed Oct 17. 1864
A. M. Neal
Clerk

F M Wood Defendant in Error
vs
S L Hicks Plaintiff in Error } In the Supreme Court

Brief of J A Beal for Deft in Error.

1 The Court properly ruled out the declarations of Downing, because he was a competent witness and no foundation had been laid to impeach his evidence by first asking him if he made a particular statement to Power on a specified time and at a particular place.

To impeach Downing, it was necessary first to ask him a question of the statement so as to enable him to explain the statement if it conflicts: In the deposition he gives a reason why he assisted Hicks in getting a deed that is to defraud Mueller & Wood, to prevent them selling the land on execution which might have been assigned as the reason for making a different statement to Power, had he been asked what he stated to Power

1 Starkie's Evidence 215.

2 The Declaration of Downing to Power is nothing but hearsay and not a declaration accompanying any act of which it is explanatory. Downing had no interest in the land or possession of it when he conversed with Power, he had already sold his title to Hicks and afterwards, defendant offers to prove that after Downing had sold the land to Hicks, Downing in a casual conversation with Power stated

that he had sold the land & had been paid.
This was not in the presence of Wood so it could not be offered to prove notice of the sale to Wood.

"Declarations of a maker of a deed attacked for fraud are not evidence in favor of those who claim under the deed"
32 Mo 464

The same principle would exclude the declarations of Downing when we attack the decree of Hicks for fraud, under which Hicks claims

3 Courts of equity have uniformly set aside deeds and judgments obtained by fraud or where deeds and judgments have been had, found obtained in bad faith, although for a valuable consideration
Fonblanques Equity, 642 note & 470
1 Storys Equity Sections 333. 353. 354-
do Sect- 369

"a conveyance must not only be for a valuable consideration, it must also be bona fide.
This doctrine was laid down in Twyne's Case (3 Co R 81) and it has ever since been steadily adhered to. Cases have been repeatedly decided in which persons have given full and fair prices for goods and where possession has been actually delivered; yet being done for the purpose of defeating creditors, the transaction has been held fraudulent, so where a man knowing of a judgment and execution and with a view of defeating it, should purchase

the debtors goods; it would be void, because the purpose is iniquitous

1 Story's Equity Section 369.
23 Mo 482 Johnson vs Sullivan
12 Pick 388. 392
7 John C R 182
3 Desaus 323
3 Phillips Evidence 854.-5.

Every judgment made or contrived with intent to hinder or delay creditors of their lawful debts or demands are clearly and utterly void as against creditors R S 1855 page 802. § 2

A creditor may combine with his debtors fraudulently to defraud his other creditors and the conveyance is void although the purchase is for a vouble consideration 23 Mo pages 482.
Johnson vs Sullivan

It is not enough that a transfer of property by an insolvent debtor to be for a valuable consideration, it must also be bone fide

35 Pa State R 432
12 Indiana 259
3 Clark (Iowa) 543
19 Texas 257.
22 Texas
29 Pa State R 357.

6. A confession of a judgment for a bone fide debt in order to give preference ~~to~~ over a prior jud

Judgment is void will be set aside by the prior Judgment Creditor

12 Pick 388 Fairfield vs Baldwin
R Statutes 1855 p 802 Section 2

a judgment confessed for an honest debt but for the purpose of forcing a compromise by other creditors, is void,

Same case

II. II.

Hicks sustained no injury as regards the merits of the controversy by the Court ruling out the original Petition of Hicks against Downing. It was not evidence of any original fact for which it was necessary to be in evidence

1. a Judgment will not be reversed unless it appears that that an error was committed effecting the merits of the case

15 Mo 143, 15 Mo 420

2. No benefit could be derived on a new trial if the original petition of Hicks vs Downing were in evidence & where it is evident no benefit can be derived, this Court will not reverse & send back for a new trial

7 Mo 497.

3 If upon the whole it appears that the Judgment is for the right party, it will be affirmed, even though error may be committed against the party seeking a reversal

1 Mo. 746. 1 Mo 313. 1 Mo 588
1 Mo 163.
3 Mo 472.

3 a confession of a judgment in favor of a bona fide

creditor done with the knowledge that another creditor is about to attach the property is void as to the creditor

Ryan vs Daly 6 Cal 238
18 U S Digest p 357.

I maintain that the well settled principles of Equity from the Case of Twyne to the present time all uniformly lay down the Doctrine that a conveyance or judgment in favor of a person for a valuable and adequate consideration, if done in bad faith or in fraud of other creditors is null & void because of the intent

Johnson vs Sullivan 23 Mo 482
Knox vs Hand & Lebanon 18 Mo 180, 181.
1 Burrow 474 15 Mo 378
7 B Monroe 369
4 Ves 412
18 Mo 180

Besides I cite Story's Equity where the same principles are fully laid down and embody the doctrine I contend for.

4. The evidence of Downing positively states that he had a good defense to the suit of Hicks, that he withdrew the defense for the purpose of defrauding Mullen and Wood out of their judgment & execution then levied upon the lots, that Hicks first proposed that he would pay Downing what he owed on the purchase money of the land if he would withdraw his defense to the suit & allow him to have a decree of title and gave as an inducement to Downing that Mullen & Wood would sell the land

on execution that if he defeated Hicks from getting a decree, Mullen & Wood would have the land & by letting Downing have the decree, Downing would get what was due to him

that after Hicks got the decree, he refused to pay Downing. So he committed a fraud on Mullen & Wood and also on Downing

Since the trial of the suit of Wood against Hicks, Wood has paid to Hicks $180 the amt of the judges decree yet Hicks has taken an ~~appeal to~~ sued out a writ of error from this Court. So he seeks to committ another fraud by getting the money of Wood & still endeavors to reverse the judgment.

He is turned with frauds & carries on all his transactions by open bribery and fraud

He attempts to prove by young Ellis his brother in law and dependent, that he paid Downing, yet the evidence of Downing and Mr Humes, the present atty of Hicks preponderate and show that Hicks never paid Downing the purchase money

Here are two witnesses against one and the facts of the case are against young Ellis. for Downing bought the land for 300 and cut $1.50 worth of cord wood.

Downing shews that he sold the land for $250 and the wood for $150. young Ellis says that Hicks paid for the land and wood with cattle & waggon which at his own estimates of prices would not come up to enough to pay what the land cost Downing, his evidence cannot show how Hicks paid for the land and wood

creditor done with the knowledge that another creditor is about to attach the property is void as to the creditor

Ryan vs Daly 6 Cal 238
18 U S Digest p 357.

I maintain that the well settled principles of Equity from the Case of Twyne to the present time all uniformly lay down the Doctrine that a conveyance or Judgment in favor of a person for a valuable and adequate consideration, if done in bad faith or in fraud of other creditors is null & void because of the intent

Johnson vs Sullivan 23 Mo 482
Knox vs Hunt & Lebanon 18 Mo 180, 181.
1 Burrow 474 15 Mo 378
7 B Monroe 369
4 Ver 412
18 Mo 180

Besides I cite Storys Equity where the same principles are fully laid down and embody the doctrine I contend for.

4. The evidence of Downing positively states that he had a good defense to the suit of Hicks, that he withdrew the defense for the purpose of defrauding Muller and Wood out of their Judgment & Execution then levied upon the land, that Hicks first proposed that he would pay Downing what he owed on the purchase money of the land if he would withdraw his defense to the suit & allow him to have a decree of title and gave as an inducement to Downing that Muller & Wood would sell the land

5 Hicks has waived all errors committed against him if any, by voluntarily giving to plaintiff a receipt in full of the judgment.

"When a party voluntarily extinguishes a judgment he cannot afterwards complain of error in it"

"What is the difference in releasing a bond and afterwards endeavoring to recover on it? a writ of error is said to be a new action, 2 Saun p 101. Suppose defendant reverses this judgment and procures a new trial, will he not hold on to what he has already received? (and he is insolvent) and if on the new trial, he should recover nothing or defeat the plaintiff; for he stands in the place of one who has received money by process of law under which he acquiesced"

11 Mo 207, Cassil vs Hagan

"When a party has received judgment & receives satisfaction of the same, he cannot afterwards sue out writ of error or appeal to reverse the judgment"

11 Mo p 207. 208. 209.

Copy of Hicks Receipt given before writ of error was issued

" Recd Mar 7th 1864 of F M Wood per J A Beal, order one hundred and Eighty dollars in full for the amount ordered by the circuit Court of Jefferson County Mo to be paid by said Wood to said Hicks in the Suit of Wood against Hicks in the Jefferson Circuit Court for amount advanced by said Hicks to Downing on the sale of land in controversy in said Suit"

Witness (Signed) S L Hicks
J A Beal

(See Same on file in Supreme Court in this case)

I respectfully submit these authorities and points in behalf of Wood, the deft in error

J A Beal Atty
for Wood.

"Every Judgment or Decree made or contrived with the intent to hinder delay or defraud creditors of their lawful actions, debts or demands shall be thenceforth deemed and taken as against said creditors, to be clearly & utterly void"

"Fraudulent Conveyances

R S 1855 Section 2 p 802

23 Ohio page 482 & 483

1 Story Equity Sections 353 & 369.

13

F M Wood
vs
S S Hicks

Brief of J A Beal
Atty for Wood D E

Filed Oct 19. 1864
A D Mead
Clerk

F. M. Wood Defendant in Error
vs
Samuel L. Hicks Plaintiff in Error

Error from Jefferson County Mo

In the Supreme Court of Mo

The Defendant in Error F. M. Wood comes & says in bar and prosecution of said writ of error, that the plaintiff in error, ought not to have & maintain the same, because he says that after rendition of the decree in this cause by the circuit Court of Jefferson County and before the impetration of said writ of error, to wit on the day of 1864, the said plaintiff in error voluntarily received from F. M. Wood the sum of one hundred and eighty dollars in satisfaction and payment of the amount ordered and adjudged by said circuit Court in said suit, to be paid by plaintiff to the defendant Hicks to complete the vesting of the title in said Wood, that thereupon said Hicks delivered to said Wood a receipt for $180 in full for the sum so ordered to be paid which Receipt is herewith filed. all of which said Hicks well knew before impetration of said writ of error and before suing out of this writ of error said Hicks being desirous of compromising and settling with said Wood the matter in controversy & to stop further proceedings in said suit, said Hicks agreed with

said Wood to receive of him $180 in said decree mentioned, to surrender to said Wood the possession of the land in controversy in said said suit and to not prosecute a writ of error in said suit; that thereupon said Wood paid to said Hicks said sum of $180. and thus said Hicks compromised the right to the prosecution of a writ of error in said cause. By reason of which said Hicks received the full benefit of said sum of money and thereby the suit in error has been compromised settled and adjusted and cannot now be prosecuted for the purpose of a reversal of said decree. And of this the defendant in Error puts himself on the Country

J A Beal Atty
for Wood

F M Wood being sworn states that the foregoing plea & answer & the matters therein as stated he believes to be true

Subscribed & sworn to
before me this day
of April 1865

13

John Wood
vs
Saml L Hicks

Plea of Release of Errors

Filed April 3d 1865

F M Wood Dft in Error
vs
S L Hicks Pltff in Error

No 230.
In Supreme Court

The defendant in error moves the Court to affirm the judgment of the Court below for the following Reasons to wit

1 Because the transcript of the record having been filed in this Court September 15 1864, the plaintiff in error has failed to assign errors as required by law in practice in Supreme Court Section 33 Page 1298 RS

2 Because the pltff in error has received satisfaction of judgment below as per his receipt on file in this Court

J A Beal Atty
for deft in error

affirmance
31 Mo p 504 Walker vs Little
31 Mo p 505 Lewis vs Hart
32 Mo p 230 Do 231
Do p 232. Do 456

Satisfation of judgment
11 Mo 204 Cassil vs Fagan

13

H. W. Wood
vs
S. L. Hicks

Motion to affirm
Judgment of Circuit
Court

Filed June 21, 1865
Jno. A. Willis
Clk

J. M. Wood, D.E.
vs
S. L. Hicks, P.E.

} Error to Jefferson Circuit Court

Now at this day comes said Plaintiff in Error and for answer to the plea of release of errors heretofore filed in this behalf by D.E. says that he did execute the receipt in said plea mentioned because said Defendant in Error was about to sue out a writ of possession against him and to enforce the decree of the Court below - but he denies that he ever made any compromise with said Wood and waived his right to a writ of error in this cause.

S. L. Hicks
By John L. Thomas, Atty.

13

F. McNeal D.E.
v
S. L. Hicks, P.E.

Answer to Plea in release of Error

Filed Oct 16, 1865
J. A. Willis
Clerk

F. M. Wood, D.E.
vs
Saml. L. Hicks P.E. } Error to Jefferson Circuit Court.

Now at this day comes said Plaintiff in Error, Samuel L. Hicks, and says that by reason of any thing in the "Plea of release of Errors" of the said F. M. Wood alleged, he ought not to be barred from his action aforesaid against him; because he says that there was no compromise made by him with D.E. but he alleges that he gave the said receipt because said Wood was about to sue out a writ of possession against him & enforce the said judgment against him. He denies that said suit in Error has been compromised, settled or adjusted and avers that same is still rightfully pending.

Keen & Thomas
Attys for Plaintiff in Error

13

F. M. Wood Dft.

S. L. Hicks Pft.

Answer to Plea in Bar.

Filed Oct 16. 1885

J. A. Willis

Clerk

F. M. Wood, D.E.
vs
S. L. Hicks, P.E.

Error to Jefferson Circuit Court.

Now at this day comes said Plaintiff in Error S. L. Hicks and assigns the following for error in this cause.

1. The Court below erred in excluding the declarations of Dawning made before the execution sale to Wood, D.E.

2. The Court below erred in excluding the original petition of Hicks in the case of Hicks vs Dawning.

3. The court erred in refusing to give the instructions asked for by P.E.

Green & Thomas
for Plaintiff in Error.

13

F. M. Wood D.C.
vs
S. L. Hicks P.E.

Assignment of
Error.

Filed Oct 16. 1865
J. A. Willis
Clerk

Wood
"
Hicks

This was a petition to set aside a decree rendered in the Jefferson Circuit court and in favor of the defendant Hicks and against one Downing decreeing title to certain real estate in said Hicks The petition sets out that at the June term of the Jefferson Circuit court 1860 the plaintiff obtained judgment against said Downing for the sum of One hundred and thirty eight and 74/100 dollars upon which judgment an execution issued and certain real estate which is described in the petition was levied on as the property of said Downing and sold to the plaintiff,

That previous to the sale of the land to the plaintiff as afores aid the defendant Hicks had commenced proceedings in the Jefferson Circuit court against said Downing for the purpose of obtaining title to the land in question, Claiming that said Downing had by a verbal contract agreed to sell the lands to said Hicks and that in pursuance of said contract said Hicks had taken

possession of said land and made valuable improvements thereon and paid the purchase money therefor

The petition charges that all the above allegation made in the petition of Hicks against Downing were false; and that the said Downing had filed an answer to said petition denying each and every one of said allegations,

That after the sale of said land under the plaintiffs execution Hicks and Downing ~~for~~ combined and confederated together for the purpose of defrauding the plaintiff out of the land, and to accomplish this it was agreed that Hicks should pay to Downing a certain sum of money claimed to be due upon the verbal sale and that Downing should withdraw his answer filed in said cause and permit a decree to be entered against him for the land; And that in accordance with said agreement Downing did withdraw his answer and permit a decree to be entered against him without any evidence being offered to sustain the allegation in Hicks petition, The petition also charges

that Hicks had knowledge of the pltff's judgment and execution at the time said decree was rendered,

The answer admits the plaintiffs judgment and execution against Downing and the sale of the land under the same and the purchase by plaintiff, But denies all combination or fraud between the defendant and Downing for the purpose of defrauding the plaintiff and insists upon the truth of all the allegations made by him in his petition against ~~and~~ Downing,

Upon the trial the Court found the facts set forth in the petition to be true and made a decree in favor of the plaintiff setting aside the decree formerly rendered in favor of Hicks against Downing and vesting the title to said land in the plaintiff and ordering the plaintiff to pay to Hicks the sum of one hundred and eighty dollars, To reverse this decree the defendant ~~appeals~~ brings the cause to this Court by writ of error

In the course of the trial the defendant offered to prove the

the declarations of Dawning in relation to the verbal sale by Dawning to himself, which was rejected by the court, and that is urged as one ground for reversing the decree.

I am unable to see upon what legal ground the declaration of Dawning could be admitted in this case. He was a competent witness and could have been introduced by either party. Indeed he was introduced by the plaintiff and examined on the very subject about which these declarations are said to relate. If he knew anything that would benefit the defendant it was an easy matter to draw it out of him while he was on the stand, and if he refused to state the facts correctly by laying a proper foundation the declarations in question might have been introduced by way of impeachment. But that is not the object in attempting to introduce them, the object was to prove a substantive fact, to wit that the verbal sale of the real estate in question ~~to~~ by Dawning to Hicks and the deed rendered thereon were bona fide. It is certainly difficult to see how Dawning's admissions even if he were not a competent witness

could be used to effect Woods rights, But we are told that the declaration sought to be proved ~~as~~ were against Downing interest at the time they were made, The rule is that if a party in possession make declarations against his interest which would have been good against himself they may be used against a person claiming under him, (Cadman vs Ward 4 John. 230) But the declarations to be good in such cases must have been made while the party was in actual possession, and in this case it is not shown that Downing was in possession at the time the declarations were made, Indeed to admit that he was in possession would destroy the whole theory of the defendants case; for if possession did not pass with the verbal agreement to sell the Cargo, there would be no shadow of title upon which the decree in favour of Hicks against Downing could be based,

We have examined the case of McLaughlin vs McLaughlin (16th Mo 243) cited by the defendant in support of his position But the cases are not similar, In that case the declarations of the intestate were admitted against the administrator But in this case the declarations of a living witness are sought to be introduced against a party

who had no common interest with him
In Tucker vs Tucker (32 Mo 469) it
was held that the declarations of the grantor
in a deed made at the time of executing
the deed showing his intention in making
the deed were inadmissible in an
action to set aside the deed for fraud
But the declarations of Downing if they
had been admitted and had proved the
verbal contract contended for,
they still would not have disproved
or tended to disprove the fraud
charged to have existed in the deed,
for if there had been a verbal sale
from Downing to Hicks and Hicks
had still owed a sum of money on
that sale Downing would have had
an interest in the real estate that
might have been levied on and
sold under our statutes, and a
decree passing title to Hicks by
paying the balance due to Downing
would be a fraud against Woods rights
For he had a lien from the date
of his judgement on all the interest
which Downing had in the real
estate in question, So it would
seem that the declarations of Downing
could have done the defendant
no good even if they had been

admitted But there was no error in excluding them he was a competent witness and if the defendant desired to prove any facts that were within his knowledge he should have introduced him

It is also complained that the court below refused to admit the original petition and answer in ~~evidence in~~ the case of Hicks vs Darroning in evidence, We are not prepared to say that there was any error in this, the recitals in the pleadings in that suit certainly could not bind the plaintiff in this, Be that as it may however the pleadings make no issue with regard to what was tried in that case, the only question here was as to the bond and contract between Hicks and Darroning

It is unnecessary to review the propositions of law given and refused by the court, This was a case of chancery tried by the court and the verdict seems to be for the right party and it is therefore affirmed

The other judges concur

W S Lowelan

13 c

Woods
vs
Hicks

Opinion of
Court Affirming
judgement

Lovelace

Filed Oct 30. 1865
J. A. Willis
Clerk

F. M. Wood, D.E.
vs
L. L. Hicks P.E.

Brief of John L. Thomas Atty for L. L. Hicks, P.E.

1. The Court below should have admitted the declarations of A. H. Downing, because they were against his interest at the time they were made. 16 Mo. Rep. p. 250, subdivision 7. The case cited by Mr. Beal in 32 Mo. 464 is not in point as the declarations admitted in that case were made in support of the fraud. Here the declarations were made long before any sale to Wood under the execution - and in reference to a transaction which is not claimed to be void for fraud. viz: the original trade between Hicks & Downing for the land in controversy. These declarations were not made in favor of the deed which is the only thing attacked for fraud, but are made in favor of a trade which is not pretended by any one to be fraudulent.

In support of the position here taken the following cases are referred to.

2. The original petition and answer in the case of Hicks vs Downing ought to have been admitted in evidence. Defendant in Error attacks our deed for fraud & we undertake to show why and how we obtained that deed & the Court below refused to allow us to do so. These papers are part of the Res Gestae.

3. The propositions of law asked for by Plaintiff in error were correct. Ought to have been given.

4. The receipt given by Hicks is not conclusive upon him. In all writs of error where no bond is given which will operate as a supersedeas the Judgment of the Court below can be enforced even by sale of property. No Supersedeas was ever granted in this case and of course the only remedy for Hicks was to receive the money, or else he would have been ousted by writ of possession & he would not have got either the money or kept the possession of the land.
If the party desires to make use of a compromise in law, he must make the compromise a part of the record below.
The fact of a compromise is denied by P.E. in error & this Court cannot direct an issue of fact to be tried.
8 Cowen, 327.

The giving of this receipt was no waiver of errors.
8 Cowen, 327.

J. M. Ward, P.E.
to
S. L. Hicks, D.E.

Bishop John L.
Thomas for P.E.

La Grange Mo. 1865

St Louis Mo. or if circumstances

In a suit for the compl

In Chr

Jan 1811 no
decision for
want of Sarvey
July 1825 –
Board of Survey
Nov 18 1825 –
Entry of Confirmation
Oct 12th 1855 –
Survey approved
June 1 1857

July 10th 1796
Lecroix claim
granted
Feb 20th 1804
Sold by Lecroix
to Chateau
March 7th 1804
Common fields
surveyed
July 23 1804
claim rejected by
Commissioners
Sept 10th 1808
Jan 30 1809 Com
orders survey
according to Concession

Wood
&
Hicks
P.E. cites
8 Cowan 327
16 Mo 250 Sub
Div 7 –
D E cites
32 Mo 464
Fonblanque's Equity
642 note + 470
1 Storys Equity
333, 353, 554
+ 369
Irvine's case 3 Cowen
81
Revised St. ~~8~~ 802 82
~~12 Pickering~~

12 Pick 388
7 Mo 479
11 Mo P 207
Strange 127
3 Peters 33