

**Collier Vs. Stanbrough**

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**Court :** US Supreme Court

**Decided On :** 1848

**Appeal No. :** 47 U.S. 14

**Appellant :** Collier

**Respondent :** Stanbrough

**Judgement :**

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**Collier v. Stanbrough**

**47 U.S. (6 How.) 14**

*ERROR TO THE SUPREME COURT FOR*

*THE WESTERN DISTRICT OF LOUISIANA*

## **SYLLABUS**

By the laws of Louisiana, debts which are due to a defendant against whom an execution has issued may be seized and sold. But they must first be appraised at their cash value, and if two-thirds of such appraised value is not bid, the sheriff

must adjourn the sale and again advertise the property.

This mode of proceeding was adopted by a rule of the circuit court of the United States, and was therefore obligatory upon the marshal.

Where the marshal made a sale of some promissory notes secured by mortgage without an appraisement and sold them for less than one-third of their amount, the sale was void.

In 1838, David Stanbrough was appointed by the local authority in Louisiana curator of the estate of one Harper, deceased.

In 1840, he was sued as curator in the Circuit Court of the United States for the Eastern District of Louisiana, by the Farmers' Bank of Virginia. Judgment was rendered against him, which became final on default.

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On 6 February, 1841, Stanbrough, the curator, exposed to sale some property of Harper, the deceased, which was in the inventory taken by the Probate Court of Madison, which court granted the order for a sale. Dougal McCall became the purchaser for the sum of \$11,433.66, divided into three payments of \$3,811.22 each, for which he gave three promissory notes, payable to the order of David Stanbrough, curator, at the Merchants' Bank of New Orleans, on the 1st of January, 1842, 1843, and 1844. And in order to secure the payment of the notes, he executed a mortgage upon the purchased property.

At some time subsequent to this, but when the record does not show, a *fiery facias* was issued upon the judgment which the Farmers' Bank of Virginia had obtained against Stanbrough, the curator, and a levy was made upon the three notes above mentioned.

On 31 December, 1841, David Stanbrough, the curator, filed a petition in the nature of a bill in chancery to the Court of Probates in the Parish of Madison, praying, amongst other things, for an injunction to restrain the marshal from further

proceedings upon the execution.

On 10 March, 1842, the court granted the injunction as prayed for.

On 1 April, 1842, Stanbrough filed a supplemental petition stating that the parties enjoined continued to advertise the notes for sale, praying that proceedings might be had against the parties for a contempt of court, that the editor of the paper might be enjoined from further publication of the advertisement, and that Dougal McCall might be enjoined from paying the notes to any person except the petitioner. An injunction was issued accordingly, on the same day.

This injunction being afterwards dissolved, the marshal proceeded to sell, on 9 April, 1842, the property levied upon, being the three notes of McCall given to Stanbrough, the curator. The property was offered for sale and sold to Lewis A. Collier, the plaintiff in error in the present case. A transfer in writing was made of said property by the marshal to Collier. The seizure of the notes was made by notifying David Stanbrough, in whose hands they were, that they were thereby seized by virtue of the execution, but they never came to the corporal possession of the marshal. The transfer was returned to the office of the clerk of the circuit court of the United States, and there duly recorded.

On 30 July, 1842, Josiah Stanbrough, the defendant in error in the present suit, filed a petition in the Ninth District Court of the State of Louisiana, stating that the first note of

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McCall, which became due on 4 January, 1842, had been protested for nonpayment, that it had been transferred by the curator, the payee, to one Jesse Stanbrough, and by the said Jesse to him, the petitioner.

He therefore prayed for an order of seizure and sale of the property mentioned in the mortgage, for cash enough to pay the note then due, and upon a credit sufficient to meet the other payments as they should become due in succession.

On the same day, an order of seizure and sale was issued in conformity with the prayer of the petition.

On 14 December, 1842, Collier filed a petition in the same court, *viz.*, the Ninth District Court of the State of Louisiana, in which he recited the facts in the case and then alleged that Josiah Stanbrough had illegally and fraudulently obtained possession of the note then due; that David Stanbrough, the curator, had become leagued with Josiah Stanbrough to defraud the petitioner and all other creditors of Harper's estate; that if the petitioner was not the legal owner of the notes, then they were the property of Harper's estate; that Josiah Stanbrough never gave any value for them; and finally praying for an injunction against all parties concerned, which should afterwards be made perpetual.

An injunction to stay further proceedings was accordingly issued.

On 4 May, 1843, Josiah Stanbrough filed his answer denying all the allegations of the petition, and averring that the property of the succession of Harper, whilst administered in the Probate Court of Louisiana, could not be legally subjected to any writ of execution from the federal courts, and claiming twenty percent damages.

Before the cause was tried, the following admission of facts was filed, *viz.:*

" *LEWIS A. COLLIER v. JOSIAH STANBROUGH*"

"Ninth District Court of the State of Louisiana for the Parish of Madison"

"The plaintiff in injunction relies upon the following facts, and he cannot go safely to trial without the documents necessary to prove them:"

"1. Some two or three years since, a judgment was obtained in the United States Circuit Court for the Eastern District of Louisiana against David Stanbrough, as curator of the succession of Jesse Harper, deceased, upon a claim against the succession of said Harper, at the suit of the Farmers' Bank of Virginia (perhaps the suit is styled 'The President, Directors, and Company of the Farmers' Bank of Virginia v. David Stanbrough,

curator of the estate of Jesse Harper'), all which will appear by the judgment."

"2. Some twelve or fifteen months since, an execution (a *feri facias* ) issued from said United States circuit court at the instance of the plaintiff in said suit, and under said execution a levy was made on the three notes mentioned in the petition of the plaintiff in injunction, and after due advertisement, the property was offered for sale and was sold to Lewis A. Collier, the plaintiff in injunction, and a transfer in writing was made of said property by the marshal to said Collier. The seizure of the notes relied on was made by notifying David Stanbrough, in whose hands they were, that they were thereby seized by virtue of said execution, but they never came to the corporal possession of the marshal, all which will appear by the execution, the return of the marshal thereon, and the conveyance of the marshal to Collier as aforesaid."

"3. Said transfer was returned to the office of the clerk of said United States court and there duly recorded."

"The statement of facts, on which the plaintiff in injunction relies, as mentioned above, and which facts are hereinbefore enumerated, is admitted by the defendant in injunction to be true."

"BEMISS, J. DUNLAP, B. M. BRAWDER"

" *Attorneys for Defendants* "

"The plaintiff in injunction admits that the notes in controversy were never appraised, and that the sale was made without appraisal, and that the notes in question belonged to the succession of said Harper, which said succession, at the time the said seizure was made, in manner stated above, was in due course of administration in the Probate Court of the Parish of Madison."

"R. C. STOCKTON, *Att'y for Collier* "

The following facts were also admitted, *viz.:*

"Admitted that Lewis A. Collier is a creditor of Jesse Harper's estate, and that for two years, at least, the said succession has been insolvent."

"Admitted that the judgment in the case of the Farmers' Bank of Virginia against David Stanbrough, curator of the succession of Jesse Harper, deceased, rendered in the United States circuit court of the Eastern District of the State of Louisiana, was made final on default."

"Admitted that David Stanbrough is now and has been curator of the succession of Jesse Harper, deceased, ever since 1 January, 1840."

"Admitted that David and Jesse Stanbrough are brothers, and Josiah Stanbrough is the son of Jesse; that they all live within some three or four miles of each other; that Jesse Stanbrough

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is security for David on his curator's bond, as curator of Harper's estate."

"Admitted that in the estate of Harper there was an inventory taken by the Probate Court of Madison of said succession of Harper, an order of sale, and sale of the property of Harper's estate, and the notes in dispute are of the proceeds of sale; that all those proceedings took place by order of the Probate court."

"It is admitted that there is no order on the records of the Court of Probates ordering the estate of Jesse Harper to be insolvent."

"Admitted, that Mr. Stockton, a creditor for \$1,000, has never received from the estate of Jesse Harper but \$250."

On 16 May, 1843, the court made the following decree:

"By reason of the law and the evidence being in favor of the defendant, Josiah Stanbrough, it is ordered, adjudged, and decreed that the injunction sued out in this case be dissolved, and it is further decreed that the defendant recover of the said plaintiff, Lewis A. Collier, and his surety, Archibald Matthews, *in solido*, the

sum of four hundred and twenty-seven dollars damages, being ten percent upon the amount of said defendant's claim, when enjoined, and that said plaintiff pay the costs of this suit to be taxed."

From this decree an appeal was had to the supreme court of the state, which affirmed the judgment of the district court, with costs.

A writ of error was sued out to bring the case up to this Court, and the following assignment of errors filed.

"Plaintiff assigns for cause, for which the judgment of the Honorable the Supreme Court of Louisiana ought to be reversed by the honorable the Supreme Court of the United States and a judgment rendered in his favor, as prayed for in his original petition, as follows, to-wit:"

"1. The decision of the Supreme Court of Louisiana denies to the Circuit Court of the United States for the State of Louisiana the power to execute judgments rightfully rendered by said circuit court against the representative of a succession, by proceeding to sell the property of the same, by a writ of *feri facias* or otherwise."

"2. The Supreme Court of Louisiana erred in assuming authority to inquire into the validity of a judgment or execution from the said circuit court or the manner in which said execution was proceeded on, the Constitution and laws of the United States guaranteeing and conferring on said circuit court the power to take cognizance of such cases as that whereon

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execution issued -- to-wit, the case of *Farmers' Bank of Virginia v. David Stanbrough, curator*, which necessarily includes the power to execute judgments so rendered."

"3. The Supreme Court of Louisiana erred in sustaining the law of that state which requires money demands against a succession to be prosecuted exclusively in the Probate court, which law, the plaintiff avers, contravenes the Constitution and laws

of the United States so far as it requires foreign creditors to prosecute their demands as aforesaid in said state court only is therefore so far null and void."

"4. The judgment aforesaid of the Supreme Court of Louisiana is for other reasons illegal and erroneous and ought to be reversed. "

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MR. JUSTICE CATRON delivered the opinion of the Court.

Lewis A. Collier filed his petition in the district court held for the Parish of Madison, in the State of Louisiana, against Josiah Stanbrough and others, alleging that the Farmers' Bank of Virginia had recovered a judgment in the Circuit Court of the United States for the Eastern District in that state, against David Stanbrough, as curator of the succession of Jesse Harper; that an execution issued on the judgment, by which the marshal seized a debt belonging to the succession, due from Dougal McCall, evidenced by three notes of hand, and by a mortgage on land, securing the payment to be made to David Stanbrough, the curator; that the debt, amounting to 11,433 dollars, was seized and sold by the marshal, and said Collier became the purchaser, for the sum of 3,500 dollars &c.;

It is also alleged, that a fictitious endorsement had been made on one of the notes by the curator to Josiah Stanbrough, which the petition prays may be annulled, and that the petitioner may have the benefit of his purchase by judgment and execution on the notes and mortgaged property.

The defendants answered and insisted that the debt was not legally seized or levied upon, and secondly that it was not legally appraised or advertised, as required by law.

The facts were agreed, and it was admitted that the notes in controversy were never appraised and that the marshal sold them to Collier at a cash sale on the first biddings.

In the district court, the law was adjudged to be for the defendants and Collier's petition was dismissed, and from this judgment he appealed to the Supreme Court

of Louisiana, where the judgment was affirmed, and to reverse this latter judgment the plaintiff prosecuted a writ of error from this Court to bring up the record, and this he had a right to do, as his claim of title was founded on "an authority exercised under the United States" which the judgment below drew in question and the decision was against its validity.

The only question submitted for our consideration is whether the marshal's sale was void or valid.

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The Supreme Court of Louisiana declared in its opinion found in the record and preceding the judgment

"that a creditor residing in another state cannot issue an execution upon the judgment which he has obtained in the federal court against the executor or administrator of an estate, which is admitted in the court of probates as insolvent, and take the property out of the hands of such executor or administrator, and leave nothing for the other creditors,"

adding that as it was one of the admitted facts that Harper's estate had been insolvent for several years before the seizure and sale were made, they were consequently void.

But as this case has been argued here by counsel for the plaintiff, Collier, only, no one appearing for the defendant in error, we deem it proper to forbear touching the delicate question on which the Supreme Court of Louisiana founded its judgment of affirmance. Its great importance in different states, and the difficulties attending it on either hand because of the conflicts it is likely to produce between the tribunals of the state and the federal courts strongly impress this Court with the propriety of leaving the question open and uninfluenced by the present opinion, as no necessity exists for such a decision in this case. The judgment of the state court pronounced the seizure and sale on the federal execution void; this judgment we are called on to revise, and if we find that it was proper for the reasons given

by the court below or on other grounds manifestly appearing of record and equally calling into exercise the jurisdiction of this Court, it is our duty to affirm it, and we are of opinion that the judgment of the state court was proper on another ground.

In Louisiana, the debts due to an execution debtor may be seized and sold on execution, like other movable property, and equally with the immovable property; in respect to lands seized on execution, it is necessary before they are offered for sale that they should be appraised by persons appointed for the purpose, and if, when offered at public sale, two-thirds of the appraised value is not bid, the officer who is attempting to sell shall not adjudicate the sale, but cease, and readvertise the property, and again offer it at public outcry on a credit of twelve months, and this mode of proceeding, having been adopted by rule in the Circuit Court of the United States held in Louisiana, governs the marshal of that court. Whether movable property was entitled to the benefit of the provision seems not to have been definitively settled until 1845, in the case of *Phelps v. Rightor*, 9 Robinson 541, when it was adjudged by the Supreme Court of Louisiana that movable property of the same description that is here in

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controversy could not be legally sold by a sheriff in virtue of an execution without having been first appraised at its cash value, and that then the cash bid on the first offer must be equal at least to two-thirds of the appraised value, and for want of such an appraisal and bid the adjudication of a cash sale on the first offer to sell was void for want of power in the officer. And it is proper to remark that in the case of [\*Gantly v. Ewing\*](#), 3 How. 707, this Court declared a similar principle to apply in a case arising under a law of Indiana which provided that the fee simple of real estate should not be sold until the sheriff had, at the time and place of sale, first offered the rents and profits of the land for a term of seven years at public outcry, and if no bid was had for the rents and profits sufficient to satisfy the execution, then the sheriff should proceed to sell the fee. In that case the sheriff had proceeded to sell the fee simple estate without first offering the rents and profits for the seven years' term, and this Court held that the sale was void for want of power in the sheriff to make it before he complied with the previous step,

forasmuch as the power to sell the fee simple arose for want of a bid for the term. In principle, that case and the one under consideration cannot be distinguished. In each it was immaterial whether the purchaser had or had not knowledge of the fact that the officer had not taken the first step, as on that step the power to sell first arose. In this case, no appraisal was had, and the debt on the first bidding was struck off to Collier, for less than one-third of the amount called for by the three notes and the mortgage to secure them, and these facts being admitted on the record, it follows that the sale was void and that the judgment of the Supreme Court of Louisiana must be

*Affirmed.*

## **ORDER**

This cause came on to be heard on the transcript of the record from the Supreme Court of the State of Louisiana, and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said supreme court in this cause be and the same is hereby affirmed with costs.

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