

## HUGHES vs. LINDSEY.

Where judgment is rendered against two defendants on a joint contract, granting a new trial on the application of one, vacates the judgment as to both defendants.

*On Certiorari to Justice Shoppach, of Saline.*

Facts appear in the opinion of the Court.

WATKINS & CURRAN, for the plaintiff.

JORDAN, contra.

Mr. Chief Justice JOHNSON delivered the opinion of the Court.

It appears, from the transcript of the record certified and returned with the writ of certiorari issued on the application of the plaintiff in this cause, that the Justice, on the 28th of July, 1849, rendered a joint judgment against the plaintiff and William K. English, which purports to be based upon a joint contract. This judgment was stayed on the day of its rendition for the space of three months by Thomas Pack, and it having been taken by default, was afterwards, on the 4th August following, on the application of English, set aside and a new trial awarded.

The time set for the new trial was the 25th August, at which time a judgment was rendered in favor of English. This latter judgment, it is true, is exceedingly informal, yet it is believed to amount to a valid judgment in favor of English and against the plaintiff, and particularly so under the law in respect to judgments before Justices of the Peace. (a) The legal effect of the order granting a rehearing upon the application of English, was necessarily to vacate the judgment against him and Hughes, his co-defendant. The judgment, being an entirety, could not be vacated as to English, and at the same time remain in force against Hughes. This being the state of case, it is manifest that the record shows no judgment whatever against the plaintiff, and, as a necessary consequence, there is nothing to quash or supersede. The execution having been issued without even the semblance of a judgment, the supersedeas of the execution, heretofore awarded by one of the judges in vacation, was properly issued; but, as there is now no judgment before said justice against Hughes, the writ in this case issued must be dismissed.

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NOTE (a)—The judgment referred to by the Court, is in these words: “And on this 25th August, A. D. 1849, said plaintiff failed to appear, and said defendant pleads that he was not legally served with process, which being sustained by the Court, judgment is given against said plaintiff (Lindsey) for the costs of this new trial. Given under my hand, this 25th August, A. D. 1849. *John W. Shoppach, J. P.*”

REPORTER.

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