

Josiah Hughes in 1821, eighteen years previously. I speak now of the judgment as an estoppel, against which, there can be no averment made, or proof offered. The judgment, it appears to me, cannot have a more extensive effect than a judgment in ejectment, which is only conclusive evidence, against the tenant in possession, of the plaintiff's title, from the day of the demise laid in the declaration, and, therefore, in an action for *mesne* profits, it is not necessary for the plaintiff to be prepared with proof of title, unless he seeks to recover profits, antecedent to the day of the demise, or bring his action against a prior occupier. *Wood vs. Grundy*, 3 *Harr. & Johns.*, 13.

It may, to be sure, be supposed that as the plaintiff is permitted to show that in the action of detinue, he recovered upon the title of Josiah Hughes, who died in 1821, it follows, of course, that the title was in him (Josiah) at that time, and that it would be impeaching the judgment to aver the contrary. But, the question here is, not whether that judgment may not be offered for any purpose, and as a circumstance to be weighed in deciding upon the title, but whether it is not *conclusive* evidence of title, in opposition to which no proof will be received. I think it is not, and that, though the defendant would not be permitted to question the title of the plaintiff, at the time of action brought, he is not precluded from controverting it at an earlier period, and this makes it necessary to express an opinion upon the evidence introduced upon this point.

This evidence I have carefully read, and considered, and upon the best reflection I can give it, and after *listening attentively* to the arguments of counsel, I am of opinion, that with reference to the negro slave Isaac, the proof is against the plaintiff.

In the first place, I think it is sufficiently shown, that these negroes, including Isaac, were sold by the sheriff, and purchased by Jesse Hughes, in 1815. There may have been some irregularities in the sale, from the absence of the property at the time, or from other causes. But although these irregularities, if they existed, might have furnished sufficient ground for setting aside the sale, on motion to the court, upon the return of the writs of execution, it is, I think, impossible to say now, at this