McCoy, John C et al vs Ragan, Jacob et al; 1857 Clay Co. #5 Cir. 226/6

78/17

· venue change from Jackson
· Reversed, finding of the facts must be included in record
· Damages and unlawful conversion
· group of men formed association to buy land
each got 1/14 part of land
· erected ferry landing and then owner of land that ferry stood on
refused to allow other assc members to use it or to share in
his profits from said ferry

THE STATE OF MISSOURI, ss.

The State of Missouri, To the Judge of the fifth Judicial Circuit in said State, GREETING:

WHEREAS, In the Record and Proceedings in a certain cause lately pending in the Circuit Court of Clay County, in the Judicial Circuit aforesaid wherein Jacob Ragan & others were plaintiffs, and John C. McCoy & others were defendants,

in an action of manifest error hath intervened, to the great damage of the said defendants as by their complaint, we are informed.

NOW, we 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 at the City of Jefferson, in the county of Cole, in said State, on the second Monday in January next, so that our Judges of our Supreme Court, on inspecting the record and proceedings aforesaid, may cause to be further done therein, for correcting the error, what of right and according to law ought to be done.

Witness, WILLIAM E. DUNSCOMB, Clerk of our said Supreme Court, at office, in the City of Jefferson, the thirtieth day of September in the year of our Lord one thousand eight hundred and fifty seven

Wm E Dunscomb

SEAL SUPREME COURT OF MISSOURI

State of Missouri }
County of Clay } ss

I Andrew J Calhoun Clerk of the Circuit Court within and for the County aforesaid do hereby Certify that in obedience to the within writ I herewith send to the Supreme Court of said state, the record and proceedings in the Cause therein mentioned, as fully as the same remain of record in said Court, before said Court; Certified under the seal of said Court. Which said Record and proceedings are hereto attached.

In Testimony whereof I hereunto set my hand and the seal of said Court, at office in Liberty on this 8th day of December 1857

Alexander J Calhoun Clerk

State of Missouri } ss
County of Clay } Pleas in the circuit court begun and held at the city of Liberty for the county of Clay in the fifth Judicial Circuit of the State of Missouri on the fourth Monday of April in the Year of our Lord One thousand Eight hundred and fifty five before the Honorable George W Dunn Judge of said Circuit:

Be it remembered that heretofore to wit on the sixth day of April in the Year of our Lord One thousand Eight hundred and fifty five the following Transcript from the the Jackson Circuit court was filed in the office of the Clay circuit court which said ~~transcript~~ is in the words and figures following to wit:

State of Missouri } ss
Jackson County } Pleas in the circuit Court begun and held at the city of Independence for the County of Jackson in the Sixth Judicial Circuit of the State of Missouri on the Second Monday of September in the Year of our Lord One thousand Eight hundred and fifty three before the Honorable Henderson Young Judge of said Circuit

"Be it remembered that heretofore to wit on the 12th day of August in the Year Eighteen hundred and fifty three Jacob Ragan & others by Smart & Shelby their attorneys filed in the office of the Clerk of the Circuit Court of Jackson County. their Petition against John C McCoy John Campbell The unknown heirs of Henry Sohe Deceased. which said Petition is in words and figures following to wit:

Jacob Ragan Jiry P McGee
William Gillis Robert Campbell
William B Evans Plaintiff
against
John C McCoy John Campbell
The unknown heirs of Henry Jobe
Deceased Defendants

In the Circuit Court Jackson County.

Petition

Plaintiff States that some time in the year 1838 William T Sublette Moses T Wilson William Collins John C McCoy William Gillis Jiry P McGee. Abraham Jonds, William M Chick. Oliver C Caldwell. George W. Gate Jacob Ragan James Smart Samuel C Owens and Russel Hicks formed an association for the purpose of purchasing the following described land situate in Jackson County Missouri to wit: The South west fractional quarter of section thirty two. Township 50. Range thirty three. containing one hundred and fourteen acres. and seven hundredths of an acre. also the South east fractional quarter of Section 32. Township 50. Range 33. containing one hundred and forty three acres and forty six hundredths of an acre. That they when the said lands were offered at public sale by the Commissioners bought the same. That before the deed conveying the said land to said parties was made by the Commissioners appointed by the Jackson Circuit Court to sell said land and to make a deed therefor. two of said Commissioners. to wit: Peter Booth and Elliot Johnson. departed this life. and also that several of the parties has sold their interest in and to said lands. to wit: James Smart. William Collins and Moses T. Wilson has sold and conveyed their interest in said land to one Robert Campbell. That on the 17th day of August 1843. James B Davenport surviving Commissioner made executed and delivered

to the parties interested a deed duly acknowledged and certified, thereby, then and there conveying the fee simple in and to said lands to Jacob Ragan, Jery P McGee Robert Campbell John C McCoy William M Chick Russell Hicks Oliver Caldwell, George W. Tate William Gillis, Abraham Tondo William T Sublette & Samuel C Owens, that is to say to the said Ragan McGee McCoy Chick Hicks Caldwell Tate, Gillis, Tonde Sublette and Owens, each the one fourteenth part of said lands, and to the said Campbell three fourteenths of the same, For more and further particulars, reference is made to the said deed which is herewith filed marked A. and relied upon as evidence.

Petition

That after the making of the said deed, the said Owens sold and conveyed his interest in and to said lands to William Gillis, which said deed is dated the 18th day of November 1845; is herewith filed and relied upon as evidence, That the said Russell Hicks sold and conveyed his interest in and to said land to Jery P McGee, by deed dated 20th day of August 1844, which is herewith filed and relied upon as evidence That said Oliver Caldwell sold and conveyed his interest in and to said lands to William Gillis by deed dated 5th June 1845; herewith filed and relied upon as evidence, That said George W. Tate has sold and conveyed his interest in said lands to one William B. Evans by deed, dated the 16th March 1843. which is herewith filed and relied upon as evidence, That since the making of the said deed the said Abraham Tondo sold and conveyed his interest in said land, to one Henry Tobe by deed dated 21st May 1845; a certified copy of which is herewith filed and relied upon as evidence, the original not being in the possession or under the controll of Plaintiffs.

That since the making of the said deed said William L. Sublette departed this life testate and by his said last will and testament which duly admitted to probate in St Louis County on the day of a certified copy of said last will and testament was duly recorded in the Recorders office in Jackson County Missouri on the 5th day of May 1845; he devised and bequeathed to Francis Sublette his interest in said lands, a copy of said last will and testament with the certificate of probate properly certified is herewith filed and relied upon as evidence the original not being in the possession or under the control of Plaintiffs and can not be here produced. That since the making of the said deed the Sheriff of Jackson County Missouri by virtue of sundry executions in his hands levied upon all the right title and interest of said William M. Chick in and to said land and in persuance to law sold the same, and made a deed therefor conveying the said interest of said Chick to one Richard R Rees he having been the purchaser a certified copy of said deed and certificate of acknowledgement thereon endorsed is herewith filed and relied upon as evidence, the original not being in the possession or under the control of Plaintiffs and cannot be here produced. That afterwards the said Reese sold and conveyed his interest so acquired in said lands to John C McCoy by deed dated the 18th day of May 1846 a certified copy of which, together with the certificate of acknowledgement thereon endorsed is herewith filed and relied upon as evidence, the original not being in the possession or under the control of Plaintiffs and cannot be here produced. That said Francis Sublette sold and conveyed her interest in said lands so acquired by virtue

Petition

of the said last will and testament of William L. Sublette deceased to Robert Campbell by deed dated 22nd April 1847. a certified copy of said deed and certificate of acknowledgment thereon indorsed is herewith filed and relied upon as evidence the original being misplaced cannot now be filed. The several deeds and copies of deeds refered to in this petition filed and relied upon as evidence as well as the copy of the said last will and testament are marked B. C. D. E. F. G. H. I. J. as they severally occur and referred to in this Petition Plaintiff State that the original interest owned by each member of the association in said lands was the one fourteenth. That by virtue of the said purchases and transfers the interest of the several members of the Company in and to said lands is now as follows to wit: The said Ragan and Evans. each the one fourteenth, the said McGee two fourteenths the said Gillis three fourteenths: the said Campbell four fourteenths: the said McCoy two fourteenths: and the said Sobe. or his unknown heirs the one fourteenth.

Petition

Plaintiffs State that on the 30th day of April 1846. the proprietors of the said Real Estate having previously laid off a town on the said land and called the same Kansas being the present City of Kansas. and made a regular plat of the same. a portion of said Company to wit: William Gillis. Jos P McGee. John C McCoy. Jacob Ragan. Henry Sobe. and William Evans. duly acknowledged said plat. and the same was on the said 30th of April 1846. filed in the office of Recorder in the County of Jackson aforesaid which is here referred to and relied upon as evidence Plaintiffs state that by said plat and the certificate of acknowledgment thereon endorsed the said proprietors of said town of Kansas reserved

to themselves individually and collectively, and to their heirs and assigns forever, the exclusive right, and privilege of ferriage on said lower tract, and the exclusive right of landing and fastening on said lower tract all ferry boats and other water craft used for the purpose of ferriage to the bank in front of said lower reference is made to a certified copy of the said certificate of acknowledgment on said plat herewith filed and relied upon as evidence marked A the original not being in the possession or under the control of Plaintiffs Plaintiffs State that they are as a company & as tenants in common jointly entitled to the ferry privileges and landing on this side the Missouri River the same being the South side of said river and extending up and down along the bank on the shore of said river, and that no other person or persons, company or companies are entitled to any of such ferry privileges except the company comprised of the plaintiffs the said McCoy and John Plaintiffs state that notwithstanding that they and the said McCoy and John are and were entitled to the said ferry privileges aforesaid as an association or tenants in common and as such tenants in common alone authorized to use and enjoy the same the said McCoy has taken possession of and has used and enjoyed the same for a long series of years to wit: Since the filing and making of said plat of the town of Kansas and being so in possession of said ferry and using and enjoying the same, the said McCoy has taken and received more than his due proportion of the benefit thereof, or of the profits arising from said ferry as aforesaid that said John & McCoy having received, and taken more than his due proportion of the profits or benefits arising from said ferry is and was bound to pay to each of the Plaintiffs his interest in the profits arising from said ferry.

Petition

That although the said McCoy was and is so liable he the said John C McCoy refuses to settle with and pay over the same profits to Plaintiffs or either of them according to their respective rights although the same has been by Plaintiffs demanded of him. Plaintiffs State that said McCoy has connected with him in some way in running said ferry and using and enjoying the same. The defendant John Campbell, they however have no knowledge of the interest claimed by said Campbell Plaintiff state that said ferry privileges including the privileges on the north and south side of the Missouri is & has been all the time since the filing of said petit to wit! The 30th of April 1846 worth at least the sum of nine hundred dollars per year rent. And that as the Plaintiffs the said McCoy and Cobe are only entitled to the ferry privileges on the South side of the Missouri! and the said McCoy has used and enjoyed the same all that space of time. he became and is liable to pay Plaintiffs at least the sum of four hundred & fifty dollars as rent per year beginning on the said 30 April 1846. Plaintiffs State that they have no means of ascertaining or knowing the profits of said ferry except as to the year by value as rent for the same. They state that said Henry Cobe has departed this life, that his estate has been finally settled, and that the heirs and legal representatives of said Cobe are unknown to Plaintiffs, and the names of whom they cannot give. They pray the court to require the said Calvin McCoy either to account for the yearly rent of said ferry privileges from the 30th April 1846, to time of Judgement or else to show & exhibit upon his corporeal oath a correct account of the profits of the said ferry privileges during the same period, and to render judgment in favor of Plaintiffs for the amount thus ascertained, or that

Petition

may be ascertained by the court to be due and owing plaintiffs by the said John C McCoy for the uses and profits so taken and received by him over and above his due proportion of the uses and profits arising from said ferry privileges: and also to ascertain and adjudge the rights privileges and immunities of each one of the parties in and to the said ferry privileges aforesaid and such other and further things as to your honor may seem just and right Plaintiffs state that defendant John C McCoy by his promissory note dated Kansas 4th May 1846. promised for value received to pay the proprietors of the town of Kansas fifty dollars at the end of twelve months from said date which said note is herewith filed and relied upon as evidence Plaintiffs state that notwithstanding said John C McCoy is one of said proprietors and as such entitled to two fourteenths, yet the whole of said note is due and owing Plaintiffs and the heirs of Henry Lobe deceased Plaintiffs state that said sum of money and all accruing interest are yet due and unpaid for which he asks judgement according.

Smart & Sheley.
For Plaintiffs

Fry P. McGee one of the Plaintiffs makes oath and says he believes the foregoing Petition and the matters and things therein as stated are true

affidavit

Fry, P. McGee

Subscribed and sworn to before me this 12th day of August 1853.

Samuel D Lucas Clerk
By O. P. W. Baily D.C.

and afterwards to wit: On the day of the filing of said Petition our said Clerk endorsed thereon

a writ of Summons which said writ is in the words and figures following to wit:
The State of Missouri To the Sheriff of the County of Jackson Greeting

You are hereby commanded to summon John C McCoy John Campbell & the unknown heirs of Henry Sohe deceased if they be found in your County, that they be & appear before the Honourable Judge of our Jackson Circuit Court, at the court house in the city of Independence on the Second Monday in September next it being the 12th day of said month then and there to answer unto the Complaint of Jacob Ragan, Sr, P. McGee William Gillis Robert Campbell & William B Evans as set forth in the foregoing petition, and that you have then and there this writ and that you certify how you execute the same.

writ

Witness Samuel D Lucas Clerk of our said court with the Seal thereof hereto affixed at office in Independence this 12th day of August AD 1853.

(Seal)

Samuel, D. Lucas Clerk.

And afterwards to wit: on the Second Monday in September our said Sheriff Benjamin F. Thomson by himself and Deputy J. G. Brice returned said writ as follows to wit: I certify that I executed the within writ by delivering a copy of the within Petition and writ to the within named John C McCoy in Jackson County on the 20th day of August 1853.

Return of Sheriff

B. F. Thomson Sheriff

I certify that I executed the within writ by reading

the within petition and writ to the within named Isbe Campbell in Jackson County on the 27th day of August 1853.

B. F. Thomson Sheriff
By I. H. Price D.S.

I certify that I made due search and could not find the within named unknown heirs of Henry Isbe deceased in Jackson County

Sheriffs fee $2.50. B. F. Thomson Sheriff

and afterwards to wit: At a term of the circuit court begun and held at the Court house in the city of Independence for the County of Jackson in the State of Missouri on the Second Monday in September A.D. 1853, it being the 12th day of said month, Court met pursuant to adjournment present the Honorable Henderson Young Judge of said Court.

And afterwards to wit: on the 7th day of said term it being the 19th day of September 1853 among other proceedings, the following were had and made to wit:

Record of Court

Jacob Ragan & others
vs
John C McCoy & others } Petition

Now at this day comes the parties aforesaid by their attorneys and said defendants file demurrer to plaintiffs Petition

Which said demurrer is in the words and figures following to wit:

Jacob Ragan Jay D McCoy
William Gillis, Robert Campbell
William Evans Plaintiffs
against
John C McCoy John Campbell
The unknown heirs of Henry Isbe decd. defendants } In the Circuit of Jackson County

Demurrer

Defendants, McCoy and Campbell demur to all that portion of Plaintiffs Petition in which they claim rent for the ferry, ferry privileges &c because it does not state facts sufficient to constitute a cause of action in their 1st Because in this State a ferry is not an incident to real Estate, but a mere franchise granted by the County Court, and consequently a ferry privilege is no such a right as could be reserved in the sale of land, 2nd Because, even if, the rights reserved in said certificate of acknowledgment on said plat are such as could be reserved, yet according to plaintiffs own showing said rights were reserved to them, who acknowledged the same individually as well as collectively & consequently the defendants McCoy & Campbell has a right to use said privileges individually and for their own individual purpose 3rd Because from said petition it appears that Plaintiff, Robert Campbell never acknowledged said plat, consequently reserved no such right as claimed for him in said Petition and therefore not entitled to recover in this action even if such reservation could have been made legally. 4th Because there is nothing in said Petition which shows that these defendants are not entitled to use said lands as they have are charged to have used them 5th Because such reservation as is claimed in this petition could not be made in the certificate of acknowledgment, but must be made in the plat itself 6th Because said petition while it states that the proprietors of the town of Kansas reserve to themselves the right of ferriage &c does not state that they reserve the exclusive right, hence there is nothing showing that defendants may not so use said privileges, Said defendants also demur to the balance of Plaintiffs petition setting up defendant

McCoy's liability on a certain note, because it does not state facts sufficient to constitute a cause of action in this. 1st Because it states that defendant McCoy promised at a certain time, to pay the sum claimed to the proprietors of the town of Kansas, but does not show who were the proprietors of said town at the time said note was executed.
2nd Because defendant McCoy was one of the proprietors of the town of Kansas consequently one of the payers of said note and cannot be sued by his co payers 3rd Because all those to whom said note is due must join in said suit which does not appear from the petition to have been done.
4th Because said note being executed by McCoy alone a joint action against him and said Campbell will not lie 5th Because it appears from said petition that said note was filed merely as evidence and not on the foundation of an action consequently plaintiffs have no right to judgment upon it. 6th Because said petition shows no right of Plaintiffs to recover upon said note against defendants or any of them.

Demurrer

Woodson Chrisman & Comings
Attorneys for McCoy & Campbell

adjourned

And afterwards to wit: At an term of the circuit court begun and held at the court house in the city of Independence for the County of Jackson in the State of Missouri on the Second Monday in January AD 1854 it being the 9th day of said month. court not pursuant to adjournment present: The Honorable Henderson Young Judge of said court, And afterwards to wit: on the 12th day of said Term it being the 21st day of January AD 1854, among other proceedings

the following were had and made to wit:

Jacob Ragan Jerry McGee
William Gillis Robert Campbell
& William P Evans
vs.
John E. McCoy John Campbell
and the unknown heirs of Henry
Jobe deceased,

} Petition

Record of Court

Now at this day comes the Plaintiffs aforesaid by their attorneys: and the Sheriff of Jackson County to whom the writ in this cause was delivered having returned that he could not find the unknown heirs of Henry Jobe, deceased in Jackson County and the Court being satisfied, that the said unknown heirs cannot be served with process in this action It is therefore ordered that the said unknown heirs of the said Henry Jobe deceased be notified that the said Plaintiffs have commenced a civil action against them and others as aforesaid, the object and general nature of which is to obtain a judgment or decree ascertaining and adjudging the rights privileges and immunities of each one of said Plaintiffs and defendants in and to the ferry privileges at the town of Kansas of the proprietors of said town and judgment against the said defendants McCoy for the amount of money received by him from and on account of said Ferry belonging to said proprietors jointly, and unless they the said unknown heirs of Henry Jobe deceased, appear at the next September Term of this court to begun and held at the court house in the city of, Independence on the Second Monday in September next and on or before the sixth day thereof to answer the Petition according to law the same shall be taken as confessed And it is further ordered that a copy.

thereof be published for eight successive weeks in some news paper published in this State the last insertion to be at least four weeks before the first day of the said next September Term and this cause is continued And afterwards to wit: At a Term of the circuit court begun and held at the court house in the city of Independence for the county of Jackson in the State of Missouri on the Second monday in March A.D 1854. it being the 13th day of said month court not pursuant to adjournment present the Honorable Henderson Young Judge of said court And afterwards to wit: on the 13th day of said Term it being the 27th day of March A.D 1854. among other proceedings the following were had and made to wit:

Jacob Ragan & others
vs. } Petition
John C McCoy & others

Now at this day come the parties aforesaid by their attorneys and this cause is continued And afterwards to wit: at a Term of the Circuit Court begun and held at the court House in the city of Independence for the County of Jackson in the State of Missouri on the Second Monday in September A.D 1854. it being the 11th day of said month court met pursuant to adjournment present the Honorable ~~Henderson Young~~ William L. Wood Judge of said court

Record of court

And afterwards to wit: on the 16th day of said Term it being the 28th day of September 1854. among other proceedings the following were had and made to wit:

Jacob Ragan & others
vs. } Petition
John C McCoy & others

Now at this day come the Plaintiffs aforesaid by their attorneys and prove to the satisfaction of the court here
Record that they have made publication in pursuance of the order made herein against the unknown heirs of Henry Jobe deceased.

And afterwards to wit: on the same day the following proceedings in said Cause were had and made to wit:

Jacob Ragan & others
vs.
John C McCoy & others } Petition

The Judge of this court having been counsel in the above Causes they are adjourned
Record over to the adjourned term to be held on the Second Monday in December next by the Judge of the 7th Judicial Circuit in this State.

And afterwards to wit: At a special adjourned term of the Jackson Circuit Court begun and held at the court house in the city of Independence for the county of Jackson in the State of Missouri on the Second Monday of December A D 1854. it being the 11th day of said month. and being adjourned from the Regular September Term 1854. under an order of the Judge of this court next pursuant to adjournment present the Honorable Wm O Ballou. Judge of the 7th Judicial Circuit of the State of Missouri in pursuance of said order.

and afterwards to wit: on the fifth day of said term it being the 15th day of December 1854 among other Proceedings the following were had and made to wit

Jacob Ragan & others
vs.
Record John C McCoy & others } Petition

Now at this day come the parties

aforesaid by their attorneys and on motion of Plaintiffs this cause is dismissed as to the defendant John Campbell and thereupon the Demurrer heretofore filed by said Defendant McCoy to said Petition is taken up and originall and the Court being Sufficiently advised and fully understanding the law arising herein doth

Record

overrule the said ~~the~~ demurer as to the Trust Court in Severo Petition mentioned and doth sustain the same Demurer to the Second Court in said Petition and thereupon on motion of Plaintiffs leave is given them to amend two said Court in said Petition and afterwards to withdraw the note filed herein and mentioned in the second Court in Plaintiffs said Petition by leaving a copy thereof.

and afterwards to wit; On the 6th day of said Term it being the 16th day of December 1854. among other proceedings the following were had and made to wit;

Jacob Ragan & others
vs.
John C. McCoy & others } Petition

Now at this day come the parties aforesaid by their attorneys and on motion leave

Record

is given said defendant McCoy to file answer to said petition in vacation 30. days after the close of this adjourned Term.

And afterwards to wit; on the 18th day of January AD 1855. in pursuance of said order said defendant McCoy filed his answer to said petition which answer is in the words and figures following to wit;

Answer of Defendant

Jacob Ragan, Fry P McGee, William Gillis
Robert Campbell William B Evans Plaintiffs
against
John C McCoy John Campbell, the unknown heirs of Henry Tobe deceased Defendants } In the circuit court of Jackson County

John C McCoy one of the defendants, for answer to Plaintiffs for Petition, states that as to the allegations that James Smart, William Collins and Moses G Wilson had sold and conveyed their interest in the land in petition described to Plaintiff Robert Campbell and as to the validity of such conveyances if so made, he has no personal knowledge nor knowledge of facts sufficient to enable him to form a belief thereof. He also states in reference to the allegations that Samuel C Owens conveyed his interest in said land to Moses G Wilson that Russell Hicks conveyed his interest in said lands to Fry W McGee; that Oliver Caldwell conveyed his interest in said lands to William Gillis; that George W Tate conveyed his interest in said lands to William B Evans; that Abraham Fondo conveyed his interest in said land to Henry Jobe, that William Sublette devised and bequeathed his interest in said lands to Francis Sublette by will which was duly admitted to probate as alleged; that said Francis Sublette conveyed her interest in said lands to Robert Campbell as alleged and as to the validity of all and each of said several conveyances, if so made as averred, he has no personal knowledge, or such knowledge of facts as will enable him to form a belief in reference thereto, and therefore he denies each and every of said allegations and asks that strict proof thereof be required.

Answer

This defendant denies that at the time of the commencement of this suit the interest of the several members of said company to said lands were as charged in said Petition to wit. The said Ragan and Evans each to the one fourteenth, the said McGee to two fourteenths; the said Gillis to two fourteenths; this defendant to two fourteenths; and the heirs of Henry Jobe to one fourteenth; and states the facts to be that years prior to the

commencement of this suit, all said lands had been sold and divided out by agreement except a small amount reserved on second plat of said town of Kansas being less than three acres, which is all of the lands described in said petition which belongs jointly to the proprietors of said town of Kansas. (This defendant denies that on the plat alleged in Petition to have been made and filed any such reservation was made as charged in said Petition he admit that in the acknowledgment an attempt was made to make certain reservations as in Petition specified: but state that he is advised and informed, and he therefore charges that no such reservation as charged was made by said acknowledgment and that by said plat and acknowledgment the fee to all streets as marked out on said plat was vested absolutely in the County of Jackson)

(See Brackets)

answer

(This defendant denies that plaintiffs as are jointly entitled to the ferry privileges and landing on the South side of the Missouri River extending up and down along the bank on the shore of said River for the full distance, said land binds on said River or any part of said distance; and also denies that they as an association or tenants in common are alone authorized to use and enjoy the same) this defendant also denies, that he has taken or received more than his due share or proportion of the benefit thereof, or of the profits arising from said ferry as aforesaid; and that in consequence he is or was bound to pay to each of Plaintiffs anything whatever of the profits arising from said ferry; This defendant denies that Plaintiffs have ever demanded from him any portion of the ~~Plaintiff~~ profits of said ferry. This defendant says it is true he has had a ferry at the town of Kansas since the year 1846, and that for a landing and other ferry

(See Brackets)

purposes on the South side of the Mo. River he used a portion of the land, described in Petition, partly, and partly land belonging to himself outside of the lands described in Petition and also that the portion of said land which he did so use in part for said purpose did not at the time of using the same belonging either in whole or in part to plaintiffs or either of them (but that the same was a public street in the town of Kansas belonging to the public and the fee to which vested in the County of Jackson)

(See Brackets)

answer

This defendant denies that said ferry privileges on the north and south side of the Missouri River were worth the sum of nine hundred dollars per year since 1846, as charged; denies that in consequence of using the same he is bound to pay plaintiffs one half that amount or any portion thereof whatever. (This defendant further states that he does not know what the yearly profits of said ferry since 1846 have - been - that he has no data from which he can form anything like a correct estimate thereof, that for some years during that period the profits were almost nothing, but that he cannot say anything with certainty in reference to the amount of said profits during said period)

(See Brackets)

Woodson Chinman & Comings
attorneys for Defendant.

John C McCoy the above named defendant makes oath and says that he believes the foregoing answer and the matters as therein stated are true.

John C McCoy.

affiant

subscribed and sworn to before me this 18th day of January 1855.

Samuel D. Lucas Clerk

and afterwards to wit: at a term of the Circuit

Court begun and held at the court house in the city of Independence for the County of Jackson in the State of Missouri on the Second Monday in March AD 1855; it being the 12th day of said month Court met pursuant to adjournment Present and Honorable William O. Wood, Judge of said court.
And afterwards to wit: on the Second day of said Term it being the 15th day of March AD 1855: among other proceedings the following were had and made to wit:

Record

Jacob Ragan & others
vs
John C McCoy & others } Petition

Now at this day come the parties aforesaid by their Attorneys and to wit: Plaintiffs file motion to Strike out Parts of Defendants McCoys answer, which said motion is in the words and figures following to wit:
Jacob Ragan & others Plaintiffs
against } In the Circuit court Jackson County
John C McCoy Defendant.

Plaintiff moves the court to strike out So much of his answer of Defendant McCoy filed in the above cause as is included in brackets ( ) for the following reason to wit:
Because the answer is not responsive to the Petition
Because the same is a reiteration of the point made in the Demurer Certain was by the court overruled Because the same is a Mortter of Law
Because the same is too general and in defendant
Because the same is otherwise infurial defective and overruled

Smart & Shealy for Plaintiffs

And afterwards to wit: on the seventh day of

Motion

June Term it being the 19th day of said month 1855, among other proceedings the following were had and made to wit;

Record

Jacob Ragan & others
against
John C McCoy & others } Petition

Now at this day come the parties aforesaid by their attorneys and the Judge of the court having been of Counsel in this cause It is ordered and the Cause be change to the County of Clay in the Fifth Judicial Court of the State and that the clerk of this court make and and transmit to the Clerk of the Clay circuit Court or transcript of the Record and proceedings had and made in this cause

Bill of fees to wit;

1857 Clerk Jackson County court to wit;

	Sept 1st filing Petition 5 Cout 5 Copy Petition 250 p 260	
Bill of	Certificate & Seal to Copy 50	0.50
Costs	Writ of Summons	1.00
	Transcript of will Deeds &c	6.00
	Certificate & Seal 50 W Sum	0.50
	Filing 7 Exhibits C 5	0.38
1854	Sept 20 filing Demurrer 5	0.25
Jany 6	Sept 20 order Publication 25	0.45
	Copy Sum 50 Continued 25	0.75
Mar	Sept 20 order 25 continued 25	0.70
Sept	Sept 20 order 25 Continued 25	0.70
Dec 6	Sept 20 order Dummy Campbell 25	0.45
	order over rely Demurrer 1st Cont	0.25
	order Sustaining Demr 2nd Cont	0.25
	order term to amend	0.25
	order to believe deed note	0.25
	Continued	0.25

1855 2 app 20 over ten Nobody to answer 25 0.48
Mrs 2 app 20 filing motion to strike out 5 0.28
2 app 20 order Cluny term 25 0.48
Transcript 7000 brows c 10 certificate & seal 50 7.50
Pence Postage on transcript 0.35 $24.50
Sheriff Thomson fees to wit:
Summoning 2 defendants 2.00
1 Non Eestes on writ 0.50
Calling Parties & action 3 terms 0.90 3.40
Sheriff Bots fees
Calling Parties & action 3 terms 0.90 0.90
Printer McMurry of order of Publication 18.00
Seal on writ Name of Plaintiff McGee 1.00
to wit $47.80

Saml. S D Lucas Clerk

State of Missouri } ss
Jackson County } I Samuel D Lucas Clerk of the Circuit court within & for the County aforesaid do certify that the preceeding 23 pages and part of the 24 page contain a full true and perfect transcript of all the Record and Proceedings in the Cause herein named wherein Jacob Ragan & others one Plaintiffs and John C McCoy & others are defendants as the same town remain of Record in said Court and that I transmit herewith all the original papers filed in this cause and writ forming a part of the Record

certificate

In testimony whereof I have unto set my hand and affix the Seal of said Court at office in Independence This 4th day of April A D 1855

(Seal)

Samuel D. Lucas Clerk

and On the same day to wit on the Sixth day of April AD 1855. The following deed was filed in this cause which reads as follows

To all to whom these presents shall come Greeting Know ye that whereas by an order of the circuit Court of Jackson County at April Term of said court in the year of our Lord one thousand eight hundred and thirty eight It became the duty of Peter Bootte James B Deavenport and Elliot Johnson Commissioners appointed by said court to perform certain duties in said order of appointment specified to sell at public action on the premises to the highest and best bidder on credit of Twelve months taking Bond with approved security from the purchasers for the purchase money drawing interest from the date at the rate of ten per cent per annum first giving note of the time and place of sale with a description of the property to be sold by one advertisement published for six weeks in some public newspaper published in the city of Saint Louis in the State of Missouri by one advertisement published at Liberty Clay County in the State of Missouri for six weeks and by six hand bills set up at six of the most public places in Jackson County in the State of Missouri the following tracts pieces or parcels of land situate lying and being in the County of Jackson and State of Missouri belonging to the legal heirs and Representatives of Gabriel Bedhomme deceased and known and designated as the South west fractional quarter of Section number thirty two of Township number fifty in Range number thirty three containing one hundred and fourteen acres and seven hundredths of an acre and the South East fractional quarter of Section number thirty two of Township fifty in Range number thirty three containing on hundred and forty three acres and forty six hundredths of an acre which sale was required to be on the fourteenth day of November in the year of our Lord Eighteen hundred and thirty eight

Deed

and whereas said Commissioners did proceed to advertise in one news paper published in the city of Saint Louis in the State of Missouri, and in one news-paper published in Liberty Clay County in the State of Missouri for six weeks succes Sively before the day of Sale a notice of the time and places of Sale of the said land and a description of the property to be sold and did also give notice of the time and place of said Sale with a description of the property to be Sold by six hand Bills put up at six of the most public places in Jackson county in the State of Missouri as required by said order of Sale, and whereas as afterwards to wit: on the fourteenth day of November in the year of our Lord Eighteen hundred and thirty eight the time specified in said order of sale for the sale of said land, the said Commissioners did go upon the above described premises and there proceed as the above specified under of sale specified to offer for sale the above discribed land and premises at public auction to the highest and best bidder and William L Sublette Moses T Wilson William Collins John le McCoy William Gillis Fry P McGee Abraham Fonda William McChick Oliver Caldwell George W. Tate Jacob Ragan James Smart Samuel C. Owens and Russell Hicks being the highest and best bidders became the purchasers thereof for the Sum of Four Thousand two hundred and Twenty dollars that being the highest and best sum bid for which said sum of Four Thousand Two hundred and twenty dollars they the said William L. Sublette Moses T Wilson William Collins John le McCoy William Gillis Fry P McGee Abraham Fonda William McChicks Oliver Caldwell George W. Tate Jacob Ragan James Smart Samuel C Owens and Russell Hicks executed to said Commissioners their Bond due Twelve months after date with interest from the date at the rates of Ten per cent per annum and bearing date on said day of Sale no security

Dec

required as the said purchasers were numerous and able which said purchase money with the interest thereon has been fully paid and the said Bonds discharged and whereas it appears to the said Commissioners that since said Sale James Smart William Collins and Moses G Wilson three of said purchasers have conveyed since said purchase all and each of interest and claim in and to the above described land and tenements unto Robert Campbell of the County of St. Louis in the State of Missouri And whereas since the making the said Sale Peter

Deed

Boothe and Elliot Johnson two of the aforesaid commissioners hadud Now therefore I the said James B Leavenport the surviving Commissioner do hereby and by these presents for and in consideration of the said Sum of Four thousand Two hundred and twenty dollars to us in hand paid the receipt whereof is hereby acknowledged give grant bargain and Sell unto the said William S Tabbet John C McCoy William Gillis Fry P. McGee Abraham Fondo. William McChick Oliver Caldwell George W. Tate Jacob Ragan Saml C Owens Russell Hicks and Robert Campbell. That is to say unto the said William S. Tabbert John C McCoy William Gillis Fry P McGee Abraham Fondo William McChick Oliver Caldwell George W. Tate Jacob Ragan Samuel C owens and Russell Hicks each one equal unwounded fourteenth part of the above described bargained and Sold premises together with all our singular the privileges and appurtenances and unto the said Robert Campbell three equal described fourteenth parts of the above bargained and Sold premises together with all and singular the privileges and appurtenances To have and to hold the above described land and premises together with all and singular the privileges and appurtenances unto them the said William S Sublette John C McCoy William Gillis Fry P McGee Abraham Fondo. William McChick Oliver Caldwell George W. Tate Jacob Ragan Samuel C Owens Russell Hicks and Robert Campbell

and their heirs and assigns forever to their and each of their our proper use and behoof and all the right title interest and claim which the said Golrit Bredham deceased had in and to the above described land and premises at time of his death and all the right title interest and claim which the heirs and other legal Representatives of the said Golrit Bredham ve Deceased had made the same at the time of his death or have since had or never have and the said James B Deavenport as such commissioners as aforesaid do hereby and by these presents covenant to and with the said William S Talbet John C McCoy William Gillis Try P McGee Abraham Fondo William McChick Oliver Caldwell George W. Tate Jacob Ragan Sam^r C Owens Rusell Heicks and Robert Campbell that they will for ever warrant and defend the right and title to said lands and premises as such commissioners to do the not to be personally liable in any event. In witness whereof I the said James B Deavenport as such commissioner as aforesaid have hereunto set our hands and seals this seventeenth day of August in the year of our Lord Eighteen hundred and forty three

James B Deavenport
(Seal)

County of Jackson } In the Jackson Circuit Court
August Term 1843

Be it remembered that on the fourth day of said term among other proceedings the following were had and made to wit:

Be it remembered that on this day satisfactory proof was made to the court of the death of Peter Boothe and Elliot Johnson two of the commissioners heretofore appointed by the County-make sale of the Real Estate of Gabrel Brudown deceased, and thereupon James B Deavenport surviving commissioners appointed as aforesaid came the open court and acknowledged the execution of a

Deed produced in court conveying to William L Sublette and others the following described Real Estate formerly belonging to the Estate of said deceased lying & being in Jackson County in the State of Missouri to wit: The South west fractional quarter of Section Thirty two Township Fifty Range Thirty three containing one hundred and fourteen acres & 7/100 of an acre also the South East Fractional quarter of Section Thirty two Township Fifty Range Thirty three containing one hundred and forty three acres and 46/100 of an acre which was sold under an order of the Jackson circuit court. made at the April term thereof in the year 1838 & the said James B Davenport being personally known to the court. acknowledge said deed to be his act and deed for the purposes therein mentioned which is ordered to be certified and endorsed on said deed.

acknowledgment

In testimony whereof I hereunto set my hand and affix the Seal of said Court at office in Independence this 17th day of August AD 1843

(Seal)

Saml. D. Lucas Clerk.

State of Missouri } ss
County of Jackson } I Samuel D Lucas Clerk of the circuit court and Ex officio Recorder within and for the County aforesaid do certify that the foregoing deed of Bargain and Sale together with the acknowledgment thereon Endorsed from James B Davenport Commissioner to William L Sublette and others was deposited and duly Recorded in office on the 17th day of August AD 1843 in Book I page 156. an following

Certificate

In testimony whereof I hereunto set my hand and affix the Seal of said Court at office in Independence this 17th day Augst AD 1843.

(Seal)

Samuel D Lucas Clerk

By. John. L. Lucas D.C.

and on the same day to wit on the sixth day of April AD 1855. The following deed was filed in this cause which recites as follows

Deed from Owens to Gillis

This Indenture made and entered into this 18th day of November AD 1845. by and between Samuel C Owens and Francis Owens his wife of the County of Jackson and State of Missouri of the first part, and William Gillis of the County and State aforesaid of the Second part. Witnesseth that the said party of the first part, have for and in consideration of the Sum of Two hundred dollars to them in hand paid by the said party of the Second part, the receipt of which sum is hereby acknowledged, this day granted, bargained and Sold and by these presents do grant, bargain and Sell unto the said William Gillis and his heirs the undivided fourteenth part of the following described tracts or parcels of land lying and being situate in the County of Jackson and State of Missouri To wit, The South west fractional quarter of Section No thirty two (32) Township No fifty (50) of Range No thirty three (33) containing one hundred and fourteen acres and seven hundredths of an acre, and the South East fractional quarter of Section No thirty two (32) of Township No Fifty (50) of Range No Thirty three (33) containing one hundred and forty three acres and forty six hundredths of an acre (But saying and excepting that the words grant, bargain and Sell shall not be an implied a express warranty from the party of the first part, to any pieces or parcels of said land which may have been Sold by the joint owners of the said land previous to this time), and the said party of the first part, doth bargain, Sell and convey unto the said party of the Second part all the right title and interest of the said party of the first part in and to all proceeds arising from any Sale previously made by the joint owners of said land, and also all the right title and interest of the party of the first part in and to the above described two fractional quarters

Sections, together with all the rights, privileges and appurtenances thereunto belonging or in any wise appertaining unto the said William Gillis and his heirs to have and to hold forever. The said two fractional quarter Sections being the tract of land commonly known as the Kansas tract, and upon which the town of Kansas is now situated In witness whereof we Samuel C Owens and Frances Owens the said party of the first part have hereunto set our hands and seals this 18th day of November in the year of our Lord one thousand Eight hundred and forty five

Ack 18th Nov — Samuel C Owens Seal
22nd Dec — Frances M Owens Seal

State of Missouri }ss
County of Jackson } Be it remembered that on the Eighteenth day of November in the year of our Lord one thousand eight Hundred and fifty five before the undersigned Clerk of the Circuit Court within and for the County aforesaid came Samuel C Owens who is personally known to me to be the person whose name is subscribed to the foregoing deed as having executed the same and acknowledged the same to be his act and deed for the purposes therein mentioned an that on the twenty Second day of December in the year aforesaid personally appeared Fanny M Owens wife of the said Samuel C Owens who is personally known to me to be the person whose name is subscribed to the foregoing deed as having executed the same and she the said Fanny M being by me first made acquainted with the contents of said deed and examined Separate and apart from her husband acknowledged that she executed the same and Relinquishes her right of dower to the Real Estate therein mentioned freely and voluntarily and without compulsion or undue influence of her said husband

In testimony Whereof I hereunto set my hand and affix the Seal of said Court at office in Independence this 22nd day of December AD 1845.

(Seal)

Samuel D Lucas Clerk
John S Lucas D. C.

State of Missouri } ss
County of Jackson } I Samuel D Lucas Clerk of the circuit Court & Exofficio Recorder within and for the County aforesaid do certify that the foregoing deed of Conveyance together with the acknowledgment thereon endorsed from Samuel C Owens & wife to William Gillis was deposited and duly Recorded in my office on the 22nd day of December A D 1845 in Book S page 150 and following

In testimony whereof I hereunto set my hand and affix the Seal of said Court at office in Independence this 22nd day of December A D 1845.

(Seal)

Samuel D Lucas Clerk
By, John S Lucas D. C.

and on the same day to wit. on the sixth day of April AD 1855.
The following deed was filed in this cause which recite as follows

This Indenture made and entered into this twentieth day of August in the year of our Lord Eighteen hundred and forty four by and between Russell Hicks of the County of Jackson and State of Missouri of the one part Fry. P. McGee of the same place of the other part, Witnesseth that the said Russel Hicks for and in consideration of the Sum of Two hundred and fifty Dollars lawful money of the United States to him in hand paid by the said Fry P McGee, the receipt whereof is hereby acknowledged has Given Granted Bargained and Sold and by these presents doth Give Grant bargain and Sell unto the said Fry. P. McGee, the following described land and tenements situate lying and being in Jackson County and State of Missouri and Known and designated as our equal undivided fourteenth part of the South west Fractional quarter of Section number thirty two of Township number fifty in Range number thirty three which said tract contains one hundred and fourteen acres and seven hundredths of an acre and also one equal undivided fourteenth part of the South East fractional quarter of Section number thirty two of Township number fifty in Range number thirty three which said tract contains one hundred and forty three acres and forty six hundredths of an acre To have and to hold unto him the said Fry P McGee and unto his heirs and assigns forever the above described tracts pieces or parcels of land together with all the rights privileges and appurtenances thereunto belonging or in any wise appertaining and all the interest therein as above specified,

Deed from Hicks to McGee

And the said Russel Hicks for himself his heirs executors

administrators doth hereby and by these presents Covenant to and with the said Jny. P. McGee that at and until the ensealing of these presents he was well seized of the premises aforesaid of an indefeasable estate in fee simple and had good right to bargain and sell the same and that the same is free from incumberance and also that he will forever warrant and defend the right and title against the claim or claims of all and every person or persons whatever In witness whereof I the said Russel Hicks have hereunto set my hand and seal this the day and year aforesaid.

Rufel. Hicks (Seal)

State of Missouri }
County of Jackson } Be it remembered that on this twentieth day of August In the year of our Lord one thousand Eight hundred and forty four before me the undersigned Clerk of the Circuit Court within and for the County aforesaid Came Rufel Hicks who is personally known to me to be the person whose name is subscribed to the foregoing instrument of writing as having executed the same and acknowledged the same to be his act and deed for the purposes therein set forth

In testimony whereof I hereunto set my hand and affix the Seal of said Court at office in Independence this 20th day of August A D 1844.

(Seal)

Sam.l D Lucas Clerk

State of Missouri }
County of Jackson } I Samd D Lucas Clerk of the circuit court and Ex officio Recorder within and for the County aforesaid do certify that the foregoing deed of Bargain and Sale together the acknowledgement thereon endorsed from Rufel Hicks to Jny P McGee was deposited and duly Recorded in my office on the 20th day of August A D 1844. in Book K page 46. and following.

In testimony whereof I hereunto set

my hand and affix the seal of said court at office in Independence this 20th day of August A.D. 1844.

Samuel D Lucas Clerk
By John T Lucas D.C.

(Seal)

And on the same day to wit; on the sixth day of April A.D. 1855 The following deed was filed in this cause which recites as follows

Know all men by these presents that we Oliver Caldwell and Ann G Caldwell his wife of the County of Jackson and State of Missouri have for and in consideration of the sum of four hundred dollars to us in hand paid by William Gillis of the County and State aforesaid, the receipt of which is hereby acknowledged granted bargained and sold, and by these presents do grant bargain and sell unto the said William Gillis the one undivided fourteenth part of the following described tracts or parcels of Land lying and being in the County of Jackson in the State of Missouri and Know as follows to wit;; The South west fractional quarter of Section No thirty two (32) Township No fifty (50) of Range No. thirty three (33) Containing one hundred and fourteen acres and seven hundredths of an acre, and the South east fractional quarter of Section No thirty two (32) of Township No fifty (50) of Range No thirty three (33) containing one hundred and forty three acres and forty six hundredths of an acre being the land on which the town of Kansas is situated To. have and to hold the above described tracts or parcels of land with all and singular the right and privileges thereunto belonging or in any wise appertaining unto him the said William Gillis his heirs and assigns forever. And we the said Oliver Caldwell and Ann G Caldwell his wife do hereby for our selves our heirs and assigns covenant to and with the said William Gillis his heirs and assigns to warrant and defend the right title claim and interest in and to said land free from the claim or claims of all and every person or persons whatever.

Deed from Caldwell to Gillis

In testimony whereof we the said Oliver Caldwell & Ann G Caldwell his wife hereunto set their hands and

affix their Seals this 5th day of
June AD 1845.

(Seal)

Oliver Caldwell (Seal)
Ann T Caldwell (Seal)

State of Missouri } ss
County of Jackson } Be it remembered that on this tenth day of June in the year of our Lord one thousand Eight hundred and forty five Before me the undersigned Clerk of the circuit court within and for the County aforesaid came Oliver Caldwell and Ann T Caldwell his wife who are personally known to me to be the persons whose names are subscribed to the foregoing instrument of writing as a party thereto and severally acknowledged the same to be their act and deed for the purposes therein set forth the said Ann T Caldwell being by me first made acquainted with the contents thereof and upon an examination separate and apart from her husband acknowledged that she executed the said instrument of writing and relinquishes her right of dower in the Real Estate therein mentioned freely voluntarily and without compulsion or undue influence of her said husband

In testimony whereof I hereunto set my hand and affix the Seal of said court at office in Independence this 10th day June AD 1845.

(Seal)

Samuel D Lucas Clerk
By John L Lucas D.C.

State of Missouri } ss
County of Jackson } I Samuel D Lucas Clerk of the circuit court & Ex officio Recorder within and for the County aforesaid do certify that the foregoing deed of bargain & Sale together with the acknowledgment thereon Endorsed from Oliver Caldwell to William Gillis was deposited & duly

Recorded in my office on the 10th day of June A D 1845
in Book K page 445 & following

In testimony whereof I hereunto set my hand and affix the seal of said court at office in Independence this 10th day of June A D 1845

(Seal)

Samuel D Lucas Clerk
By John T Lucas D.C.

and on the same day to wit; on the sixth day of April A D 1855; The following deed was filed in this cause which reads as follows

Deed from Tate to Evans

This Indenture made and entered into this sixteenth day of March one thousand eight hundred and forty three Between George W. Tate of the County of Jackson and State of Missouri of the first part, and William B Evans of the County and State aforesaid of the Second part, Witnesseth that the said party of the first part for and in consideration of the sum of thirty four dollars, to him in hand paid by the party of the Second part, the receipt whereof is hereby acknowledged hath this granted bargained and Sold and by these presents doth grant bargain & Sell unto the party of the second part all my right title and interest in and to a certain tract or parcel of land lying and being in the County of Jackson and State aforesaid and designated as follows to wit; The tract of land formerly owned by the heirs Gabriel Bredeen lying on the Missouri River and purchased by a Company for a town site, and upon which the town of Kansas is located supposed to contain Two hundred and fifty seven acres be the same more or less, And the said party of the Second part further more binds himself to pay over to the rightful owner all that part of the original purchase money and all other money for which the said party of the first part would have been bound if he the said party of the first part, have had remained a partner of said Company; And the said William B Evans first takes said Tates interest in & to the above described lands & tenements and releases the said Tate from all responsibilities which may have occured or may hereafter occur on account of the above described lands and the said Evans is entitled to all the emoluments arising from the said lands & which the said Tate would have been entitled to had he not have sold the same to the said Evans.

In testimony whereof I hereunto set my hand and Seal this 16th day of March A D 1843.

George W. Tate

State of Missouri
County of Jackson } This day personally appeared before me a justice of the peace within and for the County and State aforesaid George W. Tate whose name is subscribed to the foregoing instrument of writing and acknowledged the same to be his act & deed for the purposes therein mentioned.

William Bowne J. P.

State of Missouri
County of Jackson } ss
I Samuel D Lucas clerk of the circuit court and Ex officio Recorder within and for the County aforesaid do certify that the within deed and acknowledgment from George W. Tate to W. D Evans was deposited and is duly Recorded in my office on the 21st day of April 1831, in Book R, page 338, & following

In testimony whereof I hereunto set my hand and affix the Seal of said Court at office in Independence this 21st day of April 1831.

(Seal)

Samuel D. Lucas Clerk
By John S. Lucas D. C.

and on the same day to wit: on the sixth day of April A D 1855 the following transcript was filed in this cause which recits as follows

Will.

In the name of God Amen I William S Sublette of the County of Saint Louis and State of Missouri do hereby make this my last Will and testament hereby revoking all former Wills and testaments made by me. Item first that all just debts and demands that exists against me shall be paid in full. I bequeath to my beloved Wife Francis that portion of my lands in St. Louis County commencing two hundred Yards West of Mr. Hempstead land at Coopers line. thence in a direct line to the ford on the River Dr. Price at the upper crossing to approach the springs from St. Louis thence running to the line of Mr. Pratiot Leavgere Square thence with Pratiot Leavgere Square where stands a stone which divides from the land sold by me to D Beasly and thence by my Southern boundary to the commencement. I also bequeath ten arpents of land near the end of my lane purchased by me at Pratiots Sale lying in what is called the Barry Dr. Hyps land I also bequeath one hundred and twenty acres of land in Jackson County one fine Prairie Creek and also one share in the town of Kansas in Jackson County in the State of Missouri. I also bequeath to my wife Francis two Lots in Randolphs addition to the of St Louis. Item I bequeath to my wife Francis all my crops now in the Ground and which may have been cut and all my personal Estate negroes Horses Cattle &c except as hereinafter mentioned and all debts due and that may be due up to the first day of March 1846. I bequeath to my wife Francis twenty shares of Stock in the St Louis Insurance Company transfered to me by Sublette & Campbell also Stock in the Bank of the State of Missouri amounting to about one hundred and thirty dollars. Item I bequeath to my brother

Andrew W. Sublette and Solomon P. Sublette to be divided into two Equal parts between them the Sulphur Spring Hem and all the improvements attached thereunto and all the remainder of my lands in the Grotiot Leagues square not previously bequathed to my wife Francis, I also bequeath to them all my land in Cole County and my town Lots in Jefferson City, I also discharge my said Brothers Andrew W. Sublette and Solomon P. Sublette from any debts or monies that they may have owed me and I also discharge my Brother Solomon P. Sublette from my one half of the debt due by him to Sublette & Campbell. I also have settled the debt due by Andrew W. Sublette as a partner of the firm of Vasques & Sublette to Sublette & Campbell by ass one half of same I also bequeath to my said Brothers all my wearing apparel and I bequeath to my brother Andrew my Goldwatch and to my Brother Solomon my Double Barrel Gun I bequeath to Hiram Cook my negro Girl Emma a Slave for life now about twelve years old I bequeath to Sims Gray the horse called Silas and a good Saddle and Bridle. Item I bequeath to my trusty servant Rose now a Slave for life her freedom to take place one year after my death and would recommend her to remain with my wife Francis as long as she finds it her interest to do so. I owe to Bank of Missouri and others about one thousand dollars which I wish my wife Francis to pay out of her portion of the Estate bequeathed to her end also to pay my funeral Expences. and also to Sir William Drummond Steward about six hundred dollars against which I have some off setts Item should the Burnup of Sublette & Campbell required any funds from Estate to pay any indebtedness they am I direct that my wife Francis shall pay one half and my Brothers Andrew & Solomon the remaining half Item should either of my brothers Andrew or Solomon die without lawful issue the Survivor is to

make it the poperty. Item should there be any surplus coming to my Estate from the buissness of Sublette & Campbell. I wish my portion divided into two Equal Shares between my wife Francis and Robert Campbell I bequeath to my Brothers Andrew and Solomon my Durham cow Victoria and all her offspring also two yoke of Steers leaving out Himans four yoke previous to their taking choice. I also give them two sows choice out of four of Doct Hinefords purchased by me I nominate and appoint as my Executors to this my last will and testament, Robert Campbell of the city of St Louis State of Missouri, and Andrew W. Sublette of St Louis. and State of Missouri, but at present in the same County our request that they will as early as possible have all the pertuns of this my will come into effect.

In witness whereof I have hereunto set my hand and Seal this twenty second day of July in the year of our Lord one thous and eight hundred and forty five on Board Steam Boat uncle Ben on the Ohio River near Pittsburg Pensylvania

Seal

William L. Sublette (Seal)

Signed in presence of A I
Cnus B. P. Smith R Campbell

Codicil

I hereby add this Codicil to my last will and in case of the death of my wife Francis without issue by me I hereby direct that one half of the property bequeathed by me to her shall at her death if within the space of five years after my death go to my Brothers Solomon and Andrew or the survivor but if she survivest me more than five Years she is to have the whole property but her and dispesut

Witness my hand and Seal the 22nd July 1845; on Board Steamer uncle Ben on Ohio River near Pittsburg

William L Sublette (Seal)

In presence of
A. S. Corus B. W. Smith R Campbell
The foregoing Will of M. S. Sublette was deposited and duly recorded in my office on the 5th day of May A D 1845.
Samuel D Lucas Clerk

Deed from Francis S Sublette to Robt Campbell

This Indenture made this twenty second day of April in the year of our Lord one thousand Eight hundred and forty seven between Francis S Sublette of one part and Robert Campbell of the other part both of the County of Saint Louis in the State of Missouri, Witnesseth that the said Francis S Sublette in consideration of the Sum of six hundred dollars to her in hand paid by the said Robert Campbell the receipt whereof she doth hereby acknowledge hath granted bargained Sold released and confirmed and by these presents doth grant bargain Sell release and confirm unto the said Robert Campbell and to his heirs and assigns forever the right title claim or interest which she the said Francis S Sublette hath under and by virtue of the Will of her late Husband William S Sublette deceased in and to the following described tracts or parcels of land lying and being in the County of Jackson in the State of Missouri on the South Bank of the Missouri River and Known and designated as the South west fractional quarter of Section Number thirty two in Township Number fifty of Range Number thirty three and the South East fractional quarter of same Section Township and Range on which the town of Kansas is laid as will more fully by reference to a plat of said town filed in the office of the Recorder of said County of Jackson the interest hereby intended to be conveyed being one undivided fourteenth part of the above described lands be the same more or less together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining and all the Estate right title interest

property claim and demand whatsoever of her the said Francis L Sublette of in and to the said premises and of in and to any part and parcel thereof with their and every of their appurtenances To have and to hold all and singular the premises hereby granted and confirmed or mentioned or intended so to be with their and every of their appurtenances unto the said Robert Campbell his heirs and assigns to the only proper use and behoof of him the said Robert Campbell his heirs and assigns forever and the said Francis L Sublette her heirs and assigns and against the lawful claim of all and every person whomsoever (except) Andrew Sublette and Solomon P Sublette and their heirs and assigns shall and will warrant and forever defend by these presents. Mens or an dum! the words by reference erased in the twenty fifth line first page, also the words He everford in the thirty second line erased, and the words defend P Sublette in the thirty second line interlined before signing,

In witness whereof the said Francis L Sublette hath hereunto set her hand and affixed her seal the day and year first above written,

Francis L Sublette (Seal)

State of Missouri }
County of St Louis } Be it remembered that on this twenty second day of April in the year of our Lord one thousand eight hundred and forty seven before me Peter Sargerson judge of probate of the county of Saint Louis personally appeared Francis L Sublette who is personally known to me to be the person whose name is subscribed to the foregoing instrument of writing as a party thereto and acknowledged the same to be her act and deed for the purposes therein mentioned

aknowledgement

In testimony whereof I hereto set my hand and affix the seal

of said Court at Office the probate Court of the County aforesaid at office in said County the day and year before written.

(Seal)

Peter Ferguson Judge of Probate

The foregoing deed and acknowledgement from Francis I Sublette to Robert Campbell was deposited and duly Recorded in my office this 28th day of April AD 1847.

Samuel D. Lucas Clerk
By James M. Davis D.C.

Deed from Reynolds to Reese

To whom all these presents shall come I Joseph H Reynolds Sheriff of Jackson County Send Greeting. Wheras on the fifteenth day of April in the year of our Lord. one thousand eight hundred and forty two there came to my hands as Sheriff of Jackson County from the office of Clerk of the Circuit Court of Jackson County the following two Several Writs of Execution bearing date the fifteenth day of April. Eighteen hundred and forty two which said writs of Execution was one in favor of John Fairman and the other in favor of Joshua C Oliver and both against William M. Chick and issued on Judgments rendered in the Circuit Court of Jackson County on the Eighteenth day of December Eighteen hundred and forty one one in favor of the said John Fairham and the other in favor of the said Joshua C Oliver and both against the said William M Chick which said writs of execution are in the following words and figures To wit:

State of Missouri } Ss
County of Jackson } To the Sheriff of the County of Jackson Greeting

Whereas John Fairham on the 18th day of December in the year of our Lord one thousand eight hundred and forty one at the December term of the Jackson Circuit Court recovered Judgement against William M Chick for his

debt the Sum of Seven Hundred and Seventeen dollars as well as the sum of forty four dollars and Eighty seven cents together with the sum of ninety one cents for his costs as appears to as of Record. These command You that of the Goods and Chattels and Real Estate of the said William M Chick. You came to be made the debt damages and cost aforesaid so that you have the same before the Judge of our Jackson Circuit Court at the Court house in the Town of Independence on the Second Monday in August next then and there to satisfy the said Fairham of his debt damages and costs aforesaid and that you certify to our said Judge then and there how You execute this writ and have you then and there this writ.

Execution

Witness Samuel D Lucas Clerk of our said Court with the Seal thereof hereto affixed at office at Independence this 15th day of April AD 1845.

Samuel D Lucas Clerk

State of Missouri
County of Jackson } ss

The State of Missouri to the Sheriff of the County of Jackson Greeting, Whereas John C Oliver on the 18th day of December in the year of our Lord one thousand eight hundred and forty one at the December term of the Jackson Circuit Court Recovered Judgement against William M Chick for his damages the sum of seven hundred and eighty dollars and sixty nine cents as well as the sum of ninety one cents which the said Joshua C Oliver we adjudged for his costs as appear to us of Record, These command You that of the Goods and Chattles and Real Estate of the said William M Chick you came to be made the damages and costs aforesaid so that you have the same before the Judge of our Jackson Circuit Court at the Court house in the Town of Independence on the Second Monday in August next then and there the said Joshua C Oliver of his damages and costs aforesaid and certify to our said then and there have you

Execution

execute this writ!

Witness Samuel D Lucas clerk of our said Circuit Court with the Seal thereof hereunto affixed at office at Independence this 13th day of April AD 1843.

Samuel D Lucas clerk

By virtue of which said several writs of Execution I did proceed to levy among other property and Real Estate upon the following described Real Estate and all the right title and interest of the said William M Chick in and to the same to wit! a part of Lot number twenty one in the town of West-port in Jackson County and State of Missouri as shown by M Coys plat of said Town and more particularly described by the following boundaries to wit! beginning at the north Eastern Corner of said Lot and running thence Southerly with the Eastern line of said Lot to a point where the Section line to the North West corner of Section number twenty of Township Forty nine in Range thirty three thence South along the western line of said Section to a point Equal distance from the Northern boundary of said Lot. as that point where the said Section line crosses the Eastern Boundary of said Lot. thence Westerly on a parallel with the Northern Boundary of said to a point thirty five feet distance from the Eastern line of said Lot thence Northerly on a parallel with the Western Boundary of said Lot to the Northern Boundary line of said Lot & thence along the Northern Boundary line of said Lot. to the place of beginning. and also lots number fifty two and forty three in the said Town of West port in Jackson County and State of Missouri. and also one equal undivided fourteenth part of the following described tract piece or parcel of land situate lying and being in Jackson County and State of Missouri known and designated as follows To wit! the South West fractional quarter and the South East fractional quarter of Section number thirty two of Township number fifty in Range number thirty three being the land on which is situated the town of Kansas

Dem

and I did proceed to advertise the said Real Estate by advertisement published in the Weston Missouri a public news paper published at the town of Independence in Jackson County and State of Missouri at least twenty days previous to the day Sale specifying the time and place of Sale with a description of the property to be Sold and where situated and on the Eleventh day of August Eighteen Hundred and forty two at the Court house door in town of Independence in Jackson County between the Hours of nine o Clock in the forenoon and five of the clock in the afternoon and while the Circuit Court of Jackson County was in session, I did in pursuance of said notice proceed to upon to Sale all the above described Real Estate publicly by auction for ready money to the highest and best bidder for all the above described Real Estate become the purchaser thereof at and for the Sum of Fifty seven dollars. now therefore I the said Joseph H. Reynolds as Sheriff of Jackson County as aforesaid do hereby and by these presents for and in consideration of the said sum of Fifty seven dollars Lawful money of the United States to me in hand paid the said Joseph H Reynolds by the said Richard. R. Ries the receipt whereof I do hereby acknowledge give grant alien and convey unto the said Richard R Ries and to his heirs and assigns forever, all the right title and interest which the William M Chick had in and to the above described Real Estate and all the rights privileges appurtenances and hereditaments thereunto belonging or in any wise appertaining on the said Eighteenth day of December in the year of our Lord one thousand eight hundred and forty one the date of the Rendition of the aforesaid Judgements as fully and absolutely as I the said Joseph H Reynolds as Sheriff could ought to do. To have and to hold the above described Real Estate and all and singular the privileges appurtenances hereditaments and Rights unto him the said Richard. R. Ries and his heirs and assigns forever.

Dem

In witness where of I the said Joseph

H Reynolds as such Sheriff as aforesaid have hereunto set my hand and affixed my Seal this eighteenth day of August in the year of our Lord one thousand Eight hundred and fifty three.

Joseph H Reynolds (Seal)
of Jackson County

State of Missouri }
County of Jackson } In the Circuit Court August term A D 1843

Be it remembered that on the fifth day of said term among other proceedings the following wer had and made to wit Joseph H Reynolds Sheriff of Jackson County this day appears in open court and acknowledges the Execution of a deed To Richard R Rees for the following described tracts or parcels of land To wit; a part of Lot number twenty one as described in said deed also Lots number thirty two and thirty three all in the Town of Westport County of Jackson and State of Missouri and also one equal undivided fourteenth part of the following described tract piece or parcel of land situated lying and being in Jackson County and State of Missouri and known and designated as follows To wit: The South West fractional quarter and the South east fractional quarter of Section number Thirty two of Township number Fifty in Range number thirty three being the land on which is situated the Town of Kansas which was sold under two Executions issued by the Clerk of the Jackson Circuit court one in favor of John Fairham against William M Chick one in favor Joshua B Oliver against William M Chick which is ordered to be certified and endorsed on said deed

(Seal)

In testimony whereof I hereunto set my hand and affix the Seal of said court at office in Independence this 18th day of August A D 1843.

Samuel D Lucas Clerk

State of Missouri } ss
County of Jackson } I Samuel D Lucas Clerk of the circuit Court and Exofficio Recorder within and for said County, do certify that the foregoing deed of bargain and Sale together with the acknowledgement thereon endorsed from Joseph H Reynolds Sheriff of Jackson County to Richard. R. Ries was deposited and duly Recorded in Book I page 159. and following

(Seal) In testimony whereof I hereunto set my hand and affix the Seal of said Court at office in Independence this 18th day of August A D 1843.

Samuel. C. Lucas Clerk

This Indenture made and entered into this Eighteenth day of May in the year of our Lord one thousand eight hundred and fifty six by and between Richard. R. Ries and Francis Ann Ries his wife of the County of Jackson and State of Missouri of the first part and John C McCoy of the same County and State aforesaid of the other part Witnesseth that the said Richard R Ries and Francis Ann Ries his wife for and in consideration of the Sum of three Hundred dollars lawful money of the United States to them in hand paid by the said John C McCoy the receipt whereof is hereby acknowledged here this day given granted bargained and Sold and by these presents do hereby give grant bargain Sell remise release and forever Quit Claim unto the said John C McCoy and his heirs and assigns forever all that land and Real Estate lying and being in the County of Jackson and State of Missouri and Known and described as follows To wit; as all our right title interest and claim either in Law or equity of in and to the one undivided fourteenth part of the South West fractional quarter and the South East fractional quarter of Section number thirty three of Township number Fifty in Range number thirty three being the land on which is situated the town of

Reese to McCoy

Kansas. To have and to hold the above bargained sold remised released and forever quit claimed premises together with the rights privileges and appurtenances thereunto belonging or in any wise appertaining unto him the said John C McCoy and his heirs and assigns forever, and it is hereby expressly understood by these Express terms that the words grant bargain and sell or granted bargained and sold and all the words of singular import are only intended to convey to the said John C McCoy said right title and interest and no others as the said Richard R Ries and Francis Ann Rees his wife have of in and to the premises aforesaid and this deed is only intended to be a quit claim Deed of such and for such right and title as the said Richard R. Rees and Francis Ann Rees his wife, have of in and to said land and premises without any covenant or obligation whatever on the part of the said Richard R Rees and Francis Ann Rees his wife

In witness whereof, we the said Richard R. Rees and Francis Ann Rees his wife have hereunto set our hands and seals this the day and year aforesaid.

Richard R Rees (Seal)
Francis Ann Rees (Seal)

State of Missouri } ss
County of Jackson } Be it remembered that Richard R Rees and Francis Ann Rees his wife who are personally known to the undersigned a justice of the peace within and for said County to be the persons whose names are subscribed to the within deed as parties thereto, this day appeared before me and acknowledged that they executed and delivered the same as their voluntary act and deed for the uses and purposes therein contained And the said Francis Ann Rhee being by me made acquainted with the contents of said deed acknowledged on an examination apart from her husband that she executed the same and Relinquishes her dower in the Real Estate therein

mentioned freely and without compulsion or undue influence of her said Husband

Given under my hand this 18th day of May AD 1846.

James Patton Justice of the peace

The foregoing deed and acknowledgment from Richard R. Rus and wife to John C McCoy was deposited and duly Recorded in my office on the 1st day of July 1846.

Samuel D. Lucas Clerk
By, Richard H. Allen D. C.

Deed from Fonde to Jobe

This Indenture made and entered into this thirty first day of May in the year of our Lord one thousand eight Hundred and forty five by and between Abraham Fonde and Francis Fonde his wife of the County of Van Buren in the State of Missouri of the one part and Henry Jobe of the County and State aforesaid of the other part Witnesseth that the said Abraham Fonde and his wife for and in consideration of the Sum of Four Hundred and twenty five dollars to them in hand paid the receipt whereof is hereby acknowledged have granted bargained and Sold and by these presents do give grant bargain Sell and convey unto the said Henry Jobe and unto his heirs and assigns forever, all our interest in and to all the following tracts pieces or parcels of land situate lying and being in the County of Jackson in the State of Missouri and described as follows To wit, (32) and also the South East quarter of Section Number thirty two (32) of Township number Fifty (50) in Range number thirty three (33) Containing according to the United States Survey two Two Hundred and seventy one acres and Eighty three Hundredths which said interest is the one undivided fourteenth part thereof To have and to hold the above bargained and Sold premises with all the and singular the rights privileges and appurtenances thereunto belonging or in any

wise appertaining unto the said Henry Sohe and to his heirs and assigns forever, and the said Abraham Fonde for himself his heirs and assigns doth hereby covenant to and with the said Henry Sohe that at and until the ensealing of these presents he is well seized of the aforesaid interest in the premises aforesaid and has good rights to bargain and sell the same in manner and form at above written and that he will warrant and forever defend the same unto the said Henry Sohe against the claim of himself his heirs or assigns and all persons claiming by through or under him but none others. The above tracts of land being the same purchased by the said Abraham Fonde and others from the commissioners appointed by the Circuit court of Jackson County in the State of Missouri to sell the Real Estate of Gabriel Broadhaum deceased and known as the Town of Kansas.

In testimony whereof the said Abraham Fonde and Frances his wife have hereunto set their hands and seals this day and year first above written

Abraham Fonde (Seal)
Frances her x mark Fonde (Seal)

State of Missouri }
County of Van Buren } ss

Be it remembered that on this thirty first day of May in the year of our Lord one thousand eight hundred and forty five before me James C Jackson Clerk of the Circuit Court within and for the County aforesaid personally came Abraham Fonde and Frances his wife who are personally known to me to be the persons whose names are subscribed to the foregoing deed as a party thereto and severally acknowledged the same to be their act and deed for the purposes therein mentioned she the said Frances Fonde being by me first made acquainted with the contents of said deed upon examination separate and apart from her said husband acknowledged that she executed the same and that she relinquished her dower to the said lands and tenements therein

mentioned freely and voluntarily and without compulsion or undue influence of her said Husband

In testimony whereof I have hereunto set my hand and affixed the Seal of said Court at office in Harrisonville this day and year aforesaid

(Seal)

James. C. Jackson Clerk

The foregoing deed and acknowledgment from Abraham Tonde & wife to Henry Jobe was deposited and duly Recorded in my office this 5th day of December A D 1846.

Samuel D Lucas Clerk
By James W. Davis D. C.

State of Missouri }
County of Jackson } Personally appeared William Gillis Fry P McGee John C M McCoy Jacob Ragan Henry Jobe William B Evans before me Watton Bales a Justice of the peace within and for the Township of Kan, County and State aforesaid and severally acknowledged the within Town plat to be their act and deed for the purposes therein set forth hereby conveying and granting for Public uses, all the Streets alleys Squares and public grounds as shown on the within plat reserving however to themselves individually and collectively and to their heirs and assigns forever the inclusive right and privileges of Ferriage on said Town tract and the Exclusive right of landing and fastening on said Town Tract all ferry Boats and other Water Craft used for the purposes of ferriage on the Bank in front of said town Taken and certified this 30th day of April in the year of our Lord one thousand Eight hundred and forty Six.

Walter, Bales J. P.

State of Missouri } ss
Jackson County } I Samuel D Lucas Clerk of the

Circuit Court and Ex officio Recorder within and for the County aforesaid do certify that the proceeding 17 pages and part of the 18th page contain a full and perfect transcript of the Record of the last Will and Testament of William L Sublette deceased together with the certificate of Probate and note of Record thereof, also the transcript the Record of a deed and acknowledgement from Francis L Sublette To Robert Campbell together with the note of Record they also the transcript of the Record of a deed and acknowlegment from Joseph H Reynolds Sheriff of Jackson County To Richard R Rees together with the note of Record thereof, also the transcript of the Record of a Deed and acknowledgement from Richard R Rees. To John C McCoy together with the note of Record thereof, also the transcript of the Record of a deed and acknowledgement from Abraham Londe, To Henry Lohe, together with the note of Record thereof, and also a transcript of the acknowledgment of the original plat of the town of Kansas together with the note of Record thereof as the same ~~the transcript~~ remains of Record in my office

clerk's Certificate

(Seal)

In witness whereof I hereunto set my hand and affix the Seal of said court at office in Independence this 11th day of August A D 1853.

Samuel D Lucas Clerk
By O. P. W. Bailey D. C.

And afterwards at a circuit court begun and held at the Court house in the City of Liberty in the County of Clay in the State of Missouri On the fourth Monday in April A D 1855 The Honorable George W Dunn Judge of the fifth Judicial in said State including the County of Clay. and on the fourth day of said April Term is the following Record viz

Jacob Ragan Et al
vs
John C McCoy Et al

Record

Now at this day comes the parties aforesaid by their attornies and by agreement this Cause is continued until the next term of this court

"

And afterwards to wit at the October Term 1855 of the Clay circuit court on the second day of said Term is the following Record

Jacob Ragan Et al
against
John C McCoy Et al

Record

Now at this day comes the parties aforesaid by their attornies and the death of Wm B Evans is suggested And on motion James C Evans Administrator of said deceased is substituted in his stead and by agreement this cause is continued at the costs of said plaintiffs until the next term of this court

And afterwards to wit at the April Term of the Clay Circuit Court for the Year A D 1856: and on the third day of said April Term being the 30th day of April A D 1856 in the following Record to wit

Jacob Ragan Et al
against
John C McCoy Et al

Now at this day comes the parties aforesaid by their attorneys and by agreement this cause is continued at the costs of the Plaintiffs

Record

And on motion an attachment is ordered in this cause against Thompson McDaniel Joseph Jarbo returnable to the next term of this Court. until which time this cause is continued

And afterwards to wit on the 30th day of October AD 1856 at a circuit court held at the court house in the City of Liberty in the County of Clay and State of Missouri one on the third day of said October Term AD 1856 is the following further record

Jacob Ragan Et al
against
James C McCoy Et al

Now at this day the death of William Evans being suggested thereupon James Harrett Evans Sarah Evans John Evans and Emily Evans by their Guardian Amelia Evans and Amelia Evans Amanda Campbell intermarried with William Campbell and James Evans and presents their petition asking to be made party plaintiffs in this cause which is accordingly done and on motion Defendant John C McCoy have leave to file an amended answer in this cause on or before the first day of January next by furnishing plaintiffs with a copy of the same and this cause is continued

Record

and afterwards to wit on the same day is the following Record

Jacob Ragan Et al
Against
John C McCoy Et al

Now at this day comes Thomson McDaniel and Joseph Jarbo and rendered their Excuse for not obeying a Subpoena served upon them which is by the court received and it is ordered that they be released from the attachment served upon them and it is ordered that the costs of said attachment be taxed in this cause

and on the same day to wit on the 30th day of October AD 1856 the following petition to be made party is was filed which recites as follows-

" Ragan & others
against
John C McCoy

Petition

Since the commencement of this suit plaintiff Evans has departed this life, and leaving Amelia Evans his widow Amanda Campbell who had intermarried with William Campbell James Evans & Emily Evans John Evans Manar Evans & Harriet Evans the last four an in facts who appear by their next friend Amelia Evans and all the said representatives pay the court to be made plaintiffs in this cause & be substituted in peace of their deceased ancestor and to be permitted to prosecute the same

Smart & Shealey
for parties

makes oath and says he believes the annexed & foregoing petition an true.

and on the first day of January AD 1857 the following Supplementary answer was filed and recites as follows

Jacob Ragan
Trey B M Lee

In the circuit court
of Clay County

William Gillis
Robert Campbell
Amelia Evans
William Campbell &
Supplemental Answer Amanda Campbell his wife
James Evans
Emily Evans &
Harriet Evans } by their Guardian
Amelia Evans } Plaintiffs
against
John C McCoy &
the unknown heirs of
Henry Tobe dec. Defendants

John C McCoy one of defendants by way of supplemental answer in addition to his answer heretofore filed in this cause. State that he is informed and believes and therefore chargis that he did mar by James B Davenport surviving commissioner did not convey and but the title to the lands mentioned in petition to plaintiffs and others as alleged in said petition and this defendant therefore owns the allegation in petition changing that said dw mar by said Davenport as surviving commissioner conveyed the fee simple in and to wit lands to Jacob Ragan and this — and for further answer to plaintiffs petition this defendant states that long prior to the filing of the plat of said town of Kansas in the year 1846 as alleged in petition to wit in the year 184 plaintiffs has parted with all their interest in and to the land in said town of Kansas which plaintiffs changs that this defendant used for the purposes of a ferry and for ferry privileges as stated in petition — that the title to said land and the night to use the same had, prior to the filing of said plat in 1846, been dedicated to the public by the proprietors of the town of Kansas and by said dedication plaintiffs parted with all their interest in and to said land

and this defendants states that this his supplemental answer may be taken in connection with his original answer filed in this cause as showing his defence to plaintiffs

Woodson Chrisman Conger
& Heavey attys for deft McCoy

John McCoy above named defendant makes oath and says that he believes the foregoing answer and the matters as therein stated are true

John A. McCoy

affiant Subscribed and sworn to before me
this 28th day of December 1856.

Samuel D Lucas clerk of the
Jackson circuit Court,
Missouri

And afterwards to wit on the 1st day of May AD1857 it being the fifth day of the April Term AD1857 of the Clay Circuit Court the following deposition was filed in this cause with at plat thereto annexed which deposition reads as follows—.

Deposition Deposition of witnesses produced sworn and examined on the sixteenth day of april Eighteen hundred and fifty seven between the hours of six o'clock in the forenoon and six of the clock in the afternoon of said day at the office of Jacob E Quick a justice of the peace in the town Laclede in the County of Linn and State of Missouri before me J E Quick a justice of the peace within and for the County aforesaid in a certain Cause now depending in the Circuit Court of the County of Clay in the State of Missouri between Jacob Ragan and others Plaintiffs and John A McCoy and others defendants on the part aforesaid defendants. William S Donahue of lawful age being produced

Deposition

Sworn and examined on the part of the defendants deposeth and saith in the year Eighteen hundred and thirty eight or Eighteen hundred and thirty nine I laid out and made a plat of the town of Kansas in the County of Jackson State of Missouri. the plat here produced to me I recognized as the plat I made of said town at the time aforesaid which said plat marked by me with my initials W. S. D. and also an exact copy thereof likewise marked W. S. D. are hereto attached. I was employed by one of the proprietors of said town to make the aforesaid plat. Their was a public sale of Town lots of said Town of Kansas made by the proprietors in the year Eighteen hundred & thirty eight or thirty nine at which I was present A number of lots were sold at said sale and all the lots so sold were sold as laid out on the plat and with reference to the streets as laid out in said plat and further this deponent saith not.

William. S. Donohoe

Subscribed and Sworn to before me on the day at the place and within the hours first aforesaid

Jacob. E. Quick J. P.

I. J. E Quick a justice of the peace within & for the County of Linn & State of Missouri do certify that in persuance of the within notice came before me William S Danoho who was by me sworn to testify the whole truth of his knowledge touching neither in controversy aforesaid that he was examined and his examination reduced to writing by me on the day between the hours and at the place in that behalf first aforesaid and his said deposition is now here with returned and I further certify that the said William S Danoho is a resident of the said County of Linn State of Missouri Given and certified before me this sixteenth day of April Eighteen hundred and fifty seven

Jacob. E. Quick. J. P.

State of Missouri } ss
County of Linn } I, F. F. Woodruff Clerk of the County court within and for the County and State aforesaid do hereby certify that Jacob E Quick whose name is subscribed to the foregoing certificate is now and was at the date of said certificate and acting Justice of the peace within and the County and State aforesaid duly Executed commissioned and sworn into office and by law authorized to administer on this and that his signal.

In testimony whereof I hereunto set my hand and affix the Seal of said Court at office in this 16th day of April A D 1857.

(Seal)

F. F. Woodruff Clerk

Platte

And afterwards to wit on the first day of May 1857. the following transcript was filed in this cause and recites as follows.

County of Jackson ss

The State of Missouri! To all persons to whom these presents shall come Greeting: Know Ye that Whereas W. B Evans late of the County of Jackson died intestate as it is said having at the time of his death property in the State, and Whereas James C Evans former administrator of the Estate of said deceased, having resigned his letters of Administrator, and Whereas the property aforesaid may be lost, destroyed or diminished in value if speedy care be not taken of the same To the end therefore that the said property may be preserved and disposed of according to Law. We do hereby appoint Amelia Evans Administratrix Debonera of all and singular the goods and chattles rights and credits of the said deceased that and at this time and administered upon, belonging to said Estate with full power and authority to receive and dispose of said property according to Law, and to collect all monies due said deceased, and in general to do and perform all other acts and things are or that may hereafter be required of, here by Law.

Transcript

In testimony whereof I John R Swearingen Clerk of the County Court and Ex officio Clerk of the Probate business of the Probate and Common Pleas Court within and for the County aforesaid have hereunto set my hand and affixed the Seal of said Court at office in the City of Independence this 21st day of May A.D 1857.

(seal)

John R. Swearingen Clerk

State of Missouri } ss
County of Jackson }

I John R Swearingen Clerk of the County Court, and Ex officio Clerk of the Probate business of the Probate and Common Pleas Court within and for the County afore-

said, do hereby certify that the above and foregoing Letters of administration Testamentum was duly recorded in my office on the 21st day of May 1855 in Book I page 134. before delivery

In Testimony whereof I have hereunto set my hand and affixed the Seal of said court at office in the city of Independence this 21st day of May AD 1855.

(Seal)

John R. Sweaningen Clerk

State of Missouri }
County of Jackson } ss

I John R Sweaningen Clerk of the County court and Ex officio clerk of the Probate business of the Probate and Common Pleas Court within and for the County aforesaid do hereby certify that the above and foregoing transcript is a full true and perfect transcript of the Letters of administration, and certificate of Record thereon endorsed as the same is of record in my office,

In Testimony whereof I have hereunto set my hand and affixed the Seal of said court at office in the city of Independence this 21st day of April AD 1857.

(Seal)

John R Sweaningen Clerk

Clerks fee 65 cents paid by admrs Petitioner

John R Sweaningen clerk

State of Missouri }
County of Jackson } ss

In the Jackson County Probate & Common Pleas court August Term AD 1855.

At a Probate and Common Pleas Court begun and held at the Court house in the city of Independence in and for the County aforesaid on the 3d Monday in August in the year of our Lord one thousand Eight hundred and fifty five the same being the 20th day of said month, Present

the Honorable James R Healey Judge of said court
Be it Remembered that at the time aforesaid of said Court,
and upon the 1st day thereof August others the following pro-
ceedings were made and had to wit:
The Court appoints Amelia Evans Guardian of the
persons and Estate of her Children, Harriet R Evans
Benjamin F Evans and Maria M. Evans Minor heirs of
William B Evans deceased under the age of Fourteen years
of age. and thereupon she Elijah M McGee her security
entered into bond in the Sum of Six Thousand dollars
Conditioned as the law directs, which said bond and Secu-
rity are by the Court here appointed"

Now at this day Comes into open court Emma Evans
and John B Evans Minor heirs of William B Evans decea-
sed over the age of fourteen years and Choose as the Guardi-
an of these persons and estate their Mother Amelia
Evans, which said Choice is by the Court here appointed
and said Amelia Evans appointed said Guardian accor-
dingly and thereupon she with Elijah M McGee her Secu-
rity entered into bond in the Sum of Four thousand
dollars conditioned as the Law directs. What said bond
and Security are by the Court here appointed.

State of Missouri }
County of Jackson } ss
I John R Swearengen Clerk of
the County Court and Ex officio Clerk of the Probate business
of the Probate and Common Pleas Court within and for the
County aforesaid do hereby certify that the foregoing is a full
true and perfect transcript of the orders of appointment
of Amelia Evans as Guardian of the children, in as full a
manner as the same is of file Record in my office,
and I further certify that the said Amelia Evans is still
the lawful and acting Guardian of said Minors

In testimony Whereof I have hereunto set my hand and affixed the Seal of said Court at office in the city of Independence this 21st day of April AD 1857.

(Seal)

John R Sweanengen Clerk.

Clerks fees 65 cents paid by Guardian.
John R. Sweanengen clerk

And afterwards to wit: 1st day of May 1857 the following proceedings were had in this cause in the circuit court within and for the County of Clay, it being the 5th day of said April term AD 1857, to wit:

Jacob Ragan Fry O McGee William Gills Robert Campbell William Evans Amelia Evans & Amanda Campbell intermarried with William Campbell James Evans & Emily Evans John Evans Warren Evans & Harriet Evans the last four are infants who appear by their next friend Amelia Evans

Record

against

John McCoy and the unknown heirs of Henry Sobe Defendant

Now at this day comes the parties aforesaid by their respective attornies and both parties being ready for trial and neither parties Requireing a Jury this cause is submitted to the court upon the petition answer, and proofs thereupon the court finds for the Plaintiff William Gills Fry O McGee and Jacob Ragan against the said defendant John McCoy that is for William Gills the sum of two hundred and ninety four Dollars for Fry O McGee the sum of one hundred and Ninety six dollars and for Jacob Ragan the sum of ninety Dollars

It is therefore considered by the court that the said William Gillis recover against the said defendant as well as the sum of two hundred and ninety four dollars as also his costs and that the said Thos P McGee recove against said defendant and well as the Sum of one hundred and Ninety Six dollars as also his costs and the said Jacob Ragan recover against the said defendant as well the Sum of Ninety Eight dollars as also his costs in the behalf Expended and that Execution issue therefore. And It is further considered by the court that the other Plaintiff take nothin by reason of his suit and the court finding for the said Plaintiff took into consideration the facts as they existed at the commencement of this suit and not what accrued afterwards.

State of Missouri }
County of Clay } I Alexander J Calhoun
Clerk of the Circuit court within and for the County aforesaid Certify that the foregoing seventy two pages contain a full true and complete Copy of the records and proceedings had and made in the above entitled cause together with a Copy the original papers filed in this cause as the same remain of Record and on file in my office

In Testimony whereof I hereunto set my hand and affix the Seal of said court at office in the City of Liberty this 24th November A.D. 1857

Alexander J Calhoun
Clerk

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Clay circuit court

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Jacob Ragan ~~nathan~~
~~Respondents~~
Fry & McGee & Wm Gillis

vs } Record

25, 27, 28, 29, 30
31, 32

John C McCoy ~~nathan~~
Plaintiffs in Error

filed Dec 16, 1857

Wm E Duncan
Clerk

Clay

5th

Jacob Ragan & others Plaintiffs
against
John C McCoy & others defendants
Judgment in the Clay
Circuit Court April Term
1857

Messrs Smart & Shelby attorneys of Record
for the above named Plaintiffs.

You will please take notice that the defendants in the above cause have sued a writ of Error in the above entitled cause and that we shall bring this cause to trial by the record before the Supreme Court at the City of Jefferson, at the next January term of said Supreme Court on such day in said January term as the same may be docketed.

Faithfully Yours
Hovey & Buchanan
attys of record for
above defendants

We accept service of a copy of the above notice on this 8th day of December 1857
Smart & Shelby
attys of Record for
the above plaintiffs

Jacob Ragan & others

vs } Notice of Writ of Error

John C McCoy & others

filed Dec. 16 1857

Wm E Dunn, Court Clerk

Jacob Ragan
Fry P McGee
William Gillis
Robert Campbell
William Evans
Amelia Evans
Amanda Campbell
who is intermarried
with Wm Campbell
James Evans
Emily Evans
John Evans
Warren Evans &
Harriet Evans
against
John C McCoy &
The unknown heirs of
Henry Job dec'd

Respondents
(Plaintiffs below)

Plaintiff in Error

In the Supreme Court
January Term AD 1858

Error to Clay Circuit Court

This was an action brought by plaintiffs below, by petition under the Practice act of 1849. to recover rents for, and title to a Ferry privilege at Kansas City, in Jackson County. It was commenced in

the Jackson Circuit Court at the September Term 1853, and the answer of defendant being filed the cause was afterwards sent to Clay Circuit by change of venue. The record is very lengthy, and its history is not necessary to the objections here taken. The Answer denies the facts in the petition. At the April Term 1857 this cause was submitted to the Clay Circuit Court without a jury, and the Court, without making any written finding of the facts, the same not being waived, rendered a judgment against the said John C McCoy defendant below, in favor of a portion of the plaintiffs for different sums amounting in all to about $600.

To reverse which judgment of the Court below the said John C McCoy brings this Cause to this Court by writ of Error.

Hovey, of Counsel for the plaintiff in Error, will insist upon the following point and authorities

That the Court below ought to have made a written finding of the facts, and for want of such written finding, the judgment should be reversed

See Bates vs Bower 17 Mo Reps 550
" Farmer vs Lyon 19 " " 122
" Jarvis vs Harris 20 " " 262
" Davidson vs Rosier " " " 132
" Jamison vs Hughes " " " 133
" White vs Bennetts " " " 262

All which is respectfully submitted and plaintiff in Error prays that the Judgment of the Court below be reversed and that he be restored &c

J Brown Hovey
of Counsel for P. in E.

Hovey in Reply

1st No bill of Exceptions could have been obtained. The Case had not progressed to the point of tendering a bill of Exceptions when a final judgment was rendered upon an unfinished trial.

2nd The finding of facts is the

judgment-roll under act of 1849. And is therefore a necessary part of the record without being saved as such. The return of the writ of Error shows that the whole record is here, and that no finding is upon it.

3rd The judment is neither irregular or void, but merely erroneous. Therefore a motion to set it aside would avail nothing. The judgment Could only be opened by writ of Error, upon apparent omission shown by the record proper. The decisions simply state that if there be no finding, Judment will be reversed.

See Nearns vs Harbert 25 Mo Reports 352 (pamphlet vol)

Jacob Ragan & others Respondents

against Plaintiffs Brief

John C McCoy Plaintiff in Error

filed Dec. 16 1857
Wm E Drury comp
Clerk

Hovey

Jacob Ragan & others Respondents
against
John C McCoy & others. Plaintiffs in Error
In the Supreme Court
January Term AD 1858
Error to the Clay Circuit Court

The said plaintiff in Error comes and shows to the Court, that in the record and proceedings in this cause in the Court below, manifest Error hath intervened, to the great damage of the said plaintiff in Error, And for a more specific assignment of Error, the said plaintiff in Error avers that the Court below Erred in this to wit, That the Court below made no written finding of the facts of this Cause, when by the law of the land [redacted] the Court below ought to have made a written finding of the facts of this cause. And for this and other Errors apparent upon the record the said plaintiff in Error prays that the judgment of the Court below be reversed and held for nought, and that he be restored &c

J Brown Hovey
of Counsel for the
Plaintiff in Error

25

Jacob Ragan & others

vs } Assignment of Error

John C McCoy & others

Filed January 11. 1858
Wm E. Dunscomb
Clerk

Hovey. Prosecuting

Jacob Ragan et al. Defendant in Error
Against & On the Supreme Court
John C McCoy Plaintiff in Error
Error to Clay Circuit Court

This was a petition originally brought to Jackson County, by change of Venue moved to Clay, When the trial was had various documents were read in testimony, and also paral testimony was offered and received, Judgment was rendered in favor of part of the plaintiff Neither party by bill of exceptions saved any point made before the Court, nor neither was any bill of exceptions signed & filed or tendered by Defendant, The record does not show that the finding was in writing

The case is brought here by writ of Error The defendants in Error rely upon the following points and Authorities to sustain the judgment of the Circuit Court -

1st The law does not require that the written finding of the Court shall be spread upon the record, It could then only become a part of the record by bill of exceptions. Then being no bill of exceptions for aught that appears to this Court, a written finding may have been made by the Circuit Court - Article XV of Practice Act 1849 - London vs King 22 Mo Rep 336

2 This Court cannot look into any case unless it is accompanied by a bill of exceptions State vs Wiedner 22 Mo Rep 327. Ames vs Bircher lb 586.

Shelby for Defendant in Error

Ragan et al Deft in Error

vs

Jno C McCoy Pltff in error

Defendants brief

Sheley for deft in error

Article XV Practice act 1849
London vs King 22 Mo Rep 336
State vs Weidner 22 Mo Rep 327
Ames vs Bircher 22 Mo Rep 586

filed Jany 14. 1858
Wm E. Dunscomb
Clerk

Jacob Ragan and Others
Against
Jno C McCoy

Defendants in error say that there is no sufficient error in the record of the case aforesaid to reverse the said cause And that the same ought to be affirmed

Shelby
On Ragan et al

25

Ragan et al

v

Jno C McCoy

Trin [illegible]

filed May 15 1858
Wm E. Dunscomb
Clerk

No 25

Ragan
v
N Cay

This suit was begun under the act of May and was tried by the Court without a jury. The record does not contain the finding of the facts by the Court, and for that reason according to the settled practice of this Court since the case of Bales and Brown (17 Mo 552) the judgment must be reversed and the cause remanded. 20. Mo 132. 133

The finding is a part of the record proper and it is not necessary to preserve it in a bill of exceptions. This rule does not apply to actions begun under the act of 1855

The other judges concur

J. O. Richardson

No 25

Rogan

v

McCoy

Opinion of the Court

Rev & Remanded

filed Feby 12 1858

Wm E Dunscomb

Clerk

Rehearsal