Magner, Patrick vs. O'Flaherty, Thomas C 1855 St. Louis 3602/3
Raftery, Thomas

580/4

dismissed
pretended to be atty's for Coffey, Henry
M purchased "Rock House" for $5687.50
O+R file demurrer - saying court has no jurisdiction - sustained
M appeals

The State of Missouri, ss.

The State of Missouri, *To the Honorable the* Saint Louis Court of Common Pleas *in said State, GREETING:*

WHEREAS, In the record and proceedings in a certain cause lately pending in the Court of Common Pleas held in and for the County of Saint Louis

wherein Patrick Magner was plaintiff — and Thomas O'Flaherty & others were defendants

in an action of manifest error hath intervened, to the great damage of said plaintiff as by his 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 in the City of Saint Louis, in the County of Saint Louis, in said State, on the third Monday in October inst. ~~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 S. GLANVILLE, Clerk of our said Supreme Court, at office, in the City of Saint Louis, the first day of October in the year of our Lord one thousand eight hundred and fifty five.

Wm. S. Glanville,

CLERK.

$1.50 paid by Patrick Magner.

State of Missouri }
County of St. Louis } ss

I Charles H. Hicks Clerk of the St. Louis Court of Common Pleas within and for the County aforesaid, in obedience to the command of the within writ, herewith transmit a full true and complete transcript of the record and proceedings in the within named cause as fully as the same remains in my Office

In testimony Whereof I hereto set my hand and affix the seal of said Court at Office in the City of St. Louis this 2d day of Oct A D 1855

C. H. Hicks Clk
C. C. P.

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State of Missouri } ss. Be it remembered that
County of St Louis } heretofore, to wit: on the Nine=
=teenth day of August 1854, there was filed in the Office of the Clerk of the St Louis Court of Common Pleas, within and for the County aforesaid a certain Petition, which is in the words and figures following, to wit:

Patrick Magner plaintiff
against
Thomas O'Flaherty &
Thomas J Rafferty
defendants

In the St Louis Court of Common Pleas.
September Term
A D 1854.
County of St Louis.

Petition

Plaintiff states that the defendants on the 5th day of January A D 1852 pretending to act as the attor=
=neys in fact for all the heirs of the late Henry Coffey deceased gave public notice, by advertise=
=ments printed & published in the Newspapers of St Louis, & also by public handbills posted up in public places in said city among other things, that they were the attorneys in fact for all the heirs of the late Henry Coffey, being duly authorised for that purpose that they would on the second Mon=
=day of February 1852 expose to sale at the North front of the Court House, in the city of St Louis to the highest bidder certain real estate in said advertise=
=ments & handbills described among the same the following, a lot in said city on Broadway, known as "Rock House," also a strip of ground adjoining said Rock House, being the same premises acquired by Henry Coffey in his lifetime from John Slacker

Samuel M Bowman, containing about thirty two feet front on Broadway, & extending Eastwardly one hundred feet more or less, the deeds for which are duly recorded in the Recorder's office of said county.

Plaintiff also states that on the said second Monday of February 1852, said defendants claiming & pretending to be & to act as the Attorneys in fact for all the heirs of the said late Henry Coffey did in fact expose to sale at said North front of the Court House in the City of St Louis to the highest bidder on the terms in said advertisements & hand bills set forth among other of the real estate therein mentioned, the aforesaid lot & premises above described. And plaintiff also says that previous to said sale he had seen the aforesaid advertisments & handbills & attended said sale on the said day & place named in good faith for the purpose of purchasing at said sale. At the time of said sale & before the above described premises were offered the defendants declared & gave notice publicly that the title thereto to be then sold, was indisputable & that they were duly authorised attorneys in fact for all the heirs of said Henry Coffey with power to dispose of the same.

Plaintiff says that relying upon the said declarations & also upon the statements in the said advertisements & handbills that defendants were the Attorneys in fact of all the heirs of the said late Henry Coffey, being duly authorised to sell the above described premises as therein set forth, did then & there purchase the said above described premises at & for the price & sum of $ 5687.50. And did then & there pay in cash to defendants, the sum of $ 10.00 part of the aforesaid price and was then & there & always ever since has been ready & willing to

3 comply with the terms of said sale — which were one fourth cash; one fourth in twelve, eighteen & twenty four months with interest at six per cent per annum from date of sale, with deed of trust to secure the defered payments.

Plaintiff says that the said defendants did not sell at the said time & place an indisputable title to the premises above described, and they were not, nor was either of them then & there Attorneys or Attorney in fact of all the heirs of said late Henry Coffey. That Patrick O'Loughlin Jr was one of the heirs of said Henry Coffey and the said defendants were not the Attorneys in fact of said Patrick. So that plaintiff avers that said defendants could not & did not sell or convey to him an indisputable title to the above described premises nor the title of all the heirs of said late Henry Coffey to the same. Plaintiff says that notwithstanding the premises the defendants after said sale & on or about the fifth day of March A D 1852 unjustly & illegally instituted a suit against him in the St Louis Court of Common Pleas under the pretence of enforcing the aforesaid claim — in which said suit such proceedings were had that afterwards on the fifth day of April A D 1853 the same was dismissed. And plaintiff was put to great expense vexation & trouble in defending said suit & for the purpose of defending the same was compelled to retain & employ attorneys & counsellors at law as also for the purpose of examining the title to said above described lot & whether said defendants were attorneys in fact for all the heirs of the late Henry Coffey aforesaid, whereby he was

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injured & suffered damages to the amount of $200.00
He also avers that said above described premises at the date of said sale were worth $2000.00 or more than the aforesaid price & sum agreed by him to be paid for the same, so that by reason of the premises & that the title sold him as aforesaid was not indisputable as aforesaid, and the said defendants were not the attorneys in fact of all the heirs of the late Henry Coffey as aforesaid, plaintiff says that he has been by reason of the premises aforesaid further injured & endamaged in the sum of $2000.00. And he has also been further injured & endamaged in the sum of the aforesaid $10.00 so paid by him as aforesaid together with interest thereon.

Plaintiff therefore prays for judgment against said defendants for each of the several amounts of damages so suffered by him as aforesaid; together with interest on the same.

T Polk Attorney for Plff.

Patrick Magner the above named plaintiff makes oath & says that he believes the foregoing petition & the matters therein as stated are true.

P Magner

Sworn to & subscribed before me this 16th day of August 1854.

Louis Du Breuil
Justice of the Peace
St Louis County Missouri.

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County of St Louis, ss.

The State of Missouri,

Summons. To the Sheriff of St Louis County: Greeting:

We command you to summon Thomas O'Flaherty and Thomas J Rafferty to appear before the Judge of our Court of Common Pleas, on the first day of the next term thereof, to be held in the City of St Louis, within and for the County of St Louis, on the third Monday of September next then and there to answer the complaint of Patrick Magner as set forth in the annexed petition: and have you then and there this writ.

Witness, Charles W Hicks, Clerk of our said Court with the seal thereof hereto affixed, at office, in the City of St Louis, this 19th day of August in the year of our Lord eighteen hundred and fifty four.

Seal

C. W. Hicks Clerk.

Executed on the 22d day of August 1854 by delivering to Thomas O'Flaherty a copy of the writ & petition as furnished by the Clerk in St Louis County. Thomas J Rafferty not found in my County.

Turner Maddox
Sheriff
By Geo. N. Stevens Deputy

And afterwards, to wit, on the 23rd day of September 1854 the following Demurrer was filed, to wit:

Demurrer } Patrick Magner plaintiff
against
Thomas O'Flaherty and
Thomas J Rafferty defendants } In the St Louis Court of Common Pleas September Term 1854.

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The defendants demur to the petition of the plaintiff for want of jurisdiction in this Court of the subject of the action in this, that it is an action founded upon contract relating to land in this County of which the St Louis Land Court has exclusive jurisdiction by virtue of an act of the General Assembly of the State of Missouri entitled "An act to establish a land Court in St Louis county and for other purposes" approved February 23rd 1853

Hudson & Thomas
attys for defendants.

And afterwards, to wit; on Tuesday the 24th day of October 1854, the following further proceedings were had in this cause, to wit:

Demurrer sustained & Judgment for defts.

Patrick Magner vs. Thomas O'Flaherty and Thomas J Rafferry 367 — Petition

Now at this day came the parties by their respective Attorneys, and submit the defendants demurrer to the plaintiffs petition to the Court, and the Court being fully advised of and concerning the premises, it is considered by the Court that said demurrer be sustained, and that said plaintiff take nothing by his suit in this behalf, but that the defendants go thereof without day and recover of said plaintiff their costs herein expended, and have thereof Execution.

State of Missouri ss.
County of St Louis

I, Charles W Hicks, Clerk of the St Louis Court of Common Pleas, within

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and for the County of St Louis, certify that the foregoing is a full and complete transcript of the record and proceedings in the above entitled cause as fully as the same remains in my Office.

In testimony whereof, I hereto set my hand and affix the seal of said Court, at Office, in the City of St Louis, this 26th day of September 1855.

Chas M Hicks
Clerk

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(4) 73 ~~113~~

March. T. 1856

Patrick Magner
P.E.

vs.

Thomas O'Flaherty &
Thomas I Rafterry
D.E.

Transcript of Record.
Common Pleas.

no opinion ever filed

Filed 3d October 1855
Wm. S. Glanville
Ck.

Ex 5

$2.80 50 Paid by pltff.
3.30

73 ~~113~~

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State of Missouri }
County of St Louis } ss

Be it remembered that on the nineteenth day of January in the year of our Lord One thousand eight hundred and fifty five there was filed in the office of the Clerk of the St Louis Land Court a petition which is in the words and figures following, to wit.

Petition

Patrick Magner, plaintiff
vs
Thomas C. Flaherty &
Thomas J. Raftery
defendants

} In the St Louis Land Court
March Term A.D. 1855.

Plaintiff states that the defendants on the 5th day of January A.D. 1852. pretending to act as the attorneys in fact for all the heirs of the late Henry Coffey deceased gave public notice by advertisements printed and published in the newspapers of the City of St Louis, & also by public hand bills posted up in public places in said City, among other things, that they were the attorneys in fact for all the heirs of the late Henry Coffey, being duly authorised for that purpose, & that they would on the second Monday of February 1852 expose to sale at the North front of the Court House, in the City of St Louis to the highest bidder certain real estate in said advertisements & hand bills described, & among the same, the following, a lot in said City on Broadway known as "Rock House" also a strip of ground adjoining said Rock House, being the said premises

page 2 acquired by said Henry Coffey in his life time from John Stacker & Samuel M. Bowman, containing about thirty two feet front on Broadway, & extending Eastwardly one hundred feet more or less, the deeds of which are duly recorded in the Recorders office of said County.

Plaintiff also states that on the said second Monday of February 1852, said defendants claiming or pretending to be & to act as the attorneys in fact for all the heirs of the said late Henry Coffey, and in fact expose to sale at said North front of the Court House in the City of St Louis to the highest bidder on the terms in said advertisement & hand bills set forth, among other of the real estate therein mentioned, the aforesaid lot & premises above described.

And plaintiff also says that previous to said sale he had seen the aforesaid advertisements & hand bills and attended said sale on the said day & place named, in good faith, for the purpose of purchasing the aforesaid premises at said sale.

At the time of said sale & before the above described premises were offered for sale the defendants declared & gave notice publicly, that the title thereto to be thus sold, was indisputable, & that that they were the authorised attorneys in fact for all the heirs of said Henry Coffey with power to dispose of the same.

Plaintiff says that relying upon the said declaration & also upon the said statements in the said advertisements and hand bills, that defendants were

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the attorneys in fact of all the heirs of the said late Henry Coffey being duly authorised to sell the above described premises as therein set forth. did then and their bid off & purchased the said above described premises at & for the price & sum of $5687.50; and did then & there pay in cash to said defendants the sum of $10.00 part of the aforesaid price and was then & there always ever since has been ready & willing to comply with the terms of said sale. which were one fourth cash, one fourth in twelve. eighteen and twenty four months with interest at six per cent per annum from date of sale, with deed of trust to secure the deferred payments.

Plaintiff says that the defendants did not sell at the said time & have an indisputable title to the premises above described. and they were not, nor was either of them. then & there attorneys ~~in attorney~~ a attorney in fact of all the heirs of the said late Henry Coffey. That Patrick O'Langlin Jr was their & then one of the heirs of said Henry Coffey and the said defendants were not the attorneys in fact of said Patrick. So that Plaintiff avers that said defendants did not & could not sell or convey to him an indisputable title to the above described premises. nor the title of all the heirs of the said late Henry Coffey to the same

Plaintiff says that notwithstanding the premises, the defendants after said sale & on or about the 5th day of March A. D 1852. unjustly & illegally instituted a suit against him in the St Louis Court of Common Pleas under the pretence of enforcing the aforesaid

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claim in which said suit, such proceedings were had, that afterwards on the fifth day of April, A.D 1853, the same was dismissed by them. And plaintiff thereby put to great expence vexation & trouble in defending said suit, & for the purpose of defending said suit was compelled to retain & employ attorneys & Counsellors at law, as also for the purpose of examining the title to said above described ~~xxxxxxxxxxxxxx~~ lot & whether said defendants were attorneys in fact of the aforesaid late Henry Coffey, whereby he was injured & suffered damage to the amount of $250.00.

He also avers that the above described premises at the date of said sale were worth $2000.00 more than the aforesaid price & sum agreed by him to be paid for the same, so that by reason of the premises & that the title sold him as aforesaid was not indisputable, as aforesaid, and the said defendants were not the attorneys in fact of all the heirs of the late Henry Coffey aforesaid,

Plaintiff says that he has by reason of the premises aforesaid, been further injured & damaged in the sum of $2000.00. And he has also been further injured & damaged in the aforesaid sum of $110.00 so paid by him as aforesaid together with interest thereon,

Plaintiff prays for judgment against said defendants for each of the several amounts of damages so suffered by him as aforesaid, together with interest on the same,

T. Polk, attorney for Pltff

page 5 Patrick Magner the above named plaintiff make oath and says that he believes the foregoing petition & the matters therein as stated, are true,

P. Magner

Sworn to and subscribed
Before me this 16th day
of January A. D. 1855.

Jeremiah Langton J. P.

A Summons was then issued in words and figures as follows. to wit,

Summons

County of St Louis, ss
The State of Missouri
To the Sheriff of St Louis County Greeting

We command you to summon Thomas O'Flaherty & Thomas J Rafferty, to appear before the Judge of our Saint Louis Land Court, on the first day of the next term thereof, to be held in the City of St. Louis, within and for the County of St Louis, on the First Monday of March next, then and there to answer the Complaint of Patrick Magner as set forth in the annexed petition; and have you then and there this writ,

Witness, Charles A. Mantz, Clerk of our said Court with the seal thereof hereto affixed, at office in the City of St Louis, this Nineteenth day of January.

Seal

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in the year of our Lord, eighteen hundred and fifty five

Charles A. Mantz, Clerk.

Thereupon the Sheriff made his Return, in the words and figures following, to wit.

Sheriffs Return.

Executed this writ in the County of St Louis the 24th day of January 1855. by delivering a Copy of the writ and petition as furnished by the Clerk to Thomas O'Flaherty

Turner Maddox Sheriff
by Charles Picker deputy.

fee $1.00

And afterwards the following proceedings were had in this cause, to wit.

Monday March 12th 1855

Demurrer filed

Patrick Magner
vs
Thomas O'Flaherty and Thomas J. Rafferty

Demurrer to petition filed.

And afterwards the following further proceedings were had in this cause, to wit.

Saturday June 9th 1855

Judgment.

Patrick Magner
vs
Thomas O'Flaherty and Thomas J Rafferty

Now at this day Come said parties by their attorneys

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and submit to the Court the demurrer of said defen=
=dants, herein before filed, to the plaintiff's petition,
and the Court having heard and being fully advised
of and concerning the premises, doth Order and adju=
=dge that said demurrer be sustained, that the plaintiff
take nothing by his said suit, but that the defendants
go hence without day and recover of said plaintiff
their costs and charges in this behalf expended, and
have thereof execution.

Which demurrer is in words and figures as
follows, to wit.

Demurrer

Patrick Magner against Thomas C Flaherty & Thomas J Raftery	In the St Louis Land Court March term 1855.

And the said defendants come and demur
to the plaintiffs petition for the reason that the
court has no jurisdiction of the subject of the action

Because the petition shows that the damages claim=
=ed result from a breach of contract, the determination
of which involves no decision affecting real estate
in any way, nor do the damages claimed in any
wise concern real estate

Hudson & Thomas
attys for defendants

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And afterwards the following further proceedings were had in this cause to wit.

Saturday June 23rd 1855

Bond for Appeal filed & granted

Patrick Magner vs Thomas C. Flaherty and Thomas J. Rafferty

Now at this day comes said plaintiff by his attorney and files his bond for an appeal to the Supreme Court, in the sum of One hundred dollars with Nicholas Devereux as his security, which bond is approved by the Court, and the appeal granted.

Which Bond is in words and figures as follows to wit;

Appeal Bond

Know all Men by these Presents, That we Patrick Magner as principal, and Nicholas Devereux as surety are held and firmly bound unto Thomas C. Flaherty, Thomas J. Rafferty in the sum of One hundred dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents, Sealed with our seals, and dated at St. Louis, this twenty third day of June, A.D. 1855

The condition of the above Obligation is such, that whereas said Patrick Magner has appealed from the judgment rendered against him and in favor of said Thomas C. Flaherty, Thomas J. Rafferty in the St Louis Land Court, for costs. Now, if the said appellant will pay all costs and damages that may be awarded against him occasioned by such appeal; and shall prosecute his appeal; and shall

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perform such judgment as shall be given by the Supreme Court, and such as the Supreme Court may direct the St Louis Land Court to give; and shall, if the judgment or any part thereof be affirmed, comply with and perform the same so far as it may be affirmed; and pay all damages and costs which may be awarded against him by the Supreme Court, then this obligation shall be void, otherwise at shall remain in full force and effect

P. Magner (Seal)
Nicholas Devereux (Seal)

St Louis Land Court, Term 1855

Be it Remembered that on the 23rd day of June 1855 in open Court appeared Patrick Magner the principal, and Nicholas Devereux the security in the foregoing bond, and acknowledge that they executed the same for the purposes therein expressed.

In Witness Whereof, I hereto set my hand and affix the Seal of said Court, at Office, in St. Louis the day and year last aforesaid

(Seal)

C. A. Mantz Clerk
By J. B. Walsh, Deputy

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State of Missouri }
County of St Louis } ss

I Charles A. Mantz, Clerk of the St Louis Land Court within and for said County Certify the foregoing transcript to be a true and faithful copy of the Record and proceedings in the case of Patrick Magner plaintiff against Thomas O'Flaherty and Thomas J. Rafferty, defendants, as fully as the same remains of Record in my Office

In testimony Whereof I hereunto set my hand and Affix the Seal of our said Court at Office in the City of St Louis this twelfth day of September A. D. 1855.

Charles A. Mantz, Clerk.

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March. T. 1856

Patrick Magner, Plff. apt.
vs.
Thomas O'Flaherty,
et. al. respts.

Transcript for Supreme Court - from St. Louis Land Court.

no opinion filed

T. Polk. Plffs atty,
Henderson & Thomas, Defts atty.

Filed 3rd. October 1855
Wm. S. Glanville
Clk.

Transcript $3.60 - pd by Plff -

Magner
v
O'Flaherty } 2 Cases

These two Cases are dismissed at the Cost of the deft. That is all the unpaid Costs are to be paid by deft. the Costs heretofore paid are not to be Collected from the deft

Hudson for the deft
T. Polk for Deft
By Hudson