Matthews, Newton v. Cook, Allen

5/2/6

631/27

Sept. 30

Tefferson Cooky

petition to set aside a deed from Matt to Cook for 160.75 on the ground that he was intoxicated

App	Resp
Cook	Thomas, John S.
Foster, C.V.	
Abner Green	

Dryden: Mr Tashmit affirmed

The State of Missouri, ss.

The State of Missouri, to the Honorable the Judge of the Ninth Judicial Circuit **in said State Greeting:**

WHEREAS, In the record and proceedings in a certain cause lately pending in the Circuit Court within and for Jefferson County

wherein Newton Matthews was Plaintiff and Allen Cook & Chapel L. Foster were defendants

in a Civil Action manifest error hath intervened, to the great damage of said Defendants as by their complaint we are informed.

NOW, 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 St. Louis, in the County of St. Louis, in said State, on the Third Monday in October 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. CHAPLAIN~~ Andrew W. Mead Clerk of our said Supreme Court, at office in the City of Saint Louis, the 19th day of May in the year of our Lord one thousand eight hundred and ~~fifty~~ Sixty four

A. W. Mead CLERK.

State of Missouri } ss
County of Jefferson } I, Elias J. Honey
clerk of the Circuit Court within and for the
county aforesaid in obedience to the mandate
of the within writ, herewith transmit to the
Honorable Supreme Court of the State of Missouri
held at St Louis a full true and complete tran-
cript of the record and proceedings in the with-
in entitled cause as fully as the same remains
of record and on file
in my office

In Testimony whereof I hereto
set my hand and affix the seal of
said Court at office in the town of
Hillsboro this 19th day of
July A.D. 1864

Elias J Honey clerk

JEFFERSON COUNTY CIRCUIT COURT SEAL

Page 1

State of Missouri } ss
County of Jefferson }

Be it remembered that heretofore, to wit on the 28th day of April A. D. Eighteen hundred and Sixty two there was filed in the office of the undersigned clerk of the Circuit Court within and for said County a petition in words and figures as follows Viz:

Newton Mathews Plaintiff
against
Allen Cook & al.
Chapel Foster Defendants

In the Jefferson Circuit Court
June Term 1862.

Plaintiff States that on or about the first day of September 1859. he was at the public House, and drinking establishment of Allen Cook in the Town of De Soto in the County of Jefferson in the State of Missouri. when he became deranged in his intellect from excess of and the bad quality of the liquor sold at said establishment, and while in that condition was induced by the said Cook to execute an instrument of writing whereby he apparently conveyed to said Cook, one hundred

page 2 and Sixty three 75/100 acres of land, Situate on Dry Creek in the County of Jefferson, the consideration expressed in said writing was One dollar which was never paid and the undertaking of the said Allen to take care of the said Mathews and give him a home during his natural life, at or about the same time plaintiff deposited with said defendant the sum of three hundred dollars in Gold for Safe Keeping. Plaintiff further States that the defendant Shortly after the pretended execution of said instrument, took possession of his dwelling house Situated upon the land described in said instrument of writing a certified Copy of which instrument is herewith filed, the original being in the possession of the said Cook, and not in his power to produce, and took possession also of all his household and Kitchen furniture and his clock, and converted the same to his own use, without the consent or approbation of plaintiff of the aggregate value of about ninety dollars, Said furniture consisted of One clock one large and heavy bed a chest of tools, Shovel and tongs one table fall leaf, table cover, boiler frying pan pots &c. one Smoothing Iron, dough trag

State of Missouri } ss
County of Jefferson } On this 1st day of
Sept 1859 personally appeared before
the undersigned a Justice of the peace
within and for the County and State
aforesaid Newton Meathens who is
personally known to me to be the person
who affixed his name and seal to the
foregoing instrument of writing, and
he acknowledged the same to his
act and deed for the purposes therein
mentioned. Given under my hand
the day and year above written

John F Vanpeters
Justice of the peace

Filed October 29th and Recorded Novem
ber 23d 1859

Elias F Kenney Recorder

State of Missouri
County of Jefferson } I, Elias F. Kenney
Clerk of the Circuit Court and Ex of
ficio Recorder in and for said County
hereby certify that the foregoing is a
full true and complete copy of an
instrument of writing purporting to be
a conveyance from Newton Meath
ens to Allen Cook with the certifi
cate of acknowledgment thereto

attached, and the date of the filing and recording thereof as fully as the same remains of record in my office in Book P. pages 668 & 669

In testimony whereof I hereto set my hand and affix the Seal of said Court at office this 24th day of February A.D. 1862

Elias F Kenney
Recorder

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1st Summons

The State of Missouri } ss
County of Jefferson }

To the Sheriff of the County of Jefferson Greeting: We command you that you Summon Allen Cook and Chappel Foster if they be found in your County, that they be and appear before the Hon Judge of our Circuit Court, on the first day of the next term thereof to be begun and held at the town of Hillsboro, within and for the County of Jefferson on the Second Monday after the fourth Monday of May next, then and there to answer unto Newton Mathews upon his original petition, a copy whereof is hereunto annexed and accompanies this writ, and have you then there this writ.

Witness Elias F. Kinney clerk of our said Circuit Court with the Seal thereof hereunto affixed, at office in Hillsboro this 28th day of April

notches containing 3 3/4 acres: also the South
1/2 of lot No 1 of the S.W. 1/4 of Sec 31 in
Township 40 of range 4 East containing
40 acres: Also the N. 1/2 of lot No 2 of the
South West 1/4 of Section 31 in Township
40 of range 4 East, containing 40 acres
and 43/100: And also the South West
1/4 and the North East 1/4 of the South
West qr of Section 31 in Township No
40 of range No 4 East, containing 80
acres and 44/100. Together with all
and singular the appurtenances
thereunto belonging or in any wise
appertaining forever in fee Simple
to the aforesaid Allen book party of
the second part his heirs and assigns
In testimony where of I have hereun
to subscribed my name and affixed
my Seal the day and first
written

Signed Sealed and
delivered in the pres
ence of Witnesses
J. W. Randall

Newton Mathews
Seal

one pine table and many other articles too tedious to mention, all of which were of the aggregate value above mentioned. Plaintiff further States that he lived with said Cook part of the time from date of said instrument to about October 1861 during which he was not taken care of by said Cook, nor during any of the time did he furnish him with a home in the proper sense of the word, but his comforts were neglected and he was badly treated by said Cook and his family In October 1861 said Cook in contemplation of removing from the State made a pretended Sale and conveyance of the land described in the above instrument to one Chapel Foster. Said Foster is in low circumstances, both as to money and property and wholly unable to pay the sum twelve hundred dollars the price at which said sale was pretended to have been made. Plaintiff says that said transaction was not a sale, but a mere contrivance to prevent said plaintiff from recovering back his land, by attempting to interpose a pretended innocent purchaser between him and plaintiff. A small part of the pretended consideration was pretended to be paid, said Cook, in property

(6)

on shape of a mule, but plaintiff charges that no part of the named consideration was in part paid. but the whole was a sham. Plaintiff further states that the defendant violated his agreement and undertaking with him in removing from the State, first selling all the property, thus putting it out of the power of defendant to take care of or furnish a home to plaintiff unless he would follow the defendant where= ever he might choose to go. Plaintiff states that said Foster is now in possession of the land in said instrument mentioned, and he further says that if he is purchaser, he has not paid for the same.

Plaintiff further states that he demanded of plaintiff about the time he was removing from the State, the three hundred dollars deposited with him by Plaintiff and the defendant neglected and refused to pay the same. In consideration of the premises plaintiff prays that the pretended deed may be set aside, and declared null and void and that he may be restored to the possession of said premises, and that the said Foster may be put out of the possession of the same and that he may have such damages for the use of the of said land against the said defend=

ants as may just. That he may have Judgment against said Cook for the three hundred dollars deposited with him, and also for the value of the household and Kitchen furniture, and also for the value of the Clock taken by said Cook, and interest on the money, and on the value of the property from the time the same went into Cooks possession till paid and for such further and other relief as the facts shall warrant;

W. Tripell Atty
for Plaintiff

Newton Mathews plaintiff makes oath and says that the foregoing petition and the matters therein as Stated he believes to be true

Sworn and Subscribed
before me April 28th 1862 } Newton Mathews
Elias F. Money Clerk.

Endorsed "Filed April 28th 1862.
Elias F. Money

Copy of deed

"This Indenture, made and entered into this first day of September, One thousand eight hundred and fifty nine, between Newton Mathews of the County of Jefferson and State of Missouri of the one part, and Allen Cook of the County and State aforesaid of the other part, Witnes

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=eth: That the aforesaid Newton Mathews of the first part, for and in consideration of the Sum of One dollar to him in hand paid by the said Allen Cook party of the Second part, the receipt of which is hereby acknowledged, and also the said Allen Cook party of the Second part further agrees with the said Newton Mathews party of the first part to take care of and give him a home during his natural life. Therefore in virtue of the aforesaid mentioned consideration the said Newton Mathews party of the first part, hath bargained, Sold aliened and conveyed and by these presents doth bargain Sell alien and convey to the aforesaid Allen Cook of the Second part, all those tracts or parcels of land lying being and Situated on the waters of Dry Creek in the County of Jefferson and State of Missouri, and described as follows, to wit: Beginning at a Stake corner from which a Walnut, five inches in diameter marked, with a blaze and three notches bears N. 27½ W. 46 links distant, thence East 10.87 chains. Set a Stake (corner of this Survey and the S. E. corner of the S. W. ¼ of the N. W. quarter Section 31 Township 40 North range 4 East from which a P. Oak ten inches in diameter marked with a blaze and three notches — thence to a Chinquepin Oak ten inches in diameter marked with a blaze and three

A. D. 1862
Elias J. Kinney
Clerk Circuit Court.

Upon which the following return by the Sheriff is endorsed.

Sheriffs Return

I executed the within Summons on Chappel Porter one of the within named defendants on the 12th day of May 1862 at the County of Jefferson Mo. by delivering to him a true copy of the Summons aforesaid together with a copy of the annexed petition as furnished me by the clerk

Oscar Dover Sheriff
By J. Pritchett D. Sheriff

2nd Summons

The State of Missouri } ss
County of Jefferson }

To the Sheriff of the County of Jefferson Greeting: We command you that you Summon Allen Cook if he be found in your County that he be and appear before the Hon Judge of our Circuit Court on the first day of the next term thereof to be begun and held at the town of Hillsboro, within and for the County of

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Jefferson on the Second Monday after the fourth Monday of May next then and there to answer unto Newton Mathews upon his original petition a copy whereof is hereunto annexed and accompanies this writ; And have you then there this writ

Witness Elias F. Money Clerk of our said Circuit Court with the Seal thereof hereunto affixed at office in Kellston this thirteenth day of January A D 1863

L S

Elias F. Money clerk
Circuit Court.

Upon which is endorsed the following return by the Sheriff"

Sheriffs Return

" I Served the within Summons on Allen Cook by delivering to him a ~~coppy~~ copy of this writ Jefferson County Mo on the 15th day of January 1863

Jerome B Dover Sheriff

Thursday June 18th 1863

Newton Mathews
vs
Allen Cook and
C. L. Foster

Default

Now at this day comes said plaintiff by his attorney and the said defendants being three times Solemnly called come not. neither have they answered. the petition of said Plaintiff though duly Served with proces. It is ordered by the Court that their default be entered and this cause is continued

Monday December 7th 1864

Newton Mathews

vs

Allen Cook & C. L Foster } Now at this day comes said Plaintiff and files his dismissal of said cause as to the personal property and money mentioned in his said petition (this paper cannot be found among the files.

dismissal as to personal property & money

Saturday Dec. 17. 1864

Newton Mathews Plaintiff

against

Allen Cook and Chappel L Foster defendants } Petition to set aside deeds

Decree

Now at this day comes said Plaintiff by his attorney and it appearing to the Satisfaction of the Court

that the interlocutory Judgement entered against defendants at this last term of this Court has not been set aside, nor any good reason or cause shown by them why the same should be set aside. This cause is submitted to the Court upon the petition of Plaintiff, from which the Court doth find that Allen Cook, one of said defendants in this cause on the first day of September 1859, obtained from Plaintiff, while deranged from the use of liquor given him by said Cook, and while incapable of entering into a valid contract a deed to the following described Real Estate situate in Jefferson County Missouri to wit: "Beginning at a Stake corner from which a Walnut five inches in diameter, marked with a blaze and three notches bears N. 27½ W. 46 links distant, thence east 10.87 chains Set a Stake, corner of this Survey, and the S. E. corner of the S.W.¼ of the N.W. quarter Section 31 Township 40, North, range 4 East, from which a P. Oak ten inches in diameter marked with a blaze and three notches.

thence to a Chinquepin Oak ten inches in diameter marked with a blaze and three notches containing 3 3/4 acres; Also the S 1/2 of lot No 4 of the S W 1/4 of Sec. 31, in Township 40 of range 4. East containing 40 acres: Also the N 1/2 of lot No 2 of the South West 1/4 of Section 31 in Township 40 of range 4 East, containing 40 acres and 43/100, and also the South West 1/4 and the North East 1/4 of the South West quarter of Section 31 in Township No 40 of range 4 East, containing 80 acres and 44/100: That said Cook paid Plaintiff no consideration whatever for said land, but undertook in consideration of said Deed to support Plaintiff and furnish him with a home during his natural life, which undertaking the said Cook, on his part, Has by failed to perform and Keep, that Chappel Porter, the other defendant herein, in October 1861, took a deed from said Cook to said land with full Knowledge of all the facts above Stated and without paying any thing therefor. It is therefore considered, adjudged and decreed by the

Page 8.

Court that the Deed executed by said Plaintiff to said Cook under date of September first 1859, and the Deed executed by said Cook to said Foster under date of October 1861, are hereby Set aside and Shall from hence forth be held for nought, that said Defendants be divested of all title to said lands and that the title thereto be, and the same is hereby vested absolutely in law and equity in Plaintiff, and that he have against the defendants and others claiming under them Since the commencement of this Suit his writ of possession for said lands and Execution for his proper Costs and Charges in this behalf expended

July 1st 1864

Record

Newton Mathews
vs
Allen Cook & L. Foster } Motion for new trial and affidavit filed and motion overruled

July 6th 1864

Newton Mathews
vs
Allen Cook & L Foster }

Bill of exceptions filed

Newton Mathews plaintiff
Against
Allen Cook and Chapel Porter
defendants

In the Circuit Court of
Jefferson County
Missouri

Bill of Exceptions

Be it remembered, that at the December Term 1863 of the Circuit Court of the County aforesaid, to wit, on the 12th day of December 1863 the above entitled cause was called for trial, whereupon the counsel for defendants objected to going into trial on that day, on the ground that the cause was set for trial on the 14th day of said December, and that consequently the defendant Allen Cook (who resides in Illinois) was not present in Court. So as to be able to show any just cause for setting aside the default entered against him at the June term 1863, or to make any defence to said action, and it being understood that the Court would hold an adjourned term on the first Monday of July 1864, the Counsel for said defendants

9 insisted on having said cause stand continued until said adjourned term but the Court being about to adjourn on that day, overruled the objection of Defendants, and refused to continue said cause to the adjourned term and against the objection of Defendants Counsel proceeded with said cause and upon the reading of plaintiff's petition pronounced a decree in favor of the Plaintiff which decree is as follows, to wit (See decree on page 6 & 7) To which decision and ruling of the Court in proceeding to trial with said cause on the 12th day of December 1863, although it was set for trial on the Docket on the 14th day of said month, and in refusing to permit said cause to stand continued to the adjourned term, the Defendants by their Counsel, objected and excepted at the time, and afterwards at the December adjourned term, to wit: On the first day of February 1864, the Defendant Allen Cook filed his motion for a new trial, and asking to have the default set aside and that he be permitted to file his answer, which

motion is in words & figures as follows (to wit)

Motion for New. trial

Newton Mathews plaintiff
against
Allen Cook and Chapel L. Foster defendant.

} In the Circuit Court of Jefferson County Mo

Now at this day February the first 1864, being the first day of the adjourned December Term 1863 come the defendants, and move the Court to set aside the default entered against them at the June Term 1863 of said Court, and the decree made against them in said Cause at the December Term thereof, to wit on the 12th day of December 1863, for the following reasons,

1st Because the Court erred in calling said Cause, and rendering a final decree therein on the 12th day of December 1863, in the absence of the defendants, when the cause was set for trial on the docket, on the 14th day of said month.

2nd Because the Court erred in refusing to give defendants time to show Cause for setting aside

10 the default entered at the June term 1863. and in refusing to let said Cause stand continued until the adjourned term in Febuary 1864

3d The action of the Court in proceeding to trial on the 12th of December instead of the 14th of said month took defendants by Surprise and deprived them of the opportunity of defending the same.

4th. The Court erred in rendering a decree for Plaintiff without evidence to Support the allegations of the petition

5th— The defendants have a good and meritorious defence against plaintiffs action but have been deprived by the action & ruling of the Court of the opportunity of making any defence

A Green and
J. J. Williams
Attys for defendants

Endorsed
Filed Febry 1st 1864.

and at the Same time defendant Allen Cook filed his own affidavit and the affidavit of Jebulon Pritch-

ett in Support of Said motion in
words and figures as follows
Newton Mathews plaintiff
Against
Allen Cook and
Chapel L Foster defendants
In the Cir
cuit Court
of Jefferson
County Missouri

Affidavit of Allen Cook

Allen Cook one of the defendants
in the above entitled cause being duly
Sworn on his oath States, that he is
now and was at the June Term 1863
of the Circuit Court aforesaid a resident
of the State of Illinois. That on being
Served with the process in the above cause
he Spoke to his Co. defendant, Chapel
L. Foster, and requested him to en
gage Counsel and obtain leave at said
June term 1863 (being the return term
of said Court) to answer in vacation
which was the customary rule of pra
ctice in Said Court, That he did not
therefore attend at said June term
knowing the cause was not triable then
and Supposing as a matter of course
time would be given to file his An
Swer in Vacation, Afterwards in July
1863, he engaged Counsel and had
his Answer prepared and made

11 affidavit to it, and ordered Subpoenas for his witnesses, and used all due deligence to get ready for trial at the december Terem 1863. That when he had his answer written out he did not know any default had been entered in said Cause against him (Supposing from the aforesaid arrangement with Porter) that time had been given him to Answer in vacation Sometime after he had returned to his residence in Illinois he was informed by his Counsel, that a default had been entered in said cause against him, and that it would be necessary for him to be at Court in the first of the Term to make affidavit (if required) to have said default Set aside. That his counsel wrote to him that said Cause was Set for trial on the 14th day of December 1863, and that he therefore came to De Soto in said County on the 12th intending to come to Court that day and make affidavit (if it were necessary) to get said default Set aside, but was informed that the Court would adjourn that day which it accordingly did

that he was taken by surprise by said cause being called and tried on Saturday the 12th of December 1863 during his absence from Court, when it was set for trial on the 14th of said month. This affiant further states that he has a good and meritorious defence to make against said cause of action. That if the judgment be set aside and a new trial granted him he can prove that he paid a good and valuable consideration for the land sued for by Plaintiff, and that all the allegations of said Plaintiffs petition, charging fraud against this defendant, are untrue that he can fully establish by the testimony of J. Patchett, and other witnesses his defence against Plaintiffs action and show that all material allegations of said petition are untrue and that Plaintiff, has no just cause of action against this defendant. This affiant therefore asks the Court to set aside the decree made on the 12th day of December 1863 so as to allow this defendant an opportunity of establishing his de

125 -fence against said action
This affiant further States that he intended coming and would have come to court at the first of the December Term 1863, but several of his family were very sick at that time, so that he disliked very much to leave home. He therefore did not come to De Soto as aforestated till the 12th of December intending then to ask to have the default set aside, but found the court had adjourned

Sworn to and subscribed before me Feby 1st 1864 } Allen Cook
Elias F. Honey Clerk }
Endorsed, Filed Feby 1st 1864"

Newton Mathews vs Allen Cook & C. L. Foster } In the Circuit Court of Jeffers on County Missouri

Zebulon Pritchett being duly sworn on his oath States that he knows Newton Mathews lived with Allen Cook something upwards two years say perhaps in 1859 & 1860 and part of 1861, being since the time

said book took a Deed for said Mathews' land that in the year 1861. this affiant was working in DeSoto in the County aforesaid, and had several conversations with said Newton Mathews in which he said he liked well living with said book, that he and family treated him well, that he had nothing to do unless he chose to & that he did not choose to do any thing as said book was bound to support him in consideration of the property he got from him. this affiant further States that before said book got Mathews land, he proposed to let this affiant have it & all his property if he would support him for his life & that this affiant refused to accept said proposition. although said Mathews had more property then, than he had when he traded with said book. This affiant further states that soon after said book went to Illinois to reside, he returned with a horse and buggy and sent this affiant after said Mathews to get him to go with said book to reside with him in Illinois but said Mathews

refused to go.

Z. Pritchett

Sworn to and Subscribed
before me Feby 1st 1864 }
Elias F. Honey Clerk. Cir. Court.
"Endorsed. Filed Feby 1st 1864"
But the Court refused to grant a New trial and Set aside the default and permit Defendant Cook to file his Answer. To which ruling and decision of the Court, in refusing to Set aside the default and grant a New trial. the Defendants by their counsel at the time objected and excepted and pray that this their Bill of exceptions may be Signed, Sealed and made a part of the record in said cause which is accordingly done

Jas. W. Owens (Seal)

Endorsed filed Feby 6th 1864
Elias F. Honey Clerk

State of Missouri } ss
County of Jefferson }

I the undersigned clerk of the Circuit Court within and for the County aforesaid, hereby certify that the foregoing is a full and true transcript of the record, proceedings and files in my office in said cause

In Testimony whereof I hereto set my hand and affix the seal of said court at office in Hillsboro July 19th 1864

Elias F. Money
Clerk

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" " Pritchett 12

7 19 C (27)

October Term 1864

Newton Mathews D.E.

vs. Transcript

Allen Cook

C. L. Foster P.E.

Error to Jefferson Circuit

N. E.

clerks fee paid by

A. Green atty for

Deff in error $ 8.50

Filed Sept 30./64

A. W. Mead

Cr

M. Frissell for D.E.

Green & Williams for P.E.

10$ due

Asst. of Error filed

1864 Oct 20. Argued & subd

1864 December 19. Affirmed. Opinion filed Dec 29 4

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