RIDDLESBARGER, JESSE et al.* (see list below) ✓ MCDANIEL, THOMPSON et al. ** (see list below) MARCH 1866 COUNTY OF ST LOUIS 572/5

OLD 653/21 REVERSED AND REMANDED / MOTION FOR REHEARING OVERRULED

INVOLVED:
LEGAL TENDER

* PLAINTIFFS
CAMPBELL, JOHN S.
COFFMAN, LOTT
? CONANT, FRANKLIN (SPELLING?)
SHOUSE, DANIEL L
? HAYDEN, JOHN G (SPELLING?)

** DEFENDANTS
JAMES, BURTON A
CAMPBELL, JAMES
HILL, BRITTAN A
CAMPBELL, ROBERT
GILHAM, WILLIAM, ADMR. OF GILHAM, ALEXANDER, DECD.

1 State of Missouri } Be it remembered that on
County of Saint Louis } this 27th day of December A.D.
Eighteen hundred and Sixty
there was filed in the office of the Clerk of the St. Louis Circuit Court a petition which is in the words and figures following, to wit.

Jno Riddlebarger, John S Campbell, Lott Coffman, Franklin Conant, Daniel L Shouse and John G Hayden — Plaintiffs

against

Thompson McDaniel Burton A James John Campbell Britton A Hill, Robert Campbell & William S Gilham admr of Alexander Gilham Decd — Defts

In the Saint Louis Circuit Court.

Saint Louis County — to February Term 1861

Petition

Plaintiffs states that on and before the 12th day of May A.D. 1857 — defendants Thompson McDaniel and Alexander Gilham since deceased — and of whose estate defendant William S Gilham is administrator were partners in trade, in the name and style of Gilham and McDaniel in this State That as such partners Robert Campbell endorsed for them and they became indebted to defendant Robert Campbell in the sum of Twenty five thousand dollars, or thereabouts and for which they made their notes in and about the purchase by them as partners of an interest in the Steam Boat A B Chambers.

2 That on the 12th day of May A D 1857 said Alexander Gilham and said McDaniel were partners in and jointly owned an interest of five eighths of the Steam Boat A B Chambers, with its tackle apparel and furniture, which interest they purchased with their partnership money and effects and held and owned the same as partnership effects, and that they were partners and joint owners in the following lands in Bates County Missouri, to wit, the South half of lot number two and lot number one of the South west quarter of Section number six Township number 37 Range 33. and North half of lot Number one of South west quarter of section Number Seven, Township 37 in Range 33. which land was purchased by them with their partnership money and effects and they were partners and joint owners therein.
And that said Alexander Gilham was the owner of lots Number fifteen and Sixteen of Block number one of McDaniels addition to Kansas City in this State Plaintiffs further state that on the said 12th day of May A D 1857 said Alexander Gilham and said McDaniel to secure said Robert Campbell in his liability as indorser as aforesaid, & the debt due as aforesaid by them as partners made acknowledged and delivered to them their deed of trust by which they conveyed to defendant John Campbell and Brittain A Hill as Trustees their said interest in said boat A B Chambers with its tackle apparel and furniture, also the said lands above described, situated in Bates County

3 Missouri, Also the said lots No 15. and Sixteen (16) in Block Number 1 in said McDaniels addition to Kansas City - also lots Nos 1. 2. 3. 4. 5. 6. 7. 8 & 9. in Block No 3 - also lots Nos 10. 11. 12. 13. 14. 15. 16 17 & 18 in Block No 3. also the North half of lot No 16 and the South ½ of lot No 15. in the same Block. Also Lots Nos 1. 2. 3. & 4. in Block No 5. also lots No 3. 4. 5. 6. 7. 8. 9. 10. 11. and 12 in Block Number Six also Lots Nos 1. 2. 3. 4. 5. 6. 7. 8. 9. 10 and 11. in Block No 1. - Also Lots No 17. 18. 19. 20. 21. 22. 23. 24. 25 and 26. in Block No 1., Also lots No 3 and North half of lot No 4 in Block No 7. also Lots Nos 11. 12. 13 14. & 15 in Block No 2, also 20 feet of ground by 120 feet west end of Spans property, all being in said McDaniels addition to Kansas City in this State and all being the separate individual property of said McDaniel, said deed provided that if such debts were not paid according to the tenor thereof then said property might be sold on the terms therein stated to pay the same, a copy of said deed is hereto annexed.

There was also embraced and conveyed by said deed slaves and personal property which have been sold and the proceeds applied to said debt and said Gilham and McDaniel paid large amounts on said debts, the amounts and dates of such payments plaintiff cannot state but defendants pretend and claim that the balance of said debt with interest is about Nine thousand dollars

4 now due.

Plaintiffs further state that afterwards and after the said deed of trust was made to wit on the 23rd day of May 1860 said McDaniel owed and was indebted to plaintiff Shaw in the sum of Twenty One hundred dollars by his note dated on that day for that sum and due one day after its date, with ten per cent interest from date, also was indebted to plaintiff Coffman in the sum of Twenty five hundred Dollars by his note dated March 8th 1860, due thirty days after its date, and was indebted to plaintiff Conant by his note to him dated November 15th 1859 due at four months for balance of about $1500 Dollars on which plaintiff Coffman was Security, and plaintiffs Riddlebarger and Hayden were bound and liable as endorser and drawer respectively for said McDaniel and as his securities, on a bill of Exchange for $2700 dated October 14 - 1859 accepted by said McDaniel due at 90 days at the Citizens Bank of New Orleans Louisiana also another bill of Exchange for $2500 dated November 14th 1859 payable at said Citizens Bank of Louisiana, also another bill of Exchange for $2000 dated November 17th 1859 due at Sixty days at the Southern Bank of Saint Louis - all accepted by said McDaniel, on all of said bills said Riddlebarger was drawer and said Hayden was endorser for the benefit and accomodation of said McDaniel and in order to secure the payment of said last

5 named debts and to secure indemnify and save harm-
less from liability the said plaintiffs in the debts
due to them respectively and in their liability as
Security drawer or indorser for him as also such
liability as they might assume for him within twelve
months therefrom, said McDaniel on the 25th day
of May AD 1860 made acknowledged and delivered
to plaintiffs his deed of mortgage of that date which
was duly recorded a copy of which is hereto annexed
by which he Conveyed to them the following real estate
in McDaniels addition to Kansas City, Jackson
County Missouri, being part of the same property
mentioned in said trust deed herein before described
and which property was the individual property of
said McDaniel, to wit. Lots No 1. 2. 3. 4. 5. 6. 7. 8
& 9 in Block No 3. also lots No 10. 11. 12. 13. 14. 15 and
18 in Block No 3, also N½ lot No 16 and South
½ lot 15. in Block 3. also lots No 1. 6. 7 & 8 Block
No 4- also lots Nos 1. 2. 3 & 4 in Block No 5.- also
lots No 3. 4. 5. 6. 7. 8. 9. 10. 11. & 12 Block No 6- also 20
feet by 120 feet west end of Spears property all in
said addition to Kansas City- also Lots No 1. 2. 3. 4.
5. 6. & 7. 10 & 11 in Block No 1.- also Lot No 17- 18. 19
20. 21. 22. 23. 24. 25 & 26 in Block No 1.
Also lots No 3. and N½ of lot No 4 in Block 7
Also Lots No 11. 12. 13. 14 & 15. in Block No 2 all
in said addition to Kansas City.
Said deed was duly recorded and provided that if
said McDaniel should fail to pay said debts
or any debts for which plaintiffs or either of them

6 might at the expiration of said twelve months sell said property or any part thereof, on giving twenty days notice of such sale, to pay such debts or reimburse themselves or either of them, and that with the consent of all parties to said mortgage a sale might sooner be made publicly or privately

Plaintiffs state that each and all of said debts remain wholly unpaid, said McDaniel being paid no part thereof, and the said deed of mortgage remains in full force and in no way satisfied. Plaintiffs further state the said debt due to said Robert Campbell was and is the partnership debt of said Gilham and McDaniel, no part thereof being the individual or separate indebtedness of either of them and that the said debts due by said McDaniel secured by said deed of mortgage, were the individual debts of said McDaniel alone, and the said debts for which plaintiffs each or either of them were and are liable for him as aforesaid, were and are the individual debts of said McDaniel alone.

Plaintiffs further states that in the month of June A.D. 1860 said Steam Boat A B Chambers was sued and was seized in Saint Louis County by the Sheriff of said County, such suit being for a lien claim against said boat of Patrick Rogers and others as plaintiffs in this Honorable Court and such proceedings were afterwards had in this Court. that said boat was ordered to be sold and the same was sold by said Sheriff by the order of this Court, and at such sale said boat

7 was sold for Ten thousand dollars cash, which was received therefor, and so reported by said Sheriff,

That in such proceedings against said boat liens claims were allowed and judgment ~~[illegible]~~ rendered therefor against said boat and proceeds to the amount of fifty five hundred and Seventeen $\frac{28}{100}$ Dollars and no more, and the costs therein in all were five hundred and ~~[illegible]~~ thirty Seven $\frac{68}{100}$ Dollars and no more, and that there remains in the hands of said Sheriff the sum of Thirty nine hundred and forty five $\frac{12}{100}$ Dollars, five eighths of which is subject to the said deed of trust and the balance remaining of the debt therein secured being the share of said Gilham and McDaniel thereof and to and against which there is no other claim

Plaintiffs state that at the time of the seizure and sale of said boat said Robert Campbell had full knowledge of all the foregoing facts and knew that plaintiffs had the mortgage aforesaid and of the indebtedness aforesaid to them and of said McDaniel and that since both the deed of trust and the mortgage aforesaid were made, said Alexander Gilham died intestate in this State and defendant William T Gilham had administered on his estate.

Plaintiffs further state that the real estate mentioned in said deed of trust and said mortgage are not sufficient to pay and satisfy both the debt secured by said deed and the

balance thereof remaining unpaid and the debts and liabilities mentioned in and intended to be secured by said Mortgage deed and that if sold for Cash will not sell for enough to satisfy the same,

They further state that said McDaniel is hopelessly insolvent having no other property or effects, than as described in said trust deed and mortgage.

They further state that on the Monday of May 1860 certain executions against said McDaniel were delivered to the Sheriff of Jackson County Missouri - which executions had been issued upon regular subsisting judgments against said McDaniel. said Sheriff duly levied said Executions on the following lots mentioned in said trust deed being the lots the individual property of said McDaniel, to wit, Lots Number 3. 5. & 6 in Block No 6 in McDaniels addition to Kansas City - said lots were duly advertised and sold by said Sheriff under said executions and were purchased at said sale by plaintiff Riddle barger, who paid for the same and took the said Sheriffs deed, which property acknowledged and recorded is hereto annexed.

Plaintiffs further state that recently and long since the said deed of trust and said mortgage were both made, Defendant Burton A James has with the full knowledge consent and with a full understanding with said McDaniels and knowledge of the foregoing facts by him and

9 McDaniel paid off to said Campbell the balance in full of the debt mentioned in said deed of trust and procured the said Robert Campbell to assign and transfer the same to him without recourse and said McDaniel and said James by an understanding as they believe and allege are using the same for the benefit of said McDaniel contrary to equity and to the wrong and prejudice and injury of plaintiffs.

They state that defendants John Campbell and Britton A Hill have, as such trustees advertised all of the real estate of said McDaniel for sale, in Saint Louis on the 27th day of December 1860, a Copy of the Advertisement is hereto attached, and said McDaniel, James, Hill, and John Campbell are about proceeding to sell the same for the whole amount of Nine thousand Dollars or thereabout, the balance claimed on said deed of Trust.

Plaintiffs state that they have requested and demanded said Robert Campbell and said James and said McDaniel and said Hill (trustees as aforesaid) to receive and apply to said trust debt, the five eighths of the proceeds of the sale of said boat after deducting said lien debts and costs and have offered to guaranty them in the collection thereof, with ten per cent interest by good bond with approved Security, but they have refused so to do, and still so refuse, and threaten and intend, and unless restrained by your Honor to sell said separate real estate of said McDaniel

10 for the whole of said debt and permit said McDaniel to receive and keep said money arising from the sale of said boat, to the great injury and in fraud of the rights of plaintiffs and with full knowledge of all the aforesaid facts and of the insolvency of said McDaniel.

Plaintiffs further state that they have requested and required said Robert Campbell, said James said McDaniel and said Hill (Trustees aforesaid) to sell for the remainder of said trust debt now unpaid upon said money arising from the sale of said boat, first the said joint and partnership real estate of said Gilham and McDaniel above described (and which was not embraced in the said mortgage to plaintiffs) - before the separate property of said McDaniel shall be sold, but they have refused so to do, and said James and said Hill threaten and declare that they will first sell such of the property in said deed as said McDaniel will direct and will be governed by his directions therein and said McDaniel in fraud of plaintiffs rights, and in violation of his Contract and mortgage, threatens to have the property embraced in said mortgage, sold before the said other property is exhausted and is fraudulently with the Consent and knowledge of said James about so to have said property sold and will so do unless restrained by your honor.

Plaintiffs further state that said McDaniel James, Hill. (Trustee aforesaid. and well know

11 that plaintiff Riddlebarger purchased said lots No 3. 5 and 6. in Block No 6 under execution as aforesaid and paid therefor, on the debts of said McDaniel - Yet altho requested, they refuse to sell the other property in said trust deed mentioned before selling said lots, and said McDaniel with the knowledge and consent of said James and Hill is about to cause said lots to be sold before exhausting said other property which is in violation of said plaintiff Riddlebarger's right, contrary to equity and good Conscience -.

Plaintiffs state and charge that the acting and doing of said McDaniel aforesaid are in fraud of the rights of plaintiffs and so designed and intended with full knowledge that said James in taking a transfer of said debt and suffering and permitting and causing a sale of property as aforesaid, as he threatens and intends is acting in violation of plaintiffs rights and equity and good conscience and unless restrained by this Honorable Court they will cause said individual separate property of said McDaniel to be sold before exhausting said partnership fund (upon which plaintiffs have no lien) and the said debts due to plaintiffs and each of them and upon which they are liable for said McDaniel and which were intended to be secured by said Mortgage as a large portion thereof will be unsecured and plaintiffs will lose the same and said McDaniel will be allowed to receive and

keep said partnership funds in fraud of these plaintiffs.

Plaintiffs therefore pray that defendants may be enjoined and restrained from selling any of the separate property aforesaid of said McDaniel until said partnership fund of Gilham and McDaniel, arising from the sale of said boat is first applied to said partnership debt or for any more of said debt than shall remain after applying the same thereto, and also until said partnership lands held jointly by Gilham and McDaniel be first sold and the proceeds applied to said debt and also until said lands which were owned by said Gilham be first sold and applied to said debt

They further pray that they may be enjoined from selling said lots No 3. 5. and Six in said block No 6 until the other of said property shall be exhausted

They further pray that defendants and each of them may be required true and perfect answers to make to each and all of the allegations herein - That on a final hearing the injunctions herein may be made perpetual and that an account may be taken as to what of said trust debt may remain unpaid, and for such other and further relief in the premises, as your Honor may deem proper and equitable and they will ever pray &c = Sharp & Broadhead

Attys for Plaintiffs

13 Jesse Riddlebarger one of said plaintiffs and as agent for his Codefendants being duly sworn on his oath states that the foregoing petition and the matters therein as stated he believes to be true

J. Riddlebarger

Subscribed and Sworn to before me
December 27th 1860

S. Rice Clk.

And on the same day, to wit the 27th day of December A D 1860. the following order was made by the ~~Court~~ Judge of the Circuit Court at Chambers.

Temporary Order of Injunction

Jesse Riddlebarger & others
vs
Thompson McDaniel & others

It is ordered by the Court that Dutton A Hill and John Campbell trustees be enjoined from selling under the deed of trust mentioned in the bill, any more property advertised for sale than sufficient to pay the balance of the debt — secured by said trust deed after deducting 5/8ths of the balance of the money from the sale of the Steam Boat A B Chambers (which is $2465.70/100) and that they only sell enough of said property to pay remainder of such trust debt after deducting said sum, and the said Dutton A Sanner is also so enjoined — They are further enjoined from selling any of the separate property of said McDaniel mentioned in said deed until the said lands in Bates County, and lots No 15 + 16

in Block No 1. in McDaniels addition to Kansas City are first sold, and also from selling lots 3.5.+6 in Block 6 in said addition until after the other property is sold & such property may be required.

Said Defendants are further ordered, after deducting from said ~~debt~~ trust debt said sum of $2465.$\frac{75}{100}$ - then they shall sell for the balance of said trust debt property mentioned in said trust deed, in the following order

1st The said land in Bates County

2nd Lots 15+16 in Block No 1 - Kansas City

3rd Lots No 1.2.3.4.+5. in Block No 1. in McDaniels addition to Kansas City

4th Lots No 23.24.25 +26 Block No 1. in same addition

5th Lots 6.7.10.11.17.18.19.20.21.+22 in Block 1 of said addition in Kansas City & then if necessary other lots of McDaniel in said trust deed

And that when a sufficiency of said property shall be sold to satisfy the balance of said trust debt after deducting therefrom $2465.$\frac{70}{100}$ as aforesaid, said sale to cease, and no further property be sold and any fractional excess remaining from the sale of any land, to remain in said Trustees hands under further ordered by this Court - that is if any lot last sold shall sell for enough to pay such balance of ~~debt~~ trust debt and leave any excess of money said trustees shall retain the same until further ordered

J. M. Breckinridge Judge

15. And on the 23rd day of January 1861 the following answer of Defendant James was filed

Answer of B W James.

The said Burton W James one of the Defendants answering says he believes the deed of trust named in plaintiffs petition as executed by Gilham and McDaniel to said Robert Campbell was executed as alleged, and for the purposes alleged, and that its contents are substantially set forth; also that the mortage referred to in Plaintiffs petition as executed by said McDaniel to the Plaintiffs on the 25th day of May, 1860 was executed as alleged, and for the purpose alleged, but how much is now due the plaintiffs on the notes and bills of Exchange named in said mortgage or for how much they are still liable on the same, this Defendant has no knowledge or information sufficient to form a belief Defendant further says that he holds the note of the said McDaniel given him for five thousand dollars, and dated September 13th 1858 upon which note there is still due him the sum of Twenty two hundred Dollars with interest at 10 per cent a year from the 13 of September 1860 and that a portion of said balance is for money for which the said firm of Gilham and McDaniel are liable to him, and a portion for which the said McDaniel alone is liable individually, but the exact proportion of each, he is not able to say He further says that on the 22nd day of December 1860

said McDaniel assigned to him as security for the payment of said balance of $2200 and interest all the right title and interest of the late firm of Gilham and McDaniel and of said McDaniel individually in five eights of the proceeds of the sale of the boat A B Chambers referred to in plaintiffs petition and authorized this defendant to collect the same of any parties who might be liable therefor, and further says that he has no other property of any kind pledged or mortgaged to him as security for the debt due him as before stated, and that the proceeds of the sale of said boat were assigned to him aforesaid in good faith, and before he had come to the conclusion, that, for the purpose of self protection against what he believes to have been the designs of the Plaintiffs, it was necessary for him to obtain from the said Campbell, the assignment of said Campbells rights under the said deed of trust

Defendant admits that on the 24th day of December 1860, took from said Campbell an assignment of all of said Campbells rights under said deed of trust, paying said Campbell therefor the full amount due him under said deed of trust, exclusive of the expenses of administering the same, and that he did so for the following reasons - 1st That he had purchased of said McDaniel at private sale, Lots 7.8 and 9 in Block 7 and at Public Sale, under execution, Lots 1. 2. 6. 7. 8 in Block 4, and lots

17 1. 2. 3. 4 in Block 5. and lots 7. 8. 9. 10. 11. 12 in Block, 6: all of which lots were Covered by the Campbell deed of trust, but had been purchased by this defendant, without any reference to said deed of trust as an incumbrance on the same: and which property is, of the value of Seven or Eight thousand Dollars, and a part of which is his own property, and a part is in his name for the benefit of other parties.—

2nd Because he had reason to believe and did believe, from declarations made by some of the plaintiffs, that if they, by an assignment, or otherwise, could control the sale under said deed of trust, that it would be used to his injury & damage, and, also, to the damage of Mr McDaniel and others, whose interest he felt solicitous to protect.

Defendant further says, that before, and at the time, he took said assignment from said Campbell, he voluntarily assured said Campbell, that he would not sell under said deed of Trust any property which had been sold to others subsequent to said deed, and that this assurance was intended to apply, and did apply, to the lots specified by the Plaintiffs as having been purchased at sale under executions by one of them: as well as lots that had been purchased by others than the plaintiffs, And this Defendant, of which latter class there are a number.

And he denies that he ever had, or expressed any intention to sell, under said deed of trust, the lots purchased by the plaintiffs, or either of them as specified in the petition, - or to do any other act under said deed of trust to the Plaintiffs, or any one else, contrary to equity and good conscience. - This defendant further says that he and the said McDaniel, had on Saturday, before the assignment was made to him, prepared and arranged the order in which said McDaniel was to request the sale to be made, and that it was the same which was produced at the hearing on the motion for an injunction, and upon which the sale was made, and that order was not intended at any time to be changed.

This defendant further says the allegation in Plaintiffs petition that the real estate therein named as mortgaged to them after selling sufficient to satisfy the Campbell deed of trust, is not sufficient to pay the amount due them, and for which, they, the plaintiffs, are liable in the notes & Bills of exchange named in their petition, - is an evasion of the facts of the case, because the said mortgage to them includes one eighth of a valuable Ferry privilege, and the real and per-sonal property therewith connected which is worth at least from Seven to Eight thousand dollars, and is not named in their petition as held by them and the same is not included in the

19 Campbell deed of trust.

This defendant avers, that the property mortgaged by McDaniels to the Plaintiffs is more than sufficient at the present Market prices when sold at auction, to pay all that is now due the plaintiffs by said McDaniels, and all for which they are liable on his account; including interest up to the 25th of May next, the time for which credit was given said McDaniel under said Mortgage, after excluding from this estimate all lots or lands sold to any, and all other persons, and after selling enough to pay the amount and expenses due on the Campbell deed of trust, without reference to the proceeds of the said Steam Boat; and after excluding the partnership land of Gilham and McDaniel; and also the two lots owned by Gilham individually. — Defendant further says that at the sale under said deed of trust on the 27th day of December 1860 the Bates County land, the only partnership real estate in said deed of trust; brought at auction, three hundred and Seventy five dollars, and was purchased by the Plaintiff Chouse, that lots 15 & 16, in Block 1. the only individual property of the said Gilham, included in the sale or advertisement was sold for two hundred and fifty dollars, to this defendant; and that lots 1. 2. 3. 4. 5 of Block 1, Containing the Union Hotel sold for Six thousand Seven hundred and fifty dollars and was purchased by this defendant, making a total of $7375.00 — After the above was sold

20 there is still left the following property covered by said deed of trust, and also by Plaintiffs mortgage, and not sold to any body else, so far as this Defendant knows, and which has been valued by the Plaintiffs, a few days previous to said sale, as follows viz – Lots 24. 25. & 26 in Block 1 with stable thereon = $1800.00, Lots 6. 7 10. 11 in Block 1. in Main street $3840.00 – Lots 17. 18. 19. 20. 21. 22. 23. – Block 1. $2800.00 – ~~Lots~~ Lots 1. 2. 3. 4. 5. 6. 7. 8. 9 in Block 3, at $250 each $2250.00. Lots 10. 11. 12. 13. 17 & 18. Block 3. at $150 each, $900.00. The North half of lot 4, and lot 3 in Block 7 – $800.00, Lots 11. 12. 13. 14. 15. Block 2 Grand Avenue – $1250, Parcel of ground West of Spears, 20 feet by 120 = $100.00

The above makes at their own valuation $13740.00, and, in the opinion of this defendant is about a fair valuation. In addition to lots so valued as above there is the one eighth of the Ferry property before mentioned, which one of the Plaintiffs, Reddlesberger, has himself said and said it the day of the sale, was worth $8000.00 There is, also, in Plaintiffs mortgage an assignment to Plaintiff of Said McDaniel's claims and demands against certain individuals, among which is a note against one Radcliff – for between Six and Seven hundred dollars now due, which amount has been, and is now claimed by the Plaintiff, and the said Radcliff is responsible and able to pay the same. – also, about $250.00 of

21 money for a dividend in the Mechanics Branch Bank of the City of Kansas, on stock formerly owned by McDaniel, which has been garnished, or is claimed by plaintiffs, and held there for them.

Thus making in all over Twenty two thousand five hundred dollars of property, according to their own valuation, held by them under their said mortgage, subject to no other claims, according to the best knowledge, or belief of this Defendant, than the balance now due on the Campbell deed of trust, which is not over Twenty Two hundred dollars, which deducted leaves over Twenty thousand ($20,000) dollars in the hands of the Plaintiffs to pay their claims, which on the 25th day of May 1861., when they can sell under their mortgage, will not exceed fourteen thousand Dollars according to their own statements in their petition

Thus showing that it is not at all necessary to their ~~own~~ protection, that the proceeds of the sale of said Steam Boat should be applied to the Campbell deed of trust, in violation of, and to the destruction of all the Security this defendant has for the payment of the balance due him on his note, against McDaniels as herein before stated

Defendant further says that the proceeds of the sale of said Steam Boat are now in the hands of Thomas E Courtenay, late Sheriff of Saint Louis County, who is insolvent and a defaulter to a large amount, and the recovery of that

22 money may involve a long law suit, and be of doubtful result, and the defendant denies that he, holding the rights of Said Campbell under said deed of trust, should be compelled to follow such a fund under the facts appearing in this Case. Defendant further states, that the defendants knew from the advertisement, at least thirty days before said sale, on the 27th of December 1860, that said sale was to take place on Said day, and had ample time beforesaid sale to have applied for an injunction, and to have given the Court full time to deliberate and act understandingly upon the matter before Said sale, and thereby avoided the expense and possible damages to defendants interest caused by Said injunction granted without full investigation. Defendant further says that at Said sale on the 27th of December, 1860, Said Plaintiff Riddlesberger was a bidder on the property Sold and frequently stated that he had the money to bid, and prevent any sacrifice of the property and after Said Sale had proceeded as far as was allowed by the order of the Court, this defendant then proposed to the Said Riddlesberger that they should waive the injunction and allow the sale to proceed till the Campbell deed of trust was satisfied stating to Said Riddlesberger that both well Knew there was property sufficient after satisfying the Campbell deed of trust to secure all the indebtedness named in the

23 Plaintiffs mortgage - and that the said Biddlesberger refused so to do. -

Defendant says, that he has a claimant, by purchase of property covered by the Campbell deed of trust, and before he had purchased, or contemplated to purchase, said Campbells rights was desirous of having a sale made under said deed of trust, so as to quit the title he and others held to lots covered by said deed of trust, - and that he had requested said Campbell to make such sale, and knows that said McDaniel had also made the same request and is informed and believes that some of the plaintiffs had, also, made the same request of said Campbell.

This Defendant, therefore, asks that the injunction granted in the case be dissolved and that he have judgment for his damages and costs, and such other and further relief as he may be entitled to in the premises

Hill and Sewett attys for
Said Defendant

Burton A James, the Defendant on oath says that the above answer and the matters therein as stated he believes to be true

B. A James

Subscribed and Sworn to this 29th day of Dec A D 1860, before me, A Notary Public in and for the County of Saint Louis

E F Spalding
Notary Public for Saint Louis County

And on the Fourth of February A D Eighteen hundred and Sixty one the following answer of John Campbell was filed herein

Answer of J Campbell

John Campbell one of the defts answering says that he has no knowledge or information relating to the matters set forth in plaintiffs petition sufficient to form a belief and submits the matter to the Court upon this answer and that of the other defendants

Hill and Swett attorneys for Defendant.

John Campbell, Defendant, on oath says that the above answer, and the matters therein as stated he believes to be true

John Campbell

State of Missouri } S. Sworn to and Subscribed
County of Jackson } before me Philip S Brown a Notary Public within and for said County on this Eleventh day of January A D 1861.

In testimony whereof I have hereunto set my hand and affixed my Notarial seal at my office in the City of Kansas the date aforesaid

(seal)

P. S. Brown
Notary Public

And on the same day the following answer of D McDaniel was filed

25. The Defendant Thompson McDaniel — answering says he admits that a deed of Trust was executed by himself and the late Gilham his partner, as alleged in Plffs petition - to secure Robert Campbell as alleged, Also that he executed a mortgage to Plffs as alleged in Plffs petition to secure them as alleged in the same - Defendant further says that his indebted to Burton Adamex by a note dated September 13th 1858 given for five thousand Dollars upon which there is due a balance of $2.200 and interest from the 13th of September 1860 and that a portion of said balance is due for money which the said late firm of Gilham and McDaniel were liable to pay him and a portion for which this deft is individually liable, but the exact proportion of each this Deft is not able to say and he further says that on the 22nd day of December 1860 he assigned to said Dames as security for the payment of said balance due Dames on said note, all the right title and interest of the ~~said~~ firm of Gilham and McDaniel and also of himself individually to five eighths of the proceeds of the sale of the Steam Boat A B Chambers refered to in Plffs petition and authorized the said Dames to collect the same of any parties who might be liable therefor and he further says that said Dames has no other property of any kind assigned or pledged to him as security for said balance for $2200 and interest and that the proceeds of said boat were assigned to said Dames in good

Answer of T McDaniel

faith, and before said James, so far as this defendant knows, had determined to purchase the interest of said Campbell under said deed of trust

Defendant further says that he was desirous of having said James take an assignment of the interest and rights of said Campbell under said deed of trust as he (this Deft) had sold at private sale and by virtue of executions levied against him many lots in the City of Kansas to said James and others; which lots were covered by said deed of trust and that he had reason to fear and did fear from certain declarations made by some of the plaintiffs that they the plaintiffs might take an assignment of said deed of trust and use it to his damage and that of those who had purchased lots covered by the same, Defendant further says that he requested the said Campbell to make the sale advertised for the 27 of December 1860 and to satisfy said deed of trust, out of lands not conveyed by this Defendant at private sale, or on execution so as to quiet the title of those holding lands under either of said titles and that said Campbell had agreed so to do, and the said James agreed to do the same, both before and after he took an assignment of said Campbells interest

Defendant further says that before said James had purchased the interest of said Campbell & said James had agreed upon the order in which the defendant was to request the said sale to

27 to take place, and that said order was the same that was pronounced at the hearing for an injunction, and which was inserted in the order of the Court made at the time and he avers that at any time he had or expressed any intention to have the lots purchased by the plaintiff or one of them as specified in their petition sold under said deed of trust, or to do to the Plffs or any one else, under said deed of trust, any thing contrary to equity and good conscience.

Defendant further says that he now is fully satisfied and believes and did on the said 27th of December 1860, that after selling under the Campbell deed of trust sufficient of the land covered by the same to satisfy said deed of trust, excluding from said sale, all lands sold by this Deft at private sale or execution against him or him and his late partner Gilhaus, - then that there is sufficient land remaining covered by the said mortgage to the Plff and upon which there is no other claim, to amply secure the Plffs for all that is due them by this Deft, and to leave unencumbered to this Deft. the one eighth of this Ferry privilege and the real and personal property thereto connected, after satisfying the Plffs demands in full, and he so avers, And this Deft further says that at the time said Mortgage to Plffs was made, it was deemed by the Plffs more than sufficient security for all the debts and demands mentioned in the same for this Deft avers that at the time of making

said mortgage the Plffs then and there agreed that they would still farther indorse this Defts paper to an amount equal to but not over twenty thousand dollars, for which it is provided in said mortgage that the same shall be security

Defendant further says that since the execution of said mortgage the Plffs have refused to become security for this Deft in any sum whatever and have thereby greatly to the injury and damage of this Deft and have thereby sacrificed much of this Defts property by forced sales at a price much less than its real value.

This Defendant avers that the said one eighth of the Ferry privilege and property cost him about twelve thousand Dollars, and he now believes it to be worth at least eight thousand Dollars.

Defendant denies that he is insolvent and that the object in having said sale under said deed of trust was to save to himself the proceeds of the sale of said boat and thereby deprive the Plff. of security for the debts specified in their mortgage, but he says he is anxious to pay all his debts and the debts of Gilham and McDaniel and that he believes he has property sufficient so to do if the same is not sacrificed by the management of the Plffs. He further says that he has already paid out of his own funds more than twenty thousand Dollars of the debts of Gilham and McDaniel and for which he claims to be and is a creditor of the firm of Gilham and McDaniel & he further

29 says that he believes it to be and still does for his interest and the interest of all those who claim a title to, or lien on lands under him, that sufficient should be sold as before stated to satisfy the Campbell deed of Trust, and he fears that great damage has been done to his interests and many other of his creditors, by the injunction in this case – The Defendants therefore asks that said injunction be dissolved and that he have judgment for his damages and costs and for such other and further relief as he may be entitled to in the premises

Hill and Sweet
Attys for Defendant.

The Defendant Thompson McDaniel on oath says that the above answer and the matters therein as stated he believes to be true

Thompson McDaniel.

State of Missouri }
County of Jackson } Sworn to and Subscribed before me on this 10th day of January A D 1861. In testimony whereof I Philip S Brown a Notary Public within and for said County have hereunto set my hand and affixed my Notarial seal at my office in the City of Kansas the day and year aforesaid

(Seal)

P S Brown
Notary Public

30

And on the Fourth of February A D 1861 the following answer of Wm T Gilham was filed

Answer of William T Gilham

William T Gilham one of the Defts — answering says that he has no knowledge or information relating to the matters set forth in Plffs petition sufficient to form a belief and submits the matter to the Court upon this answer and that of the other Defendants

Hill and Sewell
Attys for Defendants

William T Gilham, Defendant, on oath says that the above answer and the matters therein as stated he believes to be true

Wm T Gilham Adm of the
Estate of Alex Gilham

State of Missouri } ss. Sworn to and subscribed
County of Jackson } before me — Philip S Brown a Notary Public within and for said County this Eleventh day of January A D 1861

In testimony whereof I have hereunto set my hand and affixed my Notarial seal at my office in the City of Kansas the date aforesaid

(seal)

P. S. Brown
Notary Public

And on the Sixth day of February A D Eighteen hundred and Sixty One the following answer of Hill and Campbell was filed

31

County of Saint Louis, ss:

Answer of B A Hill & Robt Campbell

Britton A Hill and Robert Campbell, two of the above Defendants, for answer to Plaintiffs petition say that the said Robert Campbell sold and assigned all his interest in the debt secured by said deed of trust to Burton A James for the full amount of the balance of the said debt due to him, the said Campbell and secured by the said deed of trust, before the commencement of the said suit by the said Plaintiffs. And the said transfer by said Robert Campbell was in good faith, and the assignment of the debt and the deed of trust was made to said James and the said R Campbell has no interest whatever in the said suit, and prays to be hence dismissed with his costs.

And the said Britton A Hill is one of the trustees in said deed of trust, and has no other interest in the said suit, or the said proceedings and sales, than as trustee. This defendant has no knowledge or information sufficient to form a belief whether he advertised all of McDaniels property under said deed of trust, Defendant avers, the property advertised was conveyed by the deed. Defendant denies that any proceeds of the sale of the Steamer A B Chambers were to be realized by him or his.

at the time of, or at any time before, the said sale of the said property under said deed of trust, or the Contrary thereof, the Sheriff Thomas E Courtney

had squandered the proceeds of said sale of the Steamer A B Chambers and had refused to pay the same over, and was then insolvent and defaulting, and so the proceeds of said sale of said Steamer A B Chambers were not in a conditioned to be realized: and this Defendant believed he had a clear — to sell so much of the other property described in said trust deed as would pay the debt due to Said Robert Campbell and by directions of the Said Robert Campbell this Defendant advertised the said property for sale accordingly. This Defendant denies that the Plaintiffs ever tendered any bond to the said R Campbell or to the said Burton A James to indemnify them, as stated; Plaintiffs offered to give security, but did not tender any bond - This defendant denies that he ever intended to permit said — McDaniel to receive or keep any money arising from the sale of said boat and this Defendant does not know that said McDaniel is insolvent - Defendant denies that he refused to sell first the partnership property of said Gilham and McDaniel. The Steamer having been sold on liens and the proceeds of the sale being in the hands of an insolvent Sheriff, the property was intended to be sold precisely as it was sold, Defendant denies that he intended to be governed by said McDaniels directions in fraud of the rights of the Plaintiffs; and denies that he intended to sell the property in any order otherwise than it was sold at the sale

The defendants motion to correct the record herein being heard and fully considered by the Court, it is ordered that the same be sustained, and that the following entry be made "nunc pro tunc" as of the last September Term (1862) and as of Friday November 7th 1862, in said term, to wit, "Cause continued to the next term for assessment of damages" And thereupon, upon application of the plaintiffs this cause is continued to the next term for assessment of damages.

And at the September Term 1863 and on the 5th of January 1864 the following further proceedings were had herein

Injunction = Now at this day come the parties by their respective attorneys, and this cause being called for assessment of damages sustained by reason of the injunction herein, the parties waiving a jury submit the said assessment to the Court upon the proofs, and the Court having duly heard and considered the same and being fully advised in the premises doth assess the defendants damages at the sum of Sixteen hundred and thirty three dollars ($1633.00) It is therefore considered by the Court that the plaintiffs suit be dismissed at the costs of the plaintiffs and that the defendants recover of the plaintiffs and of John D Perry and John B Slaughter, the securities on the injunction bond herein, the damages aforesaid assessed and their costs and charges in this behalf expended and have execution therefor, Opinion of the Court filed. Motion for a new trial filed

And at the September Term 1863 and on the 28th January 1864 the following entry was made herein

Motion for a new trial continued to next term

And at the February Term 1864 and on the 22nd day of February 1864 the following further entry was made herein.

The motion for a new trial herein being heard and fully considered by the Court is overruled

And at the February Term 1864, and on the 15th of April 1864 the following further entry was made herein

The plaintiffs file an affidavit for an appeal and on motion of the plaintiffs by attorney an appeal is allowed them to the Supreme Court from the judgment herein rendered and they thereupon file an appeal bond which is approved by the Court.

Said affidavit for an appeal is as follows

Affidavit for Appeal

Now at this day comes the above named Lesse Riddlesberger for himself and his Co plaintiffs and asks an appeal from the judgment of the Circuit Court of Saint Louis County Missouri rendered in the above entitled cause on the motion for the assessment of damages and also from the judgment of said Court in dissolving the injunctions in said cause, and from the final and all judgments rendered against plaintiffs in said Cause and affiant on oath states that said appeal is not made for vexation

And Defendant avers that the intent was to sell the property fairly, so as to make the money necessary to be made to pay the trust debt, out of property that had not been previously sold, if possible.- Defendant denies that he refused to sell other property before selling lots three, five and six, in Block No 6, as alleged, and before the granting of said injunction, this Defendant sold the lots 15. & 16 in Block One: Lots 1.2.3.4 & 5. known as the Hotel property, and 149 $\frac{86}{100}$ acres of Bates County land, with the Consent and approbation of the plaintiffs for $8375.00 and adjourned the said sale until the first Monday of March 1861.- by reason of the issuing of said injunction And this Defendant denies all fraud and Confederacy and prays to be dismissed with his costs.

Britton A Hill, for himself and as Attorney for R Campbell

County of Saint Louis=}

Britton A Hill for himself and as attorney for the defendants being duly sworn says he believes the foregoing answer and the matters therein as stated are true

Subscribed and sworn = Britton A Hill
to before me February 6th 1861.

P Rice Clk.

And at the September Term 1862, and on the 7th of November 1862 the following further proceedings were had herein

Injunction

Now come the parties by their respective attorneys and submit the defendants motion to dissolve the injunction herein to the Court and the Court having duly heard and considered the same and being fully advised in the premises doth order that the said motion be sustained, It is there considered adjudged and decreed by the Court that the injunction heretofore granted herein enjoining and restraining the defendants from selling certain property in said injunction and the petition herein mentioned be dissolved and that the defendants recover of the plaintiffs their costs and charges herein expended and have execution therefor. The plaintiffs file a motion for a new trial herein, which being heard and fully considered by the Court is overruled; and the plaintiffs file a bill of Exceptions and an affidavit for an appeal, and an appeal is allowed them to the Supreme Court from the judgment herein rendered, and the parties file an agreement, and by consent six days are given the plaintiffs to file an appeal bond herein, which bond, by like Consent, may be approved by the Clerk in the absence of the Judge.

And at the February Term 1863 and on the 18th of March 1863 the following further entry was made herein

37 and delay but because affiant believes that the said appellants are aggrieved by the judgments and decisions of the said ~~[illegible]~~ Circuit Court in said cause

J. Riddlebarger

Sworn to before me April 9th 1864
J. Rice Clk

Appeal Bond

Said Appeal Bond is as follows

Know all men by these presents, That we Jesse Riddlebarger as principal, and William J Stone and William Pope as sureties are held and firmly bound unto Thompson A McDaniel, Burton A James, Jno Campbell Button A Hill Robert Campbell, William P Gilham admr of Alexander Gilham dec'd, in the sum of Thirty three 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 Saint Louis this 15th day of April A D 1864.

The Condition of the above obligation is such, that whereas Jesse Riddlebarger Jno S Campbell, Lott Coffman, Franklin Conant Daniel L Shouse and John C Hayden have appealed from the judgment rendered against them, and in favor of Thompson McDaniel Burton A James, John Campbell and Wm P Gilham Admr in the Saint Louis Circuit Court

for the sum of Sixteen hundred and thirty three dollars together with costs

Now, if the said appellants will prosecute their appeal with due diligence, to a decision in the Supreme Court, and shall perform such judgment as shall be given by the Supreme Court, and such as the Supreme Court may direct the Saint Louis Circuit Court to give; and, if the judgment or any part thereof be affirmed, will comply with and perform the same so far as it may be affirmed; and pay all damages and costs that may be awarded against them by the Supreme Court. then this obligation shall be void, otherwise it shall remain in full force and effect.

Approved
James C Moody
Judge

S. Riddlebarger (Seal)
W. S. Stone (Seal)
William Pope (Seal)

And on the 5th of May 1864 the following "Bill of Exceptions" was filed herein

Bill of Exceptions

In application for assessment of damages

Be it remembered that on the trial and hearing of said motion and application the same was submitted to the Court without a Jury, and thereupon the defendant introduced the following testimony and the following proceedings were had.

Defendants proved that they had employed Counsel to defend said cause, who had defended the same and that Five hundred dollars was a reasonable

fee, and compensation to them therefor

James M Francis Witness

Defendants then introduced as a witness James M Francis, and offered to prove by him that on the 27th day of December 1860 at Saint Louis, gold was at a premium of from 2 to 3 per cent, over and above United States Legal tender notes, and that on the 23rd day of January 1863, and about that time gold was at a premium of 47 to 48 per cent over and above United States legal tender notes at Saint Louis, - to all of which plaintiffs objected, and insisted that the difference in value between such legal tender notes and gold at the times stated, or at any other times was not a proper or legal subject of damages but the Court over-ruled their objections and admitted the testimony and ruled the same legal and Competent, to all of which plaintiffs at the time excepted.

Said witness then testified on behalf of defendants that on said twenty seventh day of December 1860 at Saint Louis Gold was at a premium of from Two to Three per cent over such legal tender notes, that after that time gold rose in value and on said 23rd day of January 1863, and about that time gold was at a ~~value~~ premium of 47 to 48 per cent over and above such legal tender notes.

On cross examination said witness testified, that on said 23rd day of January 1863. and for a long time before and ever since, United States legal tender notes was the money in general circulation

at Saint Louis and all over the Country, and was the circulation of the Country and the standard of all values, and with it debts were paid and the business of the Country Conducted that gold was not in general circulation and was not a circulating medium at money, or a standard of values, but was an article of merchandise as any other species of personal property.

It was admitted that said 27th day of December 1860 was the day on which the first sale under the deed of trust refered to in this case and said 23rd day of January 1863. was the day on which the last sale thereunder took place after the injunction herein was dissolved.

It was proven by defendants that at the sale under said deed of trust on the 27th day of December 1860 they demanded gold in payment for the property then sold and received gold, and that at the sale on said 23rd day of January 1863, they received United States legal tender notes

To all of which when offered plaintiffs in due time objected but the Court overruled their objection and declared such evidence legal, and admitted the same and to all of which plaintiffs at the time duly excepted.

P A Hill Witness =

Britton A Hill witness for Plaintiff testified that at the sale of property made by him as trustee under the deed of trust mentioned

41 in this cause on the 27th day of December 1860 the nett proceeds of such sale amounted to $7112.63 that the amount due on the trust deed and trust debt at that time was $9371.70 which left a balance unpaid on the trust debt, after such sale was made of $2259.07 that at the time of the last sale on the 23rd day of January 1863. the nett proceeds of the property sold by him as trustee under said trust and was $2997.95. all of which money was paid over by him to defendants and retained by him as trustee, and one of the defendants, and no part thereof was ever paid to any of the plaintiffs or any one for them excepting the sum of $2012 which he paid over to said Shouse on the 23rd of January 1863. and all the balance of said money is retained by defendants

The foregoing was all the evidence ~~offered~~ given or offered in the cause

The plaintiffs then asked the following instructions

43. Judgment was thereupon given for Defendant for. $1633 $\frac{00}{100}$ damages

And thereupon on the 5th day of January 1864 and in due time plaintiffs filed their motion for a new trial herein which is as follows

Motion for a New Trial

Now at this day come the plaintiffs by their attorney and move the Court to grant a new trial in the above entitled cause

1. Because the judgment of the Court in dissolving the injunction in this cause is against the law.
2. Because the said judgment in dissolving the injunction is against the evidence and the weight of evidence.
3. Because the damages awarded by the Court on the dissolution of the injunction are exhorbitant
4. Because the opinion and judgment of the Court upon the question of the assessment of damages are against the law and not warranted by the evidence in the case
5. Because the damages assessed are not warranted by the evidence in the Case
6. Because the Court admitted improper evidence offered by the Defendants on the motion to assess damages

Sharp and Broadhead
attys. for Plffs.

And which being seen and heard by the Court was by the Court overruled, to all of which plaintiffs at the time duly excepted, and tender this their bill of exceptions which they ask may be signed sealed and

made a part of the record and which is done accordingly

James C Moody (Seal)
Judge.

And on the 23rd day of May 1864 the following motion to strike out the Bill of Exceptions was filed

Motion to strike out Bill of Exceptions

In the above case the Defts by their attorneys move the Court to strike out the Bill of exceptions and to cancel or strike out or disallow the appeal taken by the Plffs in this case, for the following reasons.

Because all the proceedings to which the Plffs have excepted, were had in this Court at the September Term of this Court 1863. (except the refusal to grant them a new trial) and no bill of exceptions to said proceedings was taken by the Plffs, at the said September Term 1863. as by law it must have been, and no agreement was made by the parties to this suit or entered of record that any bill of exceptions should be filed at this term

H C Allard Sewell
Attys for Defts.

And at the February Term 1864 and on the 8th of June 1864 the following entry was made herein

The motion to strike out the Bill of Exceptions herein being heard and fully considered by the Court is overruled

45. State of Missouri } ss. I Josiah Thornburgh
County of Saint Louis } Clerk of the Saint Louis Circuit Court, certify the foregoing to be a true and Complete transcript of the proceedings in the above entitled Cause as fully as the same remains of record in my office

In testimony whereof I hereto set my hand and affix seal of said Court at office in City of St Louis this 17th day of August A D 1864

Josiah Thornburgh Clk

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79 (21)

March Term, 1866.

Jesse Riddlesbarger
Et al Appellants,
~~Appellants~~

vs } Transcript

Thompson McDaniel
Et al Respondents

Transcript for Supreme Court

Filed Sept 30. 1864
A W Mead Jr
Sharp & Broadhead
of Appellants

Hill & Jewell for
Appellee

$ 14.00 paid by Appellant
10 p paid by Appellant

1864
Oct 16 Assignment of Errors filed
1866
Apr 24 Appellant's Statement
1866 May 8. Arg & Sub. Cr. of Ap. St. & Cr. res. filed
" " 8 motion to strike bill of ex. from Rec.
" May 12 R.R.
" " 19 Motion for re-hearing filed
" " 28 " " " Overruled

Jesse Riddlesbarger Appellant ~~Respondent~~
aff
Thompson McDaniel et al
Respondents

IN SUPREME COURT,
October TERM, 1864

AND now comes the said Appellant and say, that in the record and proceedings of the Court below, in the above entitled cause, there is manifest error, and for error said Appellant assigns the following, to wit:

1. That said Court admitted improper and illegal testimony offered by Respondent
2. That said Court rejected proper and legal testimony offered by Appellant
3. That the Court gave ~~to the Jury~~ improper and illegal instructions.
4. That the Court refused to give ~~to the Jury~~ proper and legal instructions offered by Appellant
5. That the ~~verdict~~ finding of the Court was against the evidence.
6. That the ~~verdict~~ finding of the Court was against law.
7. That the ~~verdict~~ finding of the Court was against both law and evidence, and against the law under the evidence.
8. That the ~~verdict~~ finding of the Court was against the weight of evidence.
9. That the judgment was rendered in favor of the Respondent when it should have been rendered for the Appellant
10. That said Court overruled the motion for a new trial, made by Appellant

Sharp & Broadhead
Attys for Appellants

And now come the Respondents and for joinder in error say, that there is no error in the record and proceedings of said Circuit Court in said cause, as assigned by said Appellants

Hill & Jennett
Attys for Resp.ts

~~232~~ 198

Supreme Court
October Term 1864

Jesse Riddlesbarger
Appellant
vs
Thompson McDaniel
et al Respondents

Assignment of Error

Filed Oct 15th 1864
S. W. Mead
Clerk

Jesse Biddlesberger & als
vs
Thompson McDaniel & als

Supreme Court St. Louis Co. Special Term, June 1865

And now the Defts by their Attys Hill & Jewett, move the Court to dismiss the appeal ~~& bill of exceptions~~ taken & brought up here by the Pffs

Because all the proceedings to which the Pffs have excepted were had in the Circuit Court of St. Louis County at the September Term 1863, of said Court except the refusal to grant them a new trial, & no bill of exceptions to the said proceedings was taken or filed at said September Term 1863, by the Pffs, as by law it should have been, & no agreement was made by the parties to this suit or their Attys, that any bill of exceptions should be taken or filed at the next or any subsequent term of said Court & the bill of exceptions, which makes a part of the record in this case, was not ~~filed~~ taken or filed till the Feb. Term 1864 of said Circuit Court

Hill & Jewett
Attys for Defts

198

Reddlesberger & Co
v
McDaniel & Co
S Ct
June 7 1865

Motion to dismiss
the appeal

Filed June 21, 1865
Jno A Willis
Clk

Jesse Riddlesbarger & others —
Plaintiffs in Error,
against
Thompson McDaniel & others
Defendants in Error.

In the Supreme Court of Virginia

Statement of the case by plaintiffs in Error.

On the 27th day of December 1860, a bill was filed by Riddlesbarger & others, (plffs. in Error) against McDaniel, Campbell, James, Hill & others (defts. in error) — the object of which was to restrain for the time — the sale of certain real estate — which respondents were then about selling under a deed of trust.

It is alleged that McDaniel & Alexander Gilham were partners as Gilham & McDaniel, & their firm became indebted to Campbell about $25,000 — and the firm owned large amount of real estate & 5/8 of the Steamboat "A B Chambers" & McDaniel individually owned some real estate & personal property — all of which was descended

That Gilham & McDaniel made a deed of trust, to Hill & John Campbell as trustees, to secure the firms indebtedness to Campbell, in which they conveyed not only all the firm property but also all the separate property of McDaniel.

That soon afterwards said McDaniel being indebted to plaintiffs in error, made a mortgage with power of sale, to secure his separate indebtedness in plaintiffs in error, this separate property being part of the same mentioned in the prior deed of trust to Campbell.

That after said deeds were executed & recorded, by sales of the personal property of said firm, & of McDaniel & by payments of the firm, Campbells debt was reduced to about $9.000

That defendants in error had advertised under the deed of trust for this balance & by a contrivance between them, to effect their purpose & cut plaintiffs off from any benefit under their mortgage - they

had threatened & were about to sell the separate property of McClaine first - instead of the joint or firm property - to pay the balance of Campbell's joint debt - and thus deprive plaintiffs of any benefits under their mortgage. - When the joint or firm property embraced in the deed of trust & which was included in the advertisement of sale was sufficient to pay the balance of the joint debt -

It was assumed that the debt due to Campbell was a joint debt, & the debt due plaintiffs was the separate debt of McClaine.

That among the property in the deed to Campbell was 5/8 of the Steam Boat A.B. Chambers, which the firm (Gilham & McClaine) owned - That the boat had been sold by proceeding in the Circuit Court by creditors - that all of its debts had been paid off by the Sheriff - from the proceeds of sale - & that 5/8 of the balance of the money in the Sheriff's hands being between $2000 & $3000 - was subject to be applied to Campbell's debt -

It was shown that Gilham had died insolvent - and that McDaniel was insolvent & that the property in the deed of trust was all of either of them -

It was shown that the joint property of Gilham & McDaniel was amply sufficient to pay off the balance of their joint debt to Campbell, & leave the separate property of Gilham to apply to his separate debt to plaintiffs. & plaintiffs had requested defendants to sell the joint property for their joint debt & they refused & were about to sell the separate property first by a contrivance between them -

The prayer was that defendants be required to sell the joint property for their joint debt - after first applying 5/8 of the balance of the sale of said Boat thereto & only sell such of the separate property as might be necessary for any residue unpaid - & an injunction according to this prayer was granted -

The trustees under Campbell's deed then proceeded with the

sale on the 27th day of Decr 1860. & sold enough of the joint property to pay the balance of the debt except between $2000 & $3000. the 5/8 of balance in the Sheriff's hands.

all the defendants answered & affidavits in November 1862, on the hearing of the motion for the purpose the injunction was dissolved — the Sheriff contrary & his securities having been found insolvent, so that Campbell could not collect the 5/8 of the money from the hands

The trustees under Campbell's deed of trust then advertised the separate property of McDaniel for sale, & on the 23rd day of January 1863. sold enough of it to pay the balance of the Campbell debt — with ten per cent interest — & costs & expenses

It was at the Sept term 1862. that the injunction was dissolved & the bill dismissed, & execution was awarded against plaintiffs for costs. — The judgment of the court at that term seems to have been final — & to be a final disposition of the case see record pages 33 & 34 &c

Afterwards - at the February term 1863 - on motion of defendants the record of the previous term was ordered to be corrected - nunc pro tunc - so as to say that the cause was continued for assessment of damages to the next term, - and then it was continued to the September term 1863 -

At the September term 1863. The court proceeded to assess & did assess damages to defendants.

The principal item of damages so assessed was the difference between gold & currency - which was Missouri bank paper in December 1860 - and the difference between gold & legal tender notes in January 1863 -

At the September term 1863. at which this judgment was given the plaintiff in time filed his motion for a new trial, which was by the court continued to the next term - at which term it was argued & overruled & bill of exceptions filed & affidavit & bond & appeal allowed - from the judgment of the court assessing

damages against them —

Upon the trial, on the assessment of damages — the Court permitted the defendants — against plaintiffs objection — to prove that in Decr 1860 — at the time of the first sale under the deed of trust, the difference between gold & Missouri paper was only 2 or 3 per cent, & in January 1863. — the time of the last sale under the deed of trust the difference between gold & legal tender notes was much greater, & this increased difference — on the amount which was enjoined — was allowed by the Court as damages — amounting we believe to upwards of $1000 —

The point involved in the case is, whether the difference in value — between gold & Currency — in Decr 1860 — & that between gold & legal tender notes of the United States in January 1863 — was a legal & proper enquiry & subject of damages — Appellants contend & insist that it was not —

No 94

Jesse Riddlesbury
& others
vs
Thompson McDaniel
& others

Statement by
Sharp & Broadhead
for appellants

Filed April 24 1866
O. T. Fitzback
Clk

J Riddlesberger & al
vs appellants
McDaniel & als
appees

Supreme Ct
March T. 1866
St Louis

Statement

The Pffs obtained an injunction against ~~Pff~~ Dfts to restrain them from selling certain property on a deed of trust in Dec 1860 — The injunction was dissolved on motion, & an assessment of damages allowed by the Court in favor of the Dfts.

The case is brought here by appeal on the part of Pffs — The first question is upon the motion made by Dfts to dismiss the appeal because the bill of exceptions was not made & signed at the term in which the judgment was rendered.

Upon the merits of the case, if the motion to dismiss is not sustained, it will appear that the only point in controversy arises from the allowance by the Court below, of damages for the difference in the value of money, at the time the injunction was imposed & when it was

dissolved. When the injunction was imposed, (Dec 1861) gold & silver were the only legal tender currency of the country & the sale was to be made for gold. At the time the injunction was dissolved, the laws of Congress were in force making U S Treasury notes legal tender for any debt & the property was sold & the bids were paid in legal tender U States Treasury notes. The sale was made as soon after the dissolution of the injunction as it well could be & at the time of the sale, January 27th 1863 gold was at a premium of about forty (40 to 48) per cent above U S Treasury legal tender notes. The court allowed the Defts, that difference, as damages, on the amount of debt enjoined by the injunction,

Brief

Upon the motion to dismiss the appeal because the bill of exceptions was not taken and allowed at the same term the judgment was rendered. We refer to Hassinger v Page 10 Mo 156

over

Diefenbrock vs Show 21st Mo 122
Sutter vs Street 21 do 157
State vs O'Blennis 21 do 272
Zurran vs Finney 21 do 569
Wilcoxen vs McBride 23 do 404
Ellis vs Andrews 25 do 327
Revised Statutes of 1855 p 1264 Sec 28

Upon the point of the correctness of the ruling of the court in allowing the difference, as damages, between the value of gold, the only legal tender at the time of the injunction & its value at the dissolution (or sale immediately following it), over & above U States legal tender notes, in which the Defts were compelled to take their pay — We refer to

Kennedys Admx vs Hammond & Hall
16 Mo pages 351 & 2 & following
City of St Louis vs Alexander 23 Mo 52 & following
Statutes of 1855 pages 1249 - Sec 11 & 13

Hill & Jouett
for Respondents

Reddlesberger Sch
v
McDonnell
Sbt
March
1866

Brief & ~~Statement~~
for Res.

Filed May 8 1866
O. T. Fishback
clk

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The case of the United States vs Gamble & Bates. 10th Mo Reps 457 & 59.
In this case on motion of Defts the Suit was dismissed - no bill of exceptions filed = & nothing to show the action or ruling of the Court, or the questions decided -
The Court says, there being no bill of exceptions at all, they cannot look into anything - not a part of the record. - That a motion is not a part of the record - unless it is incorporated into a bill of exceptions.
This is all they do decide, & clearly infer that if the motion did appear in a bill of exceptions - they would then look into the motion & the ruling upon it -

In 21st Mo Reps 112, Christy & Admr vs Myers,
The same point & nothing more is decided,
No bill of exceptions was filed - and therefore, a motion, being no part of the record, unless preserved in a bill of exceptions - the Court cannot consider it, or the action of the Court upon it,

The above cases having been cited below, are perhaps relied on by appellee - to sustain his motion to dismiss - but how they can be expected to do so, the appellant was & is wholly

unable to see

That a motion (unless prop=erly made so) is no part of the record, is beyond dispute.

That it is a part of the record, when incorporated in & made so by a bill of exceptions, is equally beyond dispute.

That the court could, by its order continue the motion, to its succeeding term is equally clear.

That it was competent, proper & regular for the court then to dispose of the motion & to sign a bill of exceptions, showing what had transpired & that the appellants raised the questions & excepted to the courts rulings upon them, at the proper time, follows as a matter of course.

And that when the bill of excep=tions was signed & filed & (on the bond & affidavit being made) the appeal was allowed, the appellate court can only look at the facts stated in the bill of exceptions which are to be taken as conclu=sively true & correct, & upon the facts shown in the bill, there is no question the appeal is properly here.

We think no authorities & certainly no reason can be shown to the contrary.

The judgment here complained of was rendered at the Sept. term 1863.

The record shows that at the same term & in due time, a motion for a new trial was filed — & that by the order of the court, it was continued to the next succeeding term, — and that at that succeeding term, it was overruled, & then bill of exceptions was signed & filed, & then an affidavit & bond for an appeal made & approved & ~~then~~ appeal allowed —

The bill of exceptions shows — That on the trial objections were made, overruled, and exceptions duly taken at the time, to the action & rulings of the court, = in short that the legal questions now presented to this court was raised on the trial, and presented to & decided by the court — & the decision & ruling duly excepted to at the time.

That a motion for a new trial was duly filed in time, at the term, and continued by the court, = & c &c

1. Now, we insist that, when the bill of exceptions is signed by the judge, embodying & showing the motion, its filing & the ruling upon it — the appellate court will receive, & cannot otherwise than receive & take the statements

in the bill of exceptions as conclusive, - & hold & treat them as part of the record -

2nd Smedes & Marshall's Reports 313. Kane & als vs Burns et al.

2nd It is the province & within the power of the court, to continue, a motion for new trial from one term to another, & the order of continuance carries the case over to such term.

2nd Smedes & Marshall 322. & authorities there cited -

And the signing & filing of a bill of exceptions at such succeeding term, showing the facts to have transpired & the ruling & exceptions at the previous term is sufficient, see same case above -

The above cited case so fully covering the question here (on the Mo to dismiss) & being consistent with reason & sound practice & our own statutes & practice, none others are now referred to -

Sharp & Burdhead
for appellants

No 94

Jesse Riddlesberger
&c
vs
T. McDaniel &c

Brief of Appellants
Sharp & Broadhead

Filed May 8. 1861
O. T. Fitleback
Clk

Jesse Riddlesberger et al
vs
Thompson McDaniel et al
Appt
Res

Supreme
Court
March T 1866
St Louis
Co

And now come the Defts by their Attys & move the Court to strike from the record the bill of exceptions, made a part of the same in this case

Because ~~the~~ said bill of exceptions was not taken & allowed ~~at~~ & signed by the ~~Court~~ Judge of the Court below, at the term or during the term of the Court at which the judgment in the case was rendered, as by law required

Hill & Jewett
Attys for Resp.

Riddlesberger
vs
McDaniels

Motion to strike bill of exceptions from record

Filed May 8/66
O. F. Fishback
Clk
per Ellis

Jesse Riddlesberger et al
vs
Thompson McDaniel et al

Supreme Ct
St Louis Co
March 2.
1864

And now the Defts by their counsel come & move the court for a rehearing as to all that part of the opinion of the court in which the court have refused to sustain the Defts motion to strike out the bill of exceptions filed by Plffs, because said bill was not filed at the term during which the exceptions were taken — & for the following reasons

1st Because it appears by the record that all the proceedings in the case were had at the Sept Term 1863 of the circuit court, & exept the overruling of the motion for a new trial, it does not appear that Defts consented to the continuance of the case & the filing of the bill of exceptions at the next term

2d Because it does not appear that there was any necessity for the continuance - as it appears by the record that judgment was rendered on the 5th of January 1864 & the motion for a new trial on the same day & the term did not close till the 28th

of January, & no affidavits were taken or asked to be taken under the motion for new trial.

3 Because it does not appear from the record that the circuit court continued the motion for its own convenience, & to keep the case in its "breast" as suggested in the opinion of the Supreme Court, but it simply appears that the "motion for a new trial was continued to the next term". & that at the next term the motion was overruled & a bill of exceptions allowed as to proceedings & judgment rendered the term before

4th Because the opinion in this case is in direct violation of the Statute quoted in the opinion, & is in fact legislation & repeal of that Statute & without any necessity as the the 27th section provides, as Judge Ryland shows in the case of Farrar vs Finney 25th Mo p 572 that bill of exceptions to the opinion of the court may be taken during the progress of the trial, & those exceptions shall be allowed & signed & made part of case, & then, when all the exceptions are taken

they shall all be embraced in one bill.

5th Because the opinion in this case overrules some nine or ten former opinions of the Supreme Court, and unsettles the practice of the State & renders it impossible for the Bar to know or calculate what the rules of practice will be sustained. Especially as the Supreme Ct of this State has repeatedly declared that the Circuit Courts have no power to grant or allow a bill of exceptions to any proceeding or opinions except at the term at which the proceedings were had or opinions expressed. This is particularly laid down in the cases of Turner vs. Turney before cited & the State vs O'Blenis 21st Mo p 272. The practice is common at this Bar to file a bill of exceptions under the 27th section of the 10th article of the practice act, at the term at which the party takes it & if the case is not disposed of that term, the bill is finally incorporated in the one bill taken at the conclusion of the case. It might have been done in this case, & if the Plffs neglected it, it dont seem to be a good reason for overturning the established practice of the State to

get at what we have no doubt the bount think is the merits of this case.

The undersigned therefore respectfully ask the bount to reconsider the opinion given in this case on the point above refered to

Hill & Jewett
Attys for Resp^s

Jesse Riddlesberger Atty
v
Thompson McDaniel Atty
No 94 Supreme Lib
March 7
1866

Motion for rehearing

Filed May 19/66
O. T. Fishback
Clerk
Sr. W. C. E.

Overruled

Jesse Riddlebarger
vs
Thomas McDaniel et al

In the Sup Ct Mo
March T. 1866.

Opinion of the Court.

The respondent in this case moves to dismiss the appeal and strike out the bill of exceptions, because the same was not made and signed at the term in which the judgment was rendered. It appears that damages were assessed by the Court below, upon the dissolution of an injunction, and that the appellants at the same term and within the time prescribed by law filed their motion for a new trial, which motion was by the Court continued till the next term. At the next term the motion was considered by the Court and overruled, the appellants excepted, and filed their bill of exceptions, and appealed to this Court. It contends that as the bill of exceptions was not made and signed during the term at which the

judgment was rendered, that therefore it was filed without authority of law and is a mere nullity, and should be stricken out. The statute provides that "exceptions may be written and filed at the time, or during the term of the court, at which they were taken and not after." And that "all exceptions taken during the trial of a cause or cause before the same jury, shall be embraced in the same bill of exceptions (2 Rev Stat 1855, h 1264 § 28)

It has been the uniform practice in this state, that a bill of exceptions could not be filed after the term has expired at which the judgment was rendered, except by consent of parties, duly entered of record. But here the question is, whether a motion for a new trial, can, at the instance of the court, ~~can~~ be continued from the term at which the verdict was rendered, until the next succeeding term, and have the effect of carrying with it the cause so that upon a final determin

-ination of the motion, excepti-
-ons may be preserved by the party.
The statute intends, that the excep-
-tions shall be written out and
filed, during the term, while the
cause rests in the breast of the
Court. But where a motion
for a new trial is made at the
close of the term, there may be good
reasons for continuing it until
the next succeeding term, for
final hearing. And until a final
hearing and disposition of the
motion the whole matter would
unquestionably rest in the breast
of the Court and it would be com-
-petent for it in its discretion
for good cause to sustain the
motion and award a new
trial. Until this result is reached
it cannot be said that the cause
is finally determined. And as
the statute requires all exceptions
to be embraced in the same bill,
it will be correct if filed at the term when
the motion is disposed of.
In assessing damages on the disso-
-lution of ~~of the dis-~~
~~solving~~ the injunction, the Court
permitted testimony to be introd-

-nced, showing that on the 27th day of December 1860 ~~at~~ the time the injunction was granted, gold was at a premium of from two to three per cent over Missouri bank paper, and that on the 23rd day of January 1863, when the injunction was dissolved, it was at a premium of forty seven to forty eight per cent over United States legal tender treasury notes. The Court assessed the damages at the difference which existed between gold and United States legal tender treasury notes and this is assigned for error.

The subject matter here enjoined was a sale under a deed of trust and in this respect comes within the decisions in the cases of Kennedy's admrx vs Hammond (16 Mo 341) and St Louis vs Alexander (23 Mo 483)

In both these cases it was held by this Court that an injunction to restrain the proceedings of a trustee to sell property, under a deed of trust, was not to be considered such an injunction upon money as to authorize the assessment of damages by the rule of per cent laid down in the statute alone

(2 Rev Stat 1855 p 1249 § 13) In the last case in speaking of the proper rule of assessment, where the trustee has been enjoined from selling the property, the Court said, "In all such cases the Court, or jury, should determine the amount of injury by evidence before it, or them, as to the damages sustained, the probable amount that would have been realized, the value of money at the time, and other circumstances tending to show the damages sustained by the creditor in consequence of such injunction". What is meant by the phrase "value of money at the time" is not very apparent. Certain it is however, the circumstances of this case was not in the contemplation of the mind of the judge when it was written.

If the party has been injured in consequence of the injunction he is entitled to whatever damages he has sustained. Destruct of the premises, or their deterioration, expenses attendant on litigation, loss of debts through the

insolvency of the debtors when the collection is hindered or restrained by virtue of the injunction, and all matters where the bank has suffered loss or injury may be taken into the account in assessing damages. We shall enter into no laborious argument to show that the act of Congress passed February 25. 1862 (Ch 33) making treasury notes of the United States a legal tender in payment of debts between private persons, is constitutional. We shall assume such to be the fact. The powerful opinion of Judge Davies in the New York Court of appeals in the case of the Metropolitan Bank v Van Dyck (27 N Y 400) seems to exhaust the whole question and appears to be unanswerable.

If then the act of Congress is constitutional, and treasury notes are valid legal tenders, they are standards of value, and in contemplation of law equal to gold. The rule adopted by the Court in assessing damages, instead

-ted a comparison between them and placed gold forty seven or forty eight ~~cents~~ percent above treasury notes, when the law declares they shall be equal. We are unable to perceive on what principle evidence was admissible showing the relative value between gold and Missouri bank notes, we see no issue made in the case rendering such evidence rele-vant. The ~~appellant~~ respondent ~~plaintiff~~ should recover whatever damages, or losses he has sustained by reason of the injunction, and when those damages or losses are ascertain-ed, they may be discharged, by the payment of legal tender notes, with the same effect as if paid in gold. Injury may have resul-ted, but if so, it is, damnum absque injuria

The judgment is reversed and the cause remanded.

Judge Holmes concurs Judge Lovelace absent

David Wagner

94

Jesse Riddlebarger
vs
Thomas McDaniel et al

Opinion of the Court
Hagner

Filed May 14 1866
O. T. Fishback
CCR

Reversed & Remanded

Jesse Riddlesberger & others
vs
Thompson McDaniel & others —

In the Supreme Court of Missouri —

From the statement of the case & the record, it will be seen that, at the time the injunction was granted restraining a sale of a part of the trust debt, gold & silver, was the only legal tender, — this was Dec^r — 1860 —
The bank paper of banks in different states was the usual currency. —
After the injunction was granted & before it was dissolved — viz — July 25, 1862, the Act of the Congress of the United States, took effect, by which treasury notes were declared to be money & made a legal tender in the payment of debts. —

Afterward — the injunction was dissolved & the balance of the trust debt was made with interest & costs, by the sale of trust property —

1— The appellants insist that this act of Congress was constitutional & valid — but as that question is not raised or involved in this cause, we neither cite authorities or make an argument in regard to it.

= 7 or =

2— If the act of Congress, making treasury notes, money & a legal tender, was, within the constitutional power of Congress, — then treasury notes stood upon the legal grounds of gold & silver, & at the last sale under the trust deed, either gold or treasury notes, — (whichever was offered) must be taken, from the purchaser, & was so much lawful money — See Henderson vs McPike 35th Mo Reports pa 255 — and respondents received no damage.

3rd If the act of Congress referred to was not within the constitutional power of Congress, — then nothing

but gold & silver — was lawful money, or a legal tender for debts. — respondents were not bound to receive any other money than gold or silver, & if they did so, it was their own act, for which they cannot complain,

See authority last cited —

In short — if treasury notes were in law, equal to, & on the same footing as gold coin, respondents sustained no damage in law by receiving them, & if they were not in law, a legal tender on the same footing as gold coin — then respondents were not bound to take them & has no right to complain, after doing so —

In no view which can be taken, could the court legally admit evidence to prove the difference, in commercial value, between gold coin & U.S. treasury notes — & its doing so & assessing damages thereon against appellants objections

was manifest, gross & fatal error — the motion to set aside the finding & ~~Sharp & Broadhead~~ judgment of the ~~[illegible]~~ Court & for a new trial should have been sustained — it raises & involves the above propositions —

Sharp & Broadhead
for appellants.

No 94

Jesse Reddlesberger & others
vs
Thompson McClaniel & others
Supreme Court

Brief by
Sharp & Broadhead
for appellants