

Jefferson County Circuit Court
Case File - Civil

November 1868, #210

Herbert, Charles W.
Herbert, Mary M.

vs

Mitchell, D.C.

Set aside deed

40 acres in S5T39R5E, involved
payment for patent to Davis Filter
for filtering cane juice sold to
plaintiffs by W.J. Wyatt

Box

22 Folio 20

Charles W. Herbert and
Mary M. Herbert, Plaintiffs

v
D. C. Mitchell Defendants

In the Jefferson
Circuit Court,
Nov Term 1868.

Plaintiffs state that on the 12th day
of March 1867. Mary M. Herbert was the owner
of the following Real Estate situate in Jefferson
County Mo. viz: East half of Lot No Six of
the NW 1/4 of Section Five and the East half
of Lot No four of the NE 1/4 of Section Five
Township Thirty Nine Range Five East
containing Eighty acres and that on
or about that time one W. J. Wyatt
was acting as agent of Chas B. Orois
in the sale of what purported to be a
patent known as the "Orois Filter" and
was in and for the purpose of filtering cane
juice so as to make and refine sugar &
syrup there from: that at the date aforesaid
the said W. J. Wyatt as agent of said
Orois offered to sell the said Filter for Jeffe-
rson County to Mary M. Herbert the wife of
Chas W. Herbert for One Thousand & Eighty
dollars: That at the said Wyatt at the
time warranted that said Filter would
refine cane juice so as to make sugar
in such quantities as would remunerate

The manufacturer, that the said Mary M. Herbert offered to convey to the said Wyatt the above described land in consideration of the transfer to her ~~the~~ of the said Patent Filter for Jefferson County as afore said the said Land being ^{then} reasonably worth One Thousand ~~dollars~~ Eighty Dollars & that said Wyatt accepted the offer, whereupon the said Plaintiffs Mary M. Herbert & Chas W. Herbert conveyed to said W. J. Wyatt the afore said Land for no other consideration than the transfer of to Mrs Herbert of the said Patent Filter for Jefferson County which was then made by the said Wyatt as agent of said Orvis.

Plaintiffs state that said Filter was utterly worthless being entirely unfit for the purposes for which it was sold and for which it was recom^mended by said Wyatt, that it would not "filter cane juice so as to make and refine sugar and syrup therefrom." That the ~~fact~~ ^{fact} of the worthlessness of said Filter was unknown to said Plaintiffs at the time they conveyed said land to said Wyatt but was well known ~~by~~ ^{to} the said Wyatt.

Plaintiffs therefore say that the consideration which said Wyatt pretended to pay them for said Land has ^{& entirely} utterly failed ~~and~~

~~That it would be~~

Plaintiff, ^{the said Wyatt.} over that on the 21st day of March 1867 - conveyed The E $\frac{1}{2}$ of Lot 24 of the NW $\frac{1}{4}$ Section five Township thirty nine Range five East containing 32.5 acres, to one D. C. Mitchell the above defendant; that said Mitchell paid Wyatt nothing for said land & he well knew at the time he took the conveyance from said Wyatt in the same all the circumstances surrounding the transaction between Plaintiff and said Wyatt as set forth in the petition.

Plaintiff therefore pray the Court to set aside the deed executed by Plaintiff to M. J. Wyatt dated March 12th 1867 and and the deed executed by said Wyatt to said defendant dated March 21 1867 and to vest in Plaintiff the title to the East half of the Lot No 24 of the North West quarter of Section ~~24~~ ^{five} Township thirty nine Range five East containing 32.5 acres and for other proper relief.

John L. Thomas

John L. Thomas makes oath & says that he believes the above petition and the matters as therein stated are true and

that said England is a non-resident of
the State of Missouri,
known and exhibited)
before me Sept 14 1868 John L. Thomas
Elmer & Mary Elmer
Dy & the original R

No 210

2217

C. W. Herbert et al

vs

D. C. Mitchell

Petition to set aside
deed

Filed Sept 14th 1868.

E. D. Honey Clerk
By C. S. Ho. Marine Dept.

NOW at this day comes said Charles W. Herbert and Mary M. Herbert, plaintiffs in the above entitled cause, by their attorney, and files in the office of the undersigned Clerk of the Circuit Court of Jefferson county, in vacation, their petition and affidavit, stating among other things that the above named defendant D. C. Mitchell is a non resident of the State of Missouri. It is thereupon ordered by the Clerk aforesaid, in vacation, that publication be made notifying him that an action has been commenced against him by petition in the Circuit Court of Jefferson county, in the State of Missouri, the object and general nature of which is to set aside a deed executed by plaintiffs to W. J. Wyatt, dated March 12, 1867, conveying the following described real estate, situate in Jefferson county and State of Missouri, to wit: The east half of lot number six of the northwest quarter of section five, and the east half of lot number four of the northeast quarter of section five, township thirty-nine, range 5 east, containing eighty acres, and also to set aside a deed executed by said Wyatt to said D. C. Mitchell, dated March 21, 1867, conveying to said Mitchell the east half of lot six of the northwest quarter of Section five, township thirty-nine, range 5 east, containing forty acres, and to vest in plaintiffs the title to the east half of the lot number six of the northwest quarter of section five, township thirty-nine, range five east, containing forty acres, and that unless he be and appear at the next term of said Court, to be holden at the Court House in Hillsboro, within the county of Jefferson, on the 16th day of November, A. D. 1868, and on or before the sixth day of said term, and answer or demur to said petition, the same will be taken as confessed, and judgment rendered accordingly. It is further ordered that a copy hereof be published in the Jefferson County Leader, a newspaper published in said county of Jefferson, for four weeks successively, the last insertion to be at least four weeks before the commencement of the next term of said Court.

A true copy from the record.

Witness my hand and the seal of
[SEAL] said Court at office this the 15th
day of September, A. D. 1868.

ELIAS F. HONEY, Clerk,

By C. Tho. Horine, Dep'y.

State of Missouri, COUNTY OF JEFFERSON.

Be it Remembered, That on this 21. day of ~~November~~ ^{October} A. D. 1868, before me, the undersigned Clerk of the ~~County~~ ^{City} Court of Jefferson county, came Chas. A. ~~Clerk~~ ^{of the} who being by me duly sworn, says that the annexed advertisement was published in the JEFFERSON COUNTY LEADER, a newspaper printed and published in the town of Hillsboro, in said county, of which he is printer, for . . . times, the first insertion being on the 18. day of ~~September~~ ^{October} 1868 and the last on the 18. day of ~~October~~ ^{November} 1868 as follows, to-wit:

Order of Publication.

In the Jefferson Circuit Court, in vacation
September 15, 1868. Charles W. Herbert
and Mary M. Herbert, Plaintiffs
vs
Herbert, Defendants.

In No. 38,	September 18	1868.
In No. 39,	"	25 1868.
In No. 40,	October 2	1868.
In No. 41,	"	9 1868.
In No. 42,	"	16 1868.
In No.		186..

Charles W. Herbert

Sworn to and subscribed before me, this 21. day of ~~October~~ ^{November} 1868.

Wm. M. Miller *clerk*

Printer's fee..... 18.50
30 Received Payment.....

13.50

Amos. 50⁺

Appy 814

Herbert vs D. C. Mitchell

Deft. & Cent. 55, indur 35⁺
Indur. 58

6 00
15
30 00
6 00
10.000

Herbert vs D. C. Mitchell,

E & Henry Clark.

Files. 5. Ind. 25. Docks 20. order Pub. 800 copy l & s. 150. = 3.00

Copy Decree. 100⁺ Record 75. Fee Ric & Copy 15⁺

130

affd. 15⁺. Just 50⁺ Deft. 35. Cent 20. ind 35.

155

6. 25
8. 75

14.50

Herbert vs H. J. Wyatt,

E & Henry Clark.

Files 10⁺ Ind. 25. Docket 20. order Pub. 75⁺

130

Copy & s. 125. Decree. 50⁺ copy l & s 100. Record 75.

350

Fee Ric 15. affd. 35. Deft. 35. Cent 20. order 35. =

140
6. 20
8. 75

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