

May 1869, No. 355

Cole, John C.

vs

Rozier, F. A.

Rozier, Frank

Valle, Felix

Boas, Robert

Injunction

Enjoin washing mineral dirt Jackson
Creek above plaintiff's mill and
remove dirt from mill dam; \$35,000
damages

John C. Cole, Plaintiff
 against
 J. A. Rogus, Thos. Rogus,
 Felix Valle and Robert
 Boas, Defendants

In the Jefferson
 Circuit Court,
 May Term 1869.

Plaintiff states that he is now the legal owner and in possession of the following real estate situate on the stream of water known ~~as~~ as the Jockum Creek and has been the owner and in possession thereof for the ten years last past viz the ~~Wth~~ of N & E Sec. 31, Township 39, R. 3, East: That about ten years prior to the filing of this petition he erected a grist mill on said land for the purpose of manufacturing flour & meal for the public and ^{did} erect and construct across said stream on said land a dam of mode of stone about ten feet high, firmly cemented, which dam was erected by Plaintiff for the purpose of accumulating water sufficient for the working of said grist mill: That Plaintiff also had his dwelling house erected near said creek on said land and has always used water from ^{said} stream for household purposes, yet the Defendants well knowing the premises

but contriving and wrongfully intending to
injure and prejudice the Plaintiff in this
respect and to deprive him of the use, bene-
fit and advantage of the water of said stream
and to prevent Plaintiff from working said
works in so ample and beneficial a manner
as he had theretofore done and of right ought
to have done and injure him in the way
of his trade ~~by~~ business as a manufacturer
of meal and flour during all the time
aforesaid exercised and could ^{on} and still
doth carry on at the said grist mill and
to put him to great charge, expense and
trouble whilst the said Plaintiff was working
his said grist mill, did the 25th day of
January 1868 and on divers days prior
thereto and since in the County of Jefferson
~~did~~ wrongfully and injuriously erect
dams on said stream above said mill
and did haul thereto and do continue
to haul thereto great quantities of mineral
dirt for the purpose of washing the
same in said stream to separate the lead
ore contained in said dirt from the dirt
itself and that immense quantities of
dirt have washed down said stream from
the points where defendants are washing
the same to Plaintiff's said dam which

dirt so washed down said stream as
aforesaid has filled in above said mill
dam so as almost to entirely prevent
the accumulation of water as the same
of right ought to have done and other-
wise would have done, by which defend-
ants unlawfully and wrongfully hindered
and prevented and do now hinder and
prevent Plaintiff from the use, benefit
and advantage of said grist mill in so ample
and beneficial a manner as he had theretofore
done and of right ought to have done
to his great damage in the sum of thirty
thousand dollars for which he asks judgment

Plaintiff further states that he is now
in possession ~~of~~ and has been in possession
for ten years in possession of a dwelling
house situated near said stream on said
land in which he and his family live
that they have all the time used the water
from said stream for household purposes,
it being clear & wholesome water, but that
defendants by their unlawful and wrongful
acts in washing their mineral dirt in
said stream above his premises have
rendered the water and do now continue
to render the water by the admixture of
mud and mineral substances with the

water of said stream ~~as to render the same~~
utterly unfit for use for household
purposes, by which Plaintiff was prevented
and is still prevented from using said
water from said stream for household
purposes as he had of right theretofore
done and would have done, to his great
damage to wit in the sum of five
thousand and dollars for which he asks
Judgment.

Plaintiff prays the Court to Compel Defendants
to abate the nuisance as aforesaid, to grant
Plaintiff a writ of Injunction directed to
Defendants enjoining and restraining them
from hauling and working any more
mineral dirt in said stream above
his said mill. and by a proper order of
Court to Compel Defendants to remove
the dirt they have already hauled to
said stream for the purpose of being
worked and for other proper relief.

Thomas L. Ripkin

Atty for Plaintiff.

John C. Cole

Prochape

M

J. A. Roginckel

3 copies book @ .80	2.40
5 copies 2 scale	1.50
2 mills 200	2.40
pieces	.05
doork	.05
	<u>3) 6.90</u>

Retention for damages
for an injunctioⁿ to
stop a nuisance
decrees

Filed Jan'y 28th 1869

E. A. Honey creek

down thru copies to

de Generis

one to J. A. Co.

3 sent to H. H. H. H. H.

11 3 paid to E. A. Honey

John C. Cole Plaintiff } In the Jefferson
against, } Circuit Court,
J. A. Rozier, Frank Rozier, } May Term 1869,
Delia Valle and Robert }
Boas Defendants

Plaintiff states that he is now the legal owner, and in possession of the following real estate situate on the stream of water known as the Joachim Creek and has been the owner and in possession thereof for the ten years last past viz; the N² of N E ¹/₄ Sec 31, Township 39 R 5 East; That about ten years prior to the filing of this petition he erected a grist mill on said land for the purpose of manufacturing flour & meal for the public, and did erect and construct across said stream on said land a dam made of stone about ten feet high firmly cemented, which dam was erected by plaintiff for the purpose of accumulating water sufficient for the working of said grist mill; That plaintiff also has his dwelling houses erected near said creek on said land and has always used water from said stream for household purposes, Yet the Defendants well knowing the premises but continuing and wrongfully intending to injure and prejudice the plaintiff in this respect and to deprive him of the use, benefit and advantage of the water of said stream and to prevent plaintiff from working said works

in so ample and beneficial a manner as had
theretofore done, and of right ought to have done
and injure him in the way of his trade &
business as a manufacturer of meal and flour
during all the time aforesaid exercised and
carried on (and still doth carry on at the said
grist mill and to put him to great charge,
expense and trouble whilst the said plain-
tiff was working his said grist mill, did
the 25th day of January 1868 and on divers days
prior thereto and since in the County of Jefferson
soon did wrongfully and injuriously erect
dams on said stream above said mill and did
haul thereto and do continue to haul thereto
great quantities of mineral dirt for the pur-
pose of washing the same in said stream
to separate the lead ore contained in said
dirt from the dirt itself and that immense
quantities of dirt have washed down said
stream from the points where defendants
are washing the same to Plaintiff's said dam
which dirt so washed down said stream
as aforesaid has filled in above said mill
dam so as almost to entirely prevent the
accumulation of water as the same of right
ought to have done, and otherwise would
have done, by which defendants unlawfully
and wrongfully hindered and prevented and do
now hinder and prevent Plaintiff from the
use benefit and advantage of said grist
mill in so ample and beneficial a manner
as he had theretofore done and of right

ought to have done to his great damage
in the sum of Thirty thousand dollars for
which he asks judgment,

Plaintiff further states that he is now in
possession and has been for ten years in
possession of a dwelling house situated near
said stream on said land in which he and
his family live, that they have all the time used
the water from said stream ~~of~~ for household
purposes, it being clear and wholesome water
but that defendants by their unlawful and
wrongful acts in washing their mineral dirt
in said stream above his premises have ren-
dered the water and do now continue to render
the water by the admixture of mud and mineral
substances with the water of said stream as
to render the same utterly unfit for use for house-
hold purposes, by which Plaintiff was prevented
and is still prevented from using said water
from said stream for household purposes, as
he had of right theretofore done and would have
done, to his great damage to wit, in the sum
of five thousand dollars for which he asks
judgment, Plaintiff prays the Court to com-
pel Defendants to abate the nuisance as afore-
said, to grant Plaintiff a writ of injunction
directed to Defendants enjoining and restraining
them from hauling and washing any more
mineral dirt in said stream above his said
mill, and by a proper order of Court to
compel Defendants to remove the dirt they
have already hauled to said stream for
the purpose of being washed and for

other proper relief

Thomas A. Pipkin

attys for Plaintiff

A true copy of the original petition
now on file in my office

Witness my hand and the seal of said
circuit court hereto affixed at
office this 25th day of January 1869,

Elias P. Hovey Clerk

By Thomas A. Noone Deft

THE STATE OF MISSOURI, }
COUNTY OF JEFFERSON. } SS.

THE STATE OF MISSOURI,

The Governor
To the Sheriff of the County of ~~Jefferson~~—Greeting:

We command you, that you summon *F. A. Rogier, Frank*
Rogier & Felix Valle

if ~~they~~ be found in your County, that
~~they~~ be and appear before the Hon. Judge of our Circuit Court, on the
first day of the next term thereof, to be begun and held at the town of Hillsboro,
within and for the County of Jefferson, on the ~~seventh~~ Monday after the
fourth Monday of ~~March~~ 1869 ~~and~~, then and there to answer unto
John. Cole

upon ~~his~~ original petition, a copy whereof is hereunto annexed and
accompanies this writ, and have you then there this writ.

(LD)

Witness, ELIAS F. HONEY, Clerk of our said Circuit Court,
with the seal thereof hereunto affixed, at office in Hillsboro, this
Twenty-sixth day of *January* A. D. 1869,

Elias F. Honey
Clerk Circuit Court.

D. J. C. Thorne Dept.

Served the within writ of Summons
by leaving a true copy of the petition and a
true copy of the writ thereunto annexed in
the hands of the within named John A. Rogers
and by leaving a true copy of the writ in the
hands of the within named Francis C. Rogers
and by leaving true copy of the writ in the hands
of the within named John Kelly at the County
of St. Lawrence in the State of Missouri the
1st day of February A.D. 1868

P. G. Meadows

Sherriff's fee \$3.00

Sherriff

2711
TO
JEFFERSON CIRCUIT COURT.

May Term, 1869

McCole,

vs

A. A. Rozier,

Frank Rozier,

Felix Valler

Robt F. Boas

copy

Returned to July 6 1869

Procured the within writ of summons by delivering
to Fernin H. Rogers one of the Deponents who was first
summoned a copy of the within petition and summons
and to Francis H. Rogers and Felix Hall who were subsequently
summoned a copy of the within writ
Sheriff fees \$3.00 paid
by plaintiffs

Wm. H. Adams

Sheriff's Attn
The

THE STATE OF MISSOURI, } SS.
COUNTY OF JEFFERSON.

THE STATE OF MISSOURI,

To the Sheriff of the County of Jefferson—Greeting:

We command you, that you summon *Robert Fous*

if he be found in your County, that
he be and appear before the Hon. Judge of our Circuit Court, on the
first day of the next term thereof, to be begun and held at the town of Hillsboro,
within and for the County of Jefferson, on the ~~seventh~~ Monday after the
fourth Monday of *March 1869* ~~and~~ then and there to answer unto
John C. Cole

upon *his* original petition, a copy whereof is hereunto annexed and
accompanies this writ, and have you then there this writ.

Witness, ELIAS F. HONEY, Clerk of our said Circuit Court,
with the seal thereof hereunto affixed, at office in Hillsboro, this
Twenty sixth day of *January* A.D. 1869

Elias F. Honey

Clerk Circuit Court.

By Chas. H. Honey

This document came to hand January 29th 1869 and I executed the same, by
delivering a true copy thereof to the within named Defendant Robert
Rees at Jefferson County Mo. This 10th day of February a 1869
Dated Copy as was delivered to me by the Circuit Court of Jefferson Co.
Dated 10th day of February 1869
Per J. M. Marshall,
Deputy.

no 255-

TO

JEFFERSON CIRCUIT COURT.

May Term, 1869

Ans. C. Cole

= vs =

F. A. Rozier.

Frank Rozier.

Felix Valle.

Robert Goas.

(original)

John C. Cole, — Plaintiff

Against

F. A. Rozier, Frank Rozier,
Felice Valle, & Robert Boas, } Defendants,

} In the Circuit Court of
Jefferson County Missouri
May Term 1869.

Now at this day Come the Defendants, and
demur to the petition of Plaintiff, for the follow-
ing grounds of objection;

- 1- Because the said petition does not allege
facts sufficient to constitute a cause of action;
- 2 — It is not averred in the petition that Plaintiff
erected his said dam across the Joachim Creek,
in pursuance of law, or that he obtained judg-
ment of the Circuit Court of this County at any time,
granting him permission, or authorizing him to
erect a dam across said water course,
- 3 — From the allegations of said petition, it appears
that Plaintiff erected his dam across said stream
of water without authority of law, and that the
same is therefore a public nuisance, and should
be abated.
- 4 — There is no averment in the petition to the ef-
fect, that Plaintiff has acquired by judgment
of any Court, or otherwise, any exclusive privileges
to the use and benefit of said Joachim Creek, to any
indefinite extent above the point where said stream

of water enter his land, - and hence there is no reason alleged why the Defendants are not equally entitled to the reasonable use and benefit of said water course where the same runs through their Lands.

5 - There is no allegation in the Petition that the Defendants have diverted the said water course from its usual channel, or done any thing to diminish the quantity of water that naturally flows therein.

6 - There is nothing averred in said Petition, showing any reason why Defendants should be debarred from the privilege of using said Stream of water where it runs through their lands, for all reasonable and useful purposes, in order that Plaintiff should have the exclusive benefit of said water course where it runs through his lands,

7 - Upon the averments made in said Petition, no cause of action is stated, and no legal right shown, why Plaintiff is entitled to recover damages against the Defendants.

8 - The Petition improperly and illegally blends together alleged causes of action at Common law, with alleged causes for equitable relief, contrary to the established practice and rules of pleading.

Wm A Rozier.

Abner Green & Leonard

Lefty Alf

In the Circuit Court
Jefferson County

John L. Cole

vs,

Therman A. Rogers
and others

Answer
to Petition

Filed May 11 1869
Wm. A. Thompson
Clerk of the Court

John C. Cole, Plaintiff

vs
J. A. Rogin, Frank
Rogin, Felix Valle and
Robert Boos, Defendants

In the Jefferson
Circuit Court.

May Term
1869.

Now at this day comes said Plaintiff
and for an amended petition by leave
Court states that heretofore to wit on the
16th day of May 1837 Thomas Tarpley and
Jonathan Smith entered from the government
of the United States the West half of the North
East qr. Section thirty one, Township
thirty nine, Range five East containing
eighty acres: that about the year 1839 the
said Tarpley & Smith constructed a mill
dam across a stream of water running through
said land, called the "Joachim" creek:
that said dam was constructed across said
stream of water, on the said eighty acres of
land for the purpose of running a grist mill
for manufacturing flour and meal for
the public: that the back water on said
stream caused by said dam did not
extend above and beyond said tract
of land: that said Tarpley & Smith about
the year 1839 erected a grist mill on
said tract of land near said dam for

the purpose of manufacturing flour and meal
for the public: That they said Laphy and
Smith did continue to use the water of
said stream by means of said dam on
said land in running and working their
said grist mill for the purposes aforesaid
from the year 1839 till 1843
without interruption and continuously,
when they sold said land, with the im-
provements thereon and the rights, privileges
and franchises thereto belonging to
John Cole the Plaintiff herein: that said
Cole continued, without interruption and
continuously, to use the ^{water} of said
stream by means of said dam so erected
by said Laphy & Smith as aforesaid
from 1843 till about the year 1862
in running and working his said grist mill
for the manufacture of flour and meal
for the public: That about the year 1862
said Cole, Plaintiff herein constructed
across said stream on said land on the site
of the old dam a new dam of stone & cement
for the purpose of accumulating water of said
stream sufficient to run and work his
said grist mill: That said Plaintiff also
had his dwelling house erected near said
mill on said land and that he has

Continued without interruption to use
said water by means of his said dam in
running his said grist mill for the
purposes aforesaid from 1862 till
about two years since. Yet the Defendants
~~Continuing~~ and well knowing the premises
but continuing and wrongfully intending
to injure and prejudice the Plaintiff in
this respect and to deprive him of the use
benefit and advantage of the water of
said stream and to prevent him, said
Plaintiff from working said grist mill
in so ample and beneficial a manner
as he had theretofore done, and ought
ought to have done and injure him
in the way of his Trade and business as
a manufacturer of flour and meal for
the public during all the time aforesaid
~~stored~~ and carried on and which Plaintiff
doth still carry on at the said grist
mill and to put Plaintiff to great charge
& pence and trouble whilst the said Plaintiff
was working his said grist mill ~~at~~ on or
about the 25th day of January 1868 and
on divers days prior thereto and since at the
County of Jefferson, State of Missouri did
said Defendants did wrongfully and injuriously
by erect dams on said stream above Plaintiff.

said mill dam and did then haul there to large quantities of mineral dirt for the purpose of washing the ~~same~~ in said stream in order to separate the lead ore contained in said dirt from the dirt itself and that immense quantities of dirt so hauled and washed in said stream by defendants as aforesaid have worked down said stream to Plaintiff's said dam, which dirt so washed down said stream as aforesaid has filled in, above the Plaintiff's mill dam so as to almost entirely prevent the accumulation of water for the purpose aforesaid, as the same ought to have done, and otherwise would have done, by which and so as to divert the water from its ordinary course in said stream, by which defendants which Plaintiff is deprived of the use of said water of said stream a great portion of the time and at all times the supply of water above said ^{dam} is diminished by said dirt so washed in above said dam, to such an extent that Plaintiff cannot run and work his said grist mill to so great profit and advantage as he had theretofore done and otherwise would have done, by which defendants unlawfully and

Wrongfully hindered and prevented and do now hinder and prevent Plaintiff from the use, benefit and advantage of said grist mill and the water of said stream in working the same in so ample and beneficial a manner as he had theretofore done and otherwise would have done and of right ought to have done to his great damage, to wit in the sum of thirty thousand dollars and for which Plaintiff asks judgment.

Plaintiff further states that he is now and has been for a great number of years past in the possession and occupancy of a dwelling house situated near said mill on said ~~land~~ ^{land}, in which he and his family lived and do now live; that he and his family have for many years used the water from said stream for household purposes, it being clear and wholesome water, but that Defendants by their unlawful and wrongful acts in working ^{mineral} dirt in said stream above Plaintiff's dwelling house have rendered the water and do now continue to render the water in said stream unfit for use, by the admixture therein of mud and mineral substances from said mineral dirt, by which

Plaintiff nor and is prevented from using the water from said stream for household purpose, as he had of right theretofore done and otherwise would have done, to his great damage to wit in the sum of Five thousand dollars, and for which he asks judgment.

Plaintiff prays the Court to compel Defendants by a proper decree to abate the nuisance aforesaid, to grant Plaintiff a writ of injunction directed to Defendants, their servants and employees, enjoining them and restraining them from hauling and washing any more mineral dirt in said stream above Plaintiff's said dam and by a proper order of Court to compel Defendants to remove the dirt they have already hauled on said stream above said dam & for other proper relief.

Thomas & Pipkin

Attys for Plaintiff

John C. Cole

or

J. A. Rosinthal

Amended Petition

320

Filed May 14/89
Clifford P. Donnelly
Payd No. 1000000000

John C. Cole, — Plaintiff

Against

Z. A. Rosier, Frank Rozier,
Felix Valle, & Robert Boas, } Defendants

} In the Circuit Court of
Jefferson County Missouri
May Term 1869.

Now at this day Come the Defendants
and demur to the amended petition of the
Plaintiff, filed on the 14th day of May 1869,
for the following grounds of objection;

- 1 - It is not averred in the petition that the
Plaintiff, his vendors, or persons from whom
he claims to have derived title to the land
described, erected the dam across the
Joachim Creek in pursuance of law,
or that any fragment of ^{any} Court of Com=
petent Jurisdiction was first had and
obtained, granting permission, or author=
izing him, or his predecessors to erect a
dam across said water course,
- 2 - From the allegations of said petition it ap=
pears that Plaintiff and his predecessors
erected said dam across said stream
of water without authority of law, and
that the same is therefore a public nuisance, & should be abated,

- 4- There is no averment in the Petition to the effect that Plaintiff, or his Predecessors, have ~~have~~ acquired by fragment of any court or otherwise, any exclusive privileges to the use and benefit of said Joashim Creek, to any indefinite extent above the point where said stream of water enters his land, - and no reason alleged why the Defendants are not equally entitled to the reasonable use and benefit of said water course where the same runs through their lands.
- 3- There is no allegation in the Petition that the Defendants have diverted the said water ^{so as to prevent its running into Plaintiff's dam} course from its natural channel, or done any thing to diminish the quantity of water that naturally flows therein.
- 6,- There is nothing averred in said Petition showing any reason why the Defendants should be debarred from the privilege of using said stream of water where it runs through their lands, for all reasonable and useful purposes, in order that the Plaintiff should have the exclusive benefit of said water course where it runs through his lands.
- 7,- The Petition is too indefinite in regard to the distance Defendants dams for washing mineral are located above the Dwelling house of Plaintiff, to show

even a remote probability that the water might be corrupted by the washing of mineral in said stream of water, so as to render it unfit for culinary purposes,

8. Upon the averments as made in said petition no cause of action is stated, and no legal right shown to entitle Plaintiff to recover damages against the Defendants.

9. The petition improperly and illegally blends together alleged causes of action at Common law with alleged causes for equitable relief, Contrary to the established practice and rules of Pleading.

~ A. Green, F. A. Rogers
~ & J. E. Leonard, Attorneys
~ for Defendants,

In Circuit Court
of Jefferson County

John C. Cole

vs,

Friman A. Razier
and others

Demurres

To Amended Petition

Filed May 19/86
Elias J. Hony & Co

John C. Cole Atty } In the Circuit Court
Firmaw A Rozier, Felix } of Jeff. Co. Mo
Rozier, Francis C Rozier
and Felix Vallier and
R J Boas Defts }

The clerk will dismiss
the above cause, by order of the
Plaintiffs,

John L Thomas & Bro
and Paul T Potter &

Thos Mcmullen Atty for

John C Cole

Plaintiffs

July 21st 1876

2711

Ino to dealer
to
J. A. Rozeier
et al

Filed Feb'y 21st 1876
L. Tho. Merwin
Clerk

Ino to Cole	} Free Bill	
F. A. Richardson	} & P. Honey Ck	
² Copy Pet. ² Co. & S. \$300	Units & 5 Copies \$1.50	\$4.50
2 docks. 10. files	\$0.4 ² Denver. \$5.4	1.25
Just \$0.4	Ind to Just 10 —	70
² order — 70	Free Bill 60	1.80
		\$7.15
F. Lichtenmyer	Sen. 1. dept 1.00	1.20
R. Madison	Shiff S. Genue County, Sen 3 dpts.	3.00
		~~11.50~~

leolo

2¹⁰ Rogier

du Reil

\$ 11.35