

Dofferson County Circuit Court
Case Files - Civil

Box

23 Folder 34

May 1869, No. 256

Cadwalader, Francis M.

vs

Wm. Lehard, R. M.

Leuckemeyer, Frederick

Injunction

Enjoin execution of judgment
on \$255 note

Francis M. Cadwallader, - Plaintiff

Against

R. M. Whitehead and
Frederick Leuchtemeyer - Defendants

In the Circuit Court of
Jefferson County Missouri

To R. M. Whitehead and Frederick
Leuchtemeyer, the above named defendants;

You are hereby notified that, at the next
Term of the County Court of Jefferson County
aforesaid, to be begun and held at the Court
House in Hillsboro in said County, on the third
monday of January 1869, and on the third
day of said Term, or so soon thereafter as Coun-
sel can be heard, I shall present to said Court
a petition in the above entitled Cause, and ap-
ply for an order to grant an injunction in
said Cause, returnable to said Circuit Court,
to enjoin and restrain you and each of
you from collecting a Judgment or any part
of it, obtained in the Circuit Court of said County
in favor of said R. M. Whitehead and against
the above Plaintiff for three hundred & one dollars,
and to enjoin and restrain you the said Fre-
derick Leuchtemeyer as Sheriff of said County from
collecting or enforcing an Execution in your hands
issued on said Judgment, or selling any property
levied on in virtue of the same. When & where you can
attend if you see fit,
Francis M. Cadwallader
By Abner Green his Attorney

J. M. Carrawallades
vs,

R. M. Whitehead

vs F. Leuchtenmeyer

Notice

Frank Leuchtenmeyer

Sheriffs fee 50

Filed Jan'y 26th 1869
E. J. Honey CRO.

and in more than one instance of the written notice
acknowledged. However, and aware the necessity of service by an officer
thus, the day of January 1869, first Sunday thereof,

I presented the within notice in person to and
on the 18th day of January 1869 on A. M. Whitehead
by delivering to him a true copy of this notice

I Fred Leuckhagenburg
By M. W. Storin & Co

Francis M. Cadwallader, - Plaintiff

Against

R. M. Whitehead, and
Frederick Leuchtemeyer } Defendants

} In the Circuit Court of
} Jefferson County Missouri,

The Plaintiff states that R. M. Whitehead, one of the above defendants, instituted suit against this Plaintiff, returnable to the November Term, 1868, of the Circuit Court of Jefferson County aforesaid, on a Promissory Note given by Plaintiff to the said Defendant, some time in 1866, for two hundred and fifty five dollars, - That, at said November Term of Court, to wit, on the 17th day of November 1868, being the second day of said Term, this Plaintiff by his Attorney applied for, and obtained leave, to answer the petition of said R. M. Whitehead in vacation, to wit, sixty days before the next Term of said Circuit Court, and said Cause was thereupon continued to said next Term of Court and so entered of record, (a copy of which record of said Court is hereto the Court shown). - That, afterwards, to wit, on the 27th day of November 1868, after this Plaintiff (Defendant in said Cause) and his Attorney had both left the Court, and had no notice whatever of the proceedings of said

Court, the Court on motion of the Plaintiff, therein
(said R. M. Whitehead) set aside said order grant-
ing to this Plaintiff leave to file his Answer
in said Cause in vacation, and also, the order
made by said Court on the 17th day of November
1868, continuing said Cause to next Term of
said Court, - a copy which order is here to the Court
shown, - And that said Court, on the same day,
to wit, on the 17th day of November 1868, without
any notice to this Plaintiff or his Attorney, (both
of whom had left the Court after said Cause was
continued) on motion of the Attorney of said R.
M. Whitehead, proceeded to, ^{and did} enter up Judg-
ment against this Plaintiff on said Note for
three hundred and one dollars, for debt and
damages, and for Costs of suit, and awarded
execution thereon, - A copy of which Judg-
ment, so entered on the records of said Court,
is here shown to the Court as an exhibit in
this Cause. And this Plaintiff alleges,
That said Judgment rendered as aforesaid, is
irregular, illegal and void, as having been
rendered without any notice to this Plaintiff
and contrary to the order of said Court made
on the 17th day of November 1868, ^{continuing said cause to next Term, and} giving this Plai-
tiff leave to answer said petition in vacation,
That this Plaintiff has a good defence to make
against said Judgment, and having got leave
of the Court to file his Answer in vacation, in-

terred to make his defence against said Note at
the proper time, - but was deprived and prevented
from making any defence against said Cause,
by the irregular, and illegal Proceeding of said
Court, in setting aside said order of Continuance
without notice to this Plaintiff, and by rendering
Judgment on said Note, without any notice
to this Plaintiff or his Attorney, - Plaintiff
therefore states that for the reasons aforesaid, said
Judgment of R. M. Whitehead against this Plaintiff
is irregular, illegal, and void, and that it would
be contrary to equity to enforce payment of the
same. Plaintiff states that he did not know
that said Judgment had been rendered against
him until after execution had been issued on
the same, more than a month after the adjourn-
ment of the November Term of said Circuit Court,
consequently, ^{it was} too late for Plaintiff to appeal from
said Judgment. Plaintiff states that he
through mistake gave said promissory Note to
R. M. Whitehead for 255 dollars, when it should
have been for only ^{one hundred & fifty five} ~~one hundred~~ dollars, - that his agent Wm.
J. Osborn, had paid said Whitehead ^{one hundred} ~~one hundred~~ dol-
lars for Plaintiff, ^{on his indebtedness to said Whitehead} before said Note was given, and
which was at the time unknown to Plaintiff.
And Plaintiff afterwards paid ten dollars on said
Note, - so that Plaintiff is entitled to a credit of
^{one hundred and ten} ~~one hundred~~ dollars on said Note, besides the interest
accruing thereon, which would make about

One hundred ^{and fifty} dollars that he ought to have credit for on said Note, & Plaintiff further states that said R. M. Whitehead has had an Execution issued on said Judgment, and which is now in the hands of Frederick Leuchtemeyer, Sheriff of said Jefferson County, and who has levied the same on the property of this Plaintiff, and is about to sell the same to satisfy said Judgment, so illegally and wrongfully obtained as aforesaid.

Plaintiff further states that said Judgment, obtained as aforesaid without notice to Plaintiff, and contrary to law, is absolutely void, and that it operates as a fraud on Plaintiff's rights, and that it would be unjust and contrary to Equity to enforce payment of the same, And that Plaintiff cannot obtain any relief at law against such illegal and unjust Judgment, or any part of it. & Plaintiff therefore in consideration of the premises, asks the Court to order and decree that said Judgment be set aside, vacated and annulled, so, that Plaintiff can be heard in his defence against said Note, and obtain his proper and just credits on the same. And Plaintiff further asks the Court to grant an injunction to enjoin and restrain the said Defendants from collecting said Judgment, or any part of it, and to restrain the said Sheriff from enforcing said Execution, or selling Plaintiff's property, - and that on a final

hearing of said Cause, that said injunction
be made perpetual against said Judgment,
or so much thereof, as Plaintiff is equitably
entitled to be relieved against, - and to grant
such further relief as may be just and proper,

} Abner Green
Attorney for Plaintiff

To the Honorable the County Court of Jefferson
County Missouri,

The undersigned petitioner, plain-
tiff in the above entitled Cause, states that there is
not now any Circuit Court in session within
said Jefferson County, or any Judge thereof within
the County of Jefferson, - and Plaintiff for
the reasons above alleged in his petition ~~he~~
prays said County Court to grant a temporary
Injunction returnable to the next Term of
the Circuit Court of said County, to restrain the
said Defendants from collecting the Judgment
aforesaid, for the reasons therein stated

Abner Green
Attorney for Plaintiff

In Circuit Court
Jefferson County

F. M. Caswallader

vs,

R. M. Whitehead &

F. Leuchtenmeyer

Petition

Injunction Granted
upon giving -
Bond of \$600 -

Dec 20/69

Wm. Mullins

Filed Jan 26/70
C. A. Honey

Know all men by these presents that we Francis M. Cadwallader as principal, and William J. Osborn — and Mitchell M. Cornack, as securities are held and firmly bound unto R. M. Whitehead in the sum of five hundred dollars, for the payment whereof, we bind ourselves, our heirs, executors, and administrators firmly by these presents, sealed with our seals, and dated this 20th day of January 1869.

The condition of the above obligation is such that whereas the said Francis M. Cadwallader ^{against said R. M. Whitehead & Treas. Leuchtmeier} has brought suit in the Circuit Court of Jefferson County Missouri returnable to the May Term 1869 thereof, and obtained by order of the County Court of said County, an injunction to enjoin and restrain the Defendants in said suit from collecting a certain judgment obtained by said R. M. Whitehead in said Circuit Court against him for three hundred and one dollars and costs, & to restrain the Sheriff of said County from collecting said judgment, or selling the property of said F. M. Cadwallader to satisfy the same.

Now, if the said Francis M. Cadwallader, plaintiff in said suit, will abide the decision which shall be made in said Cause by said Circuit Court, and shall pay all sums of money, damages, and costs that shall be adjudged against him in said Cause, if the said injunction shall be dissolved then the above bond shall be null and void otherwise it shall remain in full force,

Witness our hands and seals this 20th
day of January 1869,

J. M. Caldwell Seal

W. T. Osborn Seal

Mitchell McCormack Seal

J. M. Caldwell

to

Wm. Whitehead Sec. Wash. Temp.

Board for Engineering

W. T. Osborn

Filed Jan'y 26 1869
D. G. Cheney Clerk

State of Missouri } In the County Court
County of Jefferson } January Term 1869

The following proceedings were had, to wit,
J. M. Cadwallader } Petitioner for Injunction
R. M. Whitehead & Fred Luchtmeyer } For at this day
comes said plaintiff, and presents his petition stating
that R. M. Whitehead one of the above defendants
instituted suit against the plaintiff returnable to
the Nov. Term 1868. of the circuit court of Jefferson
county, that on the second day of said term
the plaintiffs Atty. obtained leave to answer the
petition in vacation, that afterwards, without
notice to the plaintiff in motion of the Atty.
of the said R. M. Whitehead, the judge of said
circuit court, entered judgment against this
plaintiff for the sum of Three Hundred and One
dollars, for debt damages and cost of suit,
and awarded execution therefor, that said
judgment was illegal and void for reasons
set forth, and that this plaintiff has a good
defense to make against said note, that
execution has been issued on said judgment
which is now in the hands of Frederick Luch-
tmeyer defendant herein, Sheriff of Jefferson County
that there is not now any circuit court in session
in this county or judge thereof in the county and
prays the court to grant a temporary injunction
to restrain and enjoin said defendants from en-
forcing the payment or collection of said judgment

and execution, whereupon, it appearing to the court that the defendants have been duly served with notice of these proceedings the court doth order that upon the plaintiff giving bond with approved security in the sum of five Hundred dollars, that the injunction be granted as prayed for, and that the clerk of this court certify ~~to~~ the clerk of the circuit court of Jefferson county the proceedings that the injunction may be granted as prayed for. A true copy from

the Record in my office,
Witness my hand and the seal
of said court affixed, this 21st
day of January A.D. 1869
Wm. M. Mullin clk

State of Missouri / In the County Court
County of Jefferson } January 21st 1869
The following proceeding was had, to wit

J. M. Cadwallader } On Petition for Injunction
vs
R. M. Whitehead & Fred Leuchteuwer } Now at this day comes said plain-
tiff in the cause and files bond in the sum of five hundred dollars
which is approved by the Court

Witness my hand and the seal of said
Court here to affixed Jan 26th 1869
R. M. Mullin

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files 20 locks	<u>25</u>	. 25
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\$ 0.50
1.00

James W. Allen
2. Burlington City

Filed July 26 1869
E. P. Honey Cl

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

THE STATE OF MISSOURI,

To the Sheriff of the County of Jefferson—Greeting:

We command you, that you summon *Frederick Luchtemeyer*
and *R M Whitehead*

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
Francis M Cadmullader

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 seventh day of January A.D. 1869

Elias F Honey
Clerk Circuit Court.
By Tho Honey Dep't

Served this 9th Feb

23

27/3
JEFFERSON CIRCUIT COURT.

May Term, 1869

J. M. Cadwallader

vs

R. M. Whitehead

Fred H. Luchtmeyer

(Indignant)

I hereby acknowledge service of the within writ and order of injunction, and waive the necessity of service by a proper officer this 27th day of January 1869.

Fred H. Luchtmeyer.
Sheriff Jeff Co

This summons came to hand Feb 2nd, and I did serve the same by leaving a true copy thereof with the defendant R M Whitehead at Jefferson County Mo this 9th day of February A D 1869

fees 100

F. Luchtmeyer Sheriff
per Fred Vollmar
Deputy

Francis M. Godwalader, Plaintiff } In the Jefferson
 v } Circuit Court.
 R. M. Whitehead and Med.
 Satcherney, Defendants }

Now at this day comes R. M. Whitehead one of said Defendants and for answer to the petition of the Plaintiff heretofore filed in this behalf ^{states} that it may be true that on the 17th day of Nov. 1868, it being the second day of the Nov. Term of the Jefferson Circuit Court for 1868 the Plaintiff by his attorney obtained leave of said Court to answer the petition which this Defendant had then filed against him but he says it was done in the absence of him self & his attorney and was therefore null and void. But Defendant denies that said judgment referred to in Plaintiff's petition is irregular, or void on account of the reasons therein set forth or for any other reasons. He avers that even if any irregularity did exist in regard to the obtaining of said judgment yet such irregularity was waived by serving out the injunction in this case.

This Defendant denies that said Plaintiff had any good or substantial defense to make to said note sued on by this Defendant as is alleged in said petition but he

aver, that said Plaintiff obtained leave
to file his answer in vacation as
alleged by him in said motion for the
purpose of vacation and delay.

Defendant denies that the Plaintiff through
mistake gave said promissory note for
\$250; when it should have been for
only one hundred and fifty five dollars.
He denies that Plaintiff's agent Wm J.
Osborn had ^{paid} him this Defendant one
hundred dollars on his indebtedness to
this Defendant before said note was
given. This Defendant denies that
Plaintiff afterwards paid him ten dollars
on said note. This Defendant avers
that the indebtedness for which said note
was given had existed for a long time prior
to the date of said note; and that ~~the~~ at the
time said note was given there was about
forty dollars of interest on said indebted-
ness due from Plaintiff to this Defendant
which this Defendant requested should
be put into the note, but said Plaintiff
stated that he did not like to pay interest
on interest: that he would ^{pay} the interest
then due in a short time and for this reason
and on account of the promise of
Plaintiff to pay the same in a short

time it was not put in the note, Defendant admits that said Plaintiff paid him ten dollars in a note and he placed the same to the Credit of the amount of interest due at the time the note was given, the said Plaintiff not directing it to be applied otherwise.

Defendant therefore denies that the Judgment which Plaintiff seeks to enjoin is unjust or fraudulent. But he avers that the same is due this Defendant and ought to be paid in full.

Defendant denies said Judgment ought to have been enjoined or that the injunction should be made perpetual.

John L. Thomas

Att'y for Defendant.

J. M. Goodenough

R. M. Whithead & Co

Answer of

R. M. Whithead

Filed Oct. 12th 1869

Chas. J. Newmark

F. M. Cadwalader, Plaintiff

vs

R. M. Whitehead and

J. L. Lichteney Defendants

In the Superior
Circuit Court.

J. L. Lichteney one of said Defendants comes and for answer to the petition of the Plaintiff says that he has no sufficient knowledge or information to form a belief in regard to the allegations of said petition and therefore requires strict proof of every allegation deemed material.

J. H. Thomas

Atty for Def.

J. M. Goodspeed
R. M. Whitcomb

William F. Hutchinson

Filed Oct. 12 1869
Wm. F. Hutchinson

J. M. Codwalade, Plaintiff

vs

R. M. Whitehead and
Fred. Lech Cerner Defendants

Injunction
In Appellate
Circuit
Court.
Nov. 1869

Now at this day come the said
Defendants, and move the Court to dissolve
the Injunction granted in the above entitled
Cause for the following reasons -

1. Because the Plaintiff has no equity
in his bill.
2. Because the Plaintiff does not show
that unless he gets his injunction his
damages will be irreparable.
3. He does not allege that the Defendants
are insolvent.
4. The injunction should not have
been granted.
5. The Petition of Plaintiff sets forth
no good & legal reasons why the injunction
should have been granted.
6. The facts set up by Plaintiff to Whitehead
judgment are unjust & should not
be allowed.

J. L. Thomas

Att'y for Defendants

J. M. Leadwold

vs

Whitehead et al

Motion to dissolve
Injunction

Filed Nov. 17th 1869
E. H. Hovey att

F. M. Cadwalader, Plaintiff
 v.
 R. M. Whitehead et al Deft } Superior
 Court.
 No 222
 1869.

And at this day Come said Defendants
and move the Court to assess the damages
they have sustained by reason of the
injunction issued in the above entitled
Cause, on the injunction bond given
by Plaintiff as principal and W. J.
Astburn and Mitchell McCormack
as ~~the~~ sureties, in this Cause.

John L. Thomas

Atty for Defendants.

Dr. Wm. Brewster

Dr. Wm. Brewster

Dr. Wm. Brewster
Dr. Wm. Brewster
Dr. Wm. Brewster

Dr. Wm. Brewster
Dr. Wm. Brewster
Dr. Wm. Brewster

1850
228

To M. Leachman } the Price
of the ~~old~~ ^{new} machinery } Indemnity }
of the new set Copy Out 150 Cost 30 2.00
Exp. Car. by 055 1.50 Wagon by 1.00 Load 15 285
docto 15 Indent 50 Indt 10 75
The Bill 20 20
Done 14 of Dec 1.00
100
\$3680

of the extension done Sept. 100 100
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220
\$40,00

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850
490.50

Cadwallader

is

Suttons &
R M Whithead

\$
See Bill 40.00