

DeForsen County Circuit Court
Case File - Civil

Box

23 Folder 35

May 1869, No. 257

Cady, Augustus F.

vs

Cady, Narcissus K.

Injunction

Enjoin defendant from selling or
cutting timber on 120 acres in
U.S. Survey 2508 purchased jointly
by litigants

In Circuit Court Jefferson County

Augustus T. Cady
Plaintiff

Against
Herastus K. Cady
Defendant

The petition of the above named plaintiff respectfully shows to this Court that he is a resident of the County of Jefferson in the State of Missouri and has been for the last ~~two~~ ^{two} years and that on or about the 26th day of April A.D. 1867, you petitioner and the above named defendant bought of and from Marshall Brotherton of St Louis, Missouri the following described tract of land lying and being situate in the County of Jefferson to wit: Beginning at a post in the eastern line of U.S. Survey No 2008, $81^{\circ} 56'$ Chasing southwardly distant from the point of intersection of said Survey line with the line between Township 39 and 40 $NR 4E$ from which post a post oak 4 inches in diameter bears $N 4^{\circ} 30' 15'' E$ 15 $\frac{1}{2}$ links dist. and a post oak 3 inches in dia. bears $N 74^{\circ} 2' E$ 17 links dist. thence South $89^{\circ} 5' E$ 24 $\frac{1}{2}$ chains to a post from which a red oak 6 inches in dia. bears $S 22^{\circ} E$ 50 $\frac{1}{2}$ links dist., & post oak 14 inches dia. bears $S 44^{\circ} E$

N, 46 $\frac{1}{2}$ links dist thence S $\frac{1}{4}$ ° W 39 $\frac{1}{2}$ chains to a
post from which a Hickory 8 inches dia bears
N 56 $\frac{1}{4}$ ° W 26 links dist, and a Hickory 7 inches
dia bears N 35 $\frac{1}{2}$ ° E 47 $\frac{1}{2}$ links dist, thence N 82 $\frac{1}{2}$ °
W 38 $\frac{1}{2}$ chains to an old corner in the eastern
line of Survey 2008 being a black Jack
10 inches dia, thence N 20 $\frac{3}{4}$ ° E 37 $\frac{1}{2}$ chains
to the place of beginning containing one
hundred twenty & twenty six hundredths
of an acre (120 $\frac{26}{100}$)

which said tract of land was purchased
by the said plaintiff and defendants
jointly the said defendant having for
his interest therein two thirds and
the said plaintiff had one third interest
in and to said purchase and of the
arails and sale of the same.

And the plaintiff further shows that
at the time of said purchase of said
land by the parties the said plain-
tiff paid for the same his propor-
tionate one third of the purchase
money thereof and the said defend-
ant two thirds of the purchase price

of the same but it was agreed on the
part of the said plaintiff to allow
the title of the same to be made and
held in the name of said defendant
and that the title thereto ever held and
is now held in the name of said de-
fendant. And the petitioner further
alleges to this Court that since the pur-
chase of said land by said parties
as aforesaid the said defendant has
sold off and from the same to one George
R. Norabach about twenty five acres
of the same and has agreed to give him a
deed therefor on the payment of to him
of thirty dollars an acre for his purchase
which will amount to about seven
hundred and fifty dollars and that
the said Norabach has already paid
to said defendant upon said pur-
chase about two hundred and fifty
dollars towards the purchase of said
tract to him sold. And the said
defendant has contracted to sell to one
G. Barr of said land between seven-
teen and eighteen acres of said tract
of land so purchased between them from
said Marshall Brotherton at the rate
of thirty dollars an acre for which said
defendant has received on said
contract of said G. Barr from three
hundred and to ~~three hundred~~

to three hundred and twenty dollars
and the said ~~plaintiff~~ further shows
to this Court that the said defendant
has sold off and from said tract
of land to other persons so that there
remains only unsold of the same
about thirty four acres of the ^{land} same
yet unsold -

And your petitioner further shows
that the said defendant has refused
to account to him for the sale of said
land and pay him his pro rata share
of the same according to his interest in
said purchase and that the said de-
fendant fraudulently denies that
the said plaintiff has any right
title claim and ~~interest~~ therein
and is fraudulently endeavoring to
cheat and defraud your petitioner
out of his rights to the same

Wherefore your petitioner prays that
the said defendant may be enjoined
and restrained from interfering with
said land or selling the same or re-
ceiving any money upon the contracts
of sale of the same, ~~so~~ that the said
defendant may be enjoined and
restrained from cutting any timber
off from said land or otherwise
interfering with the same until the

rights of the parties are established
by a decree of this Court -

And your petitioners further pray
that his rights may be established
in and to said land and that the
defendant be decreed to account
to the said plaintiff for the sales
already made of the same and that
the interest of the said plaintiff
in and to said land may be decreed in
him and such other and further
relief in the premises as may
be just and equitable.

For Edward
Plffs Atty

" Vicar's Book

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mustard & lady
apt

rastrus & lady

"
Chiton

ra Seaward
Piffally

led Jan 24 1869

E A Honey Cl,

By O M'Nime D.P.

paid by A D Cady

Copper - $\frac{91.25}{100}$ 50 / 1.75
mint & copy $\frac{1.10}{100}$ files 05 1.15
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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 *Leviastus K Cady*

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* ~~at~~, then and there to answer unto

Augustus F Cady

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 ninth day of *January* A.D. 1869

Elias F Honey

Clerk Circuit Court.

Charles P. Hime Sept

This summons came to hand Feb 2nd 1869 and I executed the same by
delivering a true copy of the within petition and writ ~~to~~
as furnished to me by the Clerk of the Circuit Court of Jefferson County, to the
defendant ~~and~~ I H. Cady at Jefferson County Mo. the 9th day
of February 1869
Jas 1st

To D. Smith Esq or Sheriff
for Fred Dallmuth

Deputy

No 257.
2 TO 709
JEFFERSON CIRCUIT COURT.

May Term, 1869,
A. J. Cady
vs
D. K. Cady

(original)

Augustus F. Cady, Plaintiff
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 Versus R. Cady, Defendant

In the Jefferson
 Circuit Court.

Now at this day comes the said Defendant
 and for answer to the petition of the Plaintiff
 heretofore filed in this behalf denies that
 on or about the 26th day of April 1867 or
 at any other time he and the Plaintiff
 bought of Marshall Brotherton the
 land described in said petition, but
 he avers that he bought said land of
 Plaintiff as the agent of said Brotherton
 and paid for the same entirely and
 wholly out of his own means. Defendant
 denies that said land was bought jointly
 by Plaintiff and Defendant, denies
 that the Plaintiff was to have one third interest
 in said land ~~or that~~ but he avers that the
 Defendant was to own and enjoy the whole
 of said property as his own absolute estate.
 Defendant denies that Plaintiff was to have
 one third interest in the avails of the
 sale of said land or any other portion
 thereof, but on the contrary the Defendant
 was to have all that might be realized
 out of said land.

Defendant denies that at the time of the
 purchase of said land the Plaintiff paid

for the same his proportionate one third
of the purchase money thereof, but on
the contrary he over that he paid the
whole of said purchase money wholly
out of his own means. Defendant denies
that it was agreed on the part of the Plaintiff
to allow the title to said land to be made
to Defendant and to be held by him.

He over that Plaintiff had nothing to do
with the title to said property except to procure
a deed from said Marshall Brotherton
to Defendant he said Plaintiff being
then the agent of said Brotherton to
sell said land. Defendant admits

that the title to said property was placed
in said Defendant but he denies that
it was made to or held by him under any
agreement on his part by which Plaintiff
was to enjoy any interest therein.

Defendant admits that he has sold some
of said land since his purchase of
Brotherton but he most positively denies
that Plaintiff is entitled to any portion
thereof or any interest therein or has any
right to maintain this action against
Defendant to compel him to account to
Plaintiff for any portion of the avails
of said sale. and having fully answered

may be discharged with his reasonable
costs.

J. L. Thomas.

Atty for Defendant.

A. F. Cook
in
D. E. Cook.

Answer
Defendant

Filed Oct 7. 1869
E. F. Henry att

A. F. Cady
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D. K. Cady } In Jefferson Circuit Court
Nov. Term 1869.

Now at this time the Deft & moves
the Court to order the Plaintiff to give
security for the costs because he
is insolvent & unable to pay costs
Mouney
for Deft.

body

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body

Motion for costs

filed Nov 17 1869
Elias P. Hooley
clerk