

Jefferson County Circuit Court
Case Files - Civil
May 1869, No. 248

Box 23 Folder 79

Kim, Theodore

vs.

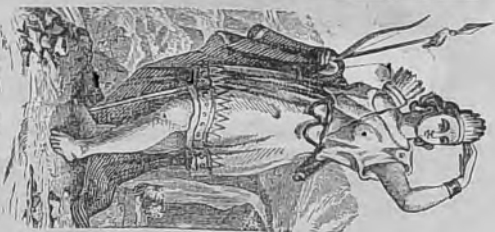
Weippert, John

Weippert, Eliza, alias

John, Eliza

Debt, notes

Debt \$600, \$106, \$500, \$17.50, \$500,
\$35 for lot and house in Kimmswick;
Supreme Court



\$ 600⁰⁰ /100

Louis 15th September 26th 1867

One year — after date, ^{7th mo} ~~the~~ ^{pro} ~~the~~ promise to pay

to the order of Theodore Sumner the sum of —

Six hundred — ¹⁰⁰ DOLLARS,

for value received, negotiable and payable, without defalcation or discount,

and with Interest from the date, at the rate of Ten per cent per annum.

John Weigert

Due

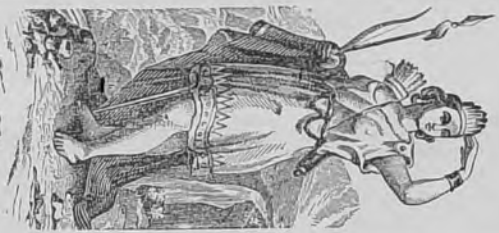
Sold by FRANCIS SAUER, Convent Street, between 3d. and 4th. Streets, St. Louis, Mo.

W. C. & H. H. H. H.

66 149 46

The property in which the payment of
the within Note was secured by deed
of Trmte has been sold by the undersigned
Trmte on the second day of December 1864
at the price and sum of five hundred
dollars, in consequence of which debt
after deduction of the costs and expenses
of executing this deed of Trmte, the sum
of four hundred and forty two ⁶²/₁₀₀ dollars
is credited on this Note.

Robert N^o Hunt
Trmte.



\$ 106 ⁰⁰/₁₀₀

— of Lewis & Clark Sept 26th 1867

One year — after date, ^{either of us} promise to pay
to the order of Charles Harmon the sum of —

— **HUNDRED AND — 100 DOLLARS,**

For value received, negotiable and payable, without defalcation or discount,
and with Interest from ^{Sept 26th} ~~March~~ at the rate of 10 per cent per annum.

Due

John Thompson

Sold by FRANCIS SALTER, Convent Street, between 3d. and 4th. Streets, St. Louis, Mo.

The property on which the payment of the
within note was secured by deed of Trust has
been sold by me under said deed of Trust on
the 2^d day of December 1868 at the price and
sum of five hundred dollars, of which sum
after deducting the expenses and costs for executing
said Trust, the sum of four hundred and forty
two ⁶⁴/₁₀₀ dollars has been credited on the first
Principal Note in said deed of Trust thereby
leaving nothing to be credited on this note

Robert W. Hunt
Trustee



\$ 500 ¹⁰/₁₀₀

Paris No. September 26 1867

Eighteen months after date, ^{with interest} I promise to pay

to the order of *Charles Tamm* the sum of

Fifty DOLLARS,

the value received, negotiable and payable, without defalcation or discount, and with Interest from *March 1st* at the rate of *ten* per cent per annum.

Due

John McQueen

Sold by FRANCIS SAUER, Convent Street, between 3d. and 4th. Streets, St. Louis, Mo.

The property, on which the payment of
the within Note was secured by deed of Trust
has been sold by me under said deed
of Trust on the 24 day of December 1868
at the price and sum of five hundred
Dollars, of which sum, after deducting
the expenses and costs for executing said
Trust, the sum of four hundred and forty
two ⁶⁰ dollars has been credited on
the first principal Note in said deed
of Trust described, leaving nothing
to be credited on this Note

Robert C. Hunt
Trustee



\$ 1450

St Louis 46 September 26. 1867

Eighteen months after date, we or our assigns promise to pay
to the order of Charles Sumner the sum of

Seven hundred and 50 CENTS,

for value received, negotiable and payable, without defalcation or discount,
and with Interest from Westport at the rate of Ten per cent per annum.

Due John Westport

Wm. Westport

Sold by FRANCIS SAUER, Convent Street, between 3d. and 4th. Streets, St. Louis, Mo.

The property, on which the
payment of the within Note
was secured by Deed of Trust
has been sold by me under said
Deed of Trust on the 2^d day of
December 1868 at the price and
sum of four hundred Dollars
of which sum after deducting
the expenses and costs for executing
said Trust, the sum of four hundred
and forty two $\frac{60}{100}$ Dollars has been
credited on the first principal Note
in said Deed of Trust described
leaving nothing to be credited
on this Note

Robert N Hunt
Trustee



\$ 500 ⁰⁰/₁₀₀

St Louis 26th September 26th — 1867

I have — after date, ^{either of us} promise to pay

to the order of Theodore Hamm the sum of —

Five hundred — ¹⁰⁰/₁₀₀ DOLLARS,

for value received, negotiable and payable, without deduction or discount,

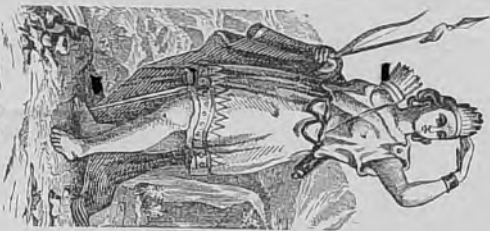
and with Interest from ^{March 1st} at the rate of 10⁰⁰ per cent per annum.

Due — John Thompson

Sold by FRANCIS SAUER, Convent Street, between 3d. and 4th. Streets, St. Louis, Mo.

The property, on which the
payment of the within Note
was secured by deed of Trust
has been sold by me under said
deed of Trust on the 2^d day of
December 1868 at the price and
sum of five hundred dollars
of which sum after deducting
the expenses and costs for executing
said Trust, the sum of four hundred
and forty two ⁶⁰ Dollars has been
credited on the first principal Note
in said deed of Trust described, leaving
nothing to be credited on this Note

Robert C Hunt
Trustee



Stamp of Trade property

\$

33

1867

after date, the holder of this

promissory note

is to pay to the order of the

holder of this note the sum of

the order of the

holder of this

promissory note

is to pay to the order of the

holder of this note the sum of

the order of the



100 DOLLARS,

for value received, negotiable, without defalcation or discount, and with interest from the date of the note at the rate of 10 per cent per annum.

Due

According to the provision

contained in the deed of gift

by which the property of Mrs

note was assigned, this note

is to be a valid receipt for the

same was at the rate of 10

per cent per annum.

John McQueen

Witness my hand and seal

this 10th day of September

Sold by PLASTER & SALTER, Corcoran Street, between 3d. and 4th. Streets, St. Louis, Mo.

Theodore Kimm

vs

John Weippert and
Eliza Weippert alias
Eliza John

In the Circuit

Court for the County
of Jefferson Wisconsin

The plaintiff states that
the the four promissory notes hereto attached
all dated on the 26th day of September 1867
respectively for the sum of six (600)
hundred dollars, one hundred and six
(106) dollars, five hundred (500) dollars
Seventeen ⁵⁰ (17.50) dollars, and five
(500) dollars, and respectively due
in one year, eighteen months, and
two years, from date, were signed
executed and delivered by the defendants
as the Consideration money in part
for a certain Lot of Land & house in
the Town of Krummrich in Jefferson
County Wisconsin, and the interest
accruing on said notes,
that to secure the payment of said
several notes the said defendants
executed and delivered to the plaintiff
a deed of Trust on said Lot in which
it is provided that in default of the
payment of ^{any of} said notes the whole of them
shall become due and payable,

and that the trustee should sell said
lot for the payment of the whole of said
notes in the order in which they mature,
that afterwards said notes falling due
and default in the payment thereof
being made, the said lot was put
up and sold according to the terms
of said deed of trust for the sum
of five hundred dollars, of which
sum after deducting the expenses of
the trust amounting fifty seven ⁴⁰/₁₀₀ dollars,
was credited on said first note, leaving
a balance due upon said first note
of one hundred fifty seven ⁴⁰/₁₀₀ dollars
with interest.

Plaintiff therefore avers that the last mentioned
sum, and the whole of the other serial
notes, as above set forth are due and
owing to the plaintiff by the defendants
amounting to the sum of twelve hundred
and eighty dollars ninety cents for which
with the interest the plaintiff asks
judgment

P. P. Piper atty
for the plaintiff

Alfred Ernest Hunt
May June 1869

Theresa Hunt
John Baptist and
Elena Baptist also
Elena John

Alfred

The club will over public
ation by Elena Baptist also
John & John Baptists as
John Baptists

Alfred
for all

Alfred Hunt 11th 1869
Alfred Hunt, Al

Theodore Krum

Attachment in
the Circuit

^{vs}
John Weppert &
Elija Weppert alias
Elija Jan Jakm

Count of the
County of Jefferson
Missouri

Bernhard H. Stumberg makes oath and
says that the matters and things set forth
in the annexed petition he believes to be
true and that the plaintiff has a just
demand against the defendants and that
amount which plaintiff believes the plaintiff
ought to recover after allowing all just credits
and offsets is twelve hundred and ~~eighty~~ ^{eighty}
dollars ninety cents with interest thereon and
that he has good reason to believe and
does believe that the said defendant
Elija Weppert alias Elija Jakm is not
a resident of this State, and that the
said defendant John Weppert is about
fraudulently to convey or assign his property
or effects so as to hinder or delay his
creditors

Sworn to & subscribed before me

on 4th day of January 1869

Charles H. Hoffmann

Notary Public ^{for} this St

Louis County Mo.

Bernhard H. Stumberg

Theodore Krum

vs

John Weiffert and
Eliza Weiffert alias
Eliza Sahn

affidavit

Filed Jan 11th 1869
E. F. Honey & Co
By Chas. H. Hume Deft

Theodore Kimm

vs

John Weippert

Eliza Weippert alias

Eliza Yan

We Bernhard S. Sternberg as
principal and Philip Pipkin as security
owe and stand indebted to the State of Wisconsin
in the sum of ~~ten~~^{twenty} hundred dollars, upon
this condition that the plaintiff in the above
entitled Cause Theodore Kimm shall prosecute
his action without delay and with effect refund
all sums of money that may be adjudged
to be refunded to the defendant or found to
have been received by the plaintiff and
not justly due to him and pay all damages
and costs that may accrue to any defendant
or garnisher by reason of the attachment
or any process or proceeding in the suit
or by reason of any judgment or process
thereon.

Bernhard S. Sternberg

Philip Pipkin

approved this 11th

day of January 1869

E. J. Honey Clerk Circuit

By C. H. Horns Sept

Madame Stuen

as

John Huppert and
Elija Huppert also
Elija ~~John~~ John

Alachua Bond

Filed Jan 11th 1869

Edw. Henry D. W.

STATE OF MISSOURI,
COUNTY OF JEFFERSON.

The State of Missouri to the Sheriff of Jefferson County, Greeting :

WE COMMAND YOU to attach *John Weippert and Eliza Weippert*
alias Eliza John

by all and singular *their* lands and tenements, goods, chattels, rights, moneys, credits, evidences of debt, and effects, or so much thereof as shall be sufficient to satisfy the sum of *twelve hundred*
and eighty dollars and *ninety* cents, with interest and costs of suit, in whose possession soever the same may be found in your county, and that you summon the said

John Weippert and Eliza Weippert alias Eliza John

that *they* be and appear before our Circuit Court of the county of Jefferson, on the first day of the next term thereof, to be holden at the Court House in Hillsboro, in said county of Jefferson, on the *seventh* day of *May* next, then and there to answer the petition of

Theodore Kimm
wherein *he* asks judgment for *twelve hundred and eighty*
dollars and *ninety* cents, and that you also summon

and all other persons that you shall find in the possession of goods, money or effects of the defendant, not

and such other persons as the plaintiff or his
and a our said court, at the time and place aforesaid,
exhibitions and interrogatories as may be exhibited against them; and have

IN TESTIMONY WHEREOF, the undersigned, Clerk of the said
Jefferson Circuit Court, has hereto signed his name and
affixed the seal of said Court, at office, this *11th* day of
January, 186*9*.

Alvin McConery Clerk.
By Thos. H. DeP.

coffee, 75¢
 tea, 50¢
 bread, 50¢
 milk, 10¢
 eggs, 10¢
 fello, 15¢
 \$3.10

No 748
 2985
 TO
 Jefferson Circuit Court.
 May Term, 1867.
 Theodore Hornum
 vs
 Mrs. Weippert and
 Eliza Weippert alias
 Eliza John
 (original)

This attachment came to hand for the
 January 15th 1869 in the County of Jefferson.
 by attaching, as the property of the within named
 Eliza Weippert. The following Real Estate to wit
~~three~~ ⁱⁿ Acres, in the town of Windsor Harbor
 Thereon. And I also served the within by leaving
 within Petition and writ ^{as furnished to me by the Circuit Clerk} with John Weippert. Eliza
 Eliza John could not be found in my County.

Dec 4-25

Fred Luchtmeier
 Sheriff. Jeff. Co. Mo.

The State of Missouri, COUNTY OF JEFFERSON.

BE IT REMEMBERED, That on this 30th day of May A. D. 1869, before me, the undersigned Clerk of the *City & Dist.* Court of Jefferson county, came Frank N. Stone, who being by me duly sworn, says that the annexed advertisement was published in the JEFFERSON DEMOCRAT, a newspaper printed and published in the town of Hillsboro, in said county, of which he is printer, for *7* times, the first insertion being on the 22d day of *January*, 1869, and the last on the 12th day of *February*, 1869, as follows, to-wit:



- In No. 4, *January* 22, 1869.
- In No. 5, " 29 1869.
- In No. 6, *February* 5, 1869.
- In No. 7, " 12 1869.
- In No. *Frank N. Stone* 186

Sworn to and subscribed before me this *1st* day of *May*, 1869.

Printer's Fee... *100.00*
Affidavit... *25*

Ellas, Jr. & Son Clerk.
By J. H. H. H. H.
Received Payment

\$10.25

Kimmer
10
Weipert

Order of Publication.

[Civil action by Attachment.]

IN the Jefferson Circuit Court of Missouri, in vacation January 11th, 1869. Theodore Kimm vs John Weippert and Eliza Weippert, alias Eliza Jahn.

Now at this day comes Theodore Kimm, the plaintiff in the above entitled cause, (by his attorney,) before the undersigned Clerk of the Circuit Court of Jefferson county, in vacation, and files his petition and affidavit, stating among other things, that one of the above named defendants, Eliza Weippert, alias Eliza Jahn is a non-resident of this State. It is thereupon ordered by the clerk aforesaid, in vacation, that publication be made, notifying her that an action has been commenced against her, by petition and attachment, in the Circuit Court of Jefferson county, in the State of Missouri, founded on a note for the sum of twelve hundred and eighty dollars and ninety cents; that her property is about to be attached, and, that unless she 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 tenth day of May, 1869; and on or before the third day thereof answer or demur to said petition, judgment will be rendered against her, and her property sold to satisfy the same. It is further ordered that a copy hereof be published in the Jefferson Democrat, 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 said court at office in Hillsboro, this fourteenth day of January, 1869.

ELIAS F. HONEY, Clerk.

Theodore Krimm, petff. In the Circuit Court
against } of Jefferson County
John Weippert and } Mo.
Eliza Weippert alias } May Term 1869.
Eliza Jahn, defds. }

Action by Attachment.

Now on this day comes John Weippert, one of the above named defendants, and also Eliza Weippert, the other defendant, who appears by said John Weippert, her husband, and both said defendants state, that they are lawfully married and still are husband and wife.

These defendants make the following motion for reformation of plaintiffs petition, to wit;

Whereas it appears upon the face of said petition, that several causes of action, are improperly united and not separately stated, as the law requires, in this: that several promissory notes, alleged to be the causes of action, are joined in one and the same count, and that relief is not asked separately upon each cause, - these defendants therefore move for an Order of Court to require plaintiff, to elect one of said causes, and to strike out the remaining ones,

thus improperly joined in one count,
John Weippert, by Henry
F. Ahlers, his atty.
and

Eliza Weippert, by John
Weippert, her husband

In the Jefferson County
Circuit Court
May Term 1869

vs 248.
Theodore Rimm, p^{et}

against
John Weippert and
Eliza Weippert, alies
Eliza John. def^t

Motion of def^ts.
for reformation
of petition.

Filed May 11/1869.
Elias R. Honey
cl^k

Theodore Krimm, plaintiff, } In the Circuit
 vs. } Court of Jefferson
 John Weippert and Eliza } County, Missouri
 Weippert, alias Eliza Yahn }
 defendants. } May Term 1869.
 Attachment suit.

Now on this day comes ~~the~~ John Weip-
 pert, one of the above named defendants,
 and for plea in abatement to the affi-
 davit, made by one Bernhard N. Sternberg
 in the above entitled attachment-suit,
 in which affidavit the causes for said
 attachment are alleged, — denies, that
 he, said John Weippert, is about, or at
 the time, said attachment was brought,
 was about, fraudulently to convey or
 assign his property or effects, so as
 to hinder or delay his creditors, as
 alleged in said affidavit; and this
 defendant also denies, that at the
 time, said suit of attachment was
 brought, said Bernhard N. Sternberg as
 the plaintiff in this case, had good
 reason to believe or did believe, that
 the John Weippert was about, fraudu-
 lently to convey or assign his property
 or effects so as to hinder or delay his

creditors, and this defendant therefore demands proof of the allegations in said affidavit.

Known to and subscribed
ed before me, this 8th,
day of May 1869.

John Weippert

Elias F. Honey Clerk

By L. H. Alford deputy

No. 248.
In the Circuit Court
of Jefferson Co, Mo.
May Term 1869

Theodore Kinn,
petff.

against
John Weippert and
Eliza Weippert, alias
Eliza Yahn, defds.

Plea in abatement
to affidavit, filed,
— by John Weippert.

Filed May 11 1869
Elias B. Koenig dk

Theodore Kinn
vs
John Weipert and
Eliza Weipert } In the Circuit Court
of Jefferson County
Missouri.

The amended petition of the plaintiff states that the defendants by their promissory note hereto attached dated September 26th 1867 promised for value received to pay plaintiff the sum of six hundred dollars.

Afterwards to wit on the 2nd day of December 1868 the sum of four hundred ~~dollars~~ forty two dollars ⁶⁰/₁₀₀ by sale of land leaving a balance of one hundred and fifty seven ⁴⁰/₁₀₀ due and unpaid for which and the interest plaintiff asks judgment

Plaintiff further states that on the day and year aforesaid the said defendants by their other promissory note hereto attached dated on the said 26th day of September 1867 for value received promised to pay plaintiff the sum of one hundred and six dollars one year after date which with the interest is due and remains unpaid and for which he asks judgment

Plaintiff further states that the said defendants by their other promissory note ^{dated on the 26th day of September 1867} hereto attached, promised for value received to pay plaintiff the sum of five

hundred dollars eighteen months after date which note is now due and remains unpaid and for which with the interest plaintiff asks judgment

Plaintiff further states that the said defendants by their other promissory note hereto attached dated September 26th 1867 promised for value received to pay plaintiffs eighteen months after date ⁵⁰two hundred dollars which note ~~and~~ is now due and remains unpaid and for which he asks judgment

Plaintiff further states that the said defendants by their other promissory note hereto attached dated on the 26th day of September 1867 promised for value received two years after date to pay to plaintiffs the sum of five hundred dollars for which is due on the 26th day of September 1869 and for which with interest plaintiff asks judgment.

Plaintiff therefore avers that the said defendants owe to said plaintiff the sum of twelve hundred and eighty dollars ninety cents (1280⁹⁰) the amount due and to become due on said notes for which and the interest

Thurman statement asks judgment
Theodore Krumm
By P. P. Krumm his atty.

Theodore Kinn

ms

John Weipert and
~~E. Jones~~
John Weipert

Amended petition

Filed Oct 1st 1869
E. J. Honey clerk

Theodore Kimm, petff, In the Circuit
vs. Court of Jefferson
John Weippert and saw county,
Eliza Weippert, defts. Missouri.

Now on this day comes the above named defendant Eliza Weippert, by her attorney, and by leave of court files the following answer to the amended petition of plaintiff in the above case:

This defendant states, that on the 26th day of September 1867, the day, on which the note for six hundred dollars in favor of plaintiff, which is attached to plaintiff's petition, was executed, she was a married woman, the wife of John Weippert; and still is a married woman; that therefore ~~her~~ said note is not binding her, and she not liable to pay the balance of one hundred and fifty seven ⁴⁰/₁₀₀ dollars, claimed by plaintiff to be due thereon.

This defendant further states, that on the day and year aforesaid, the day, on which the other note, attached to plaintiff's petition, for the sum of one hundred and six dollars, payable one year after date to plaintiff, is said to have been executed, she was and still

is a married woman, the wife of John Weppert, unable to bind herself by note, that therefore said note is not binding upon her, and totally void as to her.

This defendant further says, that on the 26th day of September 1867, the day, when the other note for five hundred dollars, payable eighteen months after date to plaintiff, is said to have been executed, ~~she was~~ and which note is attached to plaintiff's petition, she ~~was~~ and still is a married woman, the wife of John Weppert, that she was unable to bind herself by note, and that said note is therefore totally void as to her,

This defendant further states, that on the 26th day of September 1867, the day, on which the note for seventeen ⁵⁰/₁₀₀ dollars, payable eighteen months after date to plaintiff, which note is attached to plaintiff's petition, was executed, she was and still is a married woman, unable to bind herself by note, that therefore said note is void and not binding as to her.

This defendant further states, that on the 26th day of September 1867, the

day, on which the other date attached to
petts, petition, for five hundred dol-
lars, payable two years after date
to plaintiff, was executed, she was
and still is a married woman,
~~the wife of John Weippert~~
unable to bind herself by date, but
therefore said date is void as to her
and not binding upon her.

This defendant therefore denies,
that she owes to plaintiff the sum of
Twelve hundred and eighty dollars and
90 cents on account of said notes, or
any other amount, and therefore
asks Judgment for costs.

Eliza Weippert
by Henry F. Ahlbrecht
her Attorney.

Theodore Kimm
pelff

vs.

John Weippert and
Eliza Weippert,
defendants,

Answer of Eliza
Weippert to an
amended petition.

Filed Oct 4th 1869
E. J. Conroy clk

Theodore Kamin, pettff
vs.
John Weippert and
Elija Weippert, defds.

In the Circuit
Court of Jefferson
County, Missouri
Novbr. Term 1869.

Now on this day came the above
named defendants by their Attorney, and
more, that the plaintiff be required to
reform the amended petition, filed
Novbr, 17th 1869. and to make the same
conform to the requirements of the
law, for the following reasons;

Said petition embraces several
causes of action in one count,
and a General Judgment is asked
for them, wherefore it is moved,
that plaintiff be required, to elect
one of these several causes of
action, and to strike out the
remaining ones.

Henry F. Ahlren, Atty
for defendants.

biscuit heart, Jeff
ferson Co. Missouri
Chancery Term 1869.

Theodore Kimm,
petff

vs,
John Weispert
and Eliza Weis-
pert, defdts.

Motion for ref-
ormation of
amended petition
filed do. 17/1869

Filed Nov. 19. 1869
Elias J. Honyer CR

Theodore Kimm

vs

John Weipert and
Eliza Weipert

In the Circuit
Court of the County
of Jefferson. Mo.
Nov. Term 1869

The plaintiff, for amended petition states, that on or about the 26th day of September 1867 he sold to said defendants, who are husband and wife, Lots 1, 2, 3 & 4 in Block two (2) in the Town of Kimmseick in said County and State, that to secure the purchase money for said lots, the said defendants executed their several ^{heretofore filed in this cause} promissory notes, for sixteen hundred dollars, being the unpaid balance of the purchase money for said lots, and their deed of trust of even date with said notes, as follows, one note for \$1000 payable one year after date, one for \$500 payable eighteen months after date and one note for \$500 payable two years after date. That at the same time said defendants executed their three other notes for the interest on said above described notes and amounting respectively to the sums of \$106. \$17 & \$35 and payable at the same time of the said three principal notes, all of said notes being negotiable.

Plaintiff further states that at the time of the maturity of the said first notes the said defendants made default in the payment of the same, whereupon the said lots so conveyed by said deed of trust were sold for the net sum of \$442.60, which was deducted from the first note above described having a balance due on said note of \$157.40, and the other two principal notes of \$500 each and the first & second of the interest notes due and unpaid and for which amounting at the time of the institution of this suit exclusive of interest to the sum of \$1281.90 plaintiff asks judgment -

Plaintiff further states that the defendant Eliza Wright was at the time of executing said notes the owner of Lot 3 in the town of Windsor Harbor in said County ~~that it was her separate property~~ in her own right, and was then, and is now the wife of said John Wright. Plaintiff avers that said Eliza Wright by executing said notes as aforesaid

became bound and liable to pay the same to the plaintiff, and thereby did then and there pledge her separate estate for the security of the payment of said notes, and by means thereof the plaintiff acquiesced and still has a lien on her separate property.

Plaintiff therefore prays judgment for the amount of said notes with the interest and that said Lot of ground as above described, or as much thereof as may be necessary to satisfy said notes with interest and costs, shall be adjudged to be sold.

Plaintiff further avers that the said John Newport is wholly insolvent and unable to pay said above described notes or either of them

J. P. Phipps
att'y for plff

Theodore Krumm

is

John Weipert &

Eliza Weipert

Amended Return

Filed Nov. 17. 1869

Elias F. Honeyess

Theodore Kimmis, plaintiff } In the district
vs. } court of Jefferson
John Weippert and } county, Missouri
Eliza Weippert, defts. } docket term 1869.

Be it remembered, that on the
19th day of November A.D. 1869, the
defendants in the above case by
their Attorney filed the following
motion in response to the ~~amended~~
amended petition filed by plaintiff
November 17th 1869. in said cause,
to wit: (here copy said mo-
tion for reformation) and
that said motion on the 26th
day of October 1869, after having
been called up for argument
by and after having been argued
before this court, was overruled
by said court, that defendants
to the decision of said court in
overruling said motion excepted
and that defendants prayed the
court to sign ~~it~~ and seal this
bill of exceptions and make
the same part of the records
in said cause, which is ac-
cordingly done. J. H. Vail ~~pro~~ seal

Lebanon Court
Jefferson County Mo.
November Term 1849

Theodore Rumin
pett.

vs.
John Weippert
and Eliza Weippert
defds.

(Bill of Exception)

Filed Nov 26 1849
E. Y. Henry Clk

Theodore Kimm, petff, } In the Circuit
vs. } Court of Jefferson
John Weippert and } County, Missouri,
Eliza Weippert, defds. } Novbr. Term 1869.

Now on this day comes ~~the~~ ^{as} Eliza Weippert, one of the above named defendants, by her attorney, and in answer to the amended petition of plaintiff, filed Novbr. 17th 1869, admits, that on or about the 26th day of September 1867, plaintiff sold to defendants who are husband and wife, Lots 1. 2. 3. & 4. in Block 2. in the town of Kimmwick in said County and State, and this defendant also admits, that ~~to secure the~~ for the sum of sixteen hundred dollars, being the balance of ~~the~~ purchase money for said lots, both defendants executed and delivered their several promissory notes to plaintiff, which notes are particularly described in said amended petition of plaintiff, and this defendant also admits, that to secure said promissory notes, both defendants executed and delivered to plaintiff a deed of trust on the nature of a mortgage upon the lots, bought as aforesaid, and as stated in said amended petition.

This defendant further states, that at the time, when she and the other defendant John Weippert, executed and delivered ~~the~~ the plaintiff the notes, described, in said amended petition of plaintiff, for the sum of sixteen hundred dollars in all, this defendant was and still is a married woman, the wife of said John Weippert, that as such married woman she was unable to contract in law, and to bind herself by notes, and that therefore said promissory notes are ^{not} binding upon her.

This defendant admits, that at the time said promissory notes were executed and delivered, she was the owner of Lot 3, in the town of Windsor Harbor in said county in her own right, but denies that by executing said notes she became bound and liable to pay the same to plaintiff and thereby pledged her separate estate for the security of the payment of said notes, and denies, that by means thereof the plaintiff acquired and still has a lien on her separate property.

This defendant further states, that at the time she signed and delivered said promissory notes to plaintiff, she and

her husband jointly executed and delivered a deed of trust in the nature of a mortgage, by which they conveyed to Robert N. Hunt, as trustee of plaintiff, the same lots, which they had bought of plaintiff, which conveyance was made to secure to plaintiff the payment of said promissory notes; that in the said deed of trust a power was given to said trustee, in case of failure to pay said notes, to sell said Lots and to pay the notes out of the proceeds of such sale, and that said Lots were sold by said trustee as stated in plaintiff's said amended petition.

This ~~plaintiff~~ defendant further states that when she and her husband executed said notes and deed of trust, it was her intention, ~~that~~ to convey said Lots, bought of plaintiff, only and exclusively, to secure said notes; and that she did not intend to, nor actually did pledge or charge any of her separate property, especially not Lot 3, in the town of Windsor, Warwick in said Jefferson County, for the payment of said promissory notes or either or any one of them. And this defendant further states, that

by the terms of the deed, by which said
Deot vs. B. in Consideration of money or
valued to her, she cannot convey or pledge
as security, said Deot alone and with
and the remainder of her husband in
a proper judgment of conscience.

This defendant therefore asks judgment for said,
Liza Overport
by Henry F. Ashburn
her attorney.

Theodore Krimm,

vs.

John Weippert
and Eliza Weippert

Answer of Eliza
Weippert to
amended petition

Filed February 12/1876
E. Henry C. K.
By S. H. Clifford Cl.

Refused

5.
The Court further declares the Law to be that if it appears from the evidence that at the time John & Eliza Weipert executed the notes sued on that they executed and delivered a deed of trust on property bought by them from Kimm to secure the unpaid balance of the purchase money therefor and if it further appears from the evidence that said Kimm received said deed of trust and notes without knowledge of the fact that said Eliza owned lot 3 in Windsor Harbor and without any intention at the time that said notes should become a charge on said lot, then in that event the Court will find for the defendant Eliza Weipert,

6.
The Court declares the Law to be that the conveyance to Eliza Weipert of lot 3 in Windsor Harbor as shown by the deed to her therefor read in evidence is not such a conveyance to her of that land as her separate property as well in Law ~~as to~~ enable her to create a charge thereon by promissory notes executed by her during coverture and the finding of the Court will therefore be for the defendant Eliza Weipert

Filed July 3/870
- Effner

The Court declared ⁴ the law to be that
upon the case as made by the Plaintiff
in his Petition he is not entitled to
recover against the Defendant Eliza
Weisher

Refused

1
If the Court find from the evidence that
Lot 3 in the Town of Windsor Harbor was and
is now the separate property of Eliza Wip-
ert, wife of John Wupert, that said
Eliza signed the notes sued on jointly with
her husband then the law presumes she
must have intended to bind her separate
property for the payment thereof.

2
The taking of a deed of trust by Plaintiff
for the securing of the notes sued ^{on} does not
rebut the presumption raised by the law
that Mrs. Wupert by signing said notes
intended to bind her separate ^{property} nor is it
necessary for the Plaintiff, in order to recover
in this action ^{to show} that he and said Eliza
Wupert at the time of the execution of said
notes as a matter of fact had in view
the separate property of said Eliza.

3.
Although the presumption raised by the law
that Mrs. Wupert by the signing of said
notes intended to charge her separate ^{property},
may be rebutted by competent evidence
yet the Court declares the law to be that
such presumption cannot be rebutted by
parole evidence which adds to, varies or
contradicts the writings intended into by the

partly at the time.

Guine

Theo Simon

John's Effectual

Guine

Filed July 5 1870

Theodore Romin, plaintiff
 vs.
 John & Eliza Weippert,
 defendants.

In the Circuit
 Court of Jef-
 ferson County,
 Missouri,
 North Term 1869.

Now on this day comes Eliza Weippert
 one of defendants, by her attorney,
 and moves the court, to grant a
 new trial in the above case, for the
 following reasons to wit:

1. because the judgment is not warranted ~~up~~ ^{by} and in accordance with the pleadings,
2. because the judgment is against the evidence,
3. because the judgment is against the weight of evidence,
4. because the judgment is against the law
5. because the judgment is against the law & evidence,
6. because the court permitted the pleading to be amended against the law.

Eliza Weippert
 by attorney & Mil-
 len's her attorney

Theodore Kinn

vs
John & Eliza
Weippert.

Motion for
new Trial by
Eliza Weippert.

Filed July 5th 1870
Eliza B. Kinnick

Theodore Kemmer, *pett* } In the Circuit
 vs. } Court of Jef.
 John & Eliza Weippert, } Person County
 Defts. } Missouri,
 Nov. Term 1879

Now on this day comes John Weippert, one of defendants, by his atty and moves the court to set aside the finding of the court and grant a new trial in the above case, for the following reasons, to wit:

1. because the judgment is not warranted by and is accordance with the pleadings,
2. because the judgment is against the evidence,
3. because the judgment is against the weight of evidence,
4. because the judgment is against the law
5. because the judgment is against the law & evidence,
6. because the court permitted the petition to be amended against the John Weippert by Adversus, Williams his atty.

Theodore Kimm

vs.

John & Eliza
Weippert,

Motion for
new Trial by
John Weippert

Filed July 5 1870

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 *John Wepert*
+ *Eliza Wepert*

if he be found in your County, that he be and appear before the Honorable
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 *First* *Monday after the fourth Monday*
of *March* next, then and there to answer unto

Theodore Romm

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 hereto affixed.
at office in Hillsboro, this *15th*

day of *February* A. D. 187*8*

Elias F. Honey Clerk Circuit Court.

By *L. H. Agard* Deputy.

RETURNABLE
TO
JEFFERSON CIRCUIT COURT.

March Term, 1870
Theodor Kunin
Plaintiff

AGAINST
Jr Elya Weipert
Defendant

Theodore Krimm, plff,

vs.

John Weippert and
Eliza Weippert, defen-
dants,

In the Circuit

Court of Jefferson

County, Missouri,

March Term 1870,

Now on this day come the above named
defendants and take an appeal from
the judgment of this court in the above
case, and for such purpose Henry F.
Shlens, Attorney for defendants, makes
oath and says, that such appeal is
not ~~taken~~ ^{made} for vexation or delay, but
because the affiant believes, that the ap-
pellants are aggrieved by the judg-
ment or decision of the court,

I now do and subscribed
before me, this 23^d day
of March A.D. 1870.

Elias J. Krimm CCR
B. L. Halpin DC

Henry F. Shlens.

Theodore Kinn

vs.

John & Eliza Mup-
per

Affidavit of
defendants for
taking an appeal,

Filed March 23 1876
Hunt & N

Theodore Kimball Reeph }
 vs }
 John Weippert & }
 Eliza Weippert - Defts }
 Appeal from }
 Jefferson }
 Circuit }
 Court -

Opinion by the Court

This was an action brought in the Jefferson Circuit Court on five several promissory notes executed by the Defts for the payment of the purchase money of certain real estate situated in the Town of Kinniswick in Jefferson County. An attachment was also taken out in the suit, the writ having been served upon the separate property of the Debt Eliza, who appears to have been the wife of the Debt John Weippert at the time of the ^{execution of the notes as well as the date of the} trial of the cause in the Court below. The plaintiff in his original petition filed in the case asked only for a judgment for the amount of the notes. There was a motion for a ~~reformation of the notes~~ a reformation of the petition on the part of the Defts which it seems the plaintiff complied with and filed his amended petition in which he declared on the notes as several causes of action, separately stated --- To this

amended petition, the Defendants filed
three separate answers, the deft Eliza setting
up her coverture in bar of plaintiffs right
to have judgment against her on said
notes - Whereupon the plaintiff obtained
leave of the Court to file another amended
petition, blending the several causes
of action on the notes into one Count
and also attempting in the same Count
to frame a bill in Chancery to subject
the separate estate of Eliza Whippert
which he had already seized by attachment
in an action at law to the payment of
the notes attempting to be sued on.

The defts filed their motion for a
reformation of the second amended pe-
tition, but it seems from the action of
the Court below that the defts, with
all their efforts were unable to effect a
reformation of the petition and so were
compelled to file their answer to it -
while it remained in an entangled state
of "intoxicating" confusion.

There was a trial before the Court
sitting as a jury. The plaintiff to sus-
tain his cause of action, offered the
notes in evidence - also a deed from
some one to the deft Eliza -

For what purpose the plaintiff introduced the deed, unless it was to prove that Eliza had not charged the property therein described with the payment of the debt sued on, we are unable to discern - The debt introduced a trust deed executed by debtors to secure the payment of the notes - also the defendant Eliza was sworn & stated that she did not by signing the notes intend to charge her separate property but had stated at the time of signing the notes she did not so intend - This we deem was unnecessary, as the plaintiff having alleged that fact was bound to prove it or fail in his action.

The plaintiff was sworn in rebuttal, but did not know what Eliza said or whether she said anything about charging her separate estate.

Upon this state of facts, the court decreed a lien against the separate property of the debtors Eliza and ordered a sale of the property for - what? -

From the record we are unable to discern. It is assigned for error that the court below refused to compel the plaintiff to re-form his petition so as to state, his several causes of action on the notes

in separate Courts - and also state his
equitable cause of action separate
from his action at Law. - The motion
was well taken & should have been sustained.
See Rev of 1865 - Chap 165 - Sec 2

The plaintiff may unite in the same
petition (not count) several causes
of action whether legal or equitable.
But the causes of action so united
must affect all parties to the action &
must be separately stated.

The Sup. Court of this State have
repeatedly determined that matters of
Equity and Law cannot be blended in the
same Court. - To cite authorities
to sustain a statutory provision
would be superfluous.

Quite a mass of instructions were asked
by Deft & refused, which we do not deem
it necessary to consider, as this cause
must be reversed by reason of the vicins
pleading off part of the plaintiff. Before
any declarations of law could be applicable,
it was necessary that there should have
been a legal statement of a cause of
action by the plff against the defts.

The action of the Court below is re-
versed and this cause is remanded

to the Jefferson Circuit for further
proceedings herein
W. L. Hawkins Judge

Judges Bartu & Lemard Concur
Judge Vaie Absent.
(Entered) Aug. 18, 1870 - L. Sargent clk

State of Missouri }
Second Judicial District }

I, the undersigned Clerk of the District Court within & for said District, Certify that the above & foregoing is a true & perfect copy of the opinion of the Court in the above entitled Cause as fully as the same remains on file in my office - - Witness my hand & official seal this 29th day of August 1870
Lemard Sargent
Clerk

Kimm

no

Weipert

Theo Kimm

no

Jno & E Weipert

In the Supreme Court held at St. Louis, of the State of Missouri,

October Term 1871
October 31st 1871

Theodore Kimm

Plaintiff in Error

vs

John Weippert and Eliza
Weippert alias Eliza Jahn
Defendants in Error

Error to Second
District Court

Now again come the parties aforesaid, by their respective attorneys, and the Court being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment rendered herein by the said Second District Court be in all things affirmed and stand in full force and effect and that the said Defendants in Error recover of the said Plaintiff in Error their costs and charges herein expended, and have execution therefor. Opinion filed.

STATE OF MISSOURI, SS.

A. Fishback

I, ~~ANDREW W. MEAD~~ Clerk of the Supreme Court, held at St. Louis, of the State of Missouri, certify that the above and foregoing is a full, true and complete copy of the judgment rendered in the above entitled cause, as fully as the same remains of record in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at office in the City of St. Louis, this *Smith* day of *December* A. D. eighteen hundred and *seventy*.

A. Fishback Clerk.
R. H. Baird & Co.

Supreme Court of Missouri.

*Theodore Kimm**vs* *P.E.**John Wicks et al*
D.E.

MANDATE.

Judgment of 2nd Dist. Court
*Affirmed.**Jefferson Circuit Ct.**Filed Dec 10 1890**W.S. Boyer Clerk*
By Chas. Lerine Dept