

Jefferson County Circuit Court
Case Files - Civil
May 1869 - No. 298

Box

24 Folder 4

Mathews, Newton

vs

Toliver, Eno B.

Vendor's Lien

3 promissory notes for
land purchased; 163 ⁷⁵/_{xx}
acres S30-T40-R4E;
\$1,000; \$1,000; and \$455

\$1,000

September 7th 1867

One day after date I promise to pay to Newton
Matthews the just and full sum of One Thousand dollars
for value Rec^d of him Witness my hand and seal
~~and~~ Drawing ten per cent interest without fraud
or Defalcation



Encl B Taliver seal

\$1,000

September 7th 1867

One day after date I promise to pay to Newton
Matthews the just and full sum of One Thousand dollars
for value Rec^d of him Witness my hand and seal
Drawing ten per cent Interest without fraud or
Defalcation

Encl B Taliver seal

\$455

September 7th 1867

one Day after date I promise to pay to Newton
Matthews the just and full sum of four hundred
and fifty five dollars for Value Rec^d of him Witness
my hand and seal Drawing ten per cent Interest
without fraud or Defalcation

Encl B Taliver seal

Newton Matthews } In the Circuit
vs } Court of
E. B. Toliver } Jefferson County,
Missouri

Plaintiff states that heretofore
to wit, on or about the 7th day
of September 1867 he was the
legal owner and possessed
of the following described Real
Estate situated in Jefferson County,
Missouri, viz, The South
West quarter of section thirty
one of Township Forty, of
Range four East containing
one hundred and sixty three
& $\frac{75}{100}$ acres, and that he had
for some years previous
thereto been the owner thereof
and that he did on ~~said~~
or about said 7th day of
September 1867 make deed
and deliver to said Defendant
a deed of conveyance for
said Land and Plaintiff says
that in consideration of such
conveyance of said Land
from Plaintiff to Defendant the
Defendant agreed to pay to

Plaintiff therefor as the purchase money thereof the sum of Two Thousand four hundred and fifty five Dollars, that although the Deed of conveyance so made as aforesaid from this Plaintiff to Defendant by which Plaintiff conveyed said Land to Defendant contains a clause acknowledging the receipt by Plaintiff of the purchase money of said Land yet Plaintiff avers that said purchase money was not paid ~~nor~~ nor any part thereof but on the contrary Plaintiff states that Defendant did on said 7th day of September 1867, execute and deliver to Plaintiff his three certain promissory notes each bearing date the day of their execution by each of which notes Defendant agreed to pay to Plaintiff for value received the sum of money in each said note mentioned together with Ten per cent interest thereon from date that is and becoming due as follows viz,

one note for one thousand dollars
with ten per cent from date & dated
Sept. 7th 1867 becoming due one day
after date, & one note for the sum of four
hundred & fifty five dollars & one note
for one thousand dollars each becoming
due one day from date, each of which
purporting to be for value received are
herewith filed, and plaintiff avers that
all of said notes were given by Defendant
to plaintiff for the purchase money of
said Land, that Defendant has not paid to
plaintiff any part of such purchase
money, and that the whole of said
purchase money as evidenced by said
promissory notes together with ten
per cent interest thereon from the
7th day of Sept. 1867 is ~~set~~ still due
from Defendant to plaintiff &
for which plaintiff asks judgment
and the plaintiff further ~~prays~~
~~that the Court in exercising its discretion~~
~~prays that the Court will make~~
~~an order~~ states that he is entitled
to a vendors lien against said
Land in the hands of Defendant
for the purpose of securing
the purchase money thereof due

due the Plaintiff & unpaid as
aforesaid & in consideration of
the premises prays the Court by a
proper Decree to Establish and enforce
his said vendors Lien thereon and
that said Land may be sold by order
& Decree of Court and the proceeds
of such sale applied to the payment
of the purchase money due
Plaintiff by Defendant as afore-
said & that the Court will grant
such other relief as may be
proper in the premises

Jos. J. Williams
Atty, for Plaintiff

Newton Mathews
no

Geo. D. Johnson

action to enforce
~~order~~ Deed
deed
origin at

Filed April 12th 1869
Edw. J. Honey et al

Draw process
William
for pay

Pay 100.00
1869

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

Erno B. Oliver

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 7th Monday after the
fourth Monday of March 1869 next, then and there to answer unto

Newton Mackin

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

14th day of April A.D. 1869

Elias F. Honey
Clerk Circuit Court.

By *L. H. Alford* D.C.

The within was used, at Jefferson County Mr. E. having a true copy of the writ
and the Petition, with the within named Enr 13 Potliver this 21 Day
of April a D 1869, as furnished to me by the Ensign's Clerk
Geo 100

Geo 100
per Street 20 March
Deputy

no

298

3055

TO

JEFFERSON CIRCUIT COURT.

May Term, 1869

Newton Mathews
vs Sumner

Ens B Oliver

(original)

Newton Mathews } In the Circuit
vs } Court of Jefferson
Eno B. Toliver } County Missouri
May Term 1869

To all whom it may concern take notice that I Newton Mathews Plaintiff in the above entitled Cause have on this 12th day of April 1869 filed a Petition and instituted a Suit in the Circuit Court within and for Jefferson County in the State of Missouri against Eno B. Toliver the above named Defendant Returnable to the May Term 1869 thereof the object of which is to recover Judgment against said Defendant on three promissory notes dated each September 7th 1867 each due one day after date, two being for the sum of one Thousand Dollars each and one for and one for four hundred and fifty five dollars amounting in the aggregate to Twenty four hundred and fifty five Dollars with Ten per Cent interest on each of said notes from September 7th 1867

for the purchase money for the
Land hereinafter described and
to Establish and enforce a reindorse
Lein on ^{said} ~~said~~ Land for the purpose
of securing & paying said sum of
money as the purchase money of
said Land, to wit, The South West
quarter of section Thirty one
Township Forty Range four
East containing one hundred
and sixty three and $\frac{75}{100}$ acres
situate in Jefferson County
Missouri and for an order of
Sale of said Land to pay such
Judgment as may be rendered
by said Court in the above
entitled Cause, against the
said Defendant,

This April 12th 1869

Newton Mattheus

Newton Matthews
vs

Eno B. Foliver

Notice of suit
to enforce a
rental on Seim

Filed April 12 1869
Eliza F. Honeycutt

Newton Mathews, Plaintiff } In the Circuit
Against } Court of Jef=
Emo B. Foliver, Defendant } ferson County

Defendant for Answer to the petition of Plaintiff, admits that he on the 7th day of September 1867, bought of Plaintiff the Lands described in his petition, containing one hundred and sixty ^{three} acres and $\frac{75}{100}$ of an acre, and situate in said Jefferson County. And admits that he agreed to pay Plaintiff Two thousand four hundred and fifty five ~~hundred~~ dollars for said Lands. But the Defendant denies that he agreed to pay said sum of money, or any part of it, to Plaintiff within one day from the date of said Contract. But Defendant avers that the agreement was, that Plaintiff was to wait five years for the payment of said money, and that only the interest on the same was to be paid annually. But the Defendant states that the Plaintiff at the time said Contract was made fraudulently drew up the three Promissory Notes described in his petition, and instead of making them payable five years after date, (according to said Contract) he fraudulently wrote them so as to make them payable one day after date, and then fraudulently represented to Defendant that said Notes were made payable five years after the date thereof, but that they were to draw interest from date, and the interest to be payable annually. And Defendant, relying on Plaintiff's repre-

sentation, signed his name ^{without reading them} to said Notes, believing at the time that they were made payable five years after the ^{according to the terms of said contract,} date thereof. - Defendant therefore avers that said Notes and his signature thereto were procured by fraud and by the fraudulent practices & representation, of Plaintiff; and that they are therefore void in law, and that no action can be maintained thereon, And Defendant denies therefore that said sum of two thousand four hundred & fifty five dollars for said Land is yet due by the terms of said Contract - and denies that Plaintiff is entitled to recover two thousand four hundred & fifty five dollars, or any sum whatever on said promissory Notes against this Defendant.

And for further Answer Defendant states that, by the terms of said Contract for the purchase of said Land, that Plaintiff agreed and promised at the time of making the same, to make Defendant a good and sufficient warranty Deed, conveying to him the fee simple title to the Land, described in Plaintiff's Petition, at the time said Contract was made, & said Notes given, - and which Notes were to be made payable five years after date, & bearing ten per cent interest from date, - But Defendant states that Plaintiff failed to comply with & perform said Contract according to its terms, In this, that he failed to make Defendant at the time a good & sufficient Deed for said Land, that he pretended to execute a deed, - but that the same is inefficacious and totally null and void in law, for uncertainty, and ^{is} ineffectual to convey any title

whatever to Defendant to said Lands, - That Defendant has since repeatedly requested Plaintiff to make him a good & sufficient Deed for said Lands, but that the Plaintiff absolutely refuses to make and execute a good and sufficient Deed to Defendant for said Lands, Defendant therefore denies that Plaintiff is entitled to recover any sum whatever on said Contract until after Plaintiff makes, and delivers to Defendant a good and sufficient Deed for the Lands aforesaid, And that, on his making such Deed, Defendant is only bound by the terms of such Contract, to pay Plaintiff the interest which has accrued on said money since the making of the same, And Defendant avers that he is not bound by the terms of said Contract, to pay Plaintiff said sum of Two thousand four hundred & fifty five dollars until the expiration of five years from the time said Contract was made, And that therefore said suit is prematurely brought, and that Plaintiff is not entitled to recover any sum whatever of Defendant,

Defendant further states that Plaintiff owes him the sum of one hundred and ninety six dollars, for boarding Plaintiff at his request for fourteen months, in the years 1867 and 1868, - and for which sum Defendant asks Judgment.

And also, that Plaintiff owes Defendant the sum of Eighteen dollars, for money loaned by Defendant to Plaintiff in 1868, - and for which sum, Defendant asks Judgment.

} Abner Green,
Attorney for Defendant

In Circuit Court
Jefferson County

Newton Mathews

vs,

E. B. Toliver

Answer

Filed Oct. 8th 1869
Elias T. Honey
Clerk ~~Records~~

Newton Matthews — In The Circuit
vs Court of
Emo. B. Fohner — Jefferson
County
Missouri

Now at this day comes The
Plaintiff and moves The
Court to strike out The
following portion of The
answer of Defendant
for the following Reasons
viz.

"But The Defendant denies that
he agreed to pay said sum of
money or any part thereof of it
to Plaintiff within one day from
the date of said Contract, But
Defendant avers that the agree-
ment was that plaintiff was to
wait five years for the
payment of said money and that
only the interest on the same was
to be paid annually. But the Defen-
dant states that the plaintiff at the
time said Contract was made
fraudulently drew up the three
promissory notes described in
his Petition and instead of making
them payable five years after

date (according to said Contract) he fraudulently wrote them so as make them payable one day after date and then fraudulently represented to Defendant that said notes were made payable five years after the date thereof but that they were to draw interest from date and the interest to ~~be~~ be payable annually, and Defendant relying on Plaintiff's representations signed his name to said notes without reading them believing at the time that they were made payable five years after the date thereof according to the terms of said Contract; Defendant therefore avers that said notes and his signature thereto were procured by fraud and by the fraudulent practices & representations of Plaintiff; and that they are therefore void in Law and that no action can be maintained thereon, and Defendant denies therefore that said sum of Two thousand four hundred and fifty five Dollars for said Law is yet due by the terms of said Contract

and denies that Plaintiff is entitled to recover Two Thousand four hundred & fifty five dollars or any sum whatever on said promissory notes against this Defendant,"

and also the following portion, to wit,

"and for further answer Defendant states that by the terms of said

contract for the purchase of said land the Plaintiff agreed and promised at the time of the making of the same to make Defendant a good and sufficient warranty deed conveying to him the fee simple title to the lands described in Plaintiff's petition at the time said contract was made & said

notes given and which notes were to be made payable five years after date bearing ten per cent interest from date but Defendant states that Plaintiff failed to comply with & perform said contract according to its terms in this that he

failed to make Defendant at the time a good and sufficient deed for said lands, ~~and~~ ^{that} he pretended to execute a deed but that the same is inefficacious & totally null and void in law for uncertainty and is ineffectual to convey any title

Whatever to Defendant, to said Lands
that Defendant has since repeatedly
requested Plaintiff to make him a
good and sufficient Deed for said Lands
but that the Plaintiff absolutely
refuses to make and execute a good and
& sufficient Deed to Defendant for
said Lands, Defendant therefore
denies that Plaintiff is entitled to
recover any sum whatever on
said Contract until after Plaintiff
makes & delivers to Defendant a
good & sufficient Deed for the
Lands aforesaid, & that on his mak-
ing such Deed Defendant is only
bound by the terms of such
Contract to pay Plaintiff the interest
which has accrued on said money
since the making of the same &
Defendant avers that he is not
bound by the terms of said
Contract said sum of Two Thousand
four hundred & fifty five Dollars
until the expiration of five years
from the time said Contract was
made and that therefore said suit
is prematurely brought and that
Plaintiff is not entitled to recover
any sum whatever of Defendant"

1st Because said ~~Port~~ Portions
of said answer are not
responsive to the Plaintiffs
Petition

2nd Because said Portions of said
answer are no Defense
to the Plaintiffs action -

Jos. J. Williams
Atty. for Plaintiff

Newton Matthews
vs

Emo. B. Folmer

Motion to Strike
out Drfts. Answer

Filed Nov. 23rd 1869
Elias F. Honeycutt

COUNTY OF JEFFERSON,

The State of Missouri,

To

Robert H. Hatcher, & J. F. Hollman

YOU ARE HEREBY COMMANDED, That setting aside all manner of excuse and delay, you appear before our Circuit Court for the County aforesaid, on the *24th day of Novr 1869* at Hillsboro, then and there to testify, and the truth to say in a certain matter of controversy, now pending in our said Court, wherein *Hatcher Hatcher* Plaintiff, and *J. F. Hollman* Defendant, on the part of *Hatcher* and herein you are in no wise to fail.

Witness, ELIAS F. HONEY, Clerk of our said

Court, with the seal thereof hereto affixed, at office

this *12th* day of *November* A. D. 1869

Clerk.

Elias F. Honey
J. F. Hollman

3005

SUBPOENA

To Jefferson Circuit Court.

Nov. Term 1869

Newton Mathews

vs.

E. B. Follier
Witnesses for def

R. A. Carter.
J. F. Follier

Served the within & residing the same at Jefferson
County Mo to the within named P. A. Carter and J. F. Follier
Return
Jas 1.00

That the undersigned Sheriff
by Jesse Follier his
Deputy

Newton Mathews } In the Circuit
vs } Court of
Mrs B. Toliver } Jefferson County
Missouri

Be it remembered that at
the November Term of the
Circuit Court of Jefferson
County, Missouri began and
held on the 15th day of
November 1869 The

Plaintiff filed in said Court
a motion to strike out
portions of the Answer of
Defendant ~~As to the~~
original petition of Plaintiff
as filed in said cause
which motion is in words
following, viz, (Here copy
motion of Plaintiff to
strike out ~~portions of~~ Defendant
Answer) which

Motion being seen & understood
by the Court was on the 26th
of November 1869 and during
the continuance of such
Term of Court overruled to
which action of the Court in
overruling said motion the

Alenith's then and there accepted
and here in open court. Leaving
this his Bill of Proclamations
and saying that the same
may be signed sealed and made
a part of the Record which
is done

At Witnes Seal

Newton Moatney

E. B. Tolaver

Bill of
Receipts

Filed Nov 26 1869
E. J. Mooney