

Jefferson County Circuit Court
Case Files - Civil
May 1869, No. 265

Box 24 Folder 8

Whitehead, Robert M.

vs.
Kleann, Theodore

Ejectment

280 acres in S29, 32 T 39 R 4 E;
\$250 damages; enjoin removal
of timber pending outcome of
suit

Robert M. Whitehead Plaintiff } In the Jefferson
Against } Circuit Court.
Theodore Klein, Defendant } May Term
1869.

Plaintiff states that on the 2nd day of January 1869 he was entitled to the possession of the following real estate situated in Jefferson County Missouri viz. The East half of the South East quarter of Section twenty nine (29), also the North East qr. of the South East qr. and the North East qr. of Section Thirty two (32) Township Thirty nine (39) North of Range Four (4) East, containing two hundred and eighty acres, and being so entitled to the possession thereof that the Defendant afterwards viz on the 3rd day of January 1869 entered into such premises and unlawfully withholds the possession thereof from Plaintiff to his damage in the sum of two hundred dollars. He further avers that the monthly value of the rents and profits of the premises is ten dollars.

Plaintiff further states that Defendant has since he took possession of said land unlawfully cut and carried away timber therefrom of the value of

Two thousand dollars for which he asks
judgment.

Wherefore he demands judgment for
the recovery of the premium and ~~two~~ ^{two} thousand
dollar damages for the unlawfully with-
holding of the same from Plaintiff and
for ten dollars for monthly rents and profits
from the rendition of judgment until the
possession of the premium is delivered
to Plaintiff and for other proper relief.

John L. Brown
Atty for Plaintiff.

Dr. M. Whithead

25

Merced River

1

Exhibitment.

2

Shiloh July 17th 1869

Edwin Dr. Henry Reed

By S. H. Alfred 20223

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

Theodore Klemm

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* next, then and there to answer unto

Robert M. Whitehead

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
Seventeenth day of *February* A.D. 186*4*

Elias F. Honey
By *L. H. Alfred* Clerk Circuit Court. *Dep't*

The within writ and Petition was served by delivering a true copy thereof to
 the Defendant Theodore Island at Jefferson County New York 28th Day of March
 1869, as were furnished to me by the Clerk of the Circuit Court of Jefferson Co.
 fees 1.00

Geo. Wash. Deming esq. Sheriff



C. R. Beckwith 1.30
 Mark & Co. 1.10
 Miller 0.50
 Filer 10

No.
265V

3073 TO

JEFFERSON CIRCUIT COURT.

May Term, 186

Robert M Whitehead
vs

Theodore Klemm

(Original)

Whitehead { In the Circuit Court
of Jefferson County Mo
Clerk } In re caption Sep 1869

Now at this day comes the Dft and by leave
of Court files his answer to petition of Plff
filed herein as for such answer states that
he denies that the Plff was entitled to the
possession of the Real Estate described in
said petition or any part thereof at the
date mentioned in said petition or at
any other date. denies that he
unlawfully withholds the possession
of said premises from Plff - to the
damage of Plff in the sum by him
stated or in any other sum
denies that the monthly rents & profits
of said premises are of the value
as alleged in said petition or any part
thereof. denies that since he took pos-
session of said premises he has unlaw-
fully cut or carried away from said
premises timber of the value as
stated by Plff or of any value & has
denies that Plff is entitled to judgment
for the recovery of the possession of said
premises or any part thereof or for
one hundred dollars damages or
for dollars for monthly rents and
profits or for dollars damages

or for my judgment of my (and
or under restriction. Depth-admits
that he is in the possession
of and provisions as of right. he
ought to be for depth-and that
he is the him and himself, and
of and that Estate.

any man claiming
all, for depth-

Whitcomb
Clem⁷

Answer

Filed Sept 23 1869.
E. J. Honeyed.

COUNTY OF JEFFERSON,

The State of Missouri.

To *Wm. Lankum, Robert Mathews and*
B. F. Meach

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 *25th day*
of November 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
Rm. Mutehead is
Plaintiff, and *Theo. Clemm* is

Defendant, on the part of *Plaintiff* and herein
you are in no wise to fail.

WITNESS, Elias F. Honey, Clerk of our said Court, with
the seal thereof hereunto affixed, at office, this *24th* day of
March *F. D.* *1869* *E. F. Honey* Clerk.

By J. H. Hager

Whitehead and Klen

As executed the within: West on Rock, Blackwell, R. Conham, and B. S. Hunt, in

Jefferson County, Missouri, on Nov. 25th 1869. by reading the same in their presence and hearing: Fred Luchtemeyer Sheriff and James M. Conham Deputy.

\$1.50

Wm
or

Whitehead.

3043

R. M. Whitehead, Plaintiff
3
Theodore Allen, Defendant } In the Upper
20th Circuit
Court.

The Plaintiff states that he is the owner of the following real estate situated in Jefferson Co. Mo Court: The E 1/2 of the S E 1/4 and the N E 1/4 of Sec. 32, Town. 39, Range four East containing two hundred and eight acres; that he has a suit pending against said Defendant now pending in this Court for the recovery of the possession of said land; that the Defendant has since the commencement of said suit, but since the 17th day of July 1869, ^{wrongfully and without leave} chopped timber off said land of the value of two hundred dollars; that a portion of said timber, about fifty cords, is still on said land; that said Defendant is threatening to chop more of the timber off of said land and to carry the same away; that Defendant is utterly insolvent so that a suit against him for the trespass he is committing on Plaintiff's land

would be unavailing. Plaintiff
further states that unless the Defendant
be restrained at once and without
delay he will remove the balance
of said timber from said land
and dispose of the same to innocent
parties thereby placing it entirely
out of the reach of Plaintiff and
that he was only informed of this
to day or else he would have
given the ^{notice} required by statute of
this application for an Injunction.

Plaintiff therefore prays the
Court to set a time ^{place} for hearing
the application of the Plaintiff
for a temporary injunction against
said Defendant and in the meantime
to make an order for to restrain said
Defendant from ^{removing} said timber so
cut by him on Plaintiff's land
as aforesaid and to restrain him from
chopping any timber therein until
said application can be heard.

John L. Thomas

Atty for Plaintiff

John L. Thomas Attorney for

Plaintiff makes oath & says that
the above petition and the matters
as therein stated are true

to the best of his knowledge and
belief.

Sworn to & subscribed
before me W 26th
1869

R. M. Whithead
John L. Thomas

E. P. Henry Clerk
By L. H. Ayford D. C.

R. M. Whithead

by

Theodore Klemm

Petition for an Extension.
11

R.M. Whitehead, Plaintiff
v
Theodore Klein, Defendant

B. F. Hunt makes oath & says
that the above named Defendant has
chopped considerable wood on the
land claimed by Plaintiff and is
now moving the same away to the
Rail Road.

B. F. Hunt

Subscribed & sworn to

before me this 26th June

1869

E. F. Hiney Clerk
By J. H. Ayres D.C.

Whithead

9
Klein

State of Missouri }
County of Jefferson }

In the Circuit Court of
Jefferson County Missouri. November
Term 1869 November 26th 1869.

The following proceeding and Remains of
Record of that day were had to wit.

A. M. Whitehead Ref

vs. Theodore Klemm Defendant } Now archis
said Plaintiff and files his Petition
Verified by affidavits and accompanied by
Affidavits of B. F. Hunt, sustaining the
same praying praying that this Court set
a time and place for the hearing of an
application for an injunction to restrain
and enjoin the Defendant, Theodore
Klemm from Removing about fifty
Cords of wood, from the following Land
Claimed by the Plaintiff To wit.

The East half of the South East quarter
of Section twenty Nine North East q^r
of South East quarter and the North
East q^r of Sec 32 Township thirty
nine, Range four East Containing
Two Hundred and Eighty acres and to
restrain and enjoin him from chopping
and removing away more timber from
said Land and that a restraining order
issue in the mean time which
being seen and fully understood by the

Court. The Court doth order that the
Defendant be notified to be and
appear before the Hon. James H. Vail
Judge of this Court at the Clerk's office
in the County of Iron, Court House
at Monticello Iron County Mo. on the
4th day of December, 1869 at the
the hour of one o'clock or as soon
thereof as a hearing can be had to
show cause why the injunction herein
after granted, should not be continued
till a final hearing of this cause.
And it is further ordered, that in the
mean time the defendant be and is
hereby enjoined and restrained from
removing said fifty cords of wood
from said land. And it is further ordered
that a copy of this order be served on this defen-
dant.

Attest Copy from the Record

In Testimony Whereof I have
hereunto set my hand & the seal
of said Court at office this.

27th day of Novr. 1869

Elias, D. K. only Clerk,

By L. H. Alford Deputy.

H. M. Muckstadt

to
Hedone M. Klemm

Notice

January 21st 1869

1st Day of December

Muckstadt

Klemm

The within was served on the 1st Day of December A.D. 1869 at Jefferson County Mo by Delivering ~~to the within named Mary Klemm~~ a copy of the within to a white member of the ^{Township of the} within named Theodore Klemm father and above the age of fifteen years at his usual place of abode.

Fred Klemmeyer Sheriff
of Fred Vallmark

Deputy

Sheriff fee
\$1.50

I do solemnly swear that I delivered to Theodore
Allen a true copy of the within notice on
the 11th day of January 1870.
Sworn to and subscribed

before me Jan 17th 1870 } Will^m Johnston
Minneapolis

Whithead

Klein

Notice of applica
tion for injunction

(Original)

Filed Jan^y 21st 1870
Elias J. Honey cut
Filed Jan 18th 1870
R. M. Mullen

Approved

Refuse
R. M. Whitehead Plff } In the Jefferson
vs } Circuit Court.
Theodore Klemm Def

Refuse
The Court declares the law to be that
the St Louis and Iron Mountain Rail
Road was authorized by its Charter and
the several acts of the Legislature of
Missouri introduced in evidence
by Plaintiff to hold and dispose of real
estate which was not needed for the purposes
of the road belonging to said Company.

Refuse
2. Josiah Thompson, being, sui juris,
having made a deed to the said Rail
Road Company was by his deed divested
of title and title to said land remained
in the said Company until taken
by proper process by the State, tho. said
Company ^{might} ~~was~~ not authorized to receive
hold and dispose of real estate not
needed for the purposes of its road.

In price
3. The act of 1864 of the Legislature
authorizing said Company to dis-
pose of all its real estate not needed
for the purposes of its road was
a license from the State for said Com-

to hold and dispose of real estate not
needed for the purposes of said road.

4. The State of Missouri acquired ^{admission} on all
the property of said Company both real
and personal by the several acts
of the Legislature of Missouri
introduced in evidence by Plaintiff
whether such property was acquired
by said Company after the passage
of the said acts creating said line or subse-
quent thereto.

5. The evidence offered by Plaintiff
shows a sufficient ^{title} upon which main-
tain ejectment.

Walter B. M.
to
Frederic Allen

File March 1978
E. H. H. H.

R. M. Whithead Plff } In the Jefferson
Theodore Allen & Co } Circuit Court

Now at this day comes said Plain-
tiff and moves the Court to set
aside the finding and judgment
of this Court and grant him a
new trial herein for the following
reasons-

1. Because the finding of the Court is
against the evidence.
2. Because the finding of the Court
is against the law of the case.
3. Because the judgment of the Court
should have been for Plaintiff in-
stead of Defendant.
4. Because the Court gave improper
instructions on the part of Defendant.
5. Because the Court refused to
give proper instructions as prayed
by Plaintiff.

John H. Moore,
Att'y for Plaintiff.

Whitehead

23

Klemm

Motion for New
trial.

Filed March 19 1876
E. F. Cowen & Co

R. M. Whithead, Plaintiff } In the Superior
vs } Circuit
Theodore Allen, Defendant } Court.

This affiant makes oath and says
that he does not take an appeal in
the above entitled cause for reversal
or delay but he cause he feels himself
aggrieved by the judgment of the
Circuit Court therein.

Sworn to & subscribed } R. M. Whithead
before me May 3rd 1870 }

E. F. Horney Clerk
By L. H. H. Deputy.

R. M. Whitehead

v

Theodore Klemm

Affidavit for appeal

Filed May 3rd 1870
E. F. Henny clk

R. M. Whithead, Plaintiff } In the Jefferson
 Theodore Klein Defendant } Circuit Court.

We R. M. Whithead as principal
 and
 as sureties acknowledge ourselves indebted
 to Theodore Klein the Defendant in the
 above entitled Cause in the Sum of
 Five hundred dollars for the payment
 of which we bind ourselves, our heirs,
 executors and administrators. This
 bond is to be void however upon
 this Condition that whereas the said
 R. M. Whithead has later^{an} appeal
 in the above entitled Cause from
 the Judgment of the Jefferson Circuit
 Court to the Second District Court of
 Missouri. Now if he shall prosecute
 his appeal without effect and without
 delay, pay all damages and costs
 which may be adjudged against
 him and otherwise the decision of
 said District Court therein then this
 bond to be void, otherwise it shall
 remain in full force.

Witness our hands and seals May 3rd 1870

Attest May 3rd 1870
 E. H. Hoar, Clerk
 By J. H. Clifford

R. M. Whithead
 J. V. Whithead
 J. V. Whithead

R. M. Whitaker

v

Mrs. Klein

Appeal Bond

Filed May 3rd 1870
E. F. Hancock

R. M. Whithead Plaintiff } In the Jefferson
v. } Circuit Court
Theodore Klem, Defendant } March Term
1870.

Be it remembered that on the day of March 1870 the above entitled Cause came on for hearing and neither ^{party} requiring a jury all and singular the matters in controversy were submitted to the Court and the Plaintiff to sustain the issue on his part introduced the following testimony.

1. A Certificate of entry of the land in controversy as follows (here copy)
2. A deed from J. Thornburg to the St Louis and Iron Mountain Rail Road Company as follows (here copy)
3. The following sections of the laws ^{passed by} of the Legislature of Missouri applicable to St Louis and Iron Mountain Rail Road Company - viz: a. Sec. 1, of an act entitled "an act to incorporate the St Louis and Iron Mountain Rail Road Company" approved March 3, 1851 as follows (here copy)
b. Sec. 10 & 17 of an act entitled "an act to amend an act to secure the completion of certain Rail Roads in this State and for other purposes" approved December

10th 1855" approved March 3rd 1857 as follows (here copy).

c. Sec. 4 of an act entitled "an act to expedite the Construction of the Pacific Rail Road and of the Hannibal and St Joseph Rail Road" approved Feb'y 22, 1851, as follows (here copy)

d. Sec. of an act entitled "an act to secure the Completion of certain Rail Roads in this State and for other purposes" ~~as~~ approved Dec. 10th 1855, as follows (here copy)

e. Secs 1 & 2. of an act entitled "an act in relation to the St Louis and Iron Mountain Rail Road Company," approved March 5th 1859, as follows (here copy).

f. Sec. 2. of an act, entitled "An act to expedite the Construction of the St Louis and Iron Mountain Branch of the Pacific Rail Road" approved December 25 1852 as follows (here copy)

g. Secs. 5 & 6 of an act entitled "an act to amend an act entitled 'an act to incorporate the St Louis and Iron Mountain Rail Road Company,'" approved March 3 1851, approved Feb'y 17, 1853, as follows (here copy)

h.

i. Secs. 1 & 2 of an Act entitled "An Act Bill authorizing the St Louis and Iron Mountain Rail Road Company to dispose of certain land" approved Feb'y 15 1864 as follows (here copy).

j. Secs. 1, 2, & 3 & 4, 5, 6 & 8 of an act entitled "An Act to provide for the sale of certain Rail Roads and property by the Governor, to foreclose the St Louis line thereon and to secure an early completion of the South West Branch Pacific, the Platte Country the St Louis and Iron Mountain and the Cairo and Fulton Rail Roads of Missouri," approved Feb'y 19, 1866. as follows (here copy).

4. A deed by Commissioners to the State of Missouri of the St Louis and Iron Mountain Rail ^{Road} and ~~the~~ the property of the Company as follows (here copy).

5. Deed from the State by Governor of said Rail Road and the property of the Company as far to McKay, Vogle, Simmons and others as follows (hereby copy)

6. A deed from McKay and others to Thomas Allen for said rail road & other property as follows (here copy)

7. Sec. 1 of an act entitled "An Act to confirm the title of the St Louis and Iron Mountain Rail Road to Thomas Allen &c.

passed and approved by the Legislature of Missouri on the 17th day of March 1868 as follows (here copy).

8. A deed from Thomas Allen & wife to R. M. Whitehead, the Plaintiff as follows (here copy)

The Plaintiff then showed by Deposition that he was in possession of the land in controversy and was at the time of the commencement of this suit and that he had cut timber on said land since the 1st day of Jan. 1868 to the value of fifty dollars. And here closed his case.

And this was all the evidence in the case offered by either party.

Whereupon Plaintiff asked the Court to declare law as follows (here copy instructions 1, 2, 3, 4 & 5 as asked by Plff) but the Court refused to declare the law as prayed by Defendant to which ruling of the Court in refusing the instructions asked by him the Plaintiff at the time duly accepted.

The Court then gave judgment for Defendant to which Plaintiff at the time accepted. And on the 15th day of March 1870, Plaintiff filed his motion for a new trial as follows (here copy motion for new trial) which was by the Court overruled to which decision of the Court in overruling his motion ^{& refusing to grant him a new trial} for a new trial, Plaintiff at the time duly accepted. And thereupon by Defendant's consent the Court gave Plaintiff till the 3rd Monday in May 1870 to prepare his bill of exceptions ~~as follows & have copy~~ affidavit for appeal and appeal bond, and now here in accordance with such rule Plaintiff tenders that his bill of exceptions and prays that the same may be signed sealed and made a part of the record in this Cause which is accordingly done. this 4th day of May 1870

Jt. Ad. Judge

222
222

R. M. Whitehead
is
Othman Khan

Bill of Exchange

Filed May 7 1870
E. F. Hornum att
By L. H. Clifford St

John A. L. Jones

Recd

Multitask } Multitask
Mem³ } Long and

We all of the General Assembly of Dec.
creating a law when it is in D. R.
and its provisions should be
considered in evidence.

John L. Moore,

Att^y for the

~~Att^y for the~~

Comptroller & Receiver
at the, for the