

Jefferson County Circuit Court
Case Files - Civil
May 1869

Box 24 Folder 16

Whitehead, Robert M.

vs.

Vinyard, Alfred

Ejectment

80 acres in S32 T39 R4E; \$100
damages; \$1,000 damages for timber
removed; Supreme Court

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

Plaintiff states that on the 2nd day of January 1869 he was entitled to the possession of the following real estate situate in Jefferson County Missouri viz: The West half of the South East qr. of Section thirty two (32), Township thirty nine (39) North of Range Four East, containing 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 from the Plaintiff the possession thereof to his damage in the sum of one hundred dollars. He further avers that the monthly value of the rents and profits of the premises is five dollars.

Plaintiff further states that Defendant has since he took possession of said land as aforesaid unlawfully cut and carried away from said premises timber of the value of one thousand dollars. Wherefore he demands judgment for the recovery of the possession of said premises

and one hundred dollar damages for
the unlawfully withholding the same
from Plaintiff and five dollar for monthly
rents and profits from the reversion of
Judgment until the possession of the
premises is delivered to the Plaintiff &
for one thousand dollar damages
for the timber cut and carried away
by Defendant and for other proper
relief.

John L. Thomas
Atty for Plaintiff.

R. M. Whithead

2

Alfred Vineyard

Chesterment.

Orlock July 17 1869

Elmo & Henry etc

By L. H. Cypnd

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 *Alfred Viny-*
= and

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. 1869

Elias F. Honey
Clerk Circuit Court.
By L. H. Alfred Depy

No. 264

30 TO

JEFFERSON CIRCUIT COURT.

May Term, 1869

Robert M. Whitehead

vs

Alfred Vingard

(Original)

original

This Summons ~~and return~~ was served on the 28th day of March 28 1869 at the County of Jefferson, by leaving a copy, of Writ and Petition with the deputy Alfred Vingard, as furnished to me from the Circuit Clerk's office

fees \$1.00

Fred Luthemeyer Sheriff

Copy returned = 1.00
Duplic. Copy 1.10
Index 08-
file 10

Robert M. Whitehead Plff } In the Cir-
Alfred Vinyard Dft } court Court
County Mo in
In circuit Sep 1869

Now at this day comes the Dft- and
by leave of court files his answer
to petition of Plff filed herein and for
such answer he deins that plff
on the 2nd day of January 1869 or on
any day prior or subsequent thereto
entitled to the possession of the Real
Estate in said petition described
or any part of the same, deins
that Dft- on the 3rd day of said Jan-
uary or any other day entered into
the possession of said premises &
unlawfully withholds the possession
thereof to plff's damage in the sum
of one hundred dollars or any other
sum, deins that the monthly value
of the rents and profits of said premises
is five dollars - deins that since
he took possession or any other
time he unlawfully cut or car-
ried away from said premises timber
of the value of one thousand dollars
or any part thereof - deins that plff
is entitled to a judgment for the possession

of said premises or for pain & losses
materially more than profits or for the
sueing one the named dollar damage
or for any judgment rendered in
the premises - I do not admit
that there is in the preservation
of said premises as of right he
ought to be for debt - even that
he is the lawful owner & has
reason of said premises, he
therefore asks judgment against
Deft for his costs in this & only
standing.

I am your obdient
Att^y for Deft &c

Whitman
by
Kinyan

Answer ✓

Ms. Sept 23, 1869

E. J. H. May

COUNTY OF JEFFERSON,

The State of Missouri.

To

George M. Hughes, D. A. Hunt &
Att. Placemore

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 3rd day
of February 1870 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
AMM. Hulehead

Plaintiff, and

Alfred Long and
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 hereto affixed, at office, this 21st day of

May A. D. 1870

E. F. Honey Clerk.

Edw. M. Deegan

Served the within subpoena this day of September
1870 by exhibiting the same to the within named A.
J. Hunt and Mr Blackwell and George
W. Hughes and their hearing and presence
at Jefferson Hunt no

Deco \$150

Fred Luchien agent
By A. J. Hunt

2 years

R M Whitehead

As^{ss}esd Vineyard

Spa for

D. J. Hunt

W^m Blackwell

& George Hughes

COUNTY OF JEFFERSON,

The State of Missouri.

To

Henry Sanborn

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

fourteenth

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

R M Mubacha

Plaintiff, and

vs Alfred Ungard

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 hereto affixed, at office, this

July 7. D. 1876 day of

E F Honey

Clerk.

By J. H. Mubacha

3057
Whitehead
is
Vinyard

for Reft
J. H. Lauham
Gorham

Served the within subpoena this 23 day of February
1870 by reading the same to the within named
Thomas Lauham in his hearing and presence
at Jefferson County Mo

Fred Lusk Ferns agent Schenck
Jas 50th
By Fred Schenck

Q. Spru

R. M. Whitehead, Plaintiff } In the Jefferson
2 Alfred Vineyard, } Circuit Court.
Defendant }

Now at this day comes said Plaintiff
and moves the Court to set aside the
finding and judgment of the
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 Court refused proper
instructions asked for the Plaintiff
- 4 Because the judgment and finding
should have been for Plaintiff
instead of Defendant.

John H. Mowbray
Atty for Plaintiff.

Whitehead
Vineyard

Motion for
New Trial

Filed March 19 1886
E. P. Honeycutt

R. M. Whithead, Plaintiff
 vs
 Alfred Vineyard, Defendant } In the Jefferson
 Circuit
 Court.

We R. M. Whithead as principal
 and

as security acknowledge
 and give ourselves indebted to Alfred Vine
 yard the Defendant in the above entitled
 cause in the sum of two hundred
 dollars to be void upon this condition
 that whereas the said R. M. Whithead
 has taken 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 & costs that may
 be adjudged against him and
 otherwise abide the decision of said
 District Court therein then this bond
 to be void otherwise it shall remain
 in full force and effect.

Witness our hands and seal May 3rd 1870.

attested this May 3rd 1870

E. F. Hany Clerk

By L. H. Hany Deputy

R. M. Whithead
 J. V. Whithead
 J. H. Clark

R. M. Whitehead

2

Alfred V. Meigs

Alfred Bond

Recd May 3rd 1876
E. P. Henry det

R. M. Whithead Plaintiff } In the Upper
Alfred Vineyard Defendant } 2nd Circuit
Court.

This affiant states that he does not take an appeal in the above entitled cause for vexation or delay but because he feels himself aggrieved by the judgment of the Jefferson Circuit Court.

Sworn to and subscribed }
before me May 3rd 1870 } R. M. Whithead
Elias P. Healey Clerk
By L. A. Wilson Deputy

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R. M. Whitehead

vs

Alfred V. Maynard

Affidavit for appeal

Filed May 3 1870

E. F. Kearney CB

R. M. Whitehead, Plaintiff
v
Alfred Viegand, Defendant } In the Jefferson
Circuit Court.

Be it remembered that on the day of
March 1870 the above entitled Cause coming
on to be heard in the Circuit Court of Jefferson
County, Missouri all and singular the
matters in controversy were submitted to
the Court, neither party requiring a jury
and the Plaintiff to sustain the issues 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 ~~of~~ passed
by the Legislature of Missouri applicable to
the St Louis and Iron Mountain Rail
Road Company, viz: a. Sec. 1 of an act en-
titled "an act to incorporate the St Louis and
Iron Mountain Rail Road Company," ap-
proved March 3rd 1857, as follows (here copy)
b. Secs 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 the Hannibal and Joseph Rail Road" approved Feby 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" approved December 10th 1855 as follows
(here copy)

e. sec. 1 & 2 of an act entitled "an act in relation to the St Louis and Iron Mountain Rail Road Company" approved March 5th 1859, (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 25th 1852. (here copy)

g. sec. 2 of an act entitled "an act to amend ~~set~~ an act entitled 'an act to incorporate the St Louis and Iron Mountain Rail Road Company'" approved December 25th 1852 as follows (here copy)

h.

i. Sect 1 & 2 of an act entitled "An
~~act~~ Bill authorizing the St Louis & Iron Mountain
Rail Road Company to dispose of certain lands
approved Feb'y 15th 1864 as follows
(here copy.)

j. Sect 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 State's lien thereon and to secure the 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)

W. 713

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

W. 51

5. Deed from the State by the Governor for
said rail road and the property property
of said Company ~~as follows~~ (here
~~copy~~) to McKay, Reed, Vogt and others
as follows (here copy)

y 54

6. A deed from McKay and others to Thomas
Allen for said rail road and 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 and Governor of Missouri on the 17th day of March 1888 as follows (Here copy).

8. A deed from Thomas Allen and wife to R. M. Whitehead as follows (Here copy). It was admitted by Defendant that he was in the possession of the land in controversy at the commencement of this suit and is yet. And the Plaintiff here closed his case.

And the Defendant to sustain the issues on his part introduced the following evidence.

1. An admission by Plaintiff that the land in controversy does not lie nearer the St Louis and Iron Mountain Rail Road at the nearest point than one half mile and here closed his case.

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

Whereupon the Plaintiff asked the Court to declare the law of the case as follows (here copy instructions Nos 1, 2, 3, 4 & 5 as prayed for by Plaintiff) which the Court refused to do and to the ruling of the Court in refusing his instructions Plaintiff at the time duly accepted.

The Court then gave judgment for Defendant to which the Plaintiff at the time accepted. And on the 19th day of March 1870 the Plaintiff filed his motion for a new trial as follows (here copy which being seen and fully understood by the Court, was by the Court overruled to which decision of the Court in overruling his motion for a new trial and refusing to grant a new ^{trial} the Plaintiff at the time duly accepted. And thereupon by Defendant's consent the Court allowed Plaintiff till the third Monday in May 1870 to prepare his bill of exceptions and now affidavit for appeal and an appeal bond and now in accordance with said rule, Plaintiff here tender this his bill of exceptions and prays the same ^{may be} signed sealed and made a part of the record in this cause which is done accordingly this 4th day of May 1870. J. H. Vail Judge

In the Supreme Court of Mo.
March Term 1892

R. M. Whitehead S.E. } Error to Land
v. } District Court,
Alfred Vineyard P.E.

Opinion of the Court

The plaintiff brings ejectment and claims title through Thomas Allen who held the property as having belonged to the Iron Mountain R.R. Co.. It is not disputed that the plaintiff established his right to purchase and hold the same and provided it was included in the lien held by the State upon its property and sold to said Allen when the State sold out the road. The District Court in reversing the judgment of the Circuit Court, held the affirmative of these propositions, and they are the only questions presented for our review. Section first of the Charter provides that the Company "may take, hold, use, possess, and enjoy the fee simple, or any other title or estate, in any lands, tenements or hereditaments, and the same to sell and dispose of at pleasure &c." Act of 1837, ch. 479 & R.R. land 40. See also Act of 1864 (ch. 382 Act 1863-4), authorizing the

* to the land, provided the Railroad Company had a right

Company to sell or lease its lands not needed for the use of the roads. It may be conceded that this power to hold and sell real estate should be held to be subordinate to the general objects of the Corporation still it is sufficient to pass title and we need not now enquire further.

Upon the second enquiry, it is evident, that the legislature intended that the State should hold a lien upon all the property of the Company, and that, when it was foreclosed, and the railroad sold, ^{and the title} confirmed in said Allen, the sale was understood to cover everything which the Company owned.

To this view it is objected, first, that the Company did not own the lands in dispute when the lien was created by statute, therefore it could not attach. True, the land was an after purchase, but the inference is a non sequiter. If this were a sound view all the State liens for advances to build railroads would have been lost. In every instance it was to take effect upon prospective property and such was the Contract between the State and the respective companies who have been aided.

This lien, for whatever it covered

was created by statutory contract referring to after acquired property and the Statutory foreclosure afterwards made was expressly provided for by the Acts under which the obligation was created. It is analogous to a mortgage of property not in esse, but which can be reached in equity.

(2 Story) As to such property, Judge Story in Mitchell v. Winslow & Mason on p. 639 says that Courts of Equity "support assignments not only of choses in action, but of Contingent interests and expectancies, and also of things which have no present actual or potential existence, but rest in mere possibility only. In respect to the latter, it is true that the assignment can have no positive operation to transfer in presenti property in things not in esse, but it operates by way of present contract, to take effect and attach to the things assigned, when and as soon as they come in esse, and it may be enforced as such a contract in rem in equity. The controversy usually arises between the mortgagee and other creditors, and when there is no fraud, pledges of property not yet acquired have been uniformly sustained

as is shown in cases cited by Counsel.

But the question is only important in the present case as showing the intention of the legislature, for if the several acts bearing upon the subject show that after acquired property was intended to be embraced in the lien of the State, this objection falls to the ground. The legislative intention constitutes the law, and the law governs the lien.

It is urged secondly that this land was not included in the lien and sale because not covered by the statute. The first act authorizing the loan of the Credit of the State to the St. Louis and S. W. R.R. Co. was passed Dec. 25. 1832 and for the terms and conditions of the loan, it referred to the Act of Feby 12. 1831. "to expedite the Construction of the Pacific M. & St. Joe. Railroads" R.R. Laws 109. 110.

The Act to which reference is thus made (R.R. Law 10-13) provides (§4) that the certificate of the acceptance of the State bonds shall operate as a mortgage of the road of the Company "and every part and section thereof and its appurtenances" and also (§11) in case of default, that the Governor shall "sell

their road and its appurtenances
by auction". Afterwards, Dec. 11. 1833, the
State, in "An act to secure the completion
of Certain Railroads in this State", granted
by sec. 4 more bonds to this Company "upon the
condition of a first lien or mortgage as contained
and reserved in the Act of Feby. 22 1831" (§ 2)
R.R. Laws 43-84. Again on the 3rd of
March 1837 an amendment to the last
mentioned act was made for the relief of
the railroad companies therein named,
including the Iron M. R.R. Co. by which they
were required to file a certificate accepting
its terms and providing (§ 17) that "all
bonds issued under the provisions of this
act shall constitute a first lien or
mortgage upon the road and property
of the several Companies so receiving them
in the same manner as provided by the
act approved Feb. 22. 1831"

Under the provisions of these acts and
subsequent legislation the railroad was
sold out, and defendant claims that the
land in controversy could not have been
sold, because not included in the term
"appurtenances" used in the act of
Feby. 22. 1831, that land outside of
and not necessary to the use of the
road, is not appurtenant to it, &

becomes unnecessary in this case to consider how much would be included in the term had not the legislative intention been otherwise made clear. Here we are compelled to go into the question it might become necessary to enquire into the object for which the land was acquired, whether it must be held subordinate to or might be acquired independent of the only object of the organization. But the act of March 7, 1837 giving further aid to the several railroad Companies, and which was expressly accepted by them, not content with the term "appurtenances," uses the more ^{un}ambiguous and sweeping phrase "the roads and property of the several Companies &c," unequivocally showing the intention to cover by the lien of the State, all the corporate property of the Companies named in the act.

Subsequent acts expressly refer to and cover lands like that in controversy and leave the legislative intention without a shadow of doubt. The act of July 15, 1864 (act of 1863 of 382) authorizes the St. Louis & I. M. R.R. Co. to sell or lease its lands not needed for the use and purposes of the road and provides that their

proceeds shall be paid into the State Treasury on account of the interest due upon State bonds, and that the lien of the State upon such lands shall cease.

Also the Act of Feby. 19, 1866 (Act of 1865-6, p. 107 § 6) provides that, in the sale of the respective railroads, the Commissioners shall "award the roads and every part and section thereof, their franchises and appurtenances and all lands and other property real and personal, to the highest and best bidder &c."

This land therefore was included in the lien held by the State upon the property of the St. Louis & Iron Mountain R.R. Co. and passed by its sale as provided in the last mentioned act.

The Judgment of the District Court reversing that of the Circuit Court and remanding the case is affirmed.
The other Judges concur.

J. P. Bliss

State of Missouri, ss.

I, FRANCIS MINOR, 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 opinion delivered in the above entitled cause, as fully as the same remains on file in my office.

Witness my hand, with the seal of said Court hereunto affixed,
at office in the City of St. Louis, this nine South
day of June 1851
hundred and seventy-two one thousand eight

Francis Minor
Clerk.
Geo. A. Thompson

March Term 1872

Monday March 25 1872

Robert M. Whitehead
D. E.

Alfred Vinyard
P. E.

Error to 2nd District
Court-

Now again come the parties
aforesaid by their respective Attorneys and the Court
being now sufficiently advised of and concerning the
premises, both consider and adjudge that the
judgment rendered herein by the said 2nd District
Court reversing the judgment rendered in this
cause by Jefferson County Circuit Court, and remanding
the cause to said Circuit Court for further proceedings
to be had therein, be in all things affirmed and
stand in full force and effect
and that the said Defendant in Error recover of the said
Plaintiff in Error his costs and charges herein expended and have execution
therefor. Opinion filed

STATE OF MISSOURI, SS.

Francis Major
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 herunto set my hand and affixed
the seal of said Court at office in the City of St. Louis,
this third day of June
A. D. eighteen hundred and ~~seventy~~ seventy two.

Francis Major Clerk.
Per J. P. Davis Sec.

305
Supreme Court of Missouri.

Robert M. Whitledge
vs
Alfred Maynard &c.

MANDATE.

Judgment of the District
Court of Eastern District
of Jefferson Circuit Court
(Remained in & Rema-
inued)
affirmed

Attest June 6 1872
Wm. D. Boyd, Cl.
D. C. M. Foxworth, Secy.

