

Jefferson County Circuit Court
Case Files - Civil
November 1869, No. 369

Box 25 Folder 19

Obeart, William L.

vs.

Allen, D. J.

Debt, note

Debt \$504.36



\$ 574 ³⁶/₁₀₀

ST LOUIS, Nov 1st 1869

One day after date I promise to pay to
the order of William F. Sears
Five Hundred and four ³⁶/₁₀₀ Dollars

for Value received negotiable and payable without falsification or discount.

at value and time at 10 per cent from date

No. Due

W. F. Sears

July 29/68 By cash

119.77

Mar 6 " "

75.04

Oct 30 " "

97.84

292.65

Sulphur Springs
Mo

J. L. J. Hills.

William F. Ober, Plaintiff } In the Jefferson
v } Circuit Court.
D. J. Allen, Defendant } Nov. Term 1869

Plaintiff states that Defendant by his promissory note, herewith filed dated Nov. 1st 1867 promised for value received to pay Plaintiff one day after the date thereof the sum five hundred and ³⁶/₁₀₀ dollars. Plaintiff states that on the 29th day of Feb'y 1868 Defendant paid on said note one hundred and nineteen ⁷⁷/₁₀₀ dollars, and on March 16th 1868, the sum of seventy ⁵/₁₀₀ dollars and on the 30th Oct 1868 the further sum of Ninety seven ⁸⁴/₁₀₀ dollars. Plaintiff states that the balance of said note with the interest thereon is yet due Plaintiff and for which he asks judgment.

Thomas & Bro.

Atty for Plaintiff

W. F. O'Leary
D. J. Allen

Petition on Note.

Filed. Oct. 13th 1869.
Elias & Honey ^{clerk}

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

D. J. Allen

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 September,
Next, and then and there to answer unto

William S. Dear,

upon his original petition, a copy whereof is herunto annexed and accompa-
nies 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 15
day of October, A. D. 1899

Elias F. Honey
By L. H. Axford D. C.
Clerk Circuit Court

No 369

15 3018

~~Jeff~~ and Corcoran Court

Nov. Term 1869

Mr. F. O'Leary

vs. Sumner

D. J. Allen

Article 20th
on himself

(original)

#273.41, 10%



Stoney	
Cop per 15 ⁵⁰ @ 20	65-
Writ & copy 1.10 Docket ¹⁰	1.20
Leave to ans 20 ²⁵ Cont ²⁵	45-
Leave to reply 20 ²⁵ Cont ²⁵	45
Cont ²⁵	25-
	3.00

MS Bay & Clerk 15	
Cont 25 Dockets	40
D B '0 missing costs 20	30
	70

Luckmeyer	1.00
	4.70

Send the within on the 28th day of Arthur at 1869 ad Jefferson County Mr
by delivering a copy of this Petition, as provided to me by the Clerk
of the Circuit Court, to the within named Defendants at J. P. Allen

Done this

James Buchanan Sheriff

William F. O'bear, - Plaintiff } In the Circuit
 Against } Court of Jefferson
 D. J. Allen, - Defendant } County Missouri
 } Adjourned Feb. Term 1870.

Now at this day comes the Defendant and for Answer to the Plaintiff's petition, admits that he on the 1st day of November 1867, made and delivered to Plaintiff the Note sued on for \$504.³⁶/₁₀₀, payable one day the date thereof. But Defendant denies that he owes Plaintiff the sum of money specified in said Note, or any part thereof of whatever. For, Defendant states that after the making of said Note, he delivered to Plaintiff on the 5th day of February 1868, a certain Promissory Note, held by Defendant against Elow G. Rathburn, Charlotte Rathburn and William G. Bragg, for five hundred and four dollars and thirty six Cents, and payable to Defendant, one day after the date thereof, as collateral security for the Note here sued on by Plaintiff. - That the Defendant afterwards paid on the Note sued on the several payments endorsed thereon by Plaintiff, amounting in the aggregate to Two hundred and ninety two dollars and sixty five Cents, - and that, in addition to that, the Plaintiff collected on the Note assigned to him as collateral security

the sum of \$ 97. 84, - making the total of \$ 390. 49, - That the Plaintiff has instituted suit on the Note assigned to him as security for the payment of this Note, against Elow G. Rathbun, Charlotte Rathbun & William G. Bragg, in the Circuit Court of Franklin County, Missouri, and on the 9th day of September 1869, said Plaintiff obtained judgment by default on said Note against said Defendants, and an enquiry of damages to be made at the succeeding Term thereof. And Defendant states that said Note, so assigned & delivered to Plaintiff as Collateral security is secured by a mortgage or Deed of Trust on valuable real & personal estate, to the value of more than five times the value of said Note. Defendant therefore states that the Plaintiff is seeking to enforce payment on the balance due on the promissory Note sued on, - and at the same time to enforce payment on the Note delivered to him as Collateral Security for the Note here sued on, and thus obtain payment twice for the same cause of action, Contrary to Law and Equity. Defendant denies that Plaintiff can maintain any action on this Note, while his action is yet pending on said pro-

missony Note gives him as security for the
payment of the Note here sued on, And
Defendant therefore avers, that there is
another action pending for the same
Cause of action set forth in this suit,
and Defendant denies therefore that Plain
tiff is entitled to recover Judgment against
him for any balance remaining unpaid
on the Note filed in this suit, or for any
sum whatever, A certified Copy of the
Proceedings had in said Circuit Court
of Dunklin County, by Plaintiff against
said Rathbuns & Bragg is hereto to the
Court shown,

} Abner Green
} Attorney for Defendant

In Jefferson County
May 12th Feb. Term 1890

W. F. O'Leary
vs.

D. J. Allen

(Answer)

Filed July 27th 1890
C. J. H. W. C. H.

23, 33, 49, 205, 280

1
Record of the pleas and proceedings had in
the Circuit Court in and for the County of Dunklin
in the State of Missouri in the fifteenth Judicial
Circuit begun and held at the Court house in
the Town of Sennett in the County and State
aforesaid on Monday the 6th day of September
AD Eighteen Hundred and Sixty Nine before
the Hon. James H. Vail Judge of said Court

On the 16th day of August 1869 plaintiff filed
in the office of the Clerk of said Circuit Court
his petition which is in words and figures
as follows to wit

William F O'bear Plaintiff	} In the Circuit Court of Dunklin County in the State of Missouri in the September Term AD 1869
against	
Olson G Rathbun and Charlotte	
Rathbun his wife and William G Bragg defendants	

Plaintiff states that defendants
Olson G Rathbun and William G Bragg by their
promissory note herewith filed dated January
6th 1868 promised for value received to pay to
the order of one David J Allen by the name
and style of D J Allen Two Hundred and four
³⁴/₁₀₀ Dollars one day after the date thereof negotia-
ble and payable without defalcation or discount
and with interest from maturity at the rate
of Ten per cent per annum plaintiff says

that said Allen assigned by endorsement and delivered said note to plaintiff, that defendants on the 30th day of October 1868 paid \$9⁵⁴/₁₀₀ to plaintiff and the remainder of said note and interest is yet due plaintiff, plaintiff further says that on the said 6th day of January 1868 defendants Elow G Rathbun and Charlotte his wife for the purpose of securing the payment of said note executed and delivered to said D. J. Allen a Mortgage deed (a certified copy of which is herewith filed) the original not being in plaintiff's possession) Conveying to said D. J. Allen the following described real estate and personal property To wit) Lot two (2) and East half of Lot No one (1) of the North East quarter of Section four (4) in Township Sixty Six (66) North of Range Eleven (11) West of said land situate in the County of Scotland & State of Missouri) also lots No Twenty (20) and Twenty one (21) and lot No (4) four in Block No one (1) and lots nine (9) ten (10) and fourteen (14) in Kennett Missouri also the said mill and lot of land to the amount of three (3) acres containing the mill land upon which the mill stands being about one and a half miles North of said Town of Kennett upon the road leading to the Town of Clarkton in said Dunklin County upon the following conditions to wit: That whereas the said Elow G Rathbun and Mrs B Bragg on the 6th day of January 1868 executed five

promissory notes due one day after the date
thereof one for the sum of \$1492²⁴/₁₀₀ one for \$499⁴⁹/₁₀₀
one for \$342⁷/₁₀₀ one for \$428. the other for \$504²⁶/₁₀₀
Now if the said Elow & Rathbun shall pay or cause
to be paid the said several sums of money speci-
fied in said several promissory notes and all
interest thereon according to the tenor and effect
of said notes, then this conveyance to be void
otherwise of full force and virtue in law
plaintiff avers that said defendants have failed
to perform the said conditions on their part and
that the remainder of said note for \$504²⁶/₁₀₀
dollars and the interest remains due and
unpaid wherefore plaintiff prays that judg-
ment may be rendered for the debt and all
interest and that the equity of redemption of
the said defendants in and to said real and
personal property may be foreclosed and that
the same or so much thereof as may be necessary
be sold to pay of and discharge the judgment
rendered and for other proper relief

Bedford & Owen

Attorneys for Plaintiff

Said petition is endorsed

No 26 18 Sept 1869

Wm J Obeas Jeff

vs { Pet to foreclose Mortgage

Elow & Rathbun Et al

Filed August 16th 1869 Wm C. B. agent clerk

Whereupon there was issued from the office of the
Clerk of the Circuit Court aforesaid a writ of Summons
in words and figures as follows

Summons

State of Missouri }
County of Dunklin } 38

The State of Missouri to the Sheriff of Dunklin County
Greeting - We command You to Summon
Eben G Rathbun Charlotte Rathbun his wife and
William G Bragg That they be and appear in our
Circuit Court to be held at the Court House in the
Town of Kennett in said County on the first
Monday in September next 1867 then and there
before the Judge of our said Court to answer the
petition of Wm F O'bear, Plaintiff and
this You shall in no wise omit and Pass You
then and there this writ

Witness my hand as clerk of our said Court
and the seal thereof Done at office in
Kennett in the County aforesaid on the
16th day of August AD 1867

EPB

Wm G Bragg Clerk

upon which the following return was made

We Eben G Rathbun Charlotte Rathbun and William
G Bragg do hereby acknowledge service of the within
petition and Summons and waive the

Necessity of a service thereof by an officer

Given under our hands this 16th day of August
AD 1869

Elon G Rathbun

Wm G Bragg

And afterwards the following proceedings were
had as appears from the records of said Court
on page 189 of said Records

Dunklin County Circuit Court Sept Term 1869
Thursday Sept 9th 4th day of Term

William F O'bear plaintiffs }

against

Elon G Rathbun Charlotte

Rathbun and William G Bragg }

Petition to foreclose

Mortgage

Now comes the plaintiff by attorney and
defendants having been served with process and
being called come not but makes default where-
upon it is considered and adjudged by the
Court that plaintiffs have an interlocutory judgment
by default against defendants and to assess the
amount of plaintiffs damages a writ of enquiry
is awarded herein returnable to the next term
of this Court to which term this cause is
continued

State of Missouri 3
County of Dunklin 3 ss

I Wm B Bragg Clerk of the Circuit Court
within and for said County & State certify
that the foregoing is a full true and com-
plete transcript of all the proceedings in
the case of Wm F Obear against Eliza
G Rathbun Charlotte Rathbun and Wm B
Bragg as the same is now of record in
my office

In witness whereof I hereunto set my
hand and affix the seal of said Court
at office in Kennett County State aforesaid
this 29th day of December 1869

Wm B Bragg Clerk