

Jefferson County Circuit Court
Case Files - Civil
September 1870

Box

27 Folder 37

McGormack, Peter A

vs

Whitelhead, Robert Monroe

Appeal

Plaintiff appealed from JP
Samuel Eaken on \$80 damages
for breach of contract involving
40 acres of land, one mare, and
\$120 note

Peter A McCormack {
vs. Plff { Before
Robert Monroe Whithead } Justice of the Peace
Deft.

Plaintiff states that
on or about the 1st day of April - 1869
in Allen Township, Jefferson Co. Mo.
he, Peter A McCormack and Monroe
Whithead, the above named defendant -
entered into an agreement whereby
the said defendant agreed that if
Plaintiff would. here sell and de-
liver to him. he deft. a certain
sowd more than owned by plaintiff
and valued at Eighty dollars, and
would afterwards, to wit: on the
following Monday at Henrivate
in said County. give defendant
his (Plaintiff's) promissory note
for one hundred and twenty
dollars, that then, under that case.
the said defendant would give
plaintiff a bond obliging himself
to convey to plaintiff by warranty
deed a certain line therein
to be specified a certain tract
of land containing forty acres of
which the said defendant claimed

to be the rightful & legal owner -
And the said defendant
agreed to meet the said plaintiff
at Hermitage on said day and
give him said bond.

Whereupon the said plaintiff
delivered to defendant said man
and afterwards, to wit, on the
day agreed upon, went to Hermitage
to meet defendant, to give ^{him} his
(Plffs) said note and receive from
def. said bond. But defendant
failed and refused to meet
plaintiff as aforesaid or to re-
ceive plaintiff's note or give
plaintiff the said bond. And
said defendant has ever since
refused and still refuses to
comply with the terms of said
agreement, or to redress plaintiff
said man or the value thereof -
Wherefore plaintiff demands
judgment against defendant
for Eighty Dollars with interest
thereon from the date of said
breach, together with the costs
of this action.

Peter A. McCormack

By A. M. Tyler
his Atty -

du Justice Count

Alar-^{to} McConville
att

3007
Morrison M. Whitcomb
Sept-

Attest this 14th day
of March 1877
Samuel B. Smith
J. P.

Hea Sep 27 1876

Thence att

Endorsed by
Sept 1876

SUMMONS.

THE STATE OF MISSOURI,

JEFFERSON COUNTY.

To the Constable of Hillsboro Township,

in the County of Jefferson STATE OF MISSOURI.

We Command you to Summon James H. Whitehead

to appear before the undersigned, one of the Justices of the Peace of Hillsboro Township, in Hillsboro County, on the 19th day of March, 1870, at 10 o'clock in the forenoon, at his office, in the said Township, to answer the complaint of Peter J. McCormack

Given under my hand, this 2nd day of March, A. D. 1870

Daniel Z. Collins

Justice of the Peace.

Yours the witness Summons on
The within The. Mr. Wrighthead. & —
Reading The same in his presence
and hearing at the County of Johnson
on the 2. day of March 1870

John B. Johnston
Clerk

3

Summery

Harvey Whitehead

OB

Peter A. McCormack

Damages

\$ 60

Justices fees

45

THE STATE OF MISSOURI,

TO

REETING:

You are hereby commanded to be and appear personally before me James M. McQuinn one of the Justices of the Peace within and for Madison Township, in the County of Jefferson, on the 19th day of March 1890 at the hour of 10 of the clock in the forenoon of that day, at my office in the township and county aforesaid, to testify on the trial of a cause wherein James M. McQuinn is plaintiff, and James M. McQuinn is defendant, in behalf of James M. McQuinn and hereof fail not at your peril.

Witness my signature this

day of

18

Justice of the Peace.

peter A. McCormack plaintiff;

against

Morrise Whitehead Defendant; Justice of the peace

Defendant This day filed his motion ~~praying~~
praying that the above judgment by default
be set aside and a new trial be granted
which is done this the
22 day of March 1870
Samuel Eaten J. p.

before Samuel Eaten

R. M. Whitehead

Application
R M Whitehead
filed March 22
1870 Samuel Eakin
J P

THE STATE OF MISSOURI,

TO *Reed McCormack & M. Hull, Clerks, &c.* **McCormack Notman
attorn**
CREETING :

You are hereby commanded to be and appear personally before me *Samuel Eaker*
one of the Justices of the Peace within and for *Joachim* Township, in the
County of Jefferson, on the *16th* day of *April* 1870 at the hour of 10
of the clock in the forenoon of that day, at my office in the township and county aforesaid, to testify on
the trial of a cause wherein *Peter A. McCormack* is plaintiff, and
Marion Whithead is defendant, in behalf of *Plaintiff*
and hereof fail not at your peril.

Witness my signature this *2* day of *April* 1870.

Samuel Eaker
Justice of the Peace.

John. J. McCormack
No 10 Spruill Ave

My Mrs

J. Coarmon
R. E. Engstrom
R. E. McShane
Shorler David
J. O. Hendley
Hos Porter
Condit 13.00
- fees, 85, in

Baker's
McCabe. 1885.
J. J. J. J. J.
Condit 13.00

35
140
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00
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Dulprana

Reed. McCormack

J. W. Hall

Hendy, R. E. McCormack

McCormack Street

010

98
071

The State of Missouri To J. G. Johnston
Constable of Jackson Township in
The County of Jefferson Greeting
You are hereby Commanaded to
Summon Six Good & Lawful
Men of said Township qualified to
act as jurors in the Circuit Court
and in no wise of kin to either Party
nor interested in the Suit to appear
before me I am well Eaten a Justice
of the Peace both with at my office
in Jackson Township for to form a
jury for the trial of an action now
pending before me Jackson Justice

Samuel Eaton
J. P.

H. G. Nash
J. Barinor
R. England
R. Mochlee
J. D. Hendry
~~J. Still~~
~~Charlotte, Lee~~
J. D. C.

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D. S. 1

156
income to
no 6
156 34

Deanna for
a Jany

P A McEannach

vs
R M Whitteat

19140
167 av
24.62

19120
167.65-
24.25

187
100
87

Dendick of Long
in p A McConing
vs
R. M Whitehead

Peter A McCormack Plaintiff }
against } Defor. James
Monna Whithead Defendant } Taken Justice
of the piece

to Peter A McCormack
you are hereby notified that I have
opened the above judgment from the Court
remot in the above entitled cause and
set it for the 16th of April 1870

J. McWhittas
appellant

Sattie

To Peter A
McComack

Peter A. McCormack Plaintiff }
 against
 Monroe Whitehead Defendant } Before
 Samuel Eaker
 Justice of the Peace

This affiant states that the application
 for an appeal by Peter A. McCormack Plaintiff
 in the above entitled cause, is not made for
 vexation and delay but because this affiant
 believes that the appellant is injured
 by the judgment of the justice

ck
 Peter A. McCormack

Sworn to and subscribed before
 me this 21st day of April 1870

Samuel Eaker
 Justice of the Peace

Peter A. McCormack
 against
 Monroe Whitehead } before Samuel Eaker
 Justice of the Peace

The plaintiff files this the 21st day of April
 1870 an application praying the above judgment
 be set aside and a new trial be granted by
 an appeal to the Circuit Court of Jefferson
 county

Peter A. McCormack

peter A McCommack
appendavid

We the undersigned Peter A. McCormack
and Mitchell McCormack acknowledge
ourselves indebted to Monroe Whitehead in
the Sum of Fifty Dollars on this condition
Whereas Peter A. McCormack has appealed
from the judgment of Samuel Eaker
a Justice of the Peace in an action
between Peter A. McCormack Plaintiff
and Monroe Whitehead Defendant
now if on such appeal the judgment
of the Justice be affirmed or if on the
trial anew in the appellate Court
judgment be given against the appellant
and he shall satisfy such judgment or
if his appeal be dismissed and he shall
pay the judgment of the Justice together
with the costs in the case of the appeal
this recognizance shall be void

Peter A. McCormack

Mitchell McCormack

Approved this 21st day of April 1870

by Samuel Eaker

Justice of the Peace

Peter A. McCormack
To hand

Peter A McCormack plaintiff }
23

Mamoe Whitehead Defendant }

plaintiff filed March 1st 1870 a petition
for suit for Eighty dollars damages and directed
a summons to issue which was done and
directed to J. G. Johnson constable and
made returnable March the 19th 1870 my
regular law day Samuel Eaker J. p.

March 19th 1870 the summons issued in this
cause is returned executed as the law directs and
the cause coming on to be heard and the
defendant being duly called came not but
made default and the plaintiff having made proof
of his complaint it is therefore considered by the
Justice that plaintiff recover of defendant the sum
of eighty dollars for his debt and four dollars
and thirty cents for his cost and that he have
execution therefor) Debt \$ 80 00

Justice's fees 1 55

Constable's fees 1 10

witnesses fees 1 50

Samuel Eaker J. p.

March 22nd 1870 Defendant this day filed application
praying the above judgment be opened and
a new trial be granted which is done and
set for the 16th day of April 1870

Samuel Eaker J. p.

Aprile 16th 1870 The above cause coming on
to be heard and a Jury being sworn the
Jury consisted of the following persons
Thornton Jarvis Leroy Cavenau Robt England
R. E. Mackher J. A. Hensley Thomas Porter
Sr after hearing the cause came in with
a verdict for the Defendant Thornton
Jarvis foreman it is there found ordered
that plaintiff pay all cost Justices fees \$2.25

Costables fees 3.40
witnesses fees 2.00
Jurors fees 3.00

Samuel Eaker J. p.

peter A McCormack plaintiff against Morris
Whitehead Defendant. plaintiff filed this
the 21st day of Aprile 1870 an application praying
the above Judgment be set aside and a new trial
be granted by an appeal to the circuit Court
which is granted and an appeal granted
to the next Term of the circuit Court to
be held in the town of
Hillsboro on the first Monday of September
1870 Samuel Eaker, J. p.

State of Missouri
County of Jefferson

Peter A McCormack plaintiff }
against }
Martha Whitehead Defendant }

I Samuel Eaker a Justice of the
within and for the Township of Leachim
in the County of Jefferson afore said hereby
certify that the above and foregoing is a full true
and complete transcript of all the entries
made in my docket relating to said case
of Peter A McCormack plaintiff against
Martha Whitehead Defendant and that such
transcript is accompanied by all the process
and other papers filed with the Justice relating
to such suit

Given under my hand this 27th day
of April 1870 Samuel Eaker J. p.

Justice fee for the above copy . 50
Samuel Eaker J. p.

Peter A. McCormack
U.S.

Maurice Whitlock
Certified Copy

The State of Missouri,

COUNTY OF JEFFERSON.

Do

Red McConaughy

John Hall

You are Herely 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

April, 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

Red McConaughy
Plaintiff, and
John Hall
Defendant

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

Witness, ELIAS F. HONEY, Clerk of our said Court, with the seal thereof

here to affixed, at office, this 22nd day of

August A. D. 1870

Elias F. Honey

Clerk.

By J. H. H. H. H.

SUBPOENA

RETURNABLE TO
JEFFERSON CIRCUIT COURT.

Sept

Term, 1870

McCormack

Whelchad

John Hull &
Reed McCormack
for Plaintiff

fee \$1.00

of Grod Luckatany & Son
of John Con Day

Send the within subpoena on the within
James John Green and see at
McCormack by reading the same
in their presence and hearing at
the County of Jefferson on the
27 day of Aug 1870

The State of Missouri,
COUNTY OF JEFFERSON. }

To *Leck Armstrong* *Defendant*
vs *Ed McConnell* *Plaintiff*

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 *5th* day of *April*, 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 *Ed McConnell* *Plaintiff* vs *Leck Armstrong* *Defendant*; and herein you are Defendant, on the part of *Ed McConnell* *Plaintiff* in no wise to fail.

Witness, ELIAS F. HONEY, Clerk of our said Court, with the seal thereof hereto affixed, at office, this *5th* day of

April A. D. 187*6*

Elias F. Honey
Clerk.

SUBPOENA

RETURNABLE TO
JEFFERSON CIRCUIT COURT.

Sept

Term, 1870

Pa M Comack

RM Whitcomb

called.

Dick Armstrong

Rud M Comack

fee \$1,00

Frederick Armstrong
By J. E. Johnston Del

Served the within Subpoena on the within
James E. Allen & and Dock Armstrong
by reading the same in their presence
and hearing at the County of Jefferson
on the 29 day of August 1870

The State of Missouri,
COUNTY OF JEFFERSON.

To

A. McWhithead

You are Herely Commanded, That setting aside all manner of excuse and delay, you appear before our Circuit Court, for the County aforesaid, on the 7th day of September 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

G. A. McCormack is

Defendant on the one part ^{Plaintiff} and R. McWhithead is Plaintiff and you will bring with you into Court to be read in evidence all deeds patents and other written papers of the land which you here before could & do by and herein you are advised & shall & convey to Plaintiff for a part of the ~~consideration~~ of which the land for the price of which their said lands ~~in no wise to part~~ brought was delivered to you as herein told.

Witness, ELIAS F. HONEY, Clerk of our said Court, with the seal thereof

hereto affixed, at office, this 6th day of September A. D. 1870

Clerk.

SUBPOENA

RETURNABLE TO
JEFFERSON CIRCUIT COURT.

SEPT, Term, 1870

C. A. McCormack

R. M. Whitehead

See 50 68

The within served on the 13 day of Sept by reading
the same to the within named R. M. Whitehead
at Jefferson County Mo

Good Luck Tenney Sheriff
By J. H. Williams S. D. J.

The State of Missouri,
COUNTY OF JEFFERSON.

To Hardy C. Wilmers

You are Herby Commanded, That setting aside all manner of excuse and delay, you appear before our Circuit Court, for the County aforesaid, on the ~~20th~~ 21st, 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

Plaintiff and
Defendant, on the part of Elmhurst and
in no wise to fail. Plaintiff

Witness, ELIAS F. HONEY, Clerk of our said Court, with the seal thereof hereto affixed, at office, this 6th day of

Sept. A. D. 1878

Elias F. Honey Clerk,
Sept 21st 1878

SUBPOENA

RETURNABLE TO
JEFFERSON CIRCUIT COURT.

Sept. Term, 1870

Peter A. McCommack
vs
R. M. Whitehead

Witness for Plaintiff
Hardy McCommack

fee .50 ls

For at such charge Hardy
J G Johnson Bell

Served the within Subpoena on the
Hansard Hardy & Mitchell on the
14th day of Sept 1870
and hearing at the County of Jefferson
on the 6th day of Sept 1870

The State of Missouri,
COUNTY OF JEFFERSON.

To

R M Whithead

You are Herely Commanded, That setting aside all manner of excuse and delay, you appear before our Circuit Court, for the County aforesaid, on the first day of March, 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 Pete A. Marnack Plaintiff, and James J. O'Fallon Defendant R M Whithead Defendant, on the part of Defendant; 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 27th day of April A. D. 1871

Clerk.

Elias F. Honey
Clerk

SUBPOENA

RETURNABLE TO
JEFFERSON CIRCUIT COURT.

Sept Term, 1870

Peter A McCormack
vs
R. M. Whitehead

for Deft

R. M. Whitehead

Served

Served the within subpoena this 8th day of September
by meeting the same to the within named R. M.
Whithead in there bearing and presence
at Jeffersons court me

Doed Jacob Kennedy or Henry
By Doed William A.

See 50th

Spent

Liter A. McCormack, Plff }
R. M. Whithead, Sift }

Now at this day comes said Sift
and moves the Court to dismiss this
Case for the following reasons.

1. Because the action should be for damages and not for the value of the mare.
2. Because the number of the lands are not given.
3. Because the statement of the cause of action is insufficient.
4. Because the Justice had no jurisdiction of the cause of action.

John L. Thomas
Atty for Sift.

McLennan

27

Whitehead

Proctor & Dennis

Black Sept. 14/78
E. J. Howell

Peter A. McCormack, Plaintiff
v.
Robert M. Whitehead, Defendant

Now at this day comes
said Defendant and moves the Court
to set aside the finding and judgment
in this case 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.
3. Because the Court admitted improper
evidence.
4. Because the Court gave improper
instructions.
5. The Court refused proper instructions.

John L. Thomas.

Att. for Defendant.

Wm. A. W. W. W.

2

Wm. W. W.

Wm. W. W.
Wm. W. W.

Wm. W. W. 19" 1870

Wm. W. W. W.

Peter A. McCormack }
Robert M. ^{vs} Whithead }

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The Court declares the Law to be
that if Plaintiff and Defendant entered into a Contract
about the 1st of April 1869 by which Defendant
on his part agreed to sell to Plaintiff forty acres
of Land which they had looked at & supposed
to belong to Defendant, and if ~~Defendant~~ ^{Plaintiff} at the
time the contract was made delivered to Defendant
a mare as a part of the consideration
of the Land, and if Plaintiff and Defendant
agreed at the time the Contract was made &
the mare delivered to Defendant to meet on the
then next Monday in Hematite at McCormack's
Store and that Defendant should then & there
deliver to Plaintiff a Bond for a deed to said
Land and also that Plaintiff on his part
should then & there deliver to Defendant his
note for one hundred & twenty dollars the balance
of the consideration such Bond so to
be executed & delivered by Defendant to bind him
to make such deed when said note should be paid
or in case they should not meet - at said store
of McCormack on said day that Defendant should
deposit such Bond at said store to be delivered
to Plaintiff on his depositing there his note for said
sum to be delivered to Defendant, and if Defendant
failed to meet Plaintiff at said time and place
and deliver him such Bond or to deposit the

same there for him within a reasonable time
thereafter, then in that event the Plaintiff
is entitled to recover in this action the value
of said mare at the time of her delivery to
Plaintiff not to exceed eight-dollars with
interest from the time this ~~suit~~ suit was
commenced at the rate of six per cent,

2nd The Court further declares the Law to be that if Defendant received from Plaintiff the Mare in question upon a contract such is indicated in the first instruction and had not delivered a Bond for a Deed to Plaintiff or deposited it for him at McCormack's Store in Hematite before this suit was commenced then Plaintiff is entitled to recover in this action the amount specified in the first instruction.

3rd The Court further declares the Law to be that if Defendant agreed with Plaintiff to deliver to him a Bond for a Deed to the Land Contracted to be sold by Defendant to Plaintiff at McCormack's Store in Hematite, ^{or to deposit it there for him} then Plaintiff was not bound to go to Buren's House for the same and his failure to do so does not excuse Defendant in failing to carry out his contract in the delivery of such Bond at the place agreed upon,

4th The Court further declares the Law to be
that if Plaintiff demanded of Defendant
a Bond for a Deed of the Land which he
agreed to buy from him before this suit
was commenced and if he was then
informed by Defendant that Defendant
would not execute to him such Bond
unless Plaintiff would give him his
note for a larger sum than that agreed
on at the time the contract was made
then ~~in that event~~ Plaintiff was not
in any event bound to tender to
Defendant any note and if the Court
so find from the evidence the Court
should find for the Plaintiff in this
action such sum as the mare in
question is proven to have been
worth at the time she was received
by Defendant from Plaintiff with
six per cent interest thereon
from the time this suit was
commenced,

John A. W. Schmitt

27

A. W. W. W. W.

Instructions
asked by Plaintiff

McComack
3
Whitchhead

1. The Court declares the law to be that the Plaintiff cannot recover in this case unless he has shown from the evidence that he made a legal tender of the note he was to receive before instituting this suit and the refusal of Defendant to accept the same and accept his bond according to contract.

2. This being a suit for a failure to comply with a contract the Plaintiff can only recover for damages and not in assumpsit. and the statement in this case being in assumpsit the judgment must be for Defendant.