

Jefferson County Circuit Court
Case Files - Civil
September 1871, No. 17

Box 28 Folder 43

Whittelsey, Charles C.

vs.

Robert, Louis

Debt, account

Debt \$1,034.27 for legal services;
real estate attached; deposition;
bill of exceptions; Supreme Court
defendant resident of Minnesota

Louis Robert

In ac with Charles C. Whittelsey

1851

Dec 24	To cash paid City Carondelet for deed	\$ 5.00
" " " "	According deed	1.38
1852 Dec 6	" services ad Stevin Commont Pleas Sup Ct	100.00
1854 Apr 28	" cash paid sheriff costs offi fa	28.28
May 29	" my share compromise with L. Bonast	880.00
		<u>1014.53</u>

Cr June 5, 1854 By deed for lot in Carondelet

	To Balance	600.00
		<u>\$ 414.53</u>
1856	To amount paid Woods lot Jofferson Co	\$ 98.43
June	Interest one year on 2 ^d payment	32.31
	" amt paid for Walsh lot	1038.99
	Interest one year on 2 ^d payment	58.54
		<u>\$ 2187.43</u>

1856 June	Cr By 1/10 sale of Woods lot	\$ 216.66
" "	" " " Walsh "	106.19
" "	" " " P. M. Brown	268.75
" "	" " " J. Brown	10.00
1857 June 16	" " " Bayler & Henderson 1. pay ^t	218.66
1857 Jul 20	By Cash from draft	200.00
Dec	By 1/10 sale Bayler & Henderson lot 2	180.37
1857 June	" " " " "	3 182.37
Dec	" " " " "	4. 195.19
1857 June	" " " " "	5. 200.29
" "	" " " Lucas lot	<u>249.31</u>

\$ 1969.00

Balance

\$ 218.43

Oct 1858	To one 1/10 sale of Adams lot, my fee	210.00
" "	" services Jofferson Circuit Court Sup Ct	250.00
" "	ad Wiley Sheriff	
Oct 1. 1860	" services ad Wiley Shiff Joff. Ct. Ct. & Sup. Ct	200.00
1860 Aug 23	To cash paid transcript	6.64
1860 Feb. 3.	" paid Clerk Sup Ct	10.00
" " "	" P. Piphon	25.00
1860 June	" services at sale Hillstovo, lands ad Wiley & others	54.20
		<u>\$ 1034.27</u>

Jefferson Circuit Court
Sep. Term 1876

Charles C. Whittlesey

v

Louis Robert

Account filed with
petition

Filed July 10th 1876,
W. H. Boyce Clerk

County of Jefferson for

Jefferson Circuit Court
September Term 1891

Charles C. Whittlesey

Louis Robert

Plaintiff states, -

That on the first day of July AD Eighteen hundred and sixty one, the defendant was indebted to the plaintiff in the sum of one thousand and thirty four \$1100 dollars, for professional services rendered by the plaintiff as an attorney and counsellor at law, to the defendant at his request, and for moneys by the plaintiff paid, laid out and expended for the defendant at his request, as will appear by the account hereto annexed and made part of this petition. That in September AD. Eighteen hundred and sixty five, he delivered or sent by mail to the defendant residing at St Paul in the State of Minnesota a statement of his account showing a balance due plaintiff of nine hundred ninety two \$9100 dollars, which account defendant never objected.

He says, farther that said defendant since the year AD 1830 has been a citizen of and resident of the State of Minnesota and has never since that date resided in the State of Missouri.

He therefore asks judgment for the sum of One thousand and thirty four \$1100 dollars with interest thereon since September 1st AD 1865, amounting to three hundred and sixty one dollars, making a total of \$1395.00, and for such other relief as to the court may seem meet.

Thomas + Thomas

Attys for.

State of Missouri 3

County of St Louis 3

Before me the undersigned came Charles C. Whittlesey who being sworn upon his oath says, that he has a just demand against the defendant, that the amount which

believes the plaintiff ought to recover after allow-
ing all just credits and set off is the sum of
thirteen hundred ninety five \$1100 dollars,
and that he has good reason to believe and
does believe that the defendant is not a resi-
dent of this State.

Charles C. Whittlesey

Sworn to and subscribed before me the
13th day of July A.D. 1871.

Joseph L. Spurr
Notary Public for Lewis County
Mo

Fee 50 cts paid by Plaintiff

2017
Jefferson Circuit Court
September Term 1871

Charles C. Whittlesey

Louis Robert

Attachment for
\$1395.27
Leave order of publica-
tion.

Filed July 15 1871
W.D. Boyce cl

\$3 paid by Plaintiff

1034.71
475.92
Dues \$1510.63.

Know all Men by these Presents, That we
Charles C. Whittelsey as principal, and
Henry H. Williams as
securit. are indebted to the State of Missouri, in the sum of Twenty eight
hundred Dollars, for the payment whereof,
we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by
these Presents. Sealed with our Seals, and dated at St. Louis, this thirteenth
day of July eighteen hundred and ~~only~~ seventy one

The Condition of this Obligation is such, That, whereas the said
Charles C. Whittelsey
about to institute a suit in the Circuit Court of ~~St. Louis~~ ^{Jefferson} County, by attachment, against
Louis Robert

defendant for the sum of ~~thirteen hundred~~ ^{ninety five} 27/100 dollars
Dollars and Cents.

Now, if the said plaintiff shall prosecute his action without delay,
and with effect, refund all sums of money that may be adjudged to be refunded to the
defendant or found to have been received by the plaintiff and not justly due to him
and pay all damages and costs that may accrue to any defendant or any garnishee, by
reason of the attachment, or any process or proceeding in the suit, or by reason of any
judgment or process thereon, then this obligation to be void, otherwise to remain in full force.

Approved: attest,

W. S. Boyce
By O. H. H. Thomas

Clerk.

Charles C. Whittelsey
Henry H. Williams
John L. Thomas
O. H. H. Thomas

SEAL

SEAL

SEAL

SEAL

Charles C. Whittlesey

v

Louis Robert

Attachment Bond

Filed July 15 '75
W S Boyce clerk

State of Missouri,

88.

County of *Jefferson*,
The State of Missouri,

OFFICE OF CIRCUIT CLERK.

To the Sheriff of

County--GREETING :

We command you to attach

by all and singular *his* lands and tenements, goods, chattels, moneys, credits, evidences of debt and effects, or so much thereof as shall be sufficient to secure the sum of *thirteen hundred and ninety five* Dollars and *twenty seven* Cents, with interest and costs of suit, in whose hands or possession soever the same may be found, and that you summon the said *Louis Robert*

that *he* be and appear at the next Term of the Circuit Court, before the Judge thereof, on the first day of said Term, to be holden at the *Town* of *Hillsboro* and State of Missouri, within and for the County of *Jefferson* on the *third* Monday of *September* next, and then and there to answer the complaint of *Charles C Whittlesey*

as set forth in *his* ~~the annexed~~ petition.

And also, that you summon all and every person in whose hand or possession soever any personal property, rights, goods, Chattels, moneys, credits, evidences of debt, or effects, may be found, or who may be named by the Plaintiff or *his* attorney, as Garnishees, ~~and particularly~~

that *they* be and appear before the Judge of our said Court, on the first day of the Term aforesaid, then and there to answer unto what may be objected against them. And have you then and here this Writ.

Witness,

W. S. Boyce Clerk of our
said Circuit Court, and the Seal thereof hereunto
affixed, at office in *Hillsboro* this *18th*
day of *July*, in the year of our
Lord, one thousand, eight hundred and *seventy one*

W. S. Boyce

Circuit Clerk.

By

Deputy.

SHERIFF'S RETURN.

Served the within Writ by attaching and leaving upon the following Real Estate as the property of Louis Robert in Jefferson County Mo. To wit: Lot No 13 of United States Survey No 1897 which lot is bounded as follows to wit: Beginning at a stake on the right bank of the Maramee River, the North West corner of Lot (11) and SW corner of Lot (13), from which a spanish oak 20 inches in diameter bears S. 78 1/2° E 90 links, and a hickory 10 inches in diameter bears north 34° E. 37 links distant thence N. 61° E 84.29 chains to the E. boundary of Survey No 1897, thence N. 29 1/2° West along the East boundary line of said survey No 1897. 60.55 chains to the Maramee River, thence up said River with its meanderings to the place of beginning containing 490. 27/100 acres. Also Lot 3 of Lot 5 in said Survey No 1897, and bounded as follows beginning N. 60° E 20 chains from a point in the West line of said survey 47.78 chains from the Maramee River being the North East corner of Lot 2 of the subdivision of Lot 5 and the North West corner of Lot 3 of the subdivision of Lot 5. Thence South 30° E 50.60 chains to the Maramee River, thence up the Maramee River to a point on said river to a point N. 60° E from the beginning corner. Thence S. 60. N. 15.00 chains to the place of beginning containing 75 3/4 acres being the same property deeded to Louis Robert by Joseph Robert. by deed recorded in Book "U" page 494 in the Records office of Jefferson County Missouri.

John Williams
Sheriff Jefferson County.

No. 17.
ATTACHMENT WRIT.
Jefferson Circuit Court,
Returnable September Term, 1891.
Charles C. Whittaker

vs.
Louis Robert
Def't.

John Williams
Sheriff fee \$2.00

344, 374, 425, 451, 486, 438
470, 487, 561, 573, 574

STATE OF MISSOURI, County of Jefferson.

Be It Remembered, That on this 12 day of *Sept* 1871, before the undersigned Clerk of the Circuit Court of Jefferson County, Mo., came *Robert A. Stoddard* who being by me duly sworn, says the annexed advertisement was published in the Jefferson Democrat, a newspaper, printed and published in the County of Jefferson, State of Missouri, of which he is printer, for 4 weeks, the first insertion being on the 21 day of *July*, 1871, and the last insertion on the 11 day of *Aug* 1871, as follows, to-wit:

In No. 28,	21	<i>July</i>	, 1871.
In No. 29,	28	"	, 1871.
In No. 30,	4	<i>Aug</i>	, 1871.
In No. 31,	11	"	, 1871.
In No. ,			, 1871.

Robert A. Stoddard

Sworn to and subscribed before me this 12 day of *Sept* 1871.

Robert A. Stoddard

Notar Public Commencement of the said
 A true copy from the Record, with-
 out seal, and the Seal of said
 Court, at office, in this city
 W. S. BOYCE, Clerk.

next term of said Court.
 Seal of said Court, at office, in this city
 W. S. BOYCE, Clerk.

Printer's Fee, 10. 00

Received Payment.

10.25

Robert A. Stoddard

Order of Publication.

[Civil Action by Attachment]

IN THE CIRCUIT COURT of Jefferson County, Missouri, in vacation, July 15, 1871:—

Charles C. Whittelsey, Plaintiff,

vs.

Louis Robert, Defendant.

Now, at this day, comes said Plaintiff, Charles C. Whittelsey, by his attorney, before the undersigned Clerk of the Circuit Court of Jefferson county, in vacation, and files his petition and affidavit, stating, among other things, that the above-named Defendant, Louis Robert, is a non-resident of the State of Missouri: It is thereupon ordered, by the Clerk aforesaid, in vacation, that publication be made, notifying him that an action has been commenced against him, by petition and attachment, in the Circuit Court of Jefferson county, in the State of Missouri, founded on an account for the sum of ten hundred and thirty-four dollars and twenty-seven cents. That his property is about to be attached; and that unless he be and appear at the next term of said Court, to be holden at the Court House, in Hillsboro, within the county of Jefferson, on the eighteenth day of September, 1871, and on or before the sixth day thereof, answer or demur to said petition, judgment will be rendered against him, and his property sold to satisfy the same. It is further ordered that a copy hereof be published in the Jefferson Democrat, a newspaper, published in said county of Jefferson, for four weeks successively, the last insertion to be at least four weeks before the commencement of the said next term of said Court.

{ SEAL } A true copy from the Record. Witness my hand and the Seal of said Court., at office, in Hillsboro, this July 15th, 1871. (28) W. S. BOYCE, Clerk.

ord Pub

Whitelsey
vs
Rabenh

Filed Sept 14 1871
MS Boone Cl

Charles C. Whittlesey } Plaintiff }
Louis Robert } Defendant }
against }
In the Circuit }
Court of }
Jefferson }
County }
Missouri }

The Defendant for answer to the Petition of Plaintiff denies that on the first day of July eighteen hundred and sixty one or at any other time he owed or was indebted to the Plaintiff in the sum of one thousand and thirty four 27/100 Dollars or any part thereof for professional services rendered by the Plaintiff as an attorney and Counsellor at Law to the Defendant at his request and for moneys by the Plaintiff paid laid out and expended by the Plaintiff for the Defendant at his request

Defendant denies that the account sued on and attached to the original petition of Plaintiff in this action is either a just and true account and denies that he owes the Plaintiff any money

for or on account of any item
or items, in said account-
specified and set-forth,

Defendant admits that Plaintiff
performed services for him as an
Attorney and Counsellor at Law
and also that he may have
paid out some moneys for him
as costs or expenses incident-
to the matters and litigation in
which he was engaged for Defendant
but Defendant has no definite
information on that point and
has no knowledge or information
sufficient to form a belief
as to whether the Plaintiff
paid, said out and expended
for the Defendant the several
amounts specified and charged
by him in his account annexed
to his original petition in this
Cause or not, and for that
reason demands strict proof
touching each such item,

Defendant can not deny that the plaintiff rendered professional services as an Attorney and Counsellor at Law for Defendant as specified in his account sued on but avers that his charges therefor in his account sued on are doubt the value of his said services, Defendant avers that for all sums of money paid out and expended by Plaintiff for Defendant as well as for all professional services by him rendered to & for Defendant ~~as~~ & charged for by Plaintiff in his account sued on in this cause the Plaintiff has been fully paid by Defendant at the time of making such advances of money and rendering such professional services

Defendant denies that in September 1865 the ~~Def.~~ Plaintiff delivered or sent by mail to Defendant at St Paul Minnesota a statement of Plaintiff's account showing a balance due Plaintiff of nine Hundred ninety-two 63/100 Dollars

or any other sum, denies that he at any time received any such statement of account from Plaintiff

Defendant admits that he has since the year 1850 been a ~~resident of~~ Citizen and resident of the State of Minnesota and that he has never since that date resided in the State of Missouri,

Defendant avers that the cause of action sued on in this cause that is to say the professional services as an attorney and Counsellor at Law and money paid out and expended by the Plaintiff for Defendant specified in the account annexed to the Plaintiffs petition in this cause as well as every item therein charged by Plaintiff and sued for in this action in so far as the same is said services were rendered and moneys expended by Plaintiff accrued to Plaintiff wholly within the state

of Missouri and that Defendant was at the time said Cause of action commenced to accrue and for many years prior thereto had been a non resident of the State of Missouri and a resident of the State of Minnesota, that he resided in Minnesota during the whole time that Plaintiffs Cause of action said on was accruing and has continued to reside

there ever since up to the present time and so the Defendant avers that the Plaintiff having failed to bring his action on said account and Cause of action within the time allowed by the Statute of the State of Missouri for the bringing and prosecution of such actions the same is Barred by the Statute of Limitations of the State of Missouri in such cases made and provided and Defendant ~~avere~~ therefore pleads said Statute in Bar of the Plaintiffs Cause of action or right of recovery in this case,

Defendant in Consideration of The

premises denies that Plaintiff is
entitled to recover judgment in this
action against Defendant for one
Thousand and Thirty four $\frac{27}{100}$ Dollars
Dollars with interest thereon from
September 1st 1865 amounting to
three hundred and sixty one Dollars
& amounting in the aggregate to \$1395.27
and denies that Plaintiff is
entitled to recover judgment for
any sum whatever either ~~for~~
for or on account of principal
or interest or otherwise

And having answered
fully prays to be discharged
with his costs

Jos. J. Williams
Atty for
Defendant

C. C. Whittelsey vs Louis Robert In the Circuit Court of Jefferson County Missouri

To C. C. Whittelsey Plaintiff take notice that Depositions of witnesses to be read in evidence on the part of the Defendant on the Trial of the above entitled Cause will be taken at the office of W. L. Samprey No 220 Third Street in St. Paul Minn. - between the hours of eight o'clock A.M. and six o'clock P.M. on the 8th day of March 1872 and that the taking of such Depositions if not completed on that day will be continued at the same place and between the same hours from day to day till completed

Louis Robert
Defendant
By Geo. J. Williams
Attorney

We accept notice of the above notice & waive the necessity of the same being served on us or the Defendant by an officer, we also waive the necessity of the issuance of a commission for the taking of

the depositions and agree that they
be taken without such commission
being issued with the same effect -
as if taken within this state

February 2nd 1872 John L. Thomas & Bro
Attys for Plaintiff

Depositions of witnesses, produced, sworn and examined, on the 18th day of March in the year of our Lord 1872, between the hours of eight o'clock in the forenoon, and six o'clock in the afternoon, of that day, at the office of U. L. Lamprey No. 220 Third Street in Saint Paul, in the County of Ramsey and State of Minnesota, before me, Angier Ames, a Notary Public, in and for said County of Ramsey and State of Minnesota, in a certain cause, now depending in the Circuit court of the county of Jefferson, in the State of Missouri, between Charles C. Whittelsey, plaintiff, and Louis Robert, defendant, on the part of the defendant.

Uri L. Lamprey of lawful age, being produced, sworn and examined on the part of the defendant, deposes, and saith: My name is Uri L. Lamprey. I am 29 years old. I have been a resident of this City in the state of Minnesota some over eight years. My business is that of an attorney and counsellor at law. I know the defendant Robert, and have known him since my residence in this city. I have met the plaintiff Mr Whittelsey. In the year 1865 and I think in the fore part of the month of August of that year I, as the agent of the defendant Robert, visited Saint Louis in Missouri and Hillsboro, Missouri, for the purpose of paying the taxes on and with a view of selling the lands of Mr. Robert, situated in Jefferson County Missouri. At that time I

called upon the plaintiff Charles C. Whittelsey at his office in the City of St Louis Missouri, I think his office was on Chestnut Street, this is my impression, I am not acquainted in St. Louis and don't know that there is any such street there. My object in calling upon Mr. Whittelsey was to get information in regard to said land. I do not know as I can state the exact words or the purport or meaning of all the conversation that there and then took place between Mr Whittelsey and myself, but I know that Mr Whittelsey and myself talked over the litigation that he had conducted in reference to said lands and other lands. I know Mr. Whittelsey told me then and there that he took charge of the entire matter under a contract with the defendant Robert, and that said contract was that he, Whittelsey, should conduct the litigation without any expense whatever to said Robert and should have for his services a share of what was won or realized in the litigation. I am not sure what he said that share was to be. He did state it and I think he said one half of what was realized. I know I asked him how the matter stood between him and Mr Robert and that he replied that there grew out of the matter some litigation with a sheriff, which was not anticipated in the start when he made the contract with

3
Robert, but that he had received his share of the land or its equivalent; that Mr Robert on one occasion had paid him \$200, cash and that, although he believed his books showed a balance of something in his favor, the matter turned out pretty well for him under the circumstances he called it square and had no further charges against Mr. Robert. I think he said that instead of the land sued for he had received on account of his share, some cash realized from the sale of said land and some other land. I can't say that I have stated the exact words used by Mr Whittelsey and myself in that conversation and interview. I think in every instance in referring to the defendant Mr. Robert, he used his given name "Louis". I have stated the conversation according to my best recollection of it and I am positive that wherever I have expressed myself as knowing what Mr Whittelsey said that he used the words by me above stated or words of the same purport and meaning. We had further conversation. He talked about the value situation and whether or not it was advisable to sell said Robert's lands at that time; but I remember no further or other conversation whatever between us that did or could have any bearing whatever

a. a.

a. a.

upon the matter in controversy in this suit. I have
been Mr Robert's, general agent for about eight
years during that time I have ^{had} charge to a con-
siderable extent of his property and during
that time I have ^{had} charge of his written docu-
ments and papers and during all of that
time I have been accustomed to receive his
letters and papers and other mail matter from
the post office, open them and give them proper
attention. That I have carefully examined and
looked over said Robert's documents and papers
many times and that I have never found or
seen any account or statement of account
between said Whittlesey and said Robert or in
favor of said Whittlesey and against said Robert
or bill or demand or communication what-
ever from said Whittlesey to or against said
Robert among them; that I have no recollection
of receiving as his agent or otherwise by mail
or otherwise in the year 1865 or at any other
time, before the commencement of this action,
from Mr Whittlesey or any one else any state-
ment of account between Mr Whittlesey and
Mr Robert or any letter bill or demand or
communication whatever from Mr. Whit-
telsey or any one for him showing or asking or
demanding any sum of money whatever
of or against Captain Robert for any cause
I am very sure that no such account or

demand prior to the commencement of this action was ever received by or seen by or heard of by me because I consider my recollection pretty good and because I have been very carefully to keep with great care everything of that sort and because I have carefully examined all my papers and all of Captain Robert's and can not find anything of the kind. Since this action was commenced I received by mail what purports to be a copy of the plaintiff's petition and account in this action from the defendant's attorney therein. When I have used the term Mr Whittelsey I have meant the plaintiff in this action and when I have used the term Robert I have meant the defendant in this action.

Cross examined by J. Y. Paige for the plaintiff:

I met Whittelsey in Saint Louis, I am very confident, in the forepart of August 1865. between 1st and 15th. There was ~~no~~ present except Mr Whittelsey and myself during this conversation ~~I believe~~. I am a son in law of Mr Robert. I have looked for the account of Mr Whittelsey several times since this action has commenced.

I have no personal knowledge of the professional services rendered by Mr Whittelsey for Mr Robert

Uri L Lamprey

Subscribed and sworn to before me, on the day, at
the place, and within the hours first aforesaid.

Angier Anes

Notary Public

Ramsey County Minnesota

Depositions of witnesses, produced, sworn and examined, on the 8th day of March in the year of our Lord 1872, between the hours of eight o'clock in the forenoon, and six o'clock in the afternoon, of that day, at the office of U. L. Lamprey No. 220 Third Street in Saint Paul, in the County of Ramsey, and State of Minnesota, before me, Angier Ames, a Notary Public, in and for said County of Ramsey and State of Minnesota, in a certain cause, now depending in the Circuit court of the county of Jefferson, in the State of Missouri, between Charles C. Whittelsey plaintiff, and Louis Robert, defendant, on the part of the defendant.

Louis Robert, of lawful age, being produced, sworn and examined on the part of the defendant, deposes, and saith:

My name is Louis Robert. My age is 62. I reside here in the City of St Paul, Minnesota. My residence has been here ever since the Spring of 1842. I first came here in the winter of 1841 and moved my family here in the spring of 1842. I resided here constantly since 1842. I have had no residence any where else. I was born at St. Louis, Missouri. I moved from Prairie du Chien to St Paul in 1842. I mean Prairie du Chien in the State of Wisconsin. I lived in Prairie du Chien about 3 years before I moved here I think. I moved from St Louis to Prairie du Chien. This was about 1837 or 38. I have never lived in Missouri or

had any residence there since I moved to Prairie du Chien in 1837 ~~and~~ 1838. I was a married man when I moved to Prairie du Chien. I moved my family there with me. My family resided in Prairie du Chien till the spring of 1842 when I moved here and they have ever since resided here. This has ever since been my home and residence. I am of French descent. I am the defendant in this action. I know the plaintiff Mr. Whittlesey. I have known him since I first went to Prairie du Chien but never well until the litigation, in which I employed him commenced. He did some legal business for me. The litigation was about land. I made a contract with him about it before the litigation commenced, the contract was that he was to have one half of what we recovered in the suit, he was to pay all the expenses I was not to be to a cent of expense. He got his share of what was recovered in the litigation either in land, which ^{he recovered} ~~I paid him~~, or money which I paid ~~him~~ in lieu of his share of the land or in other land that I turned over to him. Besides the above monies that I paid him once when I was coming from Washington I met Mr Whittlesey in Chicago Illinois at the Sherman House. He claimed I ought to pay him something for additional expense and services that he had been to. I claimed

Not

the services and expense was all under the contract, but I paid him then \$200, in money. I paid him this with the understanding that it squared all between us. I can't fix the date of that payment, it was in 1858/59 or 60 I think it was in 1860. When I paid him the \$200, the litigation between me and the sheriff had commenced and I think had been closed out.

Since I paid him the \$200, he has never rendered me any account or bill whatever or demanded any sum of me. I saw him in Saint Louis several times after that, when I was running my boat there for the space of some three years and he never mentioned any account against me, I always supposed it was all settled up. Since the payment of \$200 I have never received or seen or heard of any account in his favor against me until the commencement of this suit. During that time I never received any communication whatever from him directly or indirectly. I mean any letter or any thing in writing, I had conversation with him in St. Louis afterwards as I have said; but in those conversations he never demanded or claimed any thing against me. Since the payment of that \$200 until the time of this suit no one

ever told me that he had or claimed any thing further against me. I cannot write. I have never requested any one to write him and no one has written him to my knowledge since I paid him the \$200.

Crop examined by J. V. Page Esq for plaintiff. Witness deposes and says: I employed Mr Whittelsey to recover for me an interest in a tract of land in Jefferson County Missouri near Eureka Station Saint Louis County Missouri. He was to bear all expenses of that litigation and get one half of the amount recovered for his services. He afterwards brought a suit in partition between myself and other owners. I consider the bringing of this partition suit as embraced in the contract. In the partition suit and at the sale in partition I bought in a considerable part of the property - say about 600 acres. Afterwards the sheriff sued me. I understand that Mr Whittelsey defended me in that suit. There was also a trifling case in St Louis by some Irishman against me which was settled before suit, in which Mr Whittelsey had something to do. That was all the

business Mr Whittlesey did for me that I know of. The Carondelet lot conveyed by me to him was valued at about \$600 in settlement of claims. In lieu of Mr. Whittlesey's interest in the 600 acres that I bought at the partition sale under our contract I conveyed to Mr Whittlesey the Carondelet lot and also interests, which I claimed, in lots in the Prairie des Noyers, near Saint Louis. I do not think any written receipt, for the money I paid Mr Whittlesey in Chicago, passed from him to me. I stopped running a boat between Saint Paul and Saint Louis in '65 or '66. Before that I had been running pretty constantly for some years.

Attest Angier Anes Louis ^{his} X Robert
mark

Subscribed and sworn to before me, on the day, at the place, and within the hours first aforesaid.

Angier Anes

Notary Public,

Ramsey County, Minnesota.

I, Angier Ames, a Notary Public, within and for the County of Ramsey, in the State of Minnesota, do certify, that in pursuance of the annexed commission or stipulation and notice, came before me at the office of U. L. Lamprey No. 220 Third Street in Saint Paul, in the county and State last aforesaid, Uri L. Lamprey and Louis Robert who were by me severally sworn to testify the whole truth of their knowledge touching the matter in controversy aforesaid; that they were examined, and their examination reduced to writing, and subscribed by them, respectively, in my presence, on the day, between the hours, and at the place in that behalf first aforesaid, and their said depositions are now herewith returned. And I further certify that said Uri L. Lamprey and Louis Robert are residents of said county of Ramsey, in said State of Minnesota.

Given at Saint Paul, in the County of Ramsey and State of Minnesota, this eighth day of March 1872. Witness my hand and notarial seal.

Angier Ames
Notary Public
Ramsey County Minnesota

My fees \$10⁰⁰

Clerk's Certificate .50

\$10.50 paid by deft

Angier Ames
Notary Public
Ramsey Co. Minn.

It is hereby certified, that Angier Ames,
on the eighth day of March, in the year
of our Lord 1872, was, and now is, a Notary
Public, within and for the County of Ramsey,
State of Minnesota, duly commissioned
and acting as such, and that full faith
and credit are due to his acts as such.



In Testimony whereof I,
Albert Armstrong Clerk of the
District Court of the County of
Ramsey and State of Minnesota
have hereunto subscribed my name
and affixed the seal of office, this 9th
day of March 1872-

Albert Armstrong

Clerk

Dist Court Ramsey County
Min.

In the Circuit Court
of Jefferson County
Missouri

Charles C. Whittlesey
against
Louis Robert

Depositions of Uri
L. Lamprey and
Louis Robert. witnesses
for defendant.

Received by mail opened
by consent of attorneys
for Plaintiff and Defendant
and filed March 14 "1872"

W. S. Boyce Clerk
By C. H. Horne
Deputy

to Wm. L. Whittier
Plaintiff
a Spanish
Louis Robert
Defendant

In the Circuit Court of Jefferson
County Mo. May Term
1872

To Louis Robert as Jas. Williams his
att'y of Record

You are hereby notified, that depositions of witnesses, to be read in evidence in the above entitled cause, on the part of the Plaintiff will be taken at the office of S. V. Papine & Bro. No 318 Chestnut Street in the City of St. Louis in the County of St. Louis and State of Missouri on the 10th day of May 1872, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon, and that the taking of said depositions, if not completed on that day, will be continued from day to day, at the same place, and between the same hours, till completed.

John L. Thomas Bro.
Attys for Plaintiff

I accept notice of the within notice
and waive the necessity of service
of the same by an officer

May 4th 1872

Jos. J. Williams
Atty. for Defendant

Louis Robert

In account with Char. C. Whittlesey

1851 Dec. 24	To Cash paid City of Camdent for deed	\$5 00	
" " "	" " " " recording of deed	1 25	
1852 Dec 6	" Services Ads Stevin Com. Pleas & Sup Ct	100 00	
1854 Apr 28	" Cash paid Sheriff Costs off. fa.	28 28	
May 29	my share compromise with H. A. Bernier	880 00	
		<u>1014 53</u>	
	Cr. June 5. 1854 By deed for lot in Camdent	600 00	
	To Balance	<u>414 53</u>	
1856	To amount paid Woods lot Jefferson Co.	598 43	
June	" Interest one year on 2 ^d payment	32 31	
	" Amount paid for Walsh lot	1038 99	
	Interest one year on 2 ^d payment	58 54	2142 80
	Cr. By 1/10 sale of woods lot	<u>216 66</u>	
1856 June	" " " " Walsh	106 19	
	" " " " P. M. Brown	265 75	
	" " " " J. Brown	10 00	
1855 June	" " " " Bayles & Henderson 1 st payment	218 66	
	By cash for draft	200 00	
See	By 1/10 sale Bayles & Henderson lot 2 ^d	180 37	
1856 June	" " " " " " 3 ^d	182 37	
See	" " " " " " 4 th	195 19	
1857 June	" " " " " " 5 th	200 29	
	Lucas lot	<u>149 31</u>	1925 79
	Balance		<u>217 01</u>
	To one tenth sale of Adams lot	270 00	
Oct 1858	" Services Jeff. Circ. Ct. & Sup Ct. Ads Willey Sheriff	250 00	
1860	Services Ads Willey Sheriff Jeff. Ct. Ct. & Sup Ct. Oct 3.	200 00	
1859 Aug 23	To Cash paid transcript	6 64	
1860 Feb 3	" " " Clerk Sup Court	10 00	
" "	" " " Pippin	25 00	
1861 June	" Services at sale Silabors Willey's expense	<u>54 20</u>	

1032 85

Depositions of witnesses, produced, sworn
and examined at the Office of S. V.
Papin and Bros. in the City of St. Louis
County of St. Louis and State of Missouri
before me, the undersigned, Ph. Verne's
Taylor, Notary Public, Saint Louis Co.
Missouri, in a certain cause now
pending in the Circuit Court of
Jefferson County Mo. May Term 1842.
Between "Charles C. Whittetsey, plaintiff
and Louis Roberts, defendants, on the
part of the plaintiff.

Thomas T. Gault, of lawful age
being produced sworn and ex-
amined on the the part of
the plaintiff, deposes and says
I am a lawyer I have been
practising in this City since 1839
I have had occasion to see a
good deal of the practice in the
Circuit and Supreme Courts and
am familiar with the value of
professional services. I am
acquainted with the plaintiff

Mr. C. C. Whittelsey has known
him since 1840 and he has prac-
ticed law in the Supreme and
Circuit Courts ^{of this State} ever since
he has a ^{highly} ~~very~~ respectable stand-
ing at the bar as a lawyer.

In the suit of Slavin in the
Court of Common Pleas and Supreme
Court \$100. ^{Dec. 6th 1852} ~~100⁰⁰~~ Consider the

charges very moderate much
less than would be charged now
and was a very low fee at
that time. The next charges

for professional services I see
are dated Oct. 1858 Services
in Jefferson Circuit Court and
Supreme Court at the suit

of Wiley the charges are \$250. ⁰⁰/₁₀₀

I know nothing of ^{the case} it except the
report I see of it in the Supreme
Court \$250. ⁰⁰/₁₀₀ is a very moderate
fee for trying that Cause in both
~~those~~ Courts or in aiding at
the trial as associate counsel.

I have the same remarks to
make of the next charge which
is of the date of Oct. ^{2nd} 1860
\$200 ⁰⁰/₁₀₀ are charged for services in

forth those Courts - the charges
are very moderate. I assume
the services to have been ren-
dered as charged, and further de-
ponent saith not
Thos T Gantt

Subscribed And sworn to before
me this 10th day of May, 1842

R. Fernet Taylor
Notary Public
St. Louis Co. Mo.

Mr. C. C. Whittetey of lawful age
being produced sworn And exam-
ined ~~And~~ on the part of the plain-
tiff deponent And saith
I am by profession a lawyer
And have been engaged in practice
in the Courts of this State since
the year 1840. The account
hereto annexed is a true And cor-
rect account ~~of~~ ^{of my} the dealings And
transactions between Louis Robert
of St. Pauls, Minn. And myself And
monies recd. And collected by me
for him And money paid out by
me for him And on his account

And at his request And the balance
shown \$1032.85 is the correct balance
due me ~~from~~ in Jan 1861.

Louis Robert, the defendant had
an interest in certain lands in
the County of St. Louis as heir
of Louis Courtois Sr. through
his mother the daughter of said
Louis Courtois some of said lands
embraced U.S. Survey 1894 containing
a league square of or over 6000
acres. Three of the heirs of Louis
Courtois Sr. And Charles Robert
the father of defendant had con-
veyed this league square to August
Chautau And the heirs of August Chau-
teau had in a suit of partition
divided up this league square
into some 13 lots which had
been sold to different parties
by order of Court. Some 1800
acres of the league square had
been sold by August Chautau
to G. And R. Paul who sold it
to Beylles And others making
some 14 subdivisions of the tract
And Louis Courtois Sr. also
owned certain lots in Carondelet

to which the title of defendant's
 mother had never been legally
 passed. There were five children
 of Mrs. Robert, the mother of defendant,
 Louis Courtois Sr. had four children
 The defendant purchased the interest
 of three of his brothers and sisters
 in the lands belonging to Louis
 Courtois Sr. and thus became
 entitled to $\frac{4}{5}$ of $\frac{1}{4}$ of the lands
 not conveyed by said Courtois
 in his life time. In the year
 1851 he, the defendant, employed
 me as attorney to sue for
 or recover his interest and title
 in said lands. I agreed
 to pay me $\frac{1}{2}$ of what I might
 recover. He also had an interest
 in some lots in Carondelet through
 his wife. My fee was to be
 contingent upon success. I procured
 and paid for the deed from the
 City of Carondelet and the recording
 thereof. I instituted suits in the
 Jefferson Circuit Courts and in the
 St. Louis Circuit Court against
 the different parties claiming under
 the sales in the suits in partition

among the heirs of Chautau, and the
assignees of Chautau. In the suit
brought by Sherin against Robert
the matter was compromised by
a division of the property, though the
case went to the Supreme Court
for decision and the services were
rendered by me as charged in
the bill, and I paid the cost
in the suit to the Sheriff \$28.²⁸/₁₀₀.
And the fee charged \$100.⁰⁰/₁₀₀ was less
than the usual fees on ~~the~~ account
of the other business I was doing
for the defendant. After the
suits were brought, defendant
and myself compromised with Louis
A. Benoit for the lands held by
him in the Courtois Tract for \$1760.⁰⁰/₁₀₀
or about that amount, this was
in May, 1854 In ^{part} payment of the
amount due me at that time
defendant conveyed to me lots
in the town of Carondelet for \$600.⁰⁰/₁₀₀
leaving a balance due at that
time of \$414.⁵³/₁₀₀. The suits against
the claimants under the Chautau
partition were tried the titles
of the plaintiffs being set out

in the petitions filed praying for
a partition of the land between the
plaintiffs and defendants in said
suits. The question of title and
defence was taken up to the Supreme
Court in the case of Robert et al.
against Walsh was decided in the
March Term 1854 as reported in
19th Missouri Reports page 452.
After this decision ~~it~~ no further
defence was made to the suits
judgments were rendered in partition
Commissioners appointed and reported
that the lands could not be well
divided and the lands were sold
In the Summer of 1855 defendant
and myself attended the sales of
these lands at Hillsboro and
the defendant purchased the Walsh
lot and part of the Woods lot
and the Adams lot in Jefferson
County. The other lots were pur-
chased by the defendants in those
suits. The sale was made ten
per cent cash and the balance in
one year with interest and bond
for the payment and I became
security for the deferred payments

in the Woods and Walsh lots To
meet these payments was the de-
fendant's share of the different lots
sold. I made these payments to
the Sheriff, Mr. Wiley, and got from
him a receipt and I believe the deeds
for these Woods and Walsh lots were
made to Robert after the sale
by the Sheriff of the Adams lot it
was agreed between Adams and Robert
that Adams should retain the lot
of which he was in possession and
take Robert's place as purchaser
and consequently Robert paid nothing
to the Sheriff for that lot and
gave no note or security. To make
the payment of the balance due on
the Walsh and Woods lots I drew
a draft in the summer of 1855^{or 1856} upon
defendant at St. Pauls in favor
L. A. Bruvost and Co. for \$200⁰⁰/₁₀₀ which
was paid and I paid over the balance
due of the Walsh and Woods lots to the
Sheriff. I ~~for~~ have given defendant
credit for his share for the sums
collected by me on their different
sales to the best of my recollection.
Some two years after the purchase

3.
of the Adams Co. the Sheriff, Wiley
brought suit against Robert by
Attachment in the Jefferson Circuit
Court for some \$2900⁰⁰ and interest
Adams having declined or refused
or neglected to comply with his
agreement with Robert, to take Robert's
place in the purchase. I prepared
the answer for Robert and by his
direction through Murray and King
his attorneys at St. Pauls I tried
the case in the Circuit Court
and judgment was rendered for the
full amount of purchase money
and interest I prepared the bill
of exceptions and took the case
to the Supreme Court and judgment
was reversed and the case was
again tried in the Jefferson Circuit
Court and the defendant had a
credit for one fifth of the purchase
money which had been refused
at the previous trial The case
was again taken to the Supreme
Court the defence in Equity
was overruled The two cases
are reported in the 27 Mo. p. 388
and 31 Mo. Reports p. 212.

The Amount Charged for services
in that case I consider as being
below the usual rate for services
of that description I paid for
the transcript and the fee to the
Clerk of the Supreme Court \$10.00⁰⁰/₁₀₀ And
I also paid Mr. Pipkin for his
services in watching the case \$25.00⁰⁰/₁₀₀

The amount of my share of the sale
of the Adams lot was \$270.00⁰⁰/₁₀₀ de-
fendants one fifth was \$54.00⁰⁰/₁₀₀

For the services rendered in
recovering these different lands
and lots I received nothing more
than a reasonable compensation.

Considering that my fee was
entirely contingent upon success
and some suits I lost. In 1861
after the affirmance of the judgment
in the case of Wiley defendants
interest in all the lands purchased
by him were sold under execution
by the Sheriff I went down
with Mr. Murray the Attorney of
defendants at St. Paul and a
brother in law I believe to attend the
the sale. The lands were purchased
by defendants brother in law, I

think, Louis Denoyers, and he paid
the money to the Sheriff. Thus de-
fendants title was taken and
passed to Denoyers.

Not being able to conclude
this deposition for want of time
I adjourn the further taking of
the same till May 11th 1892 then
to be continued at the same place
and between the same hours men-
tioned in the annexed notice.

Th. Vernon Taylor
Notary Public

In pursuance of the foregoing ad-
journment I resume the taking
of said depositions at on the
11th day of May 1892 at the
place and between the hours
mentioned in the annexed notice.
C. C. Whittelsey being further
examined says. My charge and
expenses for going down and attending
that sale are \$54.20 which was
a reasonable charge & motion
was also made in the Adams
Case the nature of which I have
now forgotten. There were some
eighteen suits relating to the

lands of Robert to which I at-
tended and prosecuted or defended.

In Sept. 1865 I sent an
account to Louis Robert at
St. Pauls, from ^{which} I never had any
reply. In 1855 the sale in
St. Louis and Jefferson Counties, de-
fendant was present and since that
time I have never known of
defendants being in this State.

Defendant never at any time
paid me any money except
by honoring the draft for \$200.⁰⁰/₁₀₀
referred to above. He never
paid me any money whatever
at Chicago at any time nor
at any other place except
the \$200.⁰⁰/₁₀₀ credited in account.

The defendant at the time
when I knew him could
not write and what correspon-
dence I had with him was
conducted through his Attorney
Murry and King. I have no
recollection of having any connec-
tion with Mr. Roberts son in
law U. L. Lamprey with regard

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to my account. As the defendant's title to all of the lands had been sold at Sheriff's sale I did not think that any thing could be made by suit. And I did not know until shortly before the bringing of this suit that defendant had any property from which the debt could be made, then I learned it by some person applying to me about the purchase of the Walsh lot. I have myself resided since 1840 in this city and the defendant has since 1855 not been in this State to my knowledge. The account annexed hereto is a full statement of the sums of money received by me for and on account of defendant in the different suits referred to and no sums have been paid to me by defendant or on his account except as credited in annexed account but by turning back to some old papers I find that I paid some

money which are not charged in
this account.

Chas. C. Whittlesey

Subscribed and sworn to before me
this 11th day of May 1872

Ph. Verneer Taylor

Notary Public

St. Louis Co. Mo.

I, Ph. Verneer Taylor, a notary public
within and for the County of Saint
Louis do hereby certify that Thomas
T. Gaunt and C. C. Whittlesey, the deponents,
whose residences are in St. Louis,
Missouri, were by me sworn to testify
the whole truth of their knowledge
touching the matter in controversy in
the cause aforesaid; and that their
depositions were reduced to writing
and subscribed by them in my presence
Thomas T. Gaunt on the 10th day of May
1872 and C. C. Whittlesey on the 11th day of
May 1872, between the hours of 8 o'clock
in the forenoon and 6 o'clock in
the afternoon at the office
of S. F. Papin and Brother

in the City of St. Louis, County
of St. Louis and State of Missouri



Ph. Verne Taylor
Notary Public
Saint Louis Co.,
Mo.

Notary's Fee \$3.50

Filed May 16th 1872
101 Bay St. Cal.



Charles C. Whittlesey }
Louis Robert }

Jefferson Circuit Court

The plaintiff for reply to the answer of new matters set up in defendants answer says,

That it is not true, and he denies that defendant has at any time paid plaintiff for the moneys charged to have been paid by plaintiff for defendant in his account and for professional services by plaintiff rendered for defendant at his request, and he denies that defendant has at any time paid plaintiff any money except as the same are credited in plaintiff account filed with his petition.

And for reply to so much of defendants answer as sets up the defence of the statute of limitations, plaintiff, says,

That the plaintiff has at all times been a citizen of and resident of the City and County of St. Louis and State of Missouri, ~~and~~ ⁱⁿ the year eighteen hundred and fifty, and that said defendant then retained the plaintiff as attorney and counsel to prosecute and defend the suits for which plaintiff has charged in his account, and in the year eighteen hundred and fifty five on June first said defendant came into and was in the State of Missouri, and that plaintiffs account accrued between the 31st Dec 1851, and June 1. 1861, and that after the said June 1. 1855, the said defendant ~~departed~~ departed from this State of Missouri, and absconded ^{himself} from this State of Missouri, and ever since has so absconded and concealed himself that the plaintiff could not commence suit against the defendant, and he says, that said defendant by such absconding and concealing himself and other improper acts did prevent the commencement of an action against him until the present suit was commenced, and so plaintiff says, that by the plaintiff is not barred from maintaining his suit against the defendant and he prays judgment &c.

Thomas & Bro
Atty for Plff.

C. C. Whittelsey

3

Lucius Robert

Repetition -

Filed May 18th 1872

W. L. Boyce
Clerk.

2 The Court instructs the jury that if the plaintiffs account for professional services as an attorney at law and cash paid for defendant accrued wholly within this state and if defendant was at and prior to the time when said account commenced to accrue a non resident of this state and a resident of the state of Minnesota and if he continued to reside in said last mentioned state during the whole time, said account was accruing and up to the time when this suit was commenced, then in that event the plaintiffs cause of action sued on is barred by the statute of ~~Limit~~ Limitations & if the jury so find their verdict should be for the defendant.

Refused

9-

Given

The Court wisheth the jury
that if they find from the
evidence that plaintiff was
fully paid for all services
rendered & money it paid
by him for defendant before
this suit was commenced
then verdict should be
for defendant-

W

7

May 18 1872

Whittlesey v Robert.

If the defendant Louis Robert came into this State ^{in 1851} and retained plaintiff to see for lands, institute and defend suits, and ~~as~~ ^{as} said retainer plaintiff rendered the services and paid the money charged in the account filed with the petition ~~until~~ ^{and his account was until} AD 1861, and defendant came into this State in 1853 and remained only a few weeks and then departed from this State and after that time never returned to this State, then the plaintiff is not barred by the statute set up by defendant.

Given

May 18 1892

If the jury believe from the evidence, that the plaintiff, at defendant's request, rendered the services charged in the account and paid laid out and expended the sums of money charged in his account, the jury will assess the amount due plaintiff for such services in accordance with the contract made ~~with~~ between the parties, and where there was no contract will assess the value of such services, and they will also assess the amount due plaintiff for money expended by him for defendant at his request. From the sums thus assessed the jury will deduct the sums paid by defendant or received by plaintiff, and upon the balance thus found they will allow interest from the time payment of said balance was unreasonably delayed up to the time of trial.

Spencer

C. C. Whittlesey, Plaintiff

vs
Louis Robert, Defendant

In the Jefferson
County Circuit
Court.
May Term 1872.

The Plaintiff moves the Court to set aside the verdict and judgment in this cause and grant him a new trial for the following reasons,
1. Because the verdict is against the evidence.

2. Because the verdict is against the law as laid down by the Court.

3. Because the verdict is against both the law and the evidence.

4. Because the verdict is against the weight of evidence.

John L. Thomas & Bro.
Attys for Plaintiff.

C. C. Whittelsey

4

Louis Robert

Motion for New
Trial

Filed May 18th 1872
Wm Boyce Cl

Charles C. Whittlesey
v
Louis Robert

} Best remembered that this
cause came on for trial before
the Court and jury and to maintain

the issues upon his part, plaintiff offered testimony as
follows. Deposition of Thos. F. Gantt, (here insert the
testimony only) and the account attached to same)

The plaintiff as a witness for himself testified, that in the
year 1850 or 1851, he was retained by defendant to prosecute and
defend suits for lands claimed by defendant in ~~Orleans~~ and
Jefferson Counties, that defendant had interests in lands in
a league square, ^{Su. 1897} and also in the town of Carondelet as heir
of his grandfather Louis Courtois Sr., and had also purchas-
ed the interest of three of his brothers and sisters giving an
interest of four fifths of one fourth in the lands of Louis
Courtois Sr., and that by agreement between plaintiff and
defendant plaintiff was to have one half of the lands or
their proceeds which might be recovered or saved. That defend-
ant and his wife were also interested in a lot in Carondelet,
and the same agreement was made as to that lot,

That as attorney of defendant he commenced and prose-
cuted some 18 or more suits and some of them going to the
Supreme Court. That he paid for defendant the items of
\$5 and \$1.25 charged Dec 24, 1851. That the item of \$100
charged Dec 6, 1852, that the suit was gained in the lower
court by defendant, but was compromised by the parties agree-
ing to divide the land so that defendant got 75 feet of ground
in the town of Carondelet, and that plaintiff's half of that
was more than \$200, that plaintiff paid costs \$28.28
in that case for defendant. That after commencing suits
for part of Courtois League Su. 1897 against A. Ben-
oit, the parties compromised the matter, and de-
fendant received some \$1800, leaving plaintiff's share
\$880. That up to June 5, 1854 the account was settled
between plaintiff and defendant made him a deed for
a lot in Carondelet for \$600. leaving balance of \$414.53
due plaintiff.

That after prosecuting the suits for Su. 1897, and estab-
lishing the title before the Courts and in Sup Cr, as reported
Robert, Walsh 39 Mo. 452, the lands were sold in
partition among the owners of the different lots, and
that at the sales in Jefferson County defendant purchas-
ed, the Woods lot and ~~Walsh~~ for \$598.43, and

Walsh lot for \$1038.99, and plaintiff became security in the bond to the sheriff for the purchase money of those lots one year time, and plaintiff paid said sums to the sheriff with the interest charged in the account making the total due him as stated \$2187.43. That from the proceeds of the different sales in partition plaintiff collected on account of defendant \$1969, leaving a balance due June 1857 of \$218.43 to plaintiff. In that sum of \$1969 was the proceeds of a draft drawn by plaintiff for \$200 and paid by defendant.

That at the sale in Jefferson Co. defendant purchased the Adams lot for some \$2800, and after some argument with Adams that Adams should take the property at defendant's bid, Adams failed to comply with his agreement and the sheriff Wiley sued defendant by attachment for the whole purchase money. The case was taken by plaintiff to Supreme Court on writ of error and reversed on 27. Mo. Rep. 388, and defendant got the credit at the next trial of one fifth of the purchase money one half of which was plaintiff's share under his agreement. The case was again taken to the Supreme Court and affirmed. In the account plaintiff charges defendant for his share of the Adams sale \$270, charges also \$250 for services at the trial at Jefferson Circuit Court and Supreme Court the first time, and \$200 the second time. That there were reasonable fees for the services rendered. That he attended the sale of the property of defendant under the Wiley judgment charging \$54.20 for his services and expenses, which was reasonable. That he also paid the other other items charged in the account for defendant. In the Woods lot there was 400 acres and in the Walsh lot about 500 acres purchased by defendant that the defence of the Wiley suit was no part of his contract with defendant and therefore he charged his fees for services. That in 1865 he sent defendant by mail a copy of the account the same as presented but accidentally omitted the cash paid Phipps and the cost for transcript and Supreme Court of \$41.66.

Plaintiff here rested.

Defendant then offered testimony as follows.

Deposition of H. A. Lamprey

(here insert the testimony only.)

Deposition of Louis Robert

(here insert testimony only)

Defendants here rested.

Plaintiff in rebuttal testified, ~~that~~

Robert the defendant did not pay me any money at Chicago. He is mistaken in saying that he paid me \$200 at that place. The only money he ever paid was the amount of the draft of \$200 credited in the account. I think I met him at the Democratic Convention at Chicago in 1864, but saw him only for a few minutes as he was leaving the hotel. He did not pay me any money at that time or at any other, in person. He paid that draft and that was the only money he ever paid me. He made a deed for some land at \$600 which is credited in the account.

I have no recollection of the conversation testified to by Mr Lamprey, and think he is mistaken, as I find by reference to my letter book, that I wrote him as the agent of Robert the defendant, enclosing the bill showing a balance of \$992.63, and asking payment. The letter was dated Sept 4. 1865, so that I could hardly have told him in August that I would forgive the balance. That account omitted the three items making \$41.66 as mentioned. Lamprey was the son in law of Robert and was his agent. Robert cannot read or write. As all Robert's property had been sold by the sheriff in 1860, I did not know of his having any property in this State until shortly before this suit was commenced.

Robert was here in 1850 and every year up to 1856, he bought his goods here for his Indian trade. He was trading with the Indians. I did

Defendant then asked the Court to give the following instructions that is to say instructions No. one as follows (here copy same) which the Court gave and to the giving of which Plaintiff at the time accepted and also Defendant, asked the following instructions (here copy same) which the Court refused to give and to which action of the Court in refusing to give said instructions Plaintiff at the time accepted.

I do not recollect of seeing him in this state after the purchase of the Lands by him in 1855, although he may have been here. I corresponded with Murray & King his agents at St Paul about the defence of the Wiley suit. Murray was here at the sale of Defendants lands in 1860, and knowing of no property here I did not institute any suit to recover the balance due me.

This was all the testimony offered.

Plaintiff asked the following instructions which the Court gave & to the giving of which Defendant at the time accepted (here copy them) +

~~Defendant asked the following instructions which the Court gave and Plaintiff at the time accepted & to the giving of which Defendant at the time accepted. (here copy same) and Plaintiff at the time accepted.~~

The jury found for a verdict for Defendant And on May 18th 1872 plaintiff filed his motion for new trial, as follows

(here copy same)

which motion the Court on May 19th 1872 overruled, and plaintiff excepted.

He prays that this bill of exceptions be signed and made part of the record.

and by agreement of parties it was ordered that a bill of exceptions might be signed in vacation within thirty days, and it is done accordingly.

Philip P. Phipps Judge (seal)

Whittelsey

v

Robert

Bill of Exceptions

Filed June 11th 1872
W. S. Boyce Clerk
By O. H. Corine
Correct,
Williams
for Deft.

Jefferson Circuit Court

Charles C. Whittelsey }

Louis Robert }

Plaintiff comes
and moves the Court,

To set aside as null and void, what purports to be the judgment of the court entered in the record book as of the date of May 18th 1872.

For the reasons,

That no term of this court was held in May 1872, and this court was not in session on said May 18, 1872, and said entry was made by the clerk at a time when this court was not in session.

That by the records of this Court it appears that J. H. Vail^{Esq} was duly commissioned^{and qualified} as judge of the Fifteenth Judicial Circuit composed of the counties of Jefferson, Washington & Iron and Reynolds for the term of six years from Jan 1. 1869, and that said Vail was on said May 18, 1872 the only lawful judge of said Jefferson Circuit Court, and the only person entitled to hold pleas for the same, and that the May term of said Court was not held by said Vail but purported to be held by Phillip Pipkin Esq who was not the judge of the said Court nor entitled to hold pleas for the same all which will appear by the records of this court and otherwise and all which plaintiff is ready to verify.

And he farther moves the court to order said cause to be set down for trial

Chas. C. Whittelsey
attorney

Jefferson Circuit Court

C. C. Whitelsey

Louis Robert

Motion to set aside
judgment entered
on record book May
18, 1872, as illegally
entered, null and

Whitelsey
W. S.

Filed Sept 17th 1872
W. J. Day & Co

Whittaker,
and
Robert

1-
The Court withdrew the jury that
if they believe from the evidence
that the plaintiff was guilty, paid
by defendant for his services and
cash advanced before this action
was commenced their verdict
should be for the defendant.

Whittelsey
vs
Robert

Instructions

Filed Sept 19th 1872

W S Boye clk

Whitelaw v Robert

Sep 19/72

If the defendant Louis Robert came into this State in 1851 and retained plaintiff to sue for lands, institute and defend suits, and under said retainer, the plaintiff rendered the services and paid the moneys charged in the account filed with the petition until a D 1861, and defendant came into this State in 1853 and remained only a few weeks and then departed this State, and after that time never returned to and resided in this State, then the plaintiff is not barred from maintaining his action by the statute of limitations set up by defendant in his answer.

Refused

The Court overruled the jury that if the Defendant was a non resident of the State of Missouri in and prior to the year 1850 and ever since that time up to the commencement of this suit and if the such services as were rendered by plaintiff and such cash as was by him and advanced were rendered and advanced by plaintiff for Defendant within the State of Missouri then in that event said suit not having been commenced within the time limited by the Statute of this State for the bringing of such actions is barred by the Statute of limitations and if the jury do find their verdict should be for the Defendant.

Notwithstanding the Defendant may
have been personally within this
State during the time Plaintiff was
performing such services or since his
account with Defendant closed,

Whitely } Instruction
vs } to Jury
Robert }

Endorsed as
"Refused"

Filed Sept 19" 1872
H. S. Boyce clk

Whitelsey v Robert Sep 19/72

If the jury believe from the evidence that the plaintiff at defendants request rendered the services, and paid laid out and expended the moneys charged in his account, the jury will assess the amount due plaintiff for such services in accordance with the contract made between the parties, and where there was no contract will assess the value of such services, and they will also assess the amount due plaintiff for moneys expended by him at defendants request.

From the sums thus assessed the jury will deduct the sums paid by defendant or received by plaintiff, and upon the balance thus found they will allow interest from the time payment of said balance was unreasonably delayed up to the time of trial

And as to the value of the services rendered by plaintiff, the only testimony is that presented by plaintiffs witnesses and the jury will be controlled by such testimony only in assessing such value

C. C. Wittersey }
Joni Robert }

We the jury find
the issues for the Plaintiff and
award his damages at the sum
of Fourteen Hundred Sixty Eight & $\frac{57}{100}$
dollars.

John Craig
Foreman.

Charles C. Whittelsey } In the Circuit
vs } Court of
Louis Robert } Jefferson
County Missouri

Now at this day comes the
Defendant and moves the Court
to set aside the finding and
verdict of the jury and grant
a new trial for the following
reasons, to wit,

18th Because the Court Erred
in refusing to give instructions
asked by Defendant which
ought to have been given

2nd Because the Court erred
on the trial in refusing
to give ^{to the jury} instruction number
two (2) asked by defendant

3rd Because the Court Erred
in giving improper and
illegal instructions to the
Jury on the Trial of the Case

4th Because the verdict of the jury is against the Law of the Case

5th Because the verdict of the jury is against the evidence and the weight of evidence

6th Because this case has heretofore been adjudicated and a verdict in this case rendered on a trial of the merits ~~of this case~~ in this case which judgment is a Bar to a judgment on this verdict

Jo. J. Williams
Atty. for Defendant

C. C. Whittelsey
vs
Louis Robert

Motion for
new trial

Filed Sept 19th 1872
W. S. Boyce clk

Charles C. Whittelsey } In the Circuit
against } Court of
Louis Robert } Jefferson
County Missouri

Be it remembered that at the September Term of the Circuit Court of the aforesaid County of Jefferson the Plaintiff filed in said Court a motion to set aside certain proceedings or the Record of certain proceedings purporting to be a judgment in this Cause and purporting to have been rendered at the May Term of this Court for 1872 which motion setting out the causes on which it was founded & the relief therein prayed is in words & figures following, viz, (Here copy copy said motion) which motion being argued by Plaintiff & by him submitted to the Court & Defendants Attorney being in Court and being enquired of by the Court as to whether he desired to say anything in regard thereto ~~he~~ replied that he had no arguments to make in the matter whereupon said motion was by the Court sustained, said entry of Record purporting to be a judgment rendered as aforesaid & as described in said motion was set aside and said Cause put upon

as follows viz (Here copy entry purporting to be a final judgment of date May 18-1872 Circuit Court Record Vol 6 page 456)

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the Docket for Trial, and afterwards during said September Term 1872 said Cause coming on for Trial before a Jury the Plaintiff to sustain the issues on his part read in evidence to the Jury a deposition of J. J. Gantt which is as follows viz (Here copy J. J. Gantt's Deposition) the Plaintiff was then sworn as a witness in the case and testified as follows, viz,

That in the year 1850 or 1851 he was retained by Defendant to prosecute and defend suits for Land claimed by Defendant in St Louis & Jefferson Counties; that Defendant had interests in a League Square Sec. 1897 & also in the Town of Carondelet as heir of his grandfather Louis Burtois Sr & had also bought the interest of three of his brothers

and
that by agreement between Plaintiff and Defendant Plaintiff was to have one half of the Lands that might be recovered or their proceeds; that Defendant & his wife were also interested in a lot in Carondelet & the same agreement was made as to that lot - That as attorney of Defendant he commenced & prosecuted some 18 suits or more some of them going to the Supreme Court

that he paid for Defendant the items of
\$5.44.25 charged Dec, 24th 1851 that as to the
item of \$100. charged Dec, 6th 1852 the suit was
gained in the Lower Court by Defendant but
was compromised by the Parties agreeing to
divide the Land so Defendant got 75 feet of
ground in Carondelet & that Plaintiff's half of
said lot was more than \$200.- that Plaintiff
Costs \$28.28 in that case for Defendant - that
after commencing suits for part of the Curtis
League Sur, 1897 against L.A. Benoist the
parties compromised the matter & Defendant
received some \$1800. leaving Plaintiff's share
\$880, that up to June 5th 1854 the account was
settled and Defendant made Plaintiff a deed
for a lot in Carondelet for \$600. leaving
a balance of \$414.53. due Plaintiff

that after prosecuting the suits
for Survey 1897 & Establishing the title
before the Courts & in the Supreme Court
as Reported Robert vs Walsh, 19th mo. 452 the
Lands were sold in partition among the
owners of the different different lots & that
at the Sale in Jefferson County Defendant
purchased the Woods lot for \$598.43 and
Walsh lot for \$1038.99 & Plaintiff became
security in the Bond to the Sheriff for the
Purchase money for these lots ~~one~~ on
one years time, & paid said debts to the

Sheriff with the interest charged in the account making the total due him as charged in the account of \$2,187.43 that from the proceeds of the different sales in partition plaintiff collected on account of defendant \$1,969.00 leaving a balance due June 1857 of \$218.43 to plaintiff in that sum of \$1,969.00 was the proceeds of a draft drawn by plaintiff on defendant & paid by him of \$200. - That at the sale in Jefferson County defendant purchased the Adams lot for the sum of \$2,800.00 and afterwards agreed verbally with Adams that Adams should take the property at defendant's bid Adams failed to comply with the agreement & the Sheriff Wiley sued the defendant by attachment for the whole purchase money the case was taken by plaintiff to the Supreme Court by writ of Error & reversed in 27 Mo. Rep. 388 & defendant got credit at the next trial for one fifth fifth of the purchase money one half of which was plaintiff's under the agreement the case was again taken to the Supreme Court & affirmed in the account plaintiff charges defendant for his share of the Adams Sale \$270. Charges also \$250. for services at the Jefferson Circuit Court & Supreme Court the first time

and \$200. for the second time, that these were reasonable fees for such services, that he attended the sale of defendant's property under the Wiley judgment charging \$54.20 for his services & expenses which was reasonable that he also paid the other items charged in the account for defendant in the woods for there were 100 acres & in the Walsh for 500 acres purchased by defendant that the defence of the Wiley suit was no part of his contract with defendant & for that reason he charges fees for his services that in 1865 he sent defendant a copy of the account by mail to St. Paul Minn., but accidentally omitted the item paid Pipkin & cost of transcript to the Supreme Court amounting to \$41.66. All the land owned by defendant in Jefferson Co. Mo. as sold in 1860 under an execution in the Case of Wiley Sheriff vs Louis Robert & brought in by Joseph Robert a cousin of defendant's & deft did not get this property back till about 1869, when I learned it had been conveyed to him by Joseph Robert.

3 And here closed his testimony whereupon the Defendant on his part represented by his attorney to sustain the ~~uses~~ issues on his part read to the jury the Deposition of Mr. L. Lamprey as follows (Here copy said Deposition) also the Deposition of the Defendant Louis Robert as follows viz (Here copy Deposition of Louis Robert) and thereupon closed his testimony - Whereupon the Plaintiff in rebuttal of the Deposition of said M. L. Lamprey testified that he saw said Lamprey in St Louis in 1865 but that he did not tell him that he believed his books showed a little balance due him by Defendant but that he had done pretty well in the business and called it square nor did he use to said Lamprey any language of that import or meaning. He could not have used any such language for he made out an account in Sept 1865 of \$993 balance against Robert & sent it to Lamprey himself as well also a copy to Robert.

also in rebuttal of said Louis Robert's evidence in said Deposition Plaintiff testified that he met Mr Robert in Chicago

but said it was not true that he received \$200.⁰⁰ from him and also said he never did receive any cash from him, except that he drew the draft for \$200. upon him at St. Paul as stated in his testimony in chief which he supposed was paid by Defendant & thought it probable that Defendant had fallen into a mistake about paying him \$200, in Chicago in consequence of having paid the \$200. draft

Plaintiff also stated that Defendant had at all times been a man of large ~~wealth~~ ~~at least of large~~ property, the foregoing was all the evidence in the cause

The Plaintiff then asked the Court to instruct the Jury as follows (Here copy instructions asked by Plaintiff) all which instructions the Court gave to which action of the Court in giving said instructions the Defendant at the time accepted, The Defendant also asked the Court to give to the Jury the following instructions viz (Here copy instructions

No 102 asked by the Defendant of which
the Court gave instruction No one
but refused to give instruction No two
to which action of the Court in refusing
to give said instruction No two the
Defendant at the time excepted -

Whereupon the evidence and instruc-
tions as given by the Court the case
was submitted to the Jury which re-
turned into Court the following ver-
dict (here copy verdict) and
afterwards on the same day the Defend-
ant filed his motion for a new

trial as follows (here copy same)
So far as the same referred to a former adjudication of the
case upon a plea of which it was argued
that the following were the facts
viz: That on the 24th day of April 1872
a commission was issued and delivered
to Philip Piptin in due form, by the
Governor commissioning him as
Judge of the 26th Judicial Circuit
of Missouri, he having been duly
elected as such Judge of that Circuit
at an election held in pursuance
of an act of the Legislature of Missouri
approved March 15th 1872 redistricting
the State into judicial Circuits and
fixing the times of holding Courts.
That on Monday the 13th day of May

1872 it being the first day of the regular
May Term of said Court for Jefferson
County Missouri in the 26th Judicial
Circuit the said Philip Pipkin, acting
under his Commission so issued to
aforesaid took his seat on the Judge's
Bench in the Court house at Hillboro
in said County and the officers of the
Court being present, ordered the
Sheriff to open Court which was done.
Thereupon James H. Vail who holds
a Commission as Judge of the 15th Circuit
of Missouri dated in April 1869 for
a term of 4 years, being near the Judge's
Bench ordered the Sheriff to open Court
and spend and attempted to hold Court
and exercise the functions and duties
of the office as Judge of said Court
but was forcibly prevented from doing
so by the Sheriff acting under the orders
of Philip Pipkin and that then the
said Vail announced that Court
was adjourned over till term in course
that Philip Pipkin then proceeded
to hold Court and transacted the usual
business of the term and among
other things that were then done were
the following, The case of C. C.

on the 18th day of May 1872
Mutterly vs Louis Robert was tried, and
a final judgment rendered therein
which has been copied into a form
part of this bill of exceptions and
to which reference is here made.
And that at the September Term of
said Court and on the first day
of the Term thereof, said Vail appeared
and held the Court without molestation
from any one and on the first
day, being the 9th day of September
1872 the following entry was made
(here copy the adjourning name
no time order).

And thereupon the Court overruled
said motion ^{as filed by Defendant as aforesaid} for a new trial, to which
action of the Court in overruling
said motion the Defendant at the
time accepted. And it being the 19th
day of September the Court was about
to adjourn till term in course it
was ordered by the Court by an entry
of record both Plaintiff and Defendant
consenting in open Court that Defend-
ant have time & tender to him to file
his bond and affidavit for an appeal
and bill of exceptions within thirty days
after said 19th day of September 1872 and
in pursuance of said order of Court

this day of September 1872 the
Defendant presents this 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.

J. H. Vail

Dea

Judge 26th Cir.

L. L. Whittelsey
vs
Louis R. Cook

Bill of Exceptions

Bills Oct 2nd 1872

ad. Dwyer

Dea

This Bill correct
Williams for

Dea 1st
John & Thomas & the
for Stewart.

C. C. Whittelsey
vs
Louis Roberth

affidavit
for appeal

Filed Oct. 2 '98/r
W. J. Dorcey

In the Supreme Court, held at St. Louis, of the State of Missouri,

October Term, 1872
November 25th 1872

Charles C. Whittlesey
Respondent
vs.
Louis Robert appellant

appeal from Jefferson
Circuit Court

Now again come the parties aforesaid, by their respective attorneys,
and the Court being now sufficiently advised of and concerning the
premises, doth consider and adjudge that the judgment rendered herein
by the said Jefferson Circuit Court be in all
things affirmed and stand in full force and effect, and that the said
Respondent recover of the said
Appellant his costs and charges herein-
expended, and have execution therefor. Opinion filed.

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 judgment rendered in the above
entitled cause, as fully as the same remains of record in my office.

In Testimony Whereof, I have hereunto set my hand and affixed
the seal of said Court, at office in the city of St. Louis,
this 2nd day of December
A. D. eighteen hundred and seventy-two

Francis Minor
Clerk.
for J. L. Davis

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Supreme Court of Missouri.

Chas. C. Whittell
vs
Louis Robert & Co.

MANDATE.

JUDGMENT OF

Jefferson Circuit Court

AFFIRMED.

Filed Dec. 9th 1872

W. S. Boyce cler
By C. M. Harris
Deputy

We the jury find for the defendant

M. C. Harrison For crown

No. 3423

Circuit Court.

Term, 18

Whittlesey

vs.

Robert

Judgment, - - \$

Date 18

Fee Book No. Page

Judg't Docket, Page

Plaintiff's Atty.

ATTORNEYS: Exercise care and return promptly.

C. F. Chamberlin & Co., Printers and Stationers, St. Louis.