

Jefferson County Circuit Court
Case Files - Civil
May 1872

Box 29 Folder 51

Veith, John

vs.

McNamee, Michael
Stelbrink, Henry
Jenni, Peter
Stubinger, John

Debt

Debt \$510.32 paid by plaintiff on note
to John Williams signed by litigants;
note for money borrowed to build
Catholic Church in Hillsboro

John Veith, Plaintiff

vs

Michael McNamee,

Henry Stelbrink,

Peter Jennie &

John Stubinger, Defendants
~~Robert H. H. H.~~

In the Circuit
Court of Jefferson
County Missouri

Plaintiff States that
he and the Defendants together on or about
the 7th day of January 1870 executed and
delivered to one John Williams their
certain joint promissory note payable
twelve months after said date for five
Hundred Dollars bearing interest
from the date thereof at Ten per
Cent per annum that upon
said note the same being due and
unpaid said John
Williams on the 25th day of August
1871 he being then still the holder
thereof instituted suit against
this Plaintiff and the Defendants
Michael McNamee, Henry Stelbrink,
Peter Jennie & John Stubinger in
the Circuit Court of the aforesaid
County of Jefferson in which action
on said note judgment was by
said Circuit Court rendered in
favor of said John Williams and
against said Defendants therein

including this Plaintiff at the September Term of said Court viz, on the 26th of September 1871 for the amount then due unpaid thereon the same being five Hundred and eighty six & $\frac{38}{100}$ Dollars bearing interest at the rate of Ten per Cent per annum together with costs of said suit & proceeding amounting to seven & $\frac{15}{100}$ Dollars and Plaintiff says that on the 13th day of December 1871 an Execution was issued by the Clerk of said Circuit Court on said Judgment against this Plaintiff and said McCamee, Stettrink Jenni & Stubinger for the amount of said Principal of said Judgment together with the interest then accrued thereon as well as the costs as before stated that said Execution was by the Sheriff of said County immediately levied on the property of this Plaintiff alone and his Lands were advertised thereunder by said Sheriff to be sold at the March Term of said Circuit Court 1872 to satisfy said Judgment, interest and costs (a copy of which Judgment, & Execution

And Advertisement of sale are hereto
Attached and made a part of this Petition
in consequence of which judgment
Execution & advertisement of sale of
this Plaintiffs Lands this Plaintiff
was compelled to and did to prevent a
sale of his said Lands shortly
before the day appointed in said
Advertisement for the sale of the
Same viz on the 8th day of March
1872 pay off to said Sheriff the
full amount of said Execution to
issued on said Judgment so
rendered as aforesaid on said
note together with all interest up
to said last mentioned day accrued
thereon as well as all costs up to that
time accrued as well as the Sheriffs
Commissions for collecting the same
amounting in the aggregate on said
last mentioned day to the sum
of Six Hundred and Thirty-eight
~~Dollars~~ Seven & $\frac{2}{100}$ Dollars, —

Plaintiff avers that
although he was compelled by the
action of said Sheriff as aforesaid
to pay the whole of said Debt interest
& costs that the same was & is unjust
and oppressive on this Plaintiff for

Plaintiff avers that said note on which said judgment was rendered was given in & for the consideration of money borrowed by this Plaintiff and the other parties thereto viz said McCamee, Stettrink, Jenni, Stubinger & Kelly on their ~~joint~~ joint-responsibility to be used in the building and construction of a Catholic Church in Hillsboro in said County of Jefferson and Plaintiff avers that although his name appears first on said note yet he avers that at the time said money was borrowed as aforesaid it was fully agreed and understood between this Plaintiff and all the parties to who signed said note that the same was not to be the individual debt of either this Plaintiff or any other party to said note but that each signer should as between themselves be liable for the payment of no more than one moiety thereof being the one sixth of the same, and Plaintiff avers that said original sum of money so borrowed was used in and for the building and construction of said Catholic Church & that this Plaintiff received ~~no for his~~

no consideration for his
signature to said note other than was
also received by each of the parties
to the same in the building & erection of
said Church for the Public good as a
Place of worship.

Plaintiff avers that prior
to the institution of said suit on said
note by said John Williams said Kelly
one of the signers of said note had become
a non resident of the State of Missouri
wherefore said suit could not then or
now be instituted against him.

And in consideration of the
premises Plaintiff prays the Court
to render judgment in favor of
Plaintiff and against Defendants for
four fifths of the sum so paid on
said judgment and execution by Plaintiff
as aforesaid viz for five Hundred
and Ten & $\frac{32}{100}$ Dollars together with
Ten Per Cent interest on the same
per annum from the 8th day of March
1872 until the rendition of judgment &
that the Court will grant other proper
relief

Jo. J. Williams
Atty. for Plaintiff

John Smith
vs
Henry Melbourn
Or al

action for Contribution
for money paid on
Judgment

original

Filed April 22nd 1872
Wm. Boyce Cl
By C. H. Stone Depy

clerk issue process
Williams
for self

John Leith, Plaintiff

vs
Michael McNamee, Henry
Stelbrink, Peter Jerni
John Gubinger

In the Circuit
Court of Jefferson
County, Missouri

Plaintiff states that
he and the Defendants on or about the 7th day of January
1870 Executed and delivered to one John Williams
their certain promissory note payable Twelve months
after said date for five hundred dollars bearing
interest from date thereof at ten per cent per annum
that upon said note the same being due and remaining
unpaid said John Williams on the 25th day of August
1871 he being then still the holder thereof instituted
suit against this Plaintiff and the Defendants
Michael McNamee, Henry Stelbrink, Peter Jerni
& John Gubinger in the Circuit Court of the aforesaid
County of Jefferson in which action on said Note
Judgment was by said Circuit Court rendered in
favor of said John Williams and against said
Defendants therein including this Plaintiff at the
September Term of said Court viz; On the 26th
of September 1871 for the amount then due and
unpaid thereon the same being Five hundred
and Eighty six & ³⁸/₁₀₀ Dollars bearing interest
at the rate of ten per cent per annum together
with costs of said suit & proceeding amounting
to Seven & ¹⁵/₁₀₀ Dollars. And Plaintiff says
that on the 13th day of December 1871 an Execution

was issued by the Clerk of said Circuit Court on said judgment against this plaintiff and said McNamee, Stelbrink, Jenni & Stubinger for the amount of said principal of said judgment together with the interest then accrued thereon as well as the costs as before stated that said Execution was by the Sheriff of said County immediately levied on the property of this plaintiff alone and his lands were advertised thereunder by said Sheriff to be sold at the March Term of said Circuit Court 1872, to satisfy said judgment interest and costs (a copy of which judgment & execution and advertisement of sale are hereto attached and made a part of this petition) in consequence of which judgment Execution & advertisement of sale of this plaintiffs lands this plaintiff was compelled to and did prevent a sale of his said lands shortly before the day appointed in said advertisement for the sale of the same viz on the 8th day of March 1872. pay off ^{to} said Sheriff the full amount of said Execution & issued on said judgment so rendered as aforesaid on said note together with all interest up to said last mentioned day accrued thereon as well as all costs up to that time accrued as well as the Sheriffs commissions for collecting the same amounting in the ag=

gregate on said last mentioned day to the sum
of six hundred and thirty seven & 100 Dollars
Plaintiff avers that although he was compelled
by the action of said Sheriff as aforesaid to pay
the whole of said Debt interest & costs that
the same was & is unjust and oppressive on the
plaintiff for Plaintiff avers that said Note
on which said judgment was rendered was given
in for the consideration of money borrowed by this
Plaintiff and the other parties thereto viz. said
McNamee, Helbrink, Jenni, Stubinger & Kelly
on their joint responsibility to be used in the
building and construction of a Catholic Church
in Hillsboro in said County of Jefferson,

And Plaintiff avers that although his name ap-
pears first on said Note he avers that at the time
said money was borrowed as aforesaid it was
fully agreed and understood between this Plain-
tiff and all the parties who signed said Note
that the same was not to be ^{the} individual debt of
either this plaintiff or any other party to said
Note but that each signer should as between them-
selves be liable for the payment of no more than
one moiety thereof being the one sixth of the same,
And Plaintiff avers that said original sum of
money so borrowed was used in and for the build-
ing and construction of said Catholic Church
& that this Plaintiff received no consideration
for his signature to said note other than

was also received by each of the parties to the same in the building & erection of said Church for the public good as a place of Worship. Plaintiff avers that prior to the institution of said suit on said Note by said John Williams said Kelly one of the signers of said Note had become a Non Resident of the State of Missouri. Wherefore suit could not then or now be instituted against him. And in consideration of the premises Plaintiff prays the Court to render judgment in favor of Plaintiff and against Defendants for four fifths of the sum so paid on said judgment and execution by Plaintiff as aforesaid viz: for five hundred and Ten & ⁹³/₁₀₀ Dollars together with ten per cent interest on the same per annum from the 1st day of March 1872 until the rendition of judgment & that the Court will grant other proper relief.

Jos J. Williams Atty for Plaintiff

A true copy of the original petition now on file in my office
Witness My Hand Clerk of said Court
with the seal thereof hereunto affixed
this April 22 1872

W. S. Boyce, Clerk,
S. C. Ho. No. 1 Dept

The State of Missouri, }
COUNTY OF JEFFERSON. } ss.

The State of Missouri,

TO THE SHERIFF OF THE COUNTY OF JEFFERSON---GREETING:

We command you, that you summon *Michael McNamee*

Henry Filbrink Peter Jennie & John Frutiger

if they be found in your County, that they be and appear before the Honorable Judge of
our Circuit Court, on the first day of the next term thereof, to be begun and held at the
town of Hillsboro, within and for the County of Jefferson, on the *second*
~~Monday after the fourth~~ Monday of *May* next, then and there
to answer unto

John Veith

upon *his* original petition, a copy whereof is hereunto annexed
and accompanies this writ, and have you then there this writ.

Witness, W. S. BOYCE, Clerk of our said

Circuit Court, with the seal thereof hereunto af-
fixed, at office in Hillsboro, this *22nd*

day of *April* A. D. 18*74*

W. S. Boyce Clerk Circuit Court.

By

J. C. McCorrinn

Deputy.

RETURNABLE
TO
JEFFERSON CIRCUIT COURT.

May TERM, 1872.

John Veith

vs

M. McNamee

Henry Helbriand

Peter Jennie

John Stuckinger

(original)

Sherriff fee \$4.00

I Executed this Writ in Jefferson County Mo
on the 23rd Day of April 1872 in
obedient obedience by Delivering to him three
copy of this Writ and Petition as furnished
to me I further Executed this Writ in
Jefferson County Mo on the same day
by Delivering ~~to~~ to Henry Helbriand
John Stuckinger and Peter Jennie
three copy of this Writ

John Williams Sheriff

John Vuth Plaintiff
Against
Michael McNamee,
Henry Stubbins,
Peter Jenni and
John Stubbins,
Defendants

In the Wapenong
County Circuit
Court.

Now at this day come
said Defendants and for answer
to the petition of the plaintiff heretofore
filed in this behalf say that
they admit that they and Plain-
tiff executed the note mentioned
in said petition and that Plain-
tiff was compelled to pay and did
pay the sum of money as therein
alleged. But Defendants deny
that said note was given for money
borrowed by the Plaintiff and these
Defendants jointly for the
purpose of building a Catholic
Church or for any other purpose
but they aver that Plaintiff bor-
rowed said sum of money for his
own use and benefit. They
deny that at the time said note
was signed or at any other time
it was agreed between the parties to said

he should collect on account of
subscriptions or donations made by
various parties to build ^{the said} Church
~~to~~ the payment of said note and
that long before suit was brought
thereon as alleged by Plaintiff
he had collected from the donors
of said more than enough
to satisfy said note and interest
but which he failed to apply
in that way in violation of his
agreement of record. Therefore
Defendants own that said note
has been paid by the proper party
and the one that really owed the
money and Defendants are
not and should not be held
liable for any part thereof.

John L. Thomas & Co.
Attys for Defendants.

John With

VI

Henry Stelbrink
et al

Answer

Filed Aug 7th 1872

W. S. Pope
clerk

Be it remembered that on this 20th day of July in the year of our Lord one thousand eight hundred and sixty nine it is agreed between E. Amos, Robert Kelly, Henry Stelbrink and John Vieths Managers of the Roman Catholic Church at Hillsboro Jefferson County State of Missouri as parties of the first part and John Vieth as individual party of the second part in manner and form following to wit.

The said John Vieth for and in consideration therein after mentioned with the said party of the first part to Build and finish a House to be used as a Church and to be as the plan and Specification produced on the day above mentioned. Lumber and Material to be first rate quality and the whole is to be completed in good workman like manner and completed to the Satisfaction of the parties of the first part with Exception of Plastering. This work is to be made of the said John Vieth individual party of the second part for the Amount of nineteen hundred dollars and to be Paid as the Money can be Collected.

In witness whereof we hereunto set our hands and seals the day and year above mentioned.

E. Amos manager
John Vieth Contractor
Robert Kelly manager
Henry Stelbrink manager

STATE OF MISSOURI,
COUNTY OF JEFFERSON.

To

Barney Wynn,

John Barry & Fred Hall

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 17th day of September 1872, 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 John Vick is Plaintiff, and Michael McNamee et al.

are Defendant

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

Witness, W. S. BOYCE, Clerk of our said Court, with the seal thereof
hereto affixed, at office, this 5th day of
September A. D., 1872.

W. S. Boyce Clerk.

J. D. McNamee Depk

Veich
vs
M Namei et al

Defks.

Warney, Wyoming,
John Carey
Fred Grall,

Sheriff Fee 1.50

State of Wisconsin
County of Jefferson
I, certify the due return
was shown by reading
the same on the 16. of Sept
1872 L.B. McPherson
Jy. C. Ryan

John Veith
 vs
 Henry Stetson
 Michael McNamee,
 Peter Jennie &
 John Stubinger

In the
 Circuit
 Court of
 Jefferson
 County
 Missouri

Now at this day comes the
 Plaintiff and for Replication
 to the answer filed herein by
 Defendants say it is not true
 as is alleged in said answer
 that this Plaintiff borrowed
 the money stated ^{in the allegation} to have been
 borrowed from John Williams
 for his own use, & benefit ^{the allegation in the answer}
 and Plaintiff denies that it
 was expressly agreed between the
 parties to said note at the time of its
 execution that Plaintiff was the
 Principal therein & Defendants only
 securities & that Defendants were only
 to be liable as securities & not as
 Principals

Plaintiff denies the
 allegation in said answer that
 Plaintiff at the time said note was
 signed agreed with them in
 consideration that they would

1
Sigm said not as securities
to apply the first money he
should collect on account
of donations or subscriptions
made by various parties to
build the said Church to the
payment of said not, and
that long before suit was
brought, thereon as alleged by
Plaintiff he had collected from
the sources aforesaid more
than enough to satisfy said
not and interest but which
he failed to apply in that way
in violation of his agreement
aforesaid

and deny the allegation that said
not was paid by the party who
really owned the money thereon
& pray judgment as in the original
petition

Jos Williams
Atty. for Plaintiff

John Veith
vs
Henry Stelbrink
et al

Replication

Filed Sept. 12 '78)
W. Brooyce, Clerk

STATE OF MISSOURI,

COUNTY OF JEFFERSON

To *John Veitch*

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 *fourth*

, 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 *and bring with you the your accounts and books with the Catholic, Hillsboro Church at Hillsboro, wherein John Veitch is* Plaintiff, and *in names stated*

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

Witness, W. S. BOYCE, Clerk of our said Court, with the seal thereof
hereto affixed, at office, this *17th* day of
September A. D. 1872.

W. S. Boyce Clerk.
By C. M. Horine Deput

Shrift Fee 50

Rich
vs
McNamee

State of Wisconsin }
County of Jefferson } I here by certify that I received the within
subpoena by Reading the same to John Smith
on the 17th day of Sept 1892.

Wm. J. Smith

STATE OF MISSOURI,

COUNTY OF JEFFERSON

To Eugene Amos

To

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 fourth, 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 for which is

Plaintiff, and

M. McNamee & al are

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

Witness, W. S. BOYCE, Clerk of our said Court, with the seal thereof
hereto affixed, at office, this 17th day of
September A. D. 1872.

W. S. Boyce Clerk.

By O. H. Horne Sept

John Verch
In M^{rs} Name et al

For E. Amman

Shuffes 50

State of Wisconsin
County of Jefferson

I certify that I have seen the within
subpoena on E. Amman on the 14th day
of Sept 1892

W. B. Murphy

STATE OF MISSOURI,
COUNTY OF JEFFERSON }

To

Rev Mcmullin

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~~ *fourth*, 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 *John Dick* is

Plaintiff, and

McNamee et al are

Defendant^s, on the part of *Def^t*,
in no wise to fail.

; and herein you are

Witness, W. S. BOYCE, Clerk of our said Court, with the seal thereof
hereto affixed, at office, this *17* day of
Sept A. D. 1872.

W. S. Boyce Clerk.
By C. McNamee *Def^t*

John Veitch
vs
McNamee & Co
For McNamee.

Shuff's fees.

50¢

W. B. Shaw

State of Missouri }
County of Jefferson }
I certify I have the within by reading the
same to R. M. McNamee on the 17th day
of Sept 1892

Wreck
Metbrink et al. 3

The Court declares the Law to be that
1- if the Plaintiff and Defendants signed the
note described in Plaintiff's Petition to
John Williams for the purpose of procur-
ing money to be used in the payment
of debts contracted in the direction of
the Catholic Church in Hillshorn and
if after said money was obtained it
was used for that purpose and if at
the time of signing said note by said
parties the purposes for which said
money was to be used were known
to Defendants and if they signed said
note with the intention of each being
jointly and severally liable to the
holder thereof for the amount
specified therein but as between
them selves ~~but as between themselves~~
and the other signers if the intention was
that each signer should be liable to
pay ^{an equal proportion} ~~one moiety~~ of said debt being one
sixth then in that event it being admitted
by the Pleadings that Plaintiff was compelled
by process of Law to pay the whole of said debt
and costs the Plaintiff is entitled to recover
in this action

2 -

The Court declares the Law to be that if the original Contract between Plaintiff and Amor, Kelly, & Stelbrink as managers for the Catholic Church was abandoned prior to the Execution by Plaintiff & Defendants of the Note to John Williams and if Plaintiff under authority of the Catholic Bishop or otherwise was proceeding to build the Catholic Church in Hillsboro and to collect means for that purpose and if Plaintiff and Defendants with one Robert Kelly either for the purpose of building up & improving said Town by the erection of said building therein or of advancing the interests of the Catholic faith or the convenience of the members of that Church by providing a place of public ~~work~~ worship signed said Note with the view of enabling Plaintiff as collector & builder of said Church to procure means to pay debts contracted for labor and materials used in the construction thereof & if the money realized on said Note was used by the Plaintiff for that purpose then in that event each signer of said Note was as between themselves liable to pay one ~~month~~ or sixth thereof & if the Court so find the finding of the Court should be for the

Plaintiff, unless the Court also further
finds from the evidence that it was agreed
between plaintiff and the other signers to
said note that plaintiff should in
case of being unable to collect means to
pay said note from subscriptions or
donations pay said note himself
as principal or unless the Court finds
from the evidence that plaintiff agreed
with Defendants to pay said note from
such money as might thereafter be
collected from subscriptions or donations
to the exclusion of other debts
which might be due on account of
said Church and that Defendants were
induced to sign said note ~~relying on~~^{by} such
promise and that plaintiff did thereafter
collect from such sources means
applicable under such contract to
the payment of said debt & failed to
pay the same therewith

3-

The Court declares the Law to be that it stands admitted by the pleadings in this case that Robert Kelly one of the signers of the note to John Williams is a non resident of this state and that if the Plaintiff is entitled to recover against the Defendants in this action his measure of recovery should on account of said Kelly's non residence be the same as if said Kelly had not signed the note viz four fifths of the amount of principal interest and costs paid by Plaintiff on said debt due said John Williams with Ten Per cent interest ^{that portion of} on the principal sum of said judgment from the time of payment by Plaintiff & six per cent on four fifths of the interest which had accrued between its rendition & the date of payment as well as six per cent on $\frac{4}{5}$ of the cost paid by Plaintiff, interest to be computed on such interest & cost from the commencement of this suit

Vieth
vs
Stellbrink et al

Filed September 19th / 72
H. S. Boyce clk

John Vith, Plaintiff
 vs
 Michael McNamee
 and others } In the Circuit
 Court.
 Sept. Term 1872

Plaintiff asks the Court to declare
 the law as follows.

1. That if the Court sitting as a jury
 shall find from the evidence that
 John Vith, the Plaintiff borrowed
 the Five hundred dollars from
 John Williams for which he gave
 his note and that Defendants
 signed said note as sureties
 merely and not as principal debtors
 the finding should be for Defend-
 ant.

2. That if the Court should find
 from the evidence that John
 Vith entered into a contract
 with E. Amor, Henry Melbunk
 and others to build a house
 of worship for the use of the
 Roman ~~Catholic~~ Catholic Church
 at Hillsboro for the sum of \$1900
 and that about 24 or eight weeks
 after entering into such contract
 he and the other parties abandoned
 it - that thereupon said Vith

Referred

Defendant
applied to and obtained permission from the Bishop of said Church to solicit donations and subscriptions from the public for the purpose of building such house and that after obtaining such permission he proceeded as mason, contractor and collector without consulting the Defendants or any one else, to build said house and that in the course of the construction thereof he borrowed \$500 from John Williams and he and Defendants ^{a note for that sum} signed ~~the same~~ without any thing being said about who was principal and who security; that the money so borrowed went into the hands of Plaintiff as such Contractor Mason and Collector as aforesaid and expended by him in the construction of said house then the finding should be for Defendants, unless the Court should further find from the evidence that Defendants signed said note as principals and not as securities.

3. If the Court should find from the evidence that the Plaintiff in order to induce Defendants to

Refused
Sigm said note told them he was collecting money by donations and subscriptions to build said house and that he would apply, in the liquidation of said note the first money he should so collect and that afterwards he collected a sufficient sum to pay said note and the interest thereon then it was his duty to apply it in that way and the finding should be for the Defendants.

John Veith

^m
Henry Mettrick
Peter Jenni
M. McNamee &
John Stubinger

In the Circuit
Court Jefferson
County
Missouri

Plaintiff moves the Court
to set aside the finding of the
Court in this Cause, and
grant a new trial for
the following reasons

1st Because the finding and
judgment of the Court
is against the evidence
and the weight of evidence

2nd Because the finding of the
Court is against the Law

3rd Because the Court
erred in giving & refusing
instructions in the case

3
3 Jos. J. Williams
Att. for Plaintiff

John Veith
m.

H. Melbrink
Et al

Motion for
new trial

Filed Sept 19th 1872

W. S. Boyce clk

No.

3811

Jefferson

Circuit Court.

May

Term, 1872

John Vith

vs.

Michael McNamee Henry Melbink
Peter Jennie John Stubinger

Judgment,

-

-

\$

Date

18

Fee Book No.

1

Page

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Judg't Docket,

Page

H. Williams

Plaintiff's Atty.

ATTORNEYS: Exercise care and return promptly.

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