

Jefferson County Circuit Court
Case Files - Civil
January 1873

Box 30 Folder 55

Cowan, John Epes

vs.

Purdy, James S.

Injunction

Enjoin \$371.99 judgment pending
Plaintiff's suit against defendant
in St. Louis for \$10,000 damages

To James S. Purdy:

Take notice, That on Tuesday the fourteenth (14th) day of January 1873, at the Town of Hillsboro, in the County of Jefferson, State of Missouri, the undersigned, John Eses Cowan will make application to the Circuit Court of said Jefferson County, for a writ of injunction, restraining ~~and~~ and enjoining you the said James S. Purdy your agents, attorney's and all other persons from collecting and enforcing the judgment obtained by you in a certain cause, commenced in the Circuit Court of said Jefferson County, the style of which is James S. Purdy vs John E. Cowan, which said judgment was on appeal, affirmed by the Supreme Court of Missouri, for the reasons set forth in the petition, which will be presented to the said Circuit Court of Jefferson County, Missouri, at the time and place aforesaid, when and where you can appear and resist, the issuing of said writ of injunction if you ^{should} see proper so to do.

John Eses Cowan

St Louis Jan'y 6th 1873.

State of Missouri }
Jefferson County }

This affiant Edward B. Cowan
upon his oath says the within
notice is a true copy of the original
notice this day ^{January 13th 1873} delivered by affiant
to James S. Purdy, who received
the said original from this af-
-fiant, and read the same or a
part of the same in affiant's
presence. The said original was
delivered to the said Purdy as
aforesaid in the city of St Louis,
at the office of Myers and Sytton
Attys at Law, in St Louis County
State of Missouri

Sworn to & Subscribed Edward B. Cowan
Before me Jan^y 13th 1873,
W. S. Boyce Clerk Cir Ct.
By A. Thos. Horne Dep^y N

John Eses Cavan, } In the Circuit
 vs Plff. } Court of Jefferson
 James S. Parry, } County January
 Dep. } Term 1843,
 County of Jefferson
 State of Missouri }

To the Honorable the judge of
 said Circuit Court,

The Plaintiff states, that he
 has commenced a suit in the Circuit
 Court of St Louis County, against the
 defendant, to recover damages from him
~~occasioned~~ ^{occasioned} by the false, fraudulent and
 deceitful conduct of him, the said
 defendant, in regard to work and materials
 pretended to have been done and fur-
 nished, by the said defendant, in and
 about the building of a house for the
 Plaintiff, in the County of Jefferson and
 State of Missouri, all which false represen-
 tations, deceit and fraudulent conduct,
 are particularly stated and set forth
 in the Petition, filed by him, now pending
 in the said Circuit Court of St Louis
 County, in which he asks judgment
 for one thousand dollars damages; a
 copy of which Petition, is herewith filed,
 marked with the letter "A", and prayer

to be taken as a part of this petition.

That the plaintiff expects to have a trial of the cause so commenced and proceeding in the Circuit Court of St Louis County at an early day, but, precisely when, it is impossible for him to state and to recover a judgment, on the trial of the same, for the damages claimed against the defendant in said cause.

And the plaintiff further states, that the defendant, herein, recovered a judgment against him in the Circuit Court of Jefferson County, for the sum of \$371.99, and costs of suit, at the September Term 1891 of said Circuit Court of Jefferson County, from which judgment, of the last named Court, the ^{now} plaintiff appealed to the Supreme Court of the State, and filed ^{a transcript of} the record in said cause, in which the now defendant recovered the said judgment against the now plaintiff in the said Circuit Court of Jefferson County, and the same judgment was affirmed in the Supreme Court of the State of Missouri, at the October Term 1892 of the last named Court.

That the plaintiff in this cause,

When said
to the Court
regarding same

has done all he could do, to read
and set aside the judgment of
affirmance in said Supreme Court, at
St Louis when the same sat. The plain-
tiff files herewith a certified transcript
of the judgment of the said Circuit
Court of Jefferson County in favor
of the Defendant Purdy, and against
the plaintiff, marking the same
with the letter "B" and praying
that it be taken as a part of
this Petition.

That the said James S. Purdy received
the said judgment in the Circuit Court
of Jefferson County against the now
plaintiff, by fraud and deceit, and
in consequence, as the plaintiff is informed
and believes, of an unfortunate oversight,
omission ^{what omission} and mistake, in pleading on the part
of the then Defendant, in the Cause,
and now plaintiff in this Petition.

That the defendant in this cause is insolvent, and nothing can be made out of him by legal process, that as the plaintiff is informed and believes, and so charges the fact to be, the defendant with intent to hinder and delay his creditors, and to prevent the plaintiff from receiving and realizing the sum for which the plaintiff expects to receive judgment in the action, pending as aforesaid, in the Circuit Court of St Louis County, wherein the plaintiff sues the defendant, for damages as hereinbefore stated, on or about the nineteenth day of September

1869, by deed conveyed to ^{his} the defendants
brother, Edward M. Purdy, a grant or
conveyance of land, which had been previously
conveyed by the plaintiff, to the defendant,
by deed, dated May 1st 1869, which
will appear by copies of the conveyances,
or deeds, dated as last aforesaid,
which copies are herewith filed,
and marked, respectively, "C" and
"D", and prayed to be taken as a
part of this petition.

That the said defendant, James
S. Purdy, has and out an Execution
upon the judgment recovered by him
in the Circuit Court of Jefferson County,
against the now plaintiff, and is
about to execute the same, by seizing
the property of the now plaintiff,
and selling it in satisfaction thereof.
That the said Execution is now in
the hands of
the Sheriff of said Jefferson County,
and will be executed by him
unless the said James S. Purdy
shall be restrained and enjoined
from proceeding therein, that if the
said James S. Purdy, shall be
permitted to proceed to obtain

satisfaction of his said judgment,
against the plaintiff, the plaintiff's
action pending as aforesaid in the
Circuit Court of St Louis, County,
will prove wholly unavailing and
the damages which he ^{has sustained and} expects to
recover, in the said action will be
lost and the cause of action stated
in said Civil action, together with
the necessary expense to be incurred
by the plaintiff, in the prosecution
of said Civil action, will be wholly
lost; that the plaintiff is unmedius,
except in a Court of equity where
fraud, mistake, accident, hardship
and injustice, not adequately unmedius
in a Court of law, are cognizable and
relievable, and from which the writ
of Injunction to stay legal proceedings
is, in proper cases, issuable.

In tender consideration of the
premises, the plaintiff prays, the
Court, to make an order for
awarding, to him, the plaintiff,
the writ of Injunction, to be issued
according to law and directed, to
the proper officer, in such case
made and provided, commanding,
restraining and requiring the said

James S. Purdy, and all other persons,
his agents and attorneys, from proceed-
ing any further to execute said exe-
cution, ~~pending~~ ^{during} the pendency, and
before the trial and determination of
the said civil action, commenced
by the plaintiff against the
said defendant James S. Purdy,
in the Circuit Court of St. Louis,
County, and therein now pending
and undetermined, as hereinbefore
stated.

And the plaintiff further prays,
that the said defendant, James
S. Purdy, be made a defendant to
this petition; that summons be
issue from this Court, according to
law, to bring him, the said James
S. Purdy, ^{into court} to answer all and sing-
ular the allegations contained
in this petition; that, upon satisfac-
tory proof of the material allegations
in this petition made, and upon the
verdict of the damages claimed
by the plaintiff in the said civil
action pending as aforesaid
and satisfactory evidence thereof
this Honorable Court may be pleased

to order, adjudge and decree, that the
said defendant, James Purdy, be
perpetually restrained and enjoined
from proceeding, by execution or otherwise,
to obtain satisfaction of the said
judgment of the Circuit Court of
Jefferson County in his favor and
against this Plaintiff, and for
such other and further relief, as
the Plaintiff may be entitled,
in equity and good conscience,
to receive, by the order and decree
of this honorable Court.

John Epes Cowan
Plaintiff
by J. H. Davis,
his Counsel

State of Missouri }
Jefferson County } ss

John Epes Cowan who is the
Plaintiff in the above and foregoing
petition for the writ of injunction and
general relief against the defendant
therein named James Purdy upon his
oath says that the facts as stated
in the said petition are true to the
best of his knowledge information
and belief and that unless the writ of

Instruction prayed for in said petition
be granted, ordered & issued as prayed
for he the said Plaintiff will suffer
and sustain irreparable damage,
loss and injury. - Deper. Bourne

Subscribed and sworn to before
me this Third day of January
AD 1873

Witness my hand and the
Seal of the Circuit Court of
Illinois County -

Proctor

John Esas Cowan }
vs } In the Circuit Court
James S. Purdy } of St Louis County,
Jefferson Term, 1873.

~~To the Honorable the Judge of the Jefferson
County Circuit Court~~

The Plaintiff states, that on or about,
the 1st day of May 1869, he sold and
^{to the defendant,} conveyed by deed, a piece of land, situ-
ate in Survey 2005, Township 42, Range
6, East, in Jefferson County, Missouri,

for the sum of fourteen hundred dollars
(1400.00), which sum the said Purdy, then
and then ^{being a house carpenter} agreed to pay the Plaintiff
for the said land in carpenters
work & ^{suitable} materials, to be furnished and
executed by the said Purdy on a
building which the Plaintiff was then about
^{to commence to build} erecting in the said County of Jefferson:
that the defendant, in part performance
of his said agreement with the Plaintiff,
~~shipped~~ sent and conveyed some materials,
on the cars of the Iron Mountain Railroad,
to Hinsdale, in said County, which he
grandulently and falsely valued at the
sum of one thousand and fifty one dollars

and twenty cents (\$051.20), to wit, on or about
the ^{said} 1st day of May 1869, and then and
then, falsely, fraudulently & deceitfully,
induced the plaintiff to believe, that
the materials so sent and conveyed
were suitable to be put into the
plaintiff's said house, and were, then
and there, worth the said sum of
one thousand and fifty one dollars
and twenty cents (\$1051.20), he
the said defendant, then and there,
being a carpenter, and as such, then and
then ^{well} knowing that the said materials
were neither suitable to be put into the
said building, nor worth the said sum
of one thousand and fifty one dollars
and twenty cents (\$1051.20), and that the
same were not worth above one half of
the said sum; that the plaintiff crediting
in the said false deceitful and fraudulent
representations of the defendant in relation
to the suitability and value of the
materials so sent and conveyed by the
defendant delivered his deed of conveyance
for the said land to the defendant and
he the said defendant entered into the
possession thereof and afterwards conveyed
the same to Edward M. Purdy, and the

Plaintiff in fact further says that the said Defendant fraudulently, falsely and deceitfully induced the Plaintiff to believe that the said materials to wit and conveyed as aforesaid were suitable and proper to be used in the building which the Plaintiff was then about to erect and of the value of the said sum of one thousand and fifty one dollars and twenty one cents and procured and induced the Plaintiff by fraud, deceit and false representations in regard to the suitability and value of the said materials for the said purpose to deduct the said sum of one thousand and fifty one dollars and twenty cents from the said price ^{sum of} ~~or consideration~~ fourteen hundred dollars to be paid by the said Defendant for the said land as hereinbefore ^{plaintiff says} stated.

By means of the premises ^{plaintiff says} he has been injured and sustained damage to the amount of one thousand dollars for which he asks judgment.

"11"

John E. Cowan, }
vs. Plff }
James E. Purdy, }
Def. }

Damages.

In the Circuit Court
of St Louis County

J. B. C. Davis,
for Plff.

State of Missouri, ss.

Be it remembered that heretofore, to wit, on the 28th day of October A.D. 1872 there was filed in the office of the Clerk of the Supreme Court held at St. Louis of the State of Missouri, a transcript of the record and proceedings of the Jefferson County Circuit Court in a certain cause of which transcript the following is a part to wit:

State of Missouri } ss.

County of Jefferson } Be it remembered that heretofore on the sixth day of January A.D. 1870. James S. Purdy filed in the office of the Clerk of the Circuit Court within and for said County his petition in words and figures as follows, to wit:

"Petition"

James S. Purdy Plaintiff } In the Circuit Court of Jefferson
Against } County Missouri May Term. 1870.
John Epes Cowan Defendant

The Plaintiff states that the Defendant is justly indebted to him, after all just credits have been given, in the sum of Three hundred and fifty three dollars and fourteen cents and that the particulars of the account and demand of plaintiff against the defendant is as follows: To wit:

"Kennesaw Nov 25th 1869

J. E. Cowan

To James S. Purdy Dr.

June 10. To 25 pieces 2 x 10 = 16. 676	}	995. 2 1/2 = 24. 87
" " " 20 " 2 x 6 = 16 320		
" " " 30 " 2 x 10 = 18 900 2 3/4 = 24. 75		
" " " 80 ft 3 ^d — 2 3/4 = 18. 00		

"	"	"	Hauling		1.50
"	"	"	508 ft 2 nd dressed m'w 5 1/2	-	27.94
"	"	"	312 " 2 nd " 1 1/2 6	-	18.92
"	"	"	504 " 2 nd " 2 in 6 1/2	-	32.76
"	"	"	304 Plained Box	3 1/2	10.64
"	"	"	200 ft Sub plank	1 1/2	3.00
"	"	"	75 pieces 2x6-12	900-2 1/2	22.50
"	"	"	Ripping joist & Bridging	-	4.60
"	"	"	300 ft fencing	2 1/4	6.75
"	"	"	200 ft 3 rd	-	4.50
"	"	"	8 pieces 2x10-18	240-2 3/4	6.60
"	"	"	10 " 2x8-12 = 160	496-2 1/2	12.40
"	"	"	16 " 2x8-16 = 336		
"	"	"	96 ft Moulding	@ 4-	3.84
"	"	"	16 M. & W. I. Shingles @ 5.00		80.00
"	"	"	Hauling		3.50
July 30	"	"	134 ft W. P. flooring	5-	6.70
"	7	"	26 pieces 2x6-12 = 312	502-2 1/2-	12.55
"	"	"	10 " 2x8-14 = 190		
Sep 7	"	"	Hauling		75
"	11	"	300 ft dressed clear	6	18.00
"		"	Hauling		75
"	30		182 ft pine dressed clear	6-	6.90
			Hauling		.50
					<u>\$353.14</u>

And the plaintiff states that the said lumber and materials and work and labor as specified in the above account was sold and delivered by plaintiff as original contractor to the defendant at

his request and was furnished for, and used by him in the construction of a large two story brick building erected upon the land of the defendant, John Eyles Cowan which land is described as follows, To wit: Lot number seven part of United States Survey number two thousand and five in Township No. forty two of Range No. Six East, containing about 100 acres and situate in Jefferson County in the State of Missouri. That the land aforesaid and the building situate thereon are owned by the defendant John Eyles Cowan, And the plaintiff states that on the 27th day of November 1867 and within six months after the lumber and materials aforesaid had been furnished to Defendant, and after such indebtedness had accrued, he filed in the Clerk's office of the Circuit Court of Jefferson County aforesaid, a just and true account of the demand due the plaintiff from the Defendant, after all just credits had been given him (a copy of which account is herein above stated) and also a true description of the land upon which said building was erected, or so near as to identify the same, and upon which building and the land, on which the same is situate to the extent of one acre the lien is intended to apply, and also the name of the owner of said building and the land on which the same is situate in order to avail himself of the benefits of the provisions of Chapter 195 of the Revised Statutes of Missouri of 1865, and to obtain a lien on said building and the land to the extent of one acre on which the same is situate to secure the payment of the indebtedness of the defendant as aforesaid, and the plaintiff therefore asks judgment against the Defendant for the sum of three hundred and fifty three dollars and fourteen cents, and the interest thereon, and that his lien aforesaid be enforced against said

building and the land on which the same is situate to the extent of one acre and that the same be ordered to be sold for the payment of such judgment as may be rendered according to the provisions of the Statute in such cases made and provided.

Abner Green Attorney
for the Plaintiff.

Abner Green attorney for the plaintiff makes oath and says the above petition and the matters therein as stated he believes to be true

Subscribed and sworn to before me

this 6th day of Aug 1870

Elias T Honey Clk

By L. H. Alford Deputy

Abner Green

Atty for Plaintiff.

Endorsed

"Filed Aug 6th 1870 E. T. Honey Clk."

Second

Amended

Answer

James S Purdy Pltff

vs

John Ephes Cowan Deft

In the Circuit Court of Jefferson

County, Missouri September 1871

Term.

For second amended answer defendant by leave of court says:

He denies that he is indebted to plaintiff in the sum of three hundred and fifty three and $\frac{14}{100}$ dollars, or in any other sum, or any account whatever: -

He admits that he received of plaintiff the items set out by pltff. in the account filed with his petition and at the prices therein specified except the item of 304 feet second rate dressed 2 inch stuff unit to 32 dollars and 76 cents, which item deft denies that he ever received. But defendant denies that said lumber, materials, work and labor or any of them as set out by plaintiff was furnished to deft by pltff as original contractor for the erection of the building in his petition

specified. He denies that pltff was ever employed by him as original contractor for the erection of the building specified by pltff in his petition, or in the erection of any building on the lands of deft. or any place else. He avers that pltff was never employed by him to do any work for him in the erection of a two story brick building, or of any building on the deft's lands, in any capacity other than that of a day laborer, at a specified rate per day. Deft denies that he is owner of the land described by pltff, or that he was the owner thereof at the date at which pltff claims to have erected the building described by him in his petition. He denies that a large two story brick building or any building was erected by him on Lot N^o 7, part of United States Survey N^o 2000, Township 40 Range 6 East in Jefferson County Missouri, either in the year 1869 or at any other time. He denies that within six months after the alleged furnishing and expending of the lumber, materials, work and labor or within four months thereafter, pltff filed with the Clerk of the Circuit Court of Jefferson County Missouri a just and true amount of any demand due him, after all credits had been given: or that he then and there filed a true description of any property, or so near a description as to identify it, upon which the building or any building described by him is situated, to the extent of one acre, or that he then and there filed said statement with the name of the owner of said building and of the land on which the same is situated. Defendant also denies that pltff commenced an action on said account within ninety days after the alleged filing of the same. He denies that Pltff is entitled to the benefit of the provisions of Chapter 195 of the General Statutes of this State, because he says that pltff has

not complied with its provisions in manner and form as therein required. He denies that plaintiff is entitled to a lien upon any building of deft. or to the land on which the same is situated to the extent of one acre or to any extent, to secure any alleged indebtedness of Deft to Pltff. He denies that the plaintiff is entitled to judgment against him in the sum of three hundred and fifty three dollars and fourteen cents or in any other sum and he denies that the plaintiff is entitled to have the lien claimed and set up by him enforced against the building described by pltff on the land described by him or on any part of it, or to an order that the same or any part thereof be sold for the purpose set out by him or for any other purpose. As a counter claim existing in favor of defendant and against the plaintiff arising also on contract and existing at the commencement of this action defendant states That on or about the first of May 1869 at the special instance and request of plaintiff he sold and conveyed to him a tract of land for which pltff promised and contracted to pay him fourteen hundred dollars: that on or about the — day of November 1869 he sold and delivered to pltff at his instance and request six (6) mules for which pltff promised and contracted to pay him the sum of twenty dollars. That on or about the — day of July 1869 he paid to pltff's use and at his request the sum of thirty four dollars and 60 cents for freight: That on or about the — day of — 1869 at the special instance and request of pltff he furnished horsefeed and pasturage to plaintiff which was reasonably worth twenty dollars: all amounting to the sum of fourteen hundred ^{and} eighty nine dollars

and thirteen cents, inclusive of interest on \$348 ⁸⁰/₁₀₀ thereof at ten per cent per annum for five months: that plaintiff has paid defendant on said account the sum of twelve hundred and seventy two dollars and sixty seven cents, leaving a balance due by plaintiff to defendant of two hundred ¹⁶/₁₀₀ sixteen and ⁴⁶/₁₀₀ dollars - the particulars of all of which items, together with the credits thereon will appear by an account herewith filed for which balance of 216 ⁴⁶/₁₀₀ dollars the defendant asks judgment - with costs of this action.

Peppin Williams & Reynolds
Attys for Def.

1869 James S. Purdy

May 1st To John E. Cowan Cr Dr

To amount of first instalment of purchase money
of a tract of land \$1,052.00

1869 May 1st To amount of second instalment of such
purchase money 348.00

" 5 Months interest on two notes for such second
instalment of purchase money each for
\$114 ⁰⁰/₁₀₀ bearing 10 percent from May 1st 1867 14.50

Nov 1st 1869 " 6 Sills sold said Purdy by said Cowan 20.00

1869 " Horsefeed & pasturage furnished said Purdy
by said Cowan 20.00

1869 " Amount for freight paid by said Cowan
for said Purdy. 34.60

Am't carried forward \$1,487.10
Cr Dr

To am't of debts brought forward \$1,487.10

1869	By 82 1/4 days work on house	\$370.12
"	2 pairs door jams @ \$2.00 each	4.00
"	3 door frames @ \$7.00 "	21.00
"	8 Box window frames @ 6.25 "	50.00
"	8 Window sills @ 85¢ "	6.80
"	15 Window frames	125.75
"	2 pairs plain door jams	4.00
"	3 door 3 door frames	42.00
"	9 doors @ \$10 each	90.00
"	76 brackets	76.00
"	15 pairs sash	40.00
"	1 front door frame incomplete	16.00
"	200 feet of cornish	60.50
"	finish	37.12
"	painting done	11.00
"	Amt of Bill for materials sued in in this case except 504 ft of second rate dressed 2. in stuff @ 6 1/2¢ amounting to \$32.76 leaving amt due on said bill	<u>328.38</u>

\$1,272.67 - 1,272.67

Balance due Cowan =

\$276.46

Endorsed "Filed Sept 23^d 1871 W.S. Boyce Cl"

In the Circuit Court Sept 26, 1871

Record.

James S. Purdy }

John E. Cowan }

Now come plaintiff by his attorney and
with leave of Court files his replication

"Replication"

James S. Purdy Plaintiff } In the Circuit Court of Jefferson
against } County Missouri Sept Term 1871
John Eges Cowan Defendant)

The plaintiff for replication to that part of the Defendant's second amended answer filed the 23^d of September 1871, which sets up a counter claim, denies that he bought said lots of land from defendant on the 1st of May 1869, but admits that on the 1st day of February 1869, he purchased of Defendant some three lots of land for \$1100⁰⁰ and soon afterwards he enlarged the size of said lots, and they fixed the price at \$1400⁰⁰ at the same time. February 1st 1869 Plaintiff agreed in said written contract to do certain specified work for defendant on his brick building at prices therein specified, which written contract was signed by plaintiff and defendant. Afterwards on the 1st day of May 1869, Plaintiff and defendant had a settlement for the work done by Plaintiff according - said contract and for lumber and materials furnished by Plaintiff for the same - and by which it was ascertained that Plaintiff's labor on said building and materials furnished amounted to \$1,052⁰⁰ a thousand and fifty two dollars and deducting the same from the \$1400⁰⁰ for said lots left the sum of \$348⁰⁰ due defendant - and for which sum, Plaintiff gave his two promissory notes for \$174⁰⁰ each to defendant and which were secured by a deed of trust on said lots. As defendant at that time May 1st 1869 gave plaintiff a deed for said lots of land, which is the same land referred to in Defendant's answer - and plaintiff therefore states that he and defendant on said first day of May 1869, had a full settlement of their accounts and by which Plaintiff's cost and labor and materials furnished amounting to \$1,052⁰⁰ were

credited on the claims of \$1400⁰⁰ for said lots as a payment thereof and the notes given for the balance \$348⁰⁰ were paid by Plaintiff to Defendant in November 1867, in work on Defendants Building, and the notes were taken up. And Plaintiff denies that he owes defendant \$1400⁰⁰ or any part of it, for said lots and denies that said claim or said accounts up to May 1st 1867, are open for further investigation. And plaintiff denies that he owes defendant \$1052⁰⁰ (stated in his answer as the first instalment) or any part of it, and denies that he owes defendant \$348⁰⁰ (the second instalment) or any part of it - and plaintiff denies that he owes Defendant \$14.53 or any other sum for 5 months interest on said two notes of \$174.00 each or for any interest, and plaintiff denies that he bought six sills of defendant and agreed to pay him \$20 for them, but Plaintiff admits he got said sills and was to pay what they are reasonably worth which is about \$14.00, and plaintiff denies that he owes defendant \$20 for horse feed and pasture of horse - and plaintiff denies that he owes defendant \$34.60 for freight, and denies that he agreed to pay him anything for freight - and plaintiff denies that he owes defendant \$1489.13 or any part of it or any interest on \$348.80, or any interest whatever. And plaintiff denies that he owes defendant \$216.46 as a balance on accounts or any sum whatever; and denies that he owes any of the items stated in defendants Bill of Particulars. And plaintiff states the work and labor defendant credits him with in his Bill of particulars was all (except the first item of 82 1/4 days work at \$4.50 per day) settled in the settlement made on the 1st day of May 1867, and was work done by the job. The 82 1/4 days work and labor was done after said settlement and was

work done by the day, and went in payment of said notes and overran the same by \$22.12 which defendant yet owes. Plaintiff therefore prays judgment against defendant for the sum of three hundred and fifty three dollars and fourteen cents and the interest thereon as in his original petition prayed,

Green & Thomas

Attorneys for Plaintiff

Endorsed Filed Sept 26th 1877

W. S. Boyce Clk.

Judgment.

James S. Purdy

vs

John Epes Corvan

Now at this day comes the parties aforesaid by their respective attorneys and thereupon comes a jury to wit: Thomas A. Williams, Thomas Shelton, Thomas Owens, N. B. Williams, Albert Eaves, R. E. McCreery, C. E. Turner, Richard Maupin, J. J. Williams, James C. Williams and Washington Williams. Eleven good and lawful men of the body of the county (the parties agreeing to excuse A. Haessel (who was sworn on said panel) and to try the cause with that number) who were elected tried and sworn to well and truly try the cause and a true verdict render according to law and evidence, and after having had hearing of the evidence and argument of Counsel return into Court here the following verdict, to wit: "We the jury find a verdict in favor of plaintiff to the amount of \$371.97. (signed) Charles E. Turner foreman." It is thereupon considered by the Court that said plaintiff have and recover of and from said defendant the aforesaid sum of Three hundred and seventy one and ⁹⁷/₁₀₀ dollars the amount so found by the jury as aforesaid

was with a lot of other lumber. I purchased a tract or lot of Land of Defendant in the latter part of — 1869 for \$1100, and agreed in writing to deliver him a certain specified amount of articles for his building. Afterward this contract was superseded by another contract by which I agreed to pay Defendant \$1400⁰⁰ for a larger Lot of Land (Here plaintiff produced the written contract, and plaintiff's counsel proposed to read it in evidence — and to which Defendant's counsel objected for the reason that said written contract is the foundation in Plaintiff's reply to the offset or counter claims of Defendant, and is not alleged to be lost or destroyed, and is not filed with the pleading — and the written contract is not stamped). The Plaintiff's counsel then withdrew the written contract (as it had been superseded by a verbal contract) and did not read it, or offer further to read it in evidence. — Witness then proceeded to state that he made a verbal contract with Defendant by which he agreed to pay him \$1400 for a lot of Land. (But Defendant objected on the ground that Plaintiff's reply stated that he agreed in February 1869, in a written contract to pay Defendant in part by delivery of certain articles for his house &c. — and that it was incompetent to prove a parol contract &c. But the court overruled the objection — and Defendant at the time excepted.

Witness then states. That on the 1st of February 1869. I purchased some three lots of land of Defendant for \$1100⁰⁰ and soon afterwards we changed the contract and I agreed to pay him \$1400⁰⁰ for the lots, as we enlarged the size of the lots. That I was to deliver to Defendant certain articles such as doors, window frames, sash, joints, frames, cornice &c to be

used in building Defendant's house in part payment for said lots of land. I was to deliver these at the depot in St. Louis. But I afterwards did deliver these articles at the depot in Kilmorwick. And the articles, lumber &c. were received by Defendant and hauled from the Railroad by his wagons and put in Defendant's barn. Afterwards on the 1st day of May 1869. I and defendant had a settlement by which we estimated the lumber and materials put in Defendant's barn at \$1052.⁰⁰, and defendant then gave me credit for that amount by deducting it from the \$1400.⁰⁰ for the land which left a balance of \$348. due defendant and for which sum I gave him my notes for \$174.⁰⁰ each. At the same time Defendant gave me a deed for said Lots of Land, and I gave him a deed of trust on said Lots to secure the \$348.⁰⁰. Defendant agreed at this time, that I should have the right to pay these notes of \$348. in carpenter work on his House, at \$4.50 per day. Afterwards in November 1869. I had a settlement with Defendant for my work on his building, by which it was ascertained that my work amounted to \$70 over the amount of the said two notes. Defendant then gave up the notes to me, and made a memorandum on one of the notes of \$70 due me, for work. That this settlement in November 1869 was final and complete for the land contract, and for my work done on the house. But the lumber sued for was not settled, and has never been paid for.

J. E. Cowan

To sustain his defense the Defendant was sworn on part of the defendant and testified as follows:

My name is John Epes Cowan and defendant in this case. The plaintiff never delivered to me the 504 feet of lumber mentioned in the account filed with his petition, nor did I

ever receive it or any part of it from him. Sometime in November 1869 I sold and delivered to plff and at his request six pigs for which he was to pay me \$20. he has never yet paid it; he also pastured and fed his horse at my place for some three months, which is worth \$20 and which he has not paid. And in April or May 1869 I paid \$34⁰⁰ freight for him, and at his request which he has never paid. In May 1869 Plff bought of me a tract of land for which he was to pay me \$1400⁰⁰ in work materials or money as might afterwards be found convenient.

Ques. In your answer you charge Plff with \$1052. for land sold him; please state whether Plff was to furnish lumber and materials in payment of that sum and if so whether he furnished the whole amount he agreed to furnish or not? The Plaintiff objected to this question for the following reasons: 1st Because the charge in the answer is \$1052. for land, and the Defendant has no right to show now that the Plff agreed to furnish lumber and did not do it. 2nd I was irrelevant, illegal and incompetent. The Court sustained the objection to the question so far as it called for an answer that all the lumber and materials which the Plaintiff agreed to furnish and did not furnish but overruled the objection to that part of the question in reference to the Plff agreeing to furnish materials and lumber in payment of the land to which rulings of the Court the Defendant then and there excepted.

Ans. The Plff agreed to furnish materials and lumber to the amount of \$1052.

Ques. Did Mr Purdy ever pay for the Land?

Ans. No.

Ques. How much does he now owe you on it?

Ans. Fourteen hundred dollars less the credits given in my answer and also for freight, horse feed and the sills.

Ques. Mr Purdy stated in his testimony that \$1052 of the purchase money for the land was paid you by him in materials and lumber is that so or not?

Ans. It is not so.

Ques. State whether Mr Purdy furnished all the materials and lumber which he agreed to furnish and represented were in the barn?

The Plaintiff objected to this question for the reasons that there was no allegation in the answer charging that Plff agreed to deliver materials and lumber and had failed to do it and because it was illegal, incompetent and outside the issues in this case, and the Court sustained the objection and the Defendant at the time accepted to the ruling of the Court in sustaining Plaintiff's objection to said question.

Ques. Explain how it was that Mr Purdy gave his notes for \$348 each for \$174.

Ans. The first day of May 1869 I sold Mr Purdy a tract of land for \$1400. He had in my barn a car load of materials for a house or houses which I was about erecting at Kimsuswick in this Co. These materials he was to deliver to me as the house required, such as were suitable to the building retaining the balance for his own use.

Ques. Did Mr Purdy furnish all the materials which he agreed to furnish?

This question was objected to by plaintiff for the reasons that defendant charged in his answer is for land and he cannot recover for materials, which plaintiff might have agreed to deliver

and did not deliver. And the Court sustained the objection to which ruling of the Court the Defendant at the time excepted.

Ques. Was Plff to pay you any portion of the purchase money in materials and lumber and if so did he do so?

Ans. He was. He had a car load of lumber in my barn which he represented to me to amount in value to \$1052 and he showed me a bill of the materials and lumber showing that amount and I agreed to take \$1052 of the purchase money in such material as might be suitable for my house but— Here the plaintiff objected to Defendant's stating anything in reference to Plff's failure to deliver lumber and materials which he represented to be on hand and agreed to deliver, and which were not on hand, or which he did not deliver for the reason that there is no charge in the answer or in the pleadings in reference to Plff's misrepresentation as to the amount of materials on hand or his failure to deliver materials which he agreed to deliver and because such statements incompetent and irrelevant. And the Court sustained the objection and directed the Defendant not to state anything in reference to Plaintiff's misrepresentations as to the amount of the materials in the barn or his failure to deliver materials which he agreed to deliver but that the witness could state fully the whole contract in reference to the sale of the land and the agreement to furnish materials in part therefor, to which ruling of the Court the Defendant at the time excepted. The above question was again asked, same answer made, same objections, and same rulings and same exceptions taken. This was repeated five or six times.

Ques When was this land sold to Purdy and how was

it to be paid for?

Ans. It was sold to him on the 1st day of May 1869. It was to be paid for in materials and lumber and if Mr Purdy chose in work at his discretion.

Ques. Was it to be paid for at the time of sale or was the lumber materials and labor afterwards to be furnished in payment for it?

Ans. It was to be furnished in payment of it afterwards.

Ques. Was the consideration ever paid, if so how?

Ans. It was not. A part of it was paid and a part was not. I received from Mr Purdy on May 1st 1869 two notes for \$174 each in part payment for said land. I gave Mr Purdy a deed for the land on that day, and he gave me the said notes for \$348. in the aggregate and gave me a deed of trust on the land conveyed to secure them.

Ques. How much of the consideration of that land was afterwards to be paid in lumber materials and work, exclusive of the amount of the two notes?

Ans. \$1052, and he had the privilege of paying the whole of the consideration in work on the house and materials to go into it.

Ques. At the time you received these notes from Purdy and conveyed him the land was there or was there not a settlement between you on that day?

Ans. There was ^{not} a settlement that day the account for the first time was opened on that ^{day} between Purdy & myself.

Ques. Why did you take these notes on that day?

Ans. Because Mr Purdy agreed to deliver me materials then in my barn but in Mr Purdy's possession such as were suitable to go into my house to the amount of \$1052, and if suitable

materials were not then there he was taking others and furnish them to me for my house. These two notes were for the balance of the purchase money and they were to be paid in work or labor or money as he chose. the account between myself and Mr Purdy commenced to run that day.

Ques. How much of that \$1052 which Purdy agreed to pay in materials &c did he actually pay?

The Plaintiff at this time objected to this question because there is no charge in the answer for materials which Plaintiff agreed to deliver and did not deliver, and because the answer claims for land and not lumber and materials and because it was incompetent irrelevant and illegal, and the Court sustained the objections to which rulings of the Court the defendant at the time excepted.

Cross examination of John Epes Cowan by Plaintiff.

Ques. Did you ever have a settlement with Purdy?

Ans. I never did.

Ques. How did you and he arrive at the fact that \$1052 was to be paid in lumber?

Ans. Because it was represented to me by Mr Purdy that there was already that amount of lumber and materials in his possession which he would deliver to me as I needed them in my house. I come to the conclusion that that amount was to be paid in materials &c from the fact that I agreed to take that amount from him in materials &c.

Ques. Where did Mr Purdy say that the materials were?

Ans. In my barn on my land. that was the same day I sold him the land.

Ques. You say you never received or accepted these materials?

Ans. Yes I say so

Ques. Then you mean to say that your teams hauled these materials from the depot. That your hands put them in your wagons and hauled them over and delivered them to Purdy in your barn on your land?

Ans. Yes sir. My hands took my wagons put the materials in the wagons and hauled them to my barn on my land, where Mr Purdy received them and put them away in my barn.

Ques. You say that Mr Purdy represented to you that there were \$1052 dollars worth of materials in your barn and showed you a bill to that effect. What was done with that sum in reference to the sale & purchase of the land?

Ans. I allowed that amount to remain in his hands to be taken out in such materials as he already had in his possession there, and for such materials as he did not then have on hand he was afterwards to supply as needed.

Ques. How did you arrive at the amount for which the notes were given?

Ans. We arrived at that amount by deducting \$1052 from \$1400 which left \$348 the amount of the two notes.

Ques. Were these notes to be paid in work?

Ans. They were.

Ques. Then why did you not take notes for \$1400 if no materials were then furnished but were to be furnished?

Ans. Because it was a positive agreement between Purdy and myself that the materials he had on hand such as was suitable, were to go into my house and that I was to take such other materials as might not be there. I agreed to leave in his hands \$1052 of the purchase

money, because he was there on the ground and represented that he had almost all that amount of materials there and what was not there he was to supply or if he did not supply it he would make it good to me in money. He told me afterwards that the materials were not all there. At that time I accepted no lumber or materials, and I was to allow for them and was to give credit when they were furnished to my satisfaction and put in my house.

Ques. As nothing was accepted and as it was all sold to be paid in the future why did you not take notes for the whole of the \$1400?

Ans. Because I had faith in Purdy.

Ques. If you had faith in Purdy in reference to his furnishing you \$1050 worth of materials, why did you take his notes for any - why did you not take his word also in reference to working out the \$348?

Ans. Because it was doubtful whether he would work the whole of it out, and in that event he wanted time and I gave him time. Here plaintiff handed witness a receipt dated May 1st 1869, and he stated that he signed that receipt, which plaintiff then read to the jury as follows: "I have this the first day of May 1869 received of James S. Purdy two promissory notes of this date, one due six months after date the other one year after date and each one for the sum of one hundred and seventy four dollars, with interest at the rate of ten per cent per annum and secured by a deed of trust. Now I agree to take payment of said notes from the said Purdy in carpenter's work to be done by himself on a building to be erected under the superintendence of him at a

Receipt

fair prices: and for so much of said sums as may be paid in such work on said building. I further agree to charge no interest provided it shall be done in six months from this date.

J. Epes Cowan.

The witness then went on to state,

Ques. Who put those materials in your house?

Ans. My wagons hauled them under Purdy's directions, he stood at the barn and received them there. I was there at the depot I received the materials at the depot for him at his request because he wrote to me to do so. The first car load of lumber that was shipped on the 29th day of April 1869 was run down on the switch. It was delivered to Purdy at my barn where he received and put it away and then he nailed up the door. Purdy told me at that time that he had \$1052 worth of lumber and materials in the barn. I left in his hands a credit of \$1052. He told me afterwards that the materials called for in the bill which he showed me were not all there and that he would make good the deficiency. The \$1052 I paid Purdy for lumber and materials. I paid him that sum in land. That is I credited the \$1400 for that much which left \$348 the amount of the two notes. I paid the freight charged in my account at Purdy's request. The lumber that it was charged on did not all go into my house, yet the freight on the cars of lumber that went into my barn was included in the amount I charge. The sills were a part of a bill of lumber I sold Purdy. Purdy brought his horse to my place. He ran on my pasture and Purdy used my corn to feed him. The pasturage and feed were worth \$20. I do not claim the interest charged in my account.

Ques. When you first employed your attorneys did you not

tell them that Purdy had paid for the land in full by materials which he represented as on hand and by two notes?

Ans. Yes. I did.

Redirect examination.

Ques. What do you mean by saying that you credited Purdy's account with \$1052, exclusive of the amount represented by the two notes?

Ans. I mean that the \$1052 was to be received in materials and lumber.

Ques. How much did it fall short, if any, that is how much less than the \$1052, did you actually receive?

This question was objected to by plaintiff for the reasons that the matter sought to be elicited did not grow out of the cross-examination, and was not in rebuttal and because the answer sets up a charge for \$1052 for land sold and no charge for lumber and materials which plaintiff agreed to furnish and did not furnish, and because the question was illegal, irrelevant and incompetent, which objections the Court sustained to which ruling of the Court the defendant at the time excepted.

E. B. Cowan

Defendant then called E. B. Cowan who stated I am the son of Defendant. I was living with my father in 1869. About the first of May 1869 my father sold to Mrs Purdy some land for which he was to pay \$1400. My father agreed to take in part payment for the land some materials which were estimated at the time to be worth \$1052. Mrs Purdy represented to my father that he had then in my father's barn materials to go into my father's house which were worth \$1052. This sum of \$1052 was then deducted from the \$1400 which left \$348 for which Purdy gave my

father two notes for \$1000. My father made a deed to Purdy for the land and Purdy gave my father a deed of trust on the land sold to secure the notes.

Ques. Do you know how much lumber or materials were in the barn, and if so how much were - that is did they fall short of \$1052 worth?

This question was objected to by plaintiff for the reason that the charge in the answer was for land sold and the Defendant could not show that the plaintiff had misrepresented the amount of materials on hand or that he had failed to deliver lumber and materials which he had agreed to deliver and because the question was illegal irrelevant ^{and} incompetent and the Court sustained the objections to which ruling of the Court the Defendant at the time excepted.

Ques. Do you know whether or not after these materials were placed in the barn, Purdy hauled off any of them and used them for his own use, if yes state how much he hauled, where he took it to, what he did with it and of what it consisted?

The question was objected to by plaintiff because defendant had in his answer - up no claim for lumber and materials hauled and converted by plaintiff to his own use and because the question was illegal, irrelevant and incompetent, which objections the Court sustained to which ruling of the Court defendant at the time excepted.

Jacob Priester

Defendant then introduced Jacob Priester and the same questions in reference to whether the \$1052 worth of materials were actually in the barn and whether plaintiff used some of them for his own use, to which made same objections as above, the

court made the same rulings and defendant at the _____ excepted.

E. B. Cowan.

E. B. Cowan was then recalled, who stated that he knew from conversations he heard between his father ^{Mr} Purdy that there was no settlement between them on the first of May 1869, that the lumber &c was not on that day delivered to defendant and by the understanding between self & Deft. it was not to be delivered or received until it was used in the house and an absolute receipt and credit for it was not to be given until so delivered and received.

Purdy

The plaintiff was then recalled by himself and stated that the deft hauled over to his house six old sills each 22 feet long in all some five or six hundred feet worth two cents per foot, and that he put the horse in defendant's pasture at defendant's request and suggestion and got just 460 years of corn and feed that to the horse 100 years make a bushel. He never requested defendant to pay any freight for him. The \$34.60 ^{freight} paid by defendant was freight ~~for~~ on the lumber and materials that went into his house and was freight that defendant was bound to pay as self only agreed to deliver these materials at Plum street Depot in St Louis. He stated he was not in Kilmuswick when the lumber and materials were placed in the barn.

Forster.

W^m Forster testified that he knew when Purdy shipped the materials to Kilmuswick from St Louis, and that he knew he remained in St Louis for several days after shipping the materials.

The above and foregoing was all the evidence offered by either party.

The plaintiff then abandoned his claim for a mechanics lien.

At the instance of the plaintiff the Court gave the following instructions to the jury

Plaintiff's
Instructions

1. The Court instructs the jury that if they believe from the evidence in this case that about the 1st day of May 1869, the plaintiff bought land of defendant and agreed to pay for it the sum of \$1400 and at that time both plaintiff & defendant agreed that this sum should be credited with the sum of \$1052 for material furnished by plaintiff prior to that and that plaintiff gave his notes for the balance of the said \$1400 and has since paid said notes, then the jury will not allow any portion of said sum of \$1400 as against plaintiff's claim for lumber sued for.

2. If the jury believe from the evidence that plaintiff has fully paid for the land bought by him of Defendant, and if the jury further believe the item of 504 feet of two inch lumber was worth \$32.75 and was received by Defendant, then all of the balance of Plaintiff's bill for lumber sold and delivered to defendant, having been admitted by defendant in his answer, Plaintiff is entitled to recover the full amount of his bill for said lumber amounting to \$355.14, less such amount of defendant's other offsets pleaded (exclusive of the claim for the land) as the jury may believe defendant has proved, and the jury should allow interest on whatever amount they may find for plaintiff at the rate of six percent from the time this suit was commenced.

3. Although the jury may believe from the evidence that the plaintiff has failed to prove the facts necessary to establish his mechanics' lien yet he is entitled to recover whatever

amount of debt for lumber sold and delivered to the defendant that the jury may believe from the evidence, the plaintiff is entitled to.

4. If the jury believe from the evidence in the case that at the time Defendant sold plaintiff the land the defendant by the agreement of both parties gave credit to the plaintiff for the sum of \$1052 for materials which if the jury believe were estimated to be on hand then that is a payment within the meaning of the law of that sum on the consideration which plaintiff was to pay defendant for the land bought.

To the giving of each defendant objected and excepted at the time.

And the Court at the instance of the Defendant gave the following instructions.

Defendants.
Instructions.

1 As the plaintiff in his reply admits that he purchased the land from the Deft at the price of fourteen hundred dollars to be paid for in work materials and labor and as the Deft admits in his answer that the plttff has paid him on it the sum of twelve hundred and seventy two dollars and sixty seven cents, the burthen of proof is on the plaintiff to show that he has paid the balance of the purchase money.

And the defendant asked the Court to give the following instructions

Instructions
Refused

The Court instructs the jury that if they believe from the evidence that the Deft sold to the plaintiff a tract of land for fourteen hundred dollars and that said plaintiff in part consideration for said land agreed to furnish and deliver to the

said Dft. building material to be used in a house of the Dft. then about to be erected to the amount of one thousand and fifty two dollars and that said plaintiff failed to deliver any part of said material then the plaintiff is entitled to a credit for such amount not delivered against the amount which plaintiff has proven of his account sued on, and if the jury find the amount not delivered together with other items of Defendants offset proven to be due him exceed the amount of plaintiff's claim as proven the jury will find a verdict for the defendant for such amount so proven to be due him.

2. The Court instructs the jury that if they believe from the evidence that the defendant sold plaintiff a tract of land for \$1400 of which sum by agreement \$1052 was to be subsequently to the making of the deed paid defendant in lumber and materials for defendant's house thereafter to be erected and if the jury further believe that Defendant ^{the} plaintiff did not at the time of the making of such deed have a settlement by which said sum of \$1052 was paid by the delivery to defendant of such lumber, labor and materials, but on the contrary if the jury believe that such amount was left in plaintiff's hands with which to thereafter furnish such lumber, labor and materials and if the jury further believe that plaintiff failed to furnish such lumber, labor and materials to the amount of \$1052, inclusive of the amount which he has proven that he furnished of the items of the bill sued on in this action, then the defendant is entitled to recover from plaintiff the balance of the amount not furnished of the \$1052, worth of labor lumber and materials which he was

to furnish in accordance with such contract,

Which the Court refused to give to which ruling of the Court the defendant at the time excepted.

And thereupon jury having heard instructions given and argument of Counsel returned the following verdict.

"We the jury find a verdict in favour of plaintiff to the amount of \$371.99.

(Signed) Charles E. Turner Foreman.

And the defendant on the 30th day of September 1871 the same being the 12th day of the Sept 1871 Term of this Court, the defendant moved the Court to set aside the verdict and grant a new trial by the following motion.

James S. Purdy }

vs

John E. Cowan }

Now comes the defendant by his attorney and files his — to set aside the verdict and grant a new trial.

Motion

for

New Trial

James S. Purdy Plff }

vs

John E. Cowan Deft }

In Circuit Court of Jefferson
Co. Mo. Sept 1871 Term.

Defendant moves for the setting aside of the verdict and for a new trial in the above cause for the following reasons:

First. The verdict is contrary to law.

Second. It is contrary to evidence.

Third. It is contrary to the law and the evidence and the evidence under the law.

Fourth. The Court erred in admitted illegal testimony offered by plaintiff.

Fifth. The Court erred in rejecting legal testimony offered by Defendant.

Sixth The Court erred in giving the instructions given at instance of Plff.

Seventh. The Court erred in refusing instructions asked by deft.

Eighth. The verdict is for the wrong party,
Pipkin, Williams & Reynolds
Attys for Deft.

Endorsed.

"Filed Sept 30th 1871 W. S. Boyce Clk.

And the same being at once taken up by consent of the parties and being by the Court seen and understood, was overruled by the following order.

In the Circuit Court Sept 30, 1871

Record.

James S. Purdy

vs

John E. Cowan

} Motion to set aside verdict and grant a new trial.

Now come said parties and agree to take up said motion, and the same being fully understood. It is considered by the Court that said motion be overruled.

To which action of the Court in overruling said motion and in refusing to grant a new trial the deft at the time excepted. And thereupon afterwards in the same day the Court entered up the following judgment.

(For Judgment see page this transcript)
And on the same day deft filed a motion in arrest of judgment

In the Circuit Court Sept 30, 1871

James S. Purdy

vs
John E. Cowan) Now comes defendant by his attorney and
files his motion in arrest of judgment

In words as follows to wit,

James S. Purdy

vs
John E. Cowan

In Circuit Court

Jefferson Co Mo

Sept 1871 Term.

Deft moves the Court to arrest the judgment in the above entitled cause, because,

First. Under the pleadings in the case the plff does not state a cause of action.

Second. The plaintiff in his replication sets up a defense alleged to be based on an instrument charged by him to have been in writing and not therein alleged to be lost or destroyed and does not tender said instrument and herein does not set up a cause of action and is not entitled to recover.

Third The facts set out by plff are not sufficient to constitute a cause of action nor are they a defence to Deft's counter claim.

Pipkin Williams & Reynolds

Attys for Deft.

Endorsed,

Filed Sept 30th 1871

W. S. Boyce Clk.

And the same being taken up by agreement of the parties and having been seen and considered by the Court was overruled

by the following order

In the Circuit Court Sept Term 1871

October 2^d 1871

Record,

James S. Purdy }

vs

John E. Cowan }

Motion in arrest of Judgment
Now upon a hearing of said motion
and the same being seen heard and fully understood, this
considered by the Court that said motion be overruled,

To which action of the Court in overruling said motion
defendant at the time objected & excepted.

In said Court on the day aforesaid the following
appears of record.

James S. Purdy }

vs

John E. Cowan }

Now come said defendant and files his af-
fidavit for an appeal.

And afterwards to wit on the said 30th day of Sept
1871. the defendant filed his motion and application for an appeal
in this cause accompanied by an affidavit which said application
and affidavit is in words and figures as follows.

Application

&

affidavit

for

appeal

State of Missouri }

Jefferson County }

James S. Purdy pltff }

vs

John E. Cowan defd }

In Circuit Court Jefferson Co Mo
Sept Term 1871.

Defendant by his attorney comes and prays
for an appeal from the judgment rendered by this Court
at this term in the above entitled cause to the Supreme Court

of this State for the reason that he believes himself aggrieved and is aggrieved by said final judgment of said Court in said cause

Reuben Williams & Reynolds
Attys for Deft.

State of Missouri }
Jefferson County }

Now comes John Epes Leowan the defendant in the above entitled cause, and being duly sworn says he is the defendant in said cause, that the appeal prayed for is not made for vexation or delay but because the affiant believes that he (the appellant herein) is aggrieved by the judgment or decision of the said Court.

Sworn to and subscribed
before me this 30th of Sept 1871

W. S. Boyce Clerk
By C. E. Horine Deft.

J. Epes Leowan

Endorsed

Filed Oct 2^d 1871

W. S. Boyce Cl.

And the same being seen and fully understood by the court is by the court granted, to take effect as soon as the Deft. files a bond in the sum of one thousand dollars, as required by law.

And both the Plaintiff and Defendant agreeing and consenting thereto, it is ordered by the court that the Deft enter into bond in the above sum and file the same with the Clerk within 30 days from the adjournment of this term of Court, said bond to be approved by the Clerk and when so approved to be effectual

as a stay of execution as fully and to all intents as if now
here filed in open court and approved by the Court and there-
upon it is agreed between the defendant and plaintiff in
open Court that a bill of exceptions may be made up and
filed in the Clerk's office of the Circuit Court on or before
the 2^d Monday of November 1871 by the following order.

In the Circuit Court September Term
October 2^d 1871

Record.

James S. Purdy

vs
John Epes Cowan

Leave is granted parties consenting to
file bill of exceptions, affidavit and appeal bond on or before
the second Monday of November next. The bond to be approved
by the Clerk in vacation, and thereupon the appeal herein is
granted. It is thereupon ordered by the Court that the Clerk of
this Court make out and send certified to the Clerk of the
Supreme Court of the State of Missouri, a true, complete and
full transcript of the record and proceedings in said cause
with all convenient speed.

In accordance wherewith the Defendant now on this
ninth day of November 1871, at Stanton, Iron County, Missouri, ten-
ders 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 done this 9th of November 1871.

James H. Vail *per*
Judge 16th Circuit

Enclosed:

Filed Nov 11th 1871 W. B. Boyce Clk
by C. E. Hoine Dept

State of Missouri Ss. J. Francis Muir
Clerk of the Supreme Court held at
St. Louis of the State of Missouri certify
that the above and foregoing is a true
copy of the petition, the second amended
~~answer~~, the replication, judgment and
bill of exceptions in the above entitled
cause as fully as the same remain
remain on file in my office.

her

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 23rd day of
December A.D. 1872.

J. Francis Muir Clerk
per J. H. Baird

of
His Deed made and entered into this
nineteenth day of September Eighteen hundred
and sixty nine by and between James S. Purdy
of the City and County of St Louis in the State
of Missouri party of the first part, and Edward
M. Purdy of the same place party of the second
part. Witnesseth: That the said party of the first
part, in consideration of One thousand Dollars,
which paid by the said party of the second part,
the receipt whereof is hereby acknowledged, has
Granted, Bargained and sold, and by these
presents does Grant, Bargain and Sell, Convey
and Confirm unto the said party of the second
part, his heirs and assigns forever; the following
described tract or parcel of land situate in the
County of Jefferson in said state of Missouri
To Wit: Block No. (3) three in Rockport Subdivi-
sion of M. S. Survey No. 2005, consisting of
Lots Nos. One (1) two (2), three (3) and four (4) front-
ing four hundred and sixty feet (460) on
Summit Street by two hundred and eighty
feet deep (280) in Township fortytwo (42) north
Range Six (6) East of the 5th Principal Meridian
as represented by Plat of said Subdivision on
file in the Recorder's Office for said County of
Jefferson, said Block No. three (3) containing
three and forty seven hundredths ($3\frac{47}{100}$) Acres
of land more or less, - and being the same tract
or parcel of land heretofore conveyed to said

James S. Purdy by John E. Brown and
Sarah A. M. ^{his wife} by their deed of date the
first day of May A. D. 1869, recorded in the
said Recorder's Office in Book No. ^{one} at Page 95.

To Have and to Hold the same with all
the rights, privileges and appurtenances thereto
belonging, or in anywise appertaining unto the
said Party of the second part, his heirs and
assigns forever; the said James S. Purdy
Party of the first part, hereby covenanting that
he his heirs executors and administrators, will
Warrant and Defend the title to the said
Premises, and every part thereof, to the said Party
of the second part, his heirs, and assigns -
against the lawful claim or claims of
all and every person or persons, Whosoever
Claiming or to claim the same, or any part
thereof, In Witness Whereof, the said Party
of the first part has hereunto set his hand
and seal, the day and Year first herein
Written, James S. Purdy

"One Dollar Revenue Stamp Canceled"

State of Missouri } ss.
County of Jefferson } Be it Remembered, that
on this Twentieth day of September, A. D.,
Eighteen hundred and sixty nine before
me, the undersigned, Clerk of the Circuit
Court in and for said County & State came

James S. Purdy who is personally known
to me to be the same person whose name
is subscribed to the foregoing instrument
of Writing as party thereto, and he acknowledged
the same to be his act and deed for the purposes
therein mentioned. In Testimony Whereof
I have hereunto set my hand and
the seal of said Court the day and
Year first above written.

Elias J. Honey Clerk
By S. H. Alford Deputy

State of Missouri } S.S.
County of Jefferson } I the undersigned
Recorder of Deeds, in and for said County
certify that the foregoing Deed of Conveyance
is a true and correct Copy of a Deed
recorded in this Office, in Book. No. 1
Page 386. Land Record. Given under
my hand and official seal this 20th
day of December A. D. 1872 -
Geo. L. Johnson
Recorder

This Deed, made and entered into this first day of May Eighteen hundred and Sixty nine, by and between John Epes Corran and Sarah A. W. his wife of Jefferson County Missouri Parties of the first part, and James S. Purdy of St. Louis Missouri Party of the second part Witnesseth; That the said Parties of the first part, for and in consideration of the sum of fourteen hundred Dollars paid by the said by the Party of the second part, the receipt of which is hereby acknowledged, do by these presents Grant, Bargain and sell, Convey and Confirm, unto the said Party of the second part, the following described tract or parcels of land, situate in the County of Jefferson in the State of Missouri. To Wit; Block No three (3) in Rockport Subdivision of M. S. Survey No. 2000, consisting of lot. nos. One (1) two (2) three (3) and four (4) fronting four hundred and Sixty feet (460) on Summit Street, by two hundred and Eighty feet deep (280) in Township forty two (42) North Range Six (6) East of the 3rd Principal Meridian as represented by Plat of said Subdivision on file in the Recorder's Office for said County of Jefferson, said Block No. three (3) containing three and forty seven hundredths (3 $\frac{47}{100}$) Acres of land more or less. To Have And To Hold the same, together with all the rights, immunities, privileges and appurtenance to the same belonging, unto the said Party of the

~~Said party of the second part~~, and to his heirs,
and assigns, forever; the said Grantor John
Epes Leonard and Sarah A. M. his wife hereby
Covenanting that they their heirs, executors and
administrators shall and will Warrant and
Defend the title to the premises unto the said party
of the second part, and to his heirs and assigns
forever, against the lawful claims of all persons
Whomsoever; For Witness Whereof the said parties
of the first part have hereunto set their hands
and seals the day and year first above

Written

Witness - { \$1.50/100 Stamp } { J. Epes Leonard }
{ canceled } { Sarah A. M. Leonard }

State of Missouri } St.
County of Jefferson } Be it Remembered, that
on this First 0 day of - Eighteen hundred
and sixty nine, before me, the undersigned, a
Notary Public duly Commissioned within
and for the County and State aforesaid, Came
John Epes Leonard, and Sarah A. M. Leonard his
wife who are personally known to me to be the same
persons whose names are subscribed to the foregoing
instrument of writing as parties thereto, and they
acknowledged the same to be their act and deed
for the purposes therein mentioned, And she
the said Sarah A. M. Leonard the wife of John
Epes Leonard, having been by me first made
acquainted with the contents of said instrument

of writing, acknowledged on an examination
apart from her husband, that she executed the
same, and relinquishes her dower in the real
estate therein mentioned, freely and without
compulsion or undue influence of her said
husband. In Witness Whereof, I have hereunto
set my hand, and affixed my Notarial
Seal at Jeff. Co., Mo., the day and year last
above Written, Robert H. Hunt
Notary Public.

Filed for Record
and Recorded May 3^d 1869
Clias J. Honey
Recorder

State of Missouri } S.S.
County of Jefferson } I the undersigned Recorder
of Deeds in and for said County Certify, that
the foregoing Deed of conveyance, is a true and
correct copy of a Deed recorded in this Office
in Book No 4. Page 95. Land Record -
Given under my hand and Official
Seal this 20th day of December 1872 -
Geo. L. Johnston
Recorder

3814

John Esau Cowan,

Plff.

vs
James J. Purdy adft

In the Circuit-Court
of Jefferson County -

Petition for injunction

Dated July 14th 1873

W. S. Boyce Esq

Filed
for petitioner,

"Q"

John E. Cawson Plaintiff
2
James S. Puddy Defendant }

This affiant James S. Puddy makes oath and says that he is the Defendant in this suit - that the claim upon which suit has been brought in St. Louis County against him is utterly unfounded: That the lumber he agreed to furnish said Cawson was specified to be delivered at certain prices all of which are delivered to and accepted by said Cawson and all of which this affiant as the Carpenter actually put into the house of Plaintiff except a few items which were left out by direction of said Cawson and during all the time that he was at work on said house the said Cawson made no objection to the quality or quantity of lumber delivered by him: That this affiant never heard of this claim of Cawson until after he had sued said Cawson on the amount due him

This affiant states that he did not
revoke his judgment against
said Cawon by fraud or deceit
but at the end of a most bitterly
contested lawsuit: that he has
not put his property out of his
hands to defraud either said
Cawon or any one else but
sold the lot he owned in Kinn-
wick to his brother for a full
consideration. He states that
he has not unloven to defraud
any one but stands ready to
pay all judgments that may
be rendered against him. He
has good reason to believe and
does believe that this claim of
said Cawon and there suits
commence are commenced
in order to harass ~~say~~ this affiant
and to force him into aban-
don his judgment or compromise
it.

James S. Purdy
Sworn to and subscribed before me, June
14th 1873.

W. S. Boyce Clerk
C. J. Thorne Depy

Dec Jan 14 1878
W. D. Boyce

State of Missouri }
County of St Louis } George W Rippey
of lawful age, being
Sworn upon his Oath, Say "he resides
in the City of St Louis, Lumber
Dealer, that sometime during
the year 1869, he furnished to
James S Purdy, a Carpenter &
builder, a quantity of Lumber
to build a house for John Epps
Cowan in the County of Jefferson
State of Missouri. I further
State that ^{all} of the Lumber so furnished
to go into said house was good
Merchantable Lumber, as good
as could be purchased in the
Market of St Louis.

Sworn to & Subscribed } George W Rippey
before me Jan'y 13 1873 }

D. C. Wainwright
Notary Public
St Louis, County
Missouri

State of Missouri }
County of Jefferson } ss.

This day personally appeared before the undersigned Clerk of the Circuit Court within and for the County of Jefferson in the State aforesaid, William A. Foster, of said County, who having by me duly sworn, deposes and says that he was present some time in the latter part of April 1869, in St. Louis, and helped to load on the Cars a large quantity of dressed lumber and materials for the building of J. Epes Cowan, at Kimmewick in said County, - that Deponent afterwards worked on the building of said Cowan, at the Carpenter work, with James S. Purdy, who had sent said lumber and materials to said John Epes Cowan, and who was then working on said Building as the foreman superintendent workman, - Deponent, as a Carpenter helped said James S. Purdy to work up, and put into the said Building of John Epes Cowan nearly all of said lumber and materials, - that said J. Epes Cowan was present nearly every day while said work was progressing, - and Deponent never at any time heard him make objection to the lumber and materials, so furnished him by said James S. Purdy, as not being suitable for said Building. This Deponent states that

he has thoroughly learned the Trade of a Car-
penter, and as an Architect, - and has worked
in both of those Capacities for many years,
- and he further states that he considers
that all of the ~~lumber~~ and materials so
furnished by said Purdy, and put into
the Building, ~~of said Cowan~~, was good
lumber and material, and in every res-
pect suitable and proper for said Build-
ing. Deponent continued working on said Build-
ing until the fall of 1869, when he and Purdy
had about worked up all of said lumber
and material in said Building, when they
quit work on said Building, said Cowan
was there nearly every day at that time,
and Deponent never at any time, heard
him make any objection to the lumber
and materials so furnished by said Purdy,
and put into said Building, - either, as
to the quality, or quantity of lumber and
material so furnished by Purdy; - And
further Deponent saith not.

Sworn to and Subscribed } Wm A Foster
before me this 11th }
day of January 1873 }

W. S. Boyce Clerk
By C. H. Horine Depy.

Filed Jan'y 14 '98 / 3
W. J. Boyce Secy

State of Missouri }
County of Jefferson } sct

This affiant Edward B. Cowan of the County of Jefferson, and State of Missouri upon his oath says that he has read the Bill and exhibits in the case of John Epes Cowan against James S. Purdy, as the same have been drafted made and prepared by S. G. C. Davis Esq, in order to obtain a writ of injunction to restrain the said Purdy from farther proceeding to enforce a judgment recovered by said Purdy in the Jefferson Circuit Court against the said John Epes Cowan as mentioned in the said Bill or petition; and that affiant knows the facts upon which the civil action, a copy of petition in which, is one of the exhibits alluded to above, and that the facts upon which said action is based, do exist and can be proved by this affiant and other witnesses, as stated in said petition in said civil action; and that the said James S. Purdy is insolvent to the best of the information knowledge and belief of this affiant who knows him.

Subscribed and sworn } Edward B. Cowan
to before this sixth day }
of Jan'y. A. D. 1873

Witness my hand and seal
By E. H. Morris Clerk.

Coran vs Pardy
Affidavit
of
E. H. Coran