

To Florsow County Circuit Court
Case files - Civil
January 1874

Box 32 Folder 31

James, Lewis

vs

Vinyard, Charles

Debt on note

Debt \$140 on note drawn by Peter
Cross and James F. Cross; bill of exceptions

Sheriff's Sale.

By virtue and authority of an execution issued from the office of the Clerk of the Circuit Court of Jefferson county, Missouri, and to me, the undersigned Sheriff, delivered, in favor of Louis James, and against Peter Cross and James F. Cross, bearing date July 11th, 1873, and returnable to the September term, 1873 thereof, I have levied it upon, and seized the following described real estate and property, lying and being in Jefferson county, Missouri, as the property of James F. Cross, and described as follows, to-wit:

Lot 1, block 3, in the town of Victoria, as the same is laid off and described on the plat of said town, now on file in the Recorder's office of Jefferson county, Mo.

And I will, on Tuesday, the ninth day of September, 1873, at the court house door, in the town of Hillsboro, in the county of Jefferson, State of Missouri, between the hours of nine o'clock in the forenoon and five o'clock in the afternoon of that day, and during the session of the Circuit Court, sell all the right, title, claim, estate and property, of the said James F. Cross, of, in, and to the above described Real Estate and property for cash in hand, to the highest bidder, to satisfy said execution and costs. Dated at Hillsboro, this 13th day of August, A. D. 1873.

T. B. MOSS, Sheriff.

STATE OF MISSOURI. County of Jefferson.

Be it Remembered, That on this 7 day of Sept 1873, before the undersigned Clerk of the Circuit Court of Jefferson county, Mo., came R. W. McMULLIN, who, being by me duly sworn, says the annexed advertisement was published in the Jefferson Democrat, a newspaper, printed and published in the County of Jefferson, State of Missouri, of which he is printer, for 4 weeks, the first insertion being on the 15 day of Aug, 1873, and the last insertion on the 5 day of

Sept 1873, as follows, to-wit:

found: at the upper end of the one pipe
this box are two pipes rising above the
the water in the well. From the top of
of which it is kept full by the pressure of
with a valve on its under side, by means
the track, a stout closed box is placed
near the bottom of well, located near
in an English journal as follows: "At or
contractors. The invention is described
ply to the method will at once com-
mend it to the attention of engineers and

In No. 1,	Aug. 15	, 1873
In No. 33,	" 22	, 1873
In No. 34,	" 29	, 1873
In No. 35,	Sept 5	, 1873
In No. ,		, 187

R. W. McMullin

Sworn to and Subscribed before me this

7 day of Sept 1873

Printer's Fee, \$ 2.50 }
Affidavit, \$ 2.25 } 4.75

W. R. Dannelson

Received Payment.

" 140

(Copy)

Under months after date we or
either of us promise to pay Charles Vinyard
or order the sum of One Hundred and fifty
Dollars, negotiable and payable without defalcation
or abatement, with interest from date, at the rate
of ten per cent per annum until paid

April 20th 1870

Peter Gross

James T. Gross

Which is endorsed as follows

" 7th Feb 8th 1873,

Received on the within, I note thirty-two

dollars and 25 cts

\$32 25 "

Lewis James Plaintiff } In the Circuit Court,
Against } Jefferson County Mo.
Charles Vineyard Defendant } January Term 1874

Plaintiff states that Peter Cross and James Cross by their ^{negotiable} promissory note (a true copy of which is herewith ~~filed~~ attached and filed, the original being now on file in the office of the Clerk of the Circuit Court of said Jefferson County, attached to petition in cause of this Plaintiff against said Peter Cross and James Cross) dated April 20th 1870, promised to pay to Charles Vineyard or order One Hundred and forty dollars, twelve months after date, with interest from date until paid at the rate of ten % per annum.

Plaintiff further states that the Defendant herein, the said Charles Vineyard, on the 30th day of January 1873, assigned by ^{said note} indorsement, on the back of ~~said note~~ thereof, ^{and delivered the same} to this plaintiff. ~~and del~~ of which indorsement the following is an exact copy

" For value received, I assign the within over to =
= Lewis James This the 30 of January 1873 =
Charles Vineyard "

Plaintiff further states that on the 15th day of March 1873, immediately preceding the first term of the Jefferson County Circuit Court, subsequent to the indorsement and delivery of said note by defendant Charles Vineyard to him, he this plaintiff instituted an action against the makers thereof, and upon such action received judgment against them, but that the said makers of said note Peter Cross and James Cross ^{at the time the plaintiff received said note as aforesaid, and continued so from that time until they were insolvent,} were insolvent, and that said judgment

was altogether unavailing,

Plaintiff further states that the amount of the Judgment thus obtained was One Hundred and fifty & ⁶⁵/₁₀₀ dollars, and that he, this plaintiff, on the first day of August 1873, and at divers times prior and subsequent thereto, notified defendant of said Judgment, and of the insolvency of the said Peter Cross and James Cross, and their refusal and failure to pay said Judgment on said note, and ~~again~~ requested said defendant to pay plaintiff the amount due upon said note, which defendant has failed and neglected to do, Therefore Plaintiff asks Judgment for the amount due him upon said note with interest & costs and for other proper relief

Thos H McMillen

atty for Plaintiff

Lewis James
against

Charles Vinyard Deft

Filed Dec 5th 1873

W. S. Boyce clerk

By C. H. McMillen
Deft

The State of Missouri, } ss.

COUNTY OF JEFFERSON.

The State of Missouri,

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

We command you, that you summon

Charles Vinyard

if he be found in your County, that he 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 *January* next, then and there to answer unto

Lewis James

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 affixed, at office in Hillsboro this *10th* day of *December* A. D. 18*73*.

W. S. Boyce

Clerk Circuit Court.

By

Chas. Morine

Deputy.

23 3898

RETURNABLE
TO
JEFFERSON CIRCUIT COURT.

January Term, 1874.

Lewis James

vs
Charles Vinyard

original

ser Dec 72

Executed the within Summons at the County of
Jefferson State of Mo. on the 12th day of Dec. 1873,
by delivering to the within named defendant
Charles Vinyard a copy of the within writ
and annexed petition as furnished me by the
Clerk.

J. B. Mo. Sheriff

Lewis James, Plaintiff } In the
Charles Veniard, Defendant } Circuit Court
Co. Mo.

Now at this day comes the Defendant
and for answer to the petition of
the Plaintiff says, he admits
that Peter & James H. Cross by their
negotiable promissory note
dated April 20th 1870 promised to
pay to Charles Veniard or order
one Hundred and Forty Dollars
twelve months after date with
interest from date at the rate of Ten
per cent per annum,

Defendant also
admits that he endorsed and delivered
said note to Plaintiff on the 3rd of
January 1873

Defendant further says
admits that the Plaintiff on the
8th day of February 1873 and after
said note was endorsed and delivered
to him by Defendant and before
any suit was instituted thereon
collected a part of said note from
said Peter & James H. Cross the
makers thereof, to wit, the sum
of Thirty Two & $\frac{25}{100}$ Dollars which
was credited by endorsement thereon

on that day - Defendant denies
that Plaintiff on the 15th day of
March 1873 immediately preceding
the first Term of the Jefferson County
Circuit Court ~~Subsequent~~

Subsequent to the indorsement
and delivery of said note by Defendant
Charles Vinyard to him instituted
an action against the makers
thereof and denies that upon
such action Plaintiff recovered
judgment against said makers

Defendant admits that
Plaintiff filed in the office of the
Clerk of the Circuit Court of said County
of Jefferson a petition for suit upon
said note on the 15th of March 1873
but avers that he did not cause
any writ or process to issue thereon
to the said James H. & Peter Cross
till the 15th of May 1873.

Defendant admits that
after the issuance of said writ
Plaintiff recovered judgment in
said Circuit Court against
said Peter & James H. Cross

But Defendant denies that
said Peter and James H. Cross
were insolvent, and denies that

said judgment was altogether
unavailing

Defendant denies
that Plaintiff on the first of
August 1873 or at any time,
prior thereto or since notified
Defendants of said judgment or
of the insolvency of said Peter
or James F. Cross or of any
refusal on their part to pay
said judgment on said note
and denies that Plaintiff at
any time requested Defendant
to pay him the amount of
said note or any sum whatever
and denies the right of Plaintiff
to recover in this action the amount
of said note from Defendant or any
sum for Interest or costs,

Further answering Defendant
says at the time he endorsed and
delivered said note to Plaintiff
said Peter & James F. Cross
were both perfectly solvent
and ever since have been and
still are, that they then
were and ever since have been
residents of Central Township
in Jefferson County Missouri

and defendant denies the allegation in the petition that said Peter
and J. F. Cross were insolvent at the time Plaintiff received said note from Defendant or

the same Township wherein
Plaintiff then ^{did} and ever since
has resided, — Defendant avers
that Plaintiff used no diligence
whatsoever to collect said note from
said Peter and James F. Cross
that several Justices of the
Peace ~~then were and~~ were in
office as such in said Township
and ~~ever~~ at the time Plaintiff
received said note from
Defendant and ever since
have continued in office each
of which Justices ^{would have had} had jurisdiction
both of the persons of said
Peter and James F. Cross as
well as of the subject matter
of the action if Plaintiff had
sued on said note before a
Justice of the Peace ~~thereon~~

And Defendant charges
that Plaintiff could by suing
on said note before any one
of said Justices have recovered
judgment against said Peter
and James F. Cross thereon
within fifteen days, after the
same was endorsed and delivered to
him by the Defendant, that is to
say by the 13th day of February 1873

and have had Execution immediately
issued thereon against them and
their personal property of which
they each had an abundance
sold thereunder by the constable &
thereby have collected his said
debt but Defendant charges that
instead of doing so plaintiff
failed to use any diligence
whatever to collect said note or
to sue on the same before a
Justice as he ought to have
done for several months
after he got said note and
then brought suit in the Circuit
Court the first Term of which
after he got said note was
fixed by Law & held in the latter
part of May 1873 & Defendant
averts that after he finally the
plaintiff finally got judgment
against said Peter & James F.
Cross in said Circuit Court no
Execution was issued thereon
till the 11th day of July 1873
and even then although both
said Peter & James F. Cross
still then had sufficient personal
property subject to Execution
in said County to satisfy the

Same no efforts were made either
 by Plaintiff or the Sheriff to cause
 their personal property to be
 levied on or sold, to satisfy
 said execution or pay said
 debt, — Defendant further says
 that Plaintiff after Defendant
 obtained said judgment, in
 said Circuit Court, against
 said Peter & J. F. Cross and
 before this suit was comm-
 enced, to wit in the month
 of November 1873 said
 J. F. Cross offered to pay
 and tendered to Plaintiff
 one Hundred dollars in
 part payment of said judgment
 and to secure the remainder
 to him to be paid in a short
 time thereafter by an
 undoubted security — which the
 Plaintiff refused to receive
 Defendant avers
 further that said Peter Cross
 being the Principal on said
 note & residing in said County
 of Jefferson having personal
 property subject to execution
 sufficient to pay said note

7

And judgment at all times
said J. F. Cross at many times
after Plaintiff got said note
from Defendant requested the
Plaintiff to proceed to try
to and collect said debt from
said Peter Cross but the
Defendant avers that
said Plaintiff utterly refused
on several different occasions
after he obtained said note &
before this suit was commenced
to proceed to collect said
debt from said Peter Cross
and refused to and neglected
to have any execution levied
upon the property of said
Peter Cross and refused to
use any efforts to collect
the same from him which
he might & ought to have
done by having debts due
said Peter of which Plaintiff
was advised and of which
there were abundant due
due him by solvent persons
in said County garnished
under execution against

said Peter for the purpose of making said Debt as well as by refusing and neglecting to have other personal property of said Peter sold of which he had an abundance subject to execution sold to make said Debt.

Dependant avers further that large sums of money more than sufficient to satisfy said Debt were from time to time after Plaintiff received said Note and after he received Judgment of the Circuit Court thereon & prior to the commencement of this suit due said J. H. Cross and subject to garnishment to pay said Debt as well as a large amount of Real & personal property of which Plaintiff might and ought to have made his said Debt.

Defendant says further that although said note sued on was a negotiable note yet Defendant avers that Plaintiff wholly failed after the same was received by him from Defendant and indorsed by Defendant to him to have payment of the same demanded ~~and notice of non~~ of said Peter & J. H. Cross or Defendant or either of them or notice of non payment given to Defendant or to have the same protested for non payment or any notice of protest or non payment to be given Defendant at any time although he well knew the places of residence and of business of each of said parties and although they each resided and did business at all times after said note was received by ~~Defendant~~ Plaintiff in said County of Jefferson where in Plaintiff resided wherefore in consideration of all the premises Defendant says

he is discharged from any
and all liability to pay
said note or any part of it
and that plainiff is not
entitled to recover and
prays judgment for his
costs,

Wm. Williams
Attorney for Defendant

P. Pfaff

vs

P. Bonanni

3

Now comes the defendant
and moves the court

Lewis & Ames
(Ind)

Chas. Wingard

Debtors

Answer

Filed Jan 18 48/4
W. L. Boyce Cl.

Lewis James
as }
James F. Cross & } Affection
Peter Cross } in the
Jefferson Co., Mo. } Circuit
Court of
W. J. Bloss Sheriff of Jefferson
County Missouri

You are hereby notified
that I claim as being the head of a
family and housekeeper residing
on and using as a homestead
the Real Estate Levied on by you
under the Execution now in
your hands in the above Cause
which Real Estate to the extent
of Thirty Square Rods I claim
as a Homestead under the
Homestead Law To wit Thirty
Square Rods of Land to be so Laid
off so as to be in one body
embracing the dwelling House, out
Houses and fences and improve-
ments on Lot Number one in
Block Number Three in the
Town of Victoria Jefferson
County Missouri as Laid off
on the Plat of said Town as
Recorded in the Recorder's office of
Jefferson County Missouri

And Request you to have the
same set off to me as required
by Law

James F. News

County of Jefferson,

The State of Missouri.

To C. W. Horne J. B. Mass

A James

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 20 day of January 1874

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

James James is

Charles Vineyard is

Plaintiff, and

Plaintiff

Defendant, on the part of Plaintiff 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 13 day

of January, A. D. 1874.

W. S. Boyce Clerk.

James
^{vs}
Vineyard

Duces Tecum to C Tho
Horne dft cir clerk

Record + papers of case of
L James Peiff
^{vs}
James Cross dft

J B Moss
L James —

Shuff

50

I have entered the within at the County of D. H. Mason.
My Recd.ing the same to J. James on the 13 day of
Jan 1874

J. B. Moss Shuff

County of Jefferson,

The State of Missouri.

To James H. Croft, Peter Croft

Alex. Gurnsey, C. W. Christopher

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 20th day of Jan'y 1874 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

James H. Croft is Plaintiff, and

Charles Croft is Defendant, on the part of

James H. Croft 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 14 day of Jan'y, A. D. 1874.

W. S. Boyce Clerk.

J. W. Hammon

James
as
Vinyard

J. H. Croft
Alex Dorsey
C. W. Christopher
Peter Croft.

Shuff for 200

State of Ohio }
County of Ash }
J. H. Croft and }
as I survey the }
Vinyard and }
Peter Croft }
on the 15 day of Jan 1824

J. H. Croft, Sheriff

Louis James

Pltff

against

Charles Vineyard
Def

In the Circuit Court
of Jefferson County, Mo.
January term 1874

Now comes Plaintiff and doth reply to certain allegations contained in Defendants answer to Plaintiffs original petition filed herein, and says that it is not true as alleged in said answer, that at the time Deft. endorsed and delivered said note (the subject of this action) to Plaintiff, the makers thereof Peter & James F. Cross were both perfectly solvent, and ever since have been and still are.

Plaintiff says that it is not true as stated by Defendant in his said answer that Plaintiff could by an action upon said note against Peter & James F. Cross, before a Justice of the Peace, immediately after the endorsement of said note to him by Defendant, have recovered judgment against them and upon execution on such judgment that the Constable could have satisfied such Execution by levying the same upon personal property of said defendants.

Plaintiff says that it is not true as Deft. in his answer states that July 11th 1873 when an Execution was issued upon a Judgt.

in this Court, upon said note, in favor of this Plaintiff, and against Peter & J F Cross.

that they both had sufficient personal property subject to Execution, in Jeff. Co Mo. to satisfy said Execution.

✓ Plaintiff says that it is not true as stated by Deft. in his answer that after Plaintiff had obtained his Judgment, in the said Circuit Court, against said Peter & J F Cross, and before this suit was commenced, to wit. in November 1873 said J F Cross offered to pay and tendered to Plaintiff, One Hundred Dollars in part payment of said Judgment and to secure the remainder to him, to be paid in a short time thereafter by an undoubted security, which the Plaintiff refused to receive.

Plaintiff says that it is not true as stated by Defendant in his answer, that Peter Cross was the principal in said note, and resided in Jefferson County Mo. owning personal property, subject to Execution sufficient to pay said note and Judgment, at all times, and J F Cross ~~at any~~ after Plaintiff got said note from Defendant, requested the Plaintiff to proceed to try and collect said debt from said Peter Cross; And denies that Plaintiff refused at any time to proceed

to collect said debt from said Peter Cross, ~~and~~ try to collect the same from Peter Cross by Execution or otherwise

Denys that he was ever advised of any debts due said Peter, by solvent persons, abundant to have satisfied such Execution by Garnishment, Denys that he was ever advised that Peter Cross had abundance of other personal property, subject to Execution, to pay said debt

Plaintiff says further that it is not true as Defendant states in his answer that large sums of money, more than sufficient to satisfy said debt were from time to time, after Plaintiff received said note, and after he received judgment in the Circuit Court thereon and prior to the commencement of this suit, due said J. F. Cross and subject to garnishment to pay said debt, as well as a large amount of Real and personal property out of which, Plaintiff might and ought to have made his said debt

Plaintiff says further that it is not true as Defendant in his answer says, that Plaintiff wholly failed after the said note was received by him from Defendant and endorsed by Defendant to him, to have payment of the same demanded of

said Peter & J F Cross or Defendant or
either of them, or notice of non-payment
given to Defendant. ~~at~~ any ~~other~~ time,

And denies that each Peter & J F Cross
and Defendant resided and did business
at all times after said note was received by
Plaintiff, in said County of Jefferson, wherein
Plaintiff resided,

And Plaintiff having fully replied to
Defendants said answer, prays for Judgment
against said Defendant for the amount of said
note and the interest thereon

Thomas H Mcmullen
Atty for Plaintiff

Louis James
vs.
Chas. Vineyard
Replication filed by
Pltff
mcmullen Atty

Filed Jan 16 1874
W. J. Boyce Clk

County of Jefferson,

The State of Missouri.

To

Reginald Olney v J G Raff

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 *James is Plaintiff*

Plaintiff, and

Chas Vinyard is

Defendant, on the part of

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 *24* day
of *January*, A.D. 1874.

Clerk.

W. S. Boyce
P. O. Holmes

James
vs
Vinyard

B. Miner
J. G. Raff

Sheff for 100

433, 2000

I executed the within on 26 Dec 1874
Reading Mass on the 26 day of Dec 1874

Lewis James {
 Charles Vinyard { Instructions asked by Plaintiff

The Court declares the law to be

Refused

1st If the Court sitting as a Jury find from the evidence that at the time defendant assigned the note in controversy to plaintiff, the makers thereof Peter Cross and James F. Cross were to the knowledge of plaintiff insolvent; and that to the knowledge of plaintiff, neither Peter or James F. Cross owned personal property ^{subject to execution} nor had debts due them from ^{subject to garnishment} solvent persons, and thus continued up to the time that plaintiff sued said makers in the Circuit Court; then this plaintiff was not guilty of laches and neglect in not suing them before a Justice of the peace between the time of acquiring said note of defendant, and suing the makers in the Circuit Court;

And his not thus suing them was not a failure on the part of plaintiff to use due diligence in collecting said note from the makers

2^d

If the Court sitting as a Jury, find from the evidence that at the time plaintiff purchased this note from defendant, James F. Cross, one of the makers thereof, was the head of a family, and held a note made by

this plaintiff to him, such note was not assets of James F. Cross which plaintiff could and should have made available in the collection of this note, unless James F. Cross had three hundred dollars worth of personal property and choses in action ^{subject to execution & garnishment} over and above and not including that note

3^d
 Defendant

If the Court ^{sitting as a Jury} find from the evidence that James F. Cross sold and transferred the note held by him against plaintiff, before plaintiff could have recovered judgment against him by suit before a Justice of the peace on the note in controversy, ~~obtained~~ Plaintiff was not bound to credit ~~this~~ note held by him, with the amount he owed James F. Cross on note

4th

If the Court sitting as a Jury find from the evidence, that at the time plaintiff purchased the note in controversy from defendant, the makers thereof Peter Cross and James F. Cross, both were insolvent, that James F. Cross was the head of a family and did not own above three hundred dollars worth of ~~personal~~ ^{personal} property, ~~nor over fifteen hundred dollars~~ ^{nor over fifteen hundred dollars} of real ~~estate~~ ^{estate}, that Peter Cross was utterly insolvent, owning no property of any kind, and

that both said makers continued so from that time forward up to the time of the commencement of this suit, and that plaintiff at the first term of Circuit Court for the County in which he and said makers resided, after such purchase, sued them on their note, and recovered judgment against them, and had execution issued on such judgment against James F. Cross, but that he claimed that real estate he owned as a homestead and ^{which was} therefore exempt from execution and by reason of the insolvency of said Peter Cross and James F. Cross such judgment could not be enforced and proved wholly unavailing. Where the issues should be found for plaintiff.

Refused

James
vs
Vinyard

5th

The Court declares the law to be that a tender of money by one party to another consists of an actual offer of the money, and the money actual shown; and that before the Court, sitting as a Jury, finds that James J. Cross offers the plaintiff, in payment of the judgment on this note in favor of plaintiff against him and Peter Cross, the sum of one hundred dollars and to secure the balance by a note with good security; the Court must find from the evidence that ^{James J.} Cross had the money and ^{and offered it to him} showed it to plaintiff, and ^{that it was legal currency of the United States} and that the note for the balance was executed at the time, ^{and} tendered ~~was made~~ to plaintiff thus executed with good security, and the plaintiff refused to accept the same.

Refused

6th

The Court declares the law to be that ~~all~~ ⁱⁿ ~~case a~~ ^{case} negotiable promissory note, assigned by the payee after maturity, is not ~~required~~ ^{necessary} that demand of payment be made and the note protested for non-payment, or ^{notice given to the assignor} provided the assignor use due diligence to collect the same from the maker or makers, - or that the makers of the note were insolvent at the time the note was assigned.

James

no

Vinyard.

Left instructions



James
Tingent

5.
Instructions asked by Plaintiff

7th

23 Mo
p. 406

Reframed

If the Court, sitting as a Jury, believes from the evidence, that a sufficient amount could ^{not} have been made out by Peter Cross and James F. Cross, the makers of said Note, to pay for the trouble and expense of a suit, (had suit been brought before a Justice of the Peace at his first Term, after the Note was received) then it was not incumbent upon Plaintiff to bring such suit against the makers of the Note, - and if such insolvency of the said makers of the Note continued up to the time of bringing this suit, - then it is immaterial whether Plaintiff instituted such suit or not, - he is entitled to recover against the assignor, -

James
Vinyard

Instruction asked by Plaintiff

8th

and did
subject to exception

Proposed

The Court declares the law to be, that if James F. Cross, at the time the Note in question was assigned to Plaintiff, did not own exceeding three hundred dollars of Personal Property, ^{and choses in action} (over and above one hundred dollars of House-hold and Kitchen furniture, and four beds and the usual bedding, and his mechanic tools) ^{not own real estate, above the value of 1500 dollars,} then he was in point of law insolvent, - and that Peter Cross, the other maker of the Note (^{was} ~~he being~~ a single man) did not own any property subject to Execution, then the Plaintiff was not bound to bring suit at the next Justice's law day, after receiving the Note, or in the Circuit Court, in order to entitle him to recover against the assignor of said Promissory Note,

James
W
Vinyard

Jeff's Instruction 3

1

James
Vinyard 3

23^{me} 405

20^{me} 350

Refused

The Court declares the Law to be that - the Plaintiff can not recover in this case without having instituted and prosecuted suit against the makers before a Justice of the Peace at the first Law day of some one of the Justices having jurisdiction of the persons of the Defendants after his receipt of the Note from the defendant unless it appears from the evidence in the case that the makers ^{any each of them} were so insolvent that a suit would have been wholly unavailing; and it is not necessary that it should appear that the whole amount of said note could have been made, if it appears that enough of the debt could have been made by suit to make it worth a suit in case the Plaintiff had no other ~~resource~~ resource except the makers of the note to make his debt out of,

2

Refused

The Court further declares the Law to be that if the makers of the note sued on were not so insolvent at the time plaintiff became the owner of it as to make it not worth while for plaintiff to bring suit against the makers (Peter & J. Gross) in case he had had no other means of collecting the note & kept out of said makers then in that event the plaintiff is not entitled to recover and the finding should be for the defendant,

3

The Court declares the Law to be that the Plaintiff after receiving the note sued on from defendant was bound at his peril to make diligent inquiry from time to time up to the commencement of this action for the purpose of ascertaining whether or not the makers of the note (Peter & J. F. Cross) had ~~means~~ property or money due them subject to execution sufficient to make said debt or any considerable portion of it and if said makers had during that time ^{subject to execution} property or debts due them subject to garnishments from which the Plaintiff might have made said debt or any considerable portion of it and if Plaintiff ~~might by the use~~ knew of the same ~~distance thereof~~ or by diligent inquiry might have ascertained it he can not recover in this action & if the Court so find the finding should be for the defendant,

Refused

James
Esq
Virginia

Defto Justice
Chambers

4

The Court further declares
 the Law to be that if the
 Court should find from the evidence
 that the makers of the note had
 not when it was transferred
 from defendant to plaintiff
 visible property equal in
 value to their indebtedness yet
 such fact if it existed is not
 of its self sufficient evidence
 to establish the insolvency
 of the makers

Required

5

The Court declares the law to be
that the plaintiff upon receiving
the note in suit was bound to use
the same measure of diligence in
collecting the same as the makers
Peter & J. H. Gross which a prudent
man would use who had no
recourse against any other party,
and by the use of such diligence
he might have collected the amount
of said note from the makers he can
not recover in this action and the
finding should be for the defendant

6 The Court declares the Law
to be that unless the Plaintiff
demanded payment of the note in
suit from Peter & J. H. Cross the
makers after it was transferred
to him by Defendant ^{in a proper application} at ~~right~~
and gave notice of non payment
thereof to Defendant ~~as early as~~
^{within a reasonable time} ~~possible~~ after said demand, or
~~had the same protested for non~~
^{an non} payment ~~and on the~~ thereof given
Defendant he is not entitled
to recover and the finding should
be for the Defendant,

given

after the time when the note was made

James
Charles Vinyard

In Jefferson Circuit Court

Now Plaintiff comes and
moves the Court to grant a new
trial in ^{abon} cause for the reasons as follows

1st The Court erred in refusing Plaintiff's
instructions asked by Plaintiff

2^d Court erred in giving instructions for
defendant which were given

3^d Judgment was against Law & evidence

4 Judgment was against weight of evidence
~~in favor of defendant~~

~~as against Plaintiff~~
5th The Judgment should have been for Plaintiff
and not Defendant = ~~in favor of defendant~~
for Plaintiff

James
20
Vinyard

Motion for new trial

Filed Jan'y 29 1874
W. L. Boyce
Clerk

Louis James, - Plaintiff } In the Circuit
Against } Court of Jefferson
Charles Vinyard, - Defendant } County Missouri
State of Missouri }
County of Jefferson } ss.

This Affiant, Louis James, the above named Plaintiff, being duly sworn, states on oath, that his application for an Appeal in the above entitled cause, from the Judgment of the Circuit Court aforesaid, to the Supreme Court of Missouri, is not made for rescission or delay, but because said Affiant believes that he, the said appellant, is aggrieved by the Judgment of said Circuit Court.

Sworn to and subscribed, Louis James
before me July 16 1874
Wm. B. ...

W. S. Bayce Esq. Sir
St. Louis Mo. D. C. N.

Louis James

W. B. Bingham

Applicant

Filed July 23 1874

W. B. Bingham

By O. H. Bingham

Louis James, - Plaintiff } In the Circuit Court
 Against } of Jefferson County
 Charles Vinyard, - Defendant } Minors,

We the undersigned, Louis James, as prin-
 cipal, and Thomas Bettle and Charles Vinyard,
 as securities, acknowledge - ourselves indebted to Charles Vinyard
 the above Defendant, in the sum one hundred dollars, to
 be void upon this condition; Whereas, the said Louis
 James has appealed from the Judgment of the Cir-
 cuit Court aforesaid, in an action between Louis
 James, Plaintiff, and Charles Vinyard, Defend-
 ant, to the Supreme Court of the State of Missouri,
 Now, if the said Appellant, Louis James, shall pros-
 ecute his said appeal with due diligence to a de-
 cision in the Supreme Court, and shall perform
 ✓ such Judgment as shall be given by the Supreme
 Court, or such as the Supreme Court may direct the
 ✓ Circuit Court to give, and if the Judgment of such
 Circuit Court, or any part thereof, be affirmed, that
 he will comply with and perform the same, so far
 as it may be affirmed, and will pay all dama-
 ges and Costs, which may be awarded against him,
 the said appellant by the supreme court, then this
 recognizance shall be void, otherwise to remain
 in full force, - Witness our hands and seals;

This 18th day of February 1874.

Approved Feb. 23rd 1874

W. S. Boyce Clerk

By Chas. Stone Secy

Louis James

Thomas Bettle

Charles Vinyard

Louis James

vs,

Charles Vinyard

Appeal Bond

Filed July 23, 1874

W. L. Boyce cler

By C. H. Adair

Att'y

Lewis James
Plaintiff
Against
Charles Vinyard
Defendant

Jefferson Circuit Court
In the State of Missouri
January Term A.D. 1874

Be it remembered that said cause coming on to be heard, both parties appeared, and waived a trial by jury, and by consent agreed to a trial by the Court sitting as a jury.

Be it remembered that on the trial of this cause the following proceedings were had. The Plaintiff to sustain the issues upon his part offered evidence as follows

Lewis James of lawful age, being sworn deposes and says "I am the plaintiff in this suit. ^{The defendant, James F. Cross, and myself all live at Victoria Jeff. Co. Mo.} When I purchased this note from defendant Charles Vinyard, one of the makers, James F. Cross held my note for one hundred dollars, I saw James F. Cross two days afterwards, and he agreed to give up my note, and that I should credit his note with the amount. He then went off to St Louis, saying when he next returned he would bring my note. ^{He left his residence was in Victoria Jefferson County Missouri where I resided} and his family were temporarily in St Louis on a visit. ^{Peter Cross was unmarried, had no family & resided generally at old town of Victoria} When he next returned, which was in two days or two weeks, he refused to give up my note, and shortly afterwards sold it. ^{to Peter Cross} I do not know what day he sold it. I knew James F. Cross' circumstances. ^{He was the head of a family.} He owned one lot in Victoria, with a house upon it. The house & lot are worth \$800^{dollars} or 900^{dollars}. There was a deed of trust on ^{the} lot to secure \$500^{dollars} ^{money} which still remains unpaid. J. F. Cross was a carpenter and worked for the Railroad Co. He had household ^{kitchen} furniture and his tools. I never

knew of his owning any other personal property from the time I purchased this note, to this time.

about a month and a half after I got the note
I sued James F. & Peter Cross in the Circuit Court, and got a judgment against them ^{of Jefferson County, on said note} and ^{James F. Cross} the Sheriff advertised Cross' lot for sale. But he did not sell it as Cross claimed it as a homestead. And nothing was made out of either of the makers on said judgments, out of either James F. or Peter Cross. - I never knew of Peter Cross owning any property whatever, some time before I got this note. He told me he had a cow to sell, and asked if I would buy ^{her}. I did not want to purchase.

Peter ^{Cross} was in St Louis when I got the note, and some time afterwards returned to Victoria. He had no particular home. He was first at one place and then he was working in St. Louis about the time I got this note but shortly after he came down to Hanover in this County, near Victoria and another - I never knew of his buying the owner of any. worked there during the summer after I got the note he was sometimes personal property. I knew him well, he was a single man.

I never knew, from the time I purchased this note, - of either James F. or Peter Cross owning any personal property subject to execution = I paid full value for the note, Perhaps there was a small amount of the accrued interest knocked off.

The defendant ^{promised me when I got the} told me if the Cross boys did not pay it he would ^{if the Plaintiff offered to prove that when he bought the note of defendant he had promised Plaintiff that if James F. or Peter Cross did not pay the note he would pay the note - but defendant objects and the Court sustained the objection I would not admit such testimony.} ~~the Plaintiff here noted:~~

Defendant to J G Rapp of lawful age being sworn, on part of plaintiff deposes and says = "I live at Victoria Jefferson Co. B.C. I know plaintiff and defendant. I know

on the ground that it was not averred in the Plaintiff's motion

*

James J. & Peter Cross, have known them ~~since they~~
~~few years~~
~~now boys~~ = I never knew of Peter Cross owning
 any personal property - He used to drive a yoke of
 oxen but ^{I don't know who owned them} ~~James J. Cross said he owned them~~, They
 were sold in 1872, during the Epizootic =

James J. Cross was married, owned a house
 & lot in Victoria worth about \$900 ^{dollars}, He was
 a carpenter and worked for the Railroad Company,
 I have been in his house = Was only in one
 room, The furniture was good = I think the furniture
 in that room was worth \$150.00 Never knew
 of James J. Cross owning any other personal property.

Bazile Hiney of lawful age, being sworn as
 part of plaintiff deposes and says -

"I live at Victoria Jefferson County, Mo, I have
 known James J. & Peter Cross since they were boys. James
 J. owned a house & lot ^{in the town of Victoria} which ought to bring \$1000.00

He has a family, - is a carpenter and works on the
 Railroad, I never was in his house = Never knew
 of his owning any personal property but one sheep

Peter Cross ^{working} ~~owned~~ a little yoke of oxen ~~at~~
~~last fall~~ = He had ^{possession of} them, the last I knew of ^{these} a year
 ago last fall, about the time the Epizootic was in
 St Louis = He worked last summer at Hiram
 station (Hannibal) He has been at Victoria the last few months
 driving two yoke of little oxen"

Peter Jennie of lawful age being produced & sworn on part of plaintiff. says "I purchased from James F. Cross a note given by Dr Lewis James, ^{I purchased it on} March 27th 1873 = the amount with interest was \$107⁰⁰"

Plaintiff here introduced and ^{read} ~~offered~~ in evidence a Deed of Trust from James F. Cross & wife to ^{Jefferson County} ~~Jefferson Co.~~ for the use of the School fund ~~on lot in Victoria~~ to secure ~~\$500~~ Five hundred dollars, Which Deed is as follows to wit, (The clerk will take copy same)

Also ^{Plaintiff} ~~read in evidence the~~ Recd and files in the case of Lewis James vs James F. & Peter Cross = consistency of Petition, summons, Shffs return, Judgment, Execution & Sheriff return = ~~(Objected to by Deft - admitted subject to objection)~~ Which are as follows to wit - (here copy all of said papers, & Judgment, Exec & returns &c)

Plaintiff here noted
The Defendant to sustain the issues on his part offered evidence as follows

James F. Cross of lawful age being sworn deposeseth and says,

I live at Victoria, on the 30th day of January 1873. I owned a house & lot in Victoria, worth \$900⁰⁰ or \$1000⁰⁰ - with furniture worth \$250⁰⁰

I had a set of carpenter tools, old but good worth \$25⁰⁰ I have had those effects from that time until now = At that date I owned & held a note on A Stroup and Charles Vinyard

given
 this defendant ~~James~~ in the Spring of 1870 for ^{one Hundred Dollars} ~~100~~ intend
 10% ^{up to} Jan'y 30th 1873. then ^{thirty five Dollars paid on said note} was ~~\$35~~ paid ~~on it~~
~~In February~~ I received ^{on said Note afterwards} ~~run~~ It is about all
 paid now = at ^{negd 27th 1873} ~~that date~~ I Jenni owed me about
 \$25 ^{the Note given by Lewis James, which} ~~as on a note~~ I sold him, I took it out in
 goods soon after = I was working at the time,
 and ~~ever~~ since have been for the rail road company,
 worked by the day = made from \$60^u to \$75^u per
 month. about two months ago the company
 owed me for ^{over} three months work ^{Two Hundred Dollars} ~~over \$200~~ This
 was before the 5th of December, during the panic
 It was in September, October + November pay
 About one third of the \$200^u was for last 30 days
 wages = I collected the \$200^u about Dec 10th 1873
 I had no other property during that time
 from Jan 30th 1873 to Dec 5th 1873 except as above stated
 I continued to hold the note in Vinyard
 & Stroup = Peter Cross during that time, owned
 three or wagons, at one time he owned two, ^{I think} at the same
 time, He also owned one cow and one ox - if not two
 even - I am certain he owned one ox and I believe
 two. Peter had a wagon a short time ago - He had
 a steer about the 5th of December ^{last} = I sued Stroup &
 Vinyard & obtained Judgment I offered, Feby 8th 1873
 to assign to ^{Lewis} James that Judgment in part payment
 of the note = he would not accept it ^{there was one Hundred Dollars due on} ~~it~~ ^{at that time} after he
 had got Judgment against me. I made the
 same offer and he refused. I told him

before he sued me, that he could make the money
off of Peter Bross - In November 1873 I offered
to pay Lewis James \$100⁰⁰ of the Judgt. against me,
and give him a note with ^{the defendant Charles Vinford & C. W. I. Vinford as} good security for the
balance on condition that he would enter satisfaction
of the Judgment. ^{both the Vinfords are very solvent} He ~~said~~ refused to do it
He offered to make such arrangement if I would
pay \$120⁰⁰ cash - I never showed him any
money but I had it & so informed him I did not show the money
because he refused to receive it

I made this same offer to him three different
times - I had this conversation in November last.

Dr James said If I would pay \$120⁰⁰ the amount
of a Judgt. against him on his note I had sold to
P. Jenni, and give him a good note for the balance
payable in six months, he would release the
Judgment against me"

Plaintiff's Attorney, on cross examination asked
witness as follows - "Ques" Did not Dr James, in
^{made by you to him as above stated by you, propose}
three days after the offer, to release the Judgment against
you on the payment of \$100⁰⁰ and the giving by you of
a note with good security for the balance?" To which
question the Defendant objected, and the objection
was by the Court sustained. To which ruling of
the Court the Plaintiff then and there excepted
at the time.

"James D. Bross further testifying says
"Peter owned a wagon Jan'y. 30 1873, worth \$25⁰⁰ dollars
He owned this wagon in March 1873, and also owned

another wagon at the same time, ^{I think} which was at the shop for repairs. ^{I know he owned one wagon} He had paid for the repairs, as he told me. The wagon when repaired would be worth \$20 ^{dollars}.

He also owned one ^{or} worth \$25⁰⁰. He owns a wagon now. The deed of trust on my lot to secure \$500 ^{dollars} is still due - the interest is paid up - I have one bed, one bedstead and one sofa.

I never offered to deliver to the Sheriff any property or to pay him ^{Dr.} or James anything on the judgment during the life of the ^{the sheriff never asked me for the money on the execution or offered to foreclose on any personal property} ~~exclusive of the debt due me to~~ lot as a homestead, on the day it was advertised to be sold ^{and consequently the sheriff could not sell it}. I never told Dr. James ^{at any time} that the Railroad Co. ^{I am sure he knew it} owed me, but it was a rule of the Company to pay every month. James lived at the Railroad and knew the Company was behind - ~~at May 1873 my personal property~~ ^{exclusive of the debt due me to} ~~would not amount to \$300⁰⁰ which I have referred~~ Dr. James was willing to credit the note he got from Vinyard with the note he owed me - He said he had got the note to lift his own - He asked me to give up his note and let him credit the Vinyard note with it and I refused ^{I told him I was only security on it & he ought to try to make it out of Peter Cross} - It was about the 12th of Feb'y 1873 that I refused to do so - my household & kitchen furniture was worth \$250⁰⁰.

In January 1873 I had a Judgt on the note due me from Stroup and Vinyard and offered to assign it to James, in part payment of the Vinyard note - I did not tell the Sheriff ~~Dr. James~~.

he never asked me for personal property to pay the execution or to that this judgment was existing - I knew there was a judgment against me, in favor of Dr James that he could make ^{his judgment} out of Peter, that Peter had a wagon and an ox and was working for wages"

Charles Vinyard of lawful age, the defendant, being sworn testifies and says

I have real estate worth \$10,000⁰⁰

I live at Victoria Mo. I know James F. Cross. He has the same property now that he has owned for several years - His furniture is worth \$250⁰⁰

Peter Cross has had a wagon all the time, He now owns a wagon and a yoke of cattle - He had a cow after harvest last year - and offered it to Dr James, as part payment of this note,

I told the ^{Doctor} ~~Dr~~ this at Peter's request that Peter would give him an order on Whitehead his employee monthly, until the debt was paid, and James refused

About two months ago I told Dr James that he had better take the \$100⁰⁰ James F. Cross was offering him - Peter Cross ~~owns~~ ~~and~~ drives a yoke of oxen now. ~~owns~~ a wagon. he drives by my door every day - he has possession of them and claims them - he has a yoke of bulls and a steer - The bulls are worth \$50⁰⁰ the ox \$25⁰⁰ and the wagon \$35⁰⁰ (Plaintiff objected to admitting the declaration of Peter Cross to be true by his own testimony. The Court overruled the objection and admitted

~~the evidence, to which ruling of the Court the plaintiff then and there excepted at the time)~~

Or Christopher on part of Defendant, of lawful age being sworn says,

"I told Lewis James at the request of James D. Cross - about Dec 1st 1873, that Cross would pay him \$100⁰⁰ and give a note well secured for the balance, ^{of his judgment} on condition that he would release ^{such} judgment against him - James said he would not do that, but would release the judgment and take such note for the balance ^{of his judgment} if Cross would pay \$120⁰⁰, ^{delegato} the amount of a judgment against ^{and} James."

Peter Cross of lawful age being sworn on part of Defendant says

"I have not owned an ox ^{at any time} since before Jan 30 1873 I owned a cow once since that time on condition,

I had not paid for her - I was to have her on the condition that I could sell her to get money for Dr James, or could sell her to James, otherwise she was not ^{to be} mine - I have owned three wagons since that time, but never owned but one at a time, some times I would have ^{the wagons were} none, ^{worth about} fifteen or twenty dollars ^{each} have been working during the last year for Mr Dorsey, driving his team hauling wood and ties - I worked for \$20 & \$25⁰⁰ a month never had more than \$25⁰⁰ due me at a time,

I never worked for Whitehead,
I once offered to sell James a cow and
also once offered to pay him so much
a month - He said all right but
Jim had refused to trade notes and he
intended to make it out of him if he
could. ^{The deft. ~~offered~~ ^{read} in evidence transcript of Judgt.}
^{as follows, (here} ~~copy same)~~ ^{copy same)} The Defendant here closed and
the Plaintiff offered the following evidence
in rebuttal

Lewis James of lawful age
The plaintiff, being sworn testifies

"I heard two or three years ago, before
I got this note that Stroup & Vingard owed
James Cross but that Stroup had about paid it.

Jim Cross never offered, at any
time to assign to me a Judgment against
Stroup & Vingard on ^{the note got of Defendant} ~~that note~~, I did not know
before to day that ~~he~~ had sued them

At one time I told Jim Cross that I
knew of ~~some~~ ^{no} property owned by Peter ^{Cross}

James never told me that Peter had
any property"

^{by the parties}
The foregoing was ~~the evidence~~ all the evidence offered.
Whereupon the plaintiff prayed the Court to
^{give the following instructions} ~~give the following instructions~~ ^{as follows} (Here insert the
^{instructions} ~~instructions~~ which ^{declarations of law} the Court refused,
to ~~give~~ ^{give} which refusal of the ~~instructions~~ ^{Court to declare the}
law, as prayed by the Plaintiff, the Plaintiff,

~~thus prayed, the defendant by his counsel~~
 then and there excepted, ~~at the time~~

The Defendant upon his part prayed
 the Court to give the following instructions,
 (Here insert instructions ^{asked by defendant})
 All of which ^{declarations of law} ~~instructions~~ ^{asked by defendant} were
 refused to ^{except} ~~give~~, and which instruction
^{in which} the Court gave, to the giving of which
 the plaintiff then and there excepted ~~at the~~
^{to the refusal of} ~~time~~ ^{no 3, 1, 2, 3, 4 & 5 Defendant at the time, excepted}

Under the instructions, the Court
 sitting as a Jury found a verdict for the
 Defendant. And on the ^{29th day of January 1874} ~~30th day of January 1874~~
 January 1874, the plaintiff filed his motion
 for new trial as follows (Here insert said)

Which said motion the Court on the ^{29th day} ~~30th day~~
 of January 1874 overruled, to which ruling and
 order of the Court, the ^{Plaintiff} ~~Defendant~~ then and there
 excepted at the time. He therefore prays the
 Court to allow and sign this ^{bill} of
 exceptions, and that the same may be
 signed and sealed and made part of
 the record, which is done this 28th day of
 February 1874 Louis A. Dunning Esq.

Judge of the Jefferson Circuit Court

Lewis James
Capt

Charles Wingard
Deft

Bill of Exceptions

I agree to the within Bill.
except. I don't doubt that
any exception ever said
to the matter of Wingard
agreeing to pay James the
note to Peter & J. F. Cross
did not see to expose, I
think that matter when
voluntarily stated by family
was passed bearing in context
without exception as no
amendment or special
undertaking was placed
in the ~~matter~~ position

For the Deft,

Filed July 23rd 1874

W. S. Boyce Clerk
By C. H. McNamee Deft

1
State of Missouri }
County of Jefferson }

Be it remembered that heretofore on the Fifth day of December A.D. Eighteen hundred and seventy three, Lewis James filed in the office of the Clerk of the Circuit Court within and for said County and State, his petition in words and figures as follows to-wit:

Petition

Lewis James plaintiff } In the Circuit Court
against } Jefferson County Mo.
Charles Vinyard defendant. } January Term 1874

Plaintiff states that Peter Croft and James Croft by their negotiable promissory note (a true copy of which is herewith attached and filed, the original being now on file in the office of the Clerk of the Circuit Court of said Jefferson County, attached to petition in cause of this Plaintiff against said Peter Croft and James Croft) dated April 20th 1870. promised to pay to Charles Vinyard or order one hundred and forty dollars, twelve months after date, with interest from date until paid at the rate of ten % per annum. Plaintiff further states that the defendant herein, the said Charles Vinyard on the 30th day of January 1873 assigned said note by indorsement on the back thereof and delivered the same to this plaintiff of which indorsement the following is an exact copy, "For value received, I assign the within over to Lewis James this the 30 of January 1873, Charles Vinyard." Plaintiff further states that on the 15th day of March 1873, immediately preceeding the first term of the

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Jefferson County Circuit Court, subsequent to the indorsement and delivery of said note by defendant, Charles Vinyard to him, he this plaintiff instituted an action against the makers thereof, and upon such action recovered judgment against them, but that the said makers of said note Peter Craf and James Craf were insolvent at the time the plaintiff received said note as aforesaid and continued so from that time and still are, and that said judgment was altogether unavailing.

Plaintiff further states that the amount of the judgment thus obtained was one hundred and fifty & ⁶⁵/₁₀₀ dollars, and that he, this plaintiff, on the first day of August 1873, and at divers times prior and subsequent thereto notified defendant of said judgment, and of the insolvency of the said Peter Craf and James Craf, and their refusal and failure to pay said judgment on said note and requested said defendant to pay plaintiff the amount due upon said note, which defendant has failed and neglected to do, wherefore plaintiff asks judgment for the amount due him upon said note with interest & costs and for other proper relief.

Thos H McMullin

att. for Plaintiff.

Copy of note.

Copy of note attached.

Copy.

"140⁰⁰ Twelve months after date we or either of us promise to pay Charles Vinyard or order the sum of one hundred and

forty dollars, ^{negotiable up to} payable without defalcation or discount, with interest from date, at the rate of ten per cent per annum until paid.

April 20th 1870

Peter Kropf.
James F. Kropf. "

which is endorsed as follows.

"Feb 8th 1873

Received on the within note thirty two dollars and 25 cts

\$ 32 ²⁵ "

Endorsed. "Filed Dec 5th 1873. W.S. Bayce clerk

By Chas. Horine depy

with

County of Jefferson.

The State of Missouri.

To the Sheriff of the County of Jefferson, Greeting:

We command you that you summon Charles Vinyard if he be found in your County, that he do 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 of January next, then and there to answer unto Lewis James upon his original petition, a copy whereof is hereunto annexed and accompanies this writ, and have you then there this writ.



Witness, W.S. Bayce clerk of our said Circuit Court, with the seal thereof hereunto affixed, at office in Hillsboro this 10th day of December A.D. 1873

W.S. Bayce Clerk Circuit Court

By Chas. Horine Deputy.

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Return

I executed the within Summons at the County of Jefferson State of Mo. on the 12th day of Dec. 1873 by delivering to the within named defendant Charles Vinyard a copy of the within writ and annexed petition as furnished me by the clerk,
J. B. Moss Sheriff.

" January 13th 1874

Record

L James } on note
vs }
Charles Vinyard } Answer filed and cause set at the
foot of the docket for trial

Answer.

Lewis James plaintiff } In the Circuit Court of Jefferson
vs } Como.
Charles Vinyard defendant. Now at this day comes the defendant and for answer to the petition of the plaintiff says, he admits that Peter & James F. Croft by their negotiable promissory note dated April 20th 1870 promised to Charles Vinyard or order one hundred and forty dollars twelve months after date with interest from date at the rate of ten per cent per annum.
Defendant also admits he endorsed and delivered said note to plaintiff on the 3rd of January 1873.
Defendant further says that the plaintiff on the 8th day of February 1873 and after said note was endorsed and delivered to him by defendant and before any suit was ~~instituted~~ ^{instituted} thereon collected a part of said note from said Peter & James F. Croft the makers thereof, to wit, the sum of thirty two & ²⁰/₁₀₀ dollars

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which was credited by endorsement thereon on that day. Defendant denies that plaintiff on the 15th day of March 1873 immediately preceeding the first Term of the Jefferson County Circuit Court, subsequent to the endorsement and delivery of said note by defendant Charles Vinyard to him instituted an action against the makers thereof and denies that upon such action plaintiff recovered judgment against said makers. Defendant admits that plaintiff filed in the office of the Clerk of the Circuit Court of said County of Jefferson a petition for suit upon said note on the 15th of March 1873 but avers that he did not cause any writ or process to issue thereon to the said James F. & Peter Croft till the 15th of May 1873. Defendant admits that after the issuance of said writ plaintiff recovered judgment in said Circuit Court against said Peter & James F. Croft. But defendant denies that said Peter and James F. Croft were insolvent, and denies that said judgment was altogether unavailing. Defendant denies that plaintiff on the first of August 1873, or at any time prior thereto or since notified defendant of said judgment or of the insolvency of said Peter or James F. Croft, or of any refusal on their part to pay said judgment on said note and denies that plaintiff at any time requested defendant to pay him the amount of said note or any sum whatever and denies the right of plaintiff to recover in this action the amount of said note from defendant or any sum for interest or costs.

Further answering defendant says at the time he

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endorsed and delivered said note to plaintiff said Peter and James D. Croft were both perfectly solvent and ever since have been and still are, and defendant denies the allegation in the petition that said Peter and J. D. Croft were insolvent at the time plaintiff received said note from defendant or that they or either of them then were or now are or since have been insolvent that they then were and ever since have been residents of Central Township in Jefferson County Michigan, the same Township wherein plaintiff then did and ever since has resided, defendant avers that plaintiff used no diligence whatever to collect said note from said Peter and James D. Croft that several Justices of the peace were in office as such in said Township and at the time plaintiff received said note from defendant and ever since, have continued in office each of which Justices would have had jurisdiction both of the persons of said Peter and James D. Croft, as well as of the subject matter of the action if plaintiff had sued on said note before a Justice of the peace, and defendant charges that plaintiff could by suing on said note before any one of said Justices have recovered judgment against said Peter and James D. Croft thereon within fifteen days, after the same was endorsed and delivered to him by the defendant that is to say by the 13th day of February 1873, and have had execution immediately issued thereon against them and their personal property of which they each had an abundance

1
sold thereunder by the Constable and thereby have collected his said debt but defendant charges that instead of doing so plaintiff failed to use any diligence whatever to collect said note or to sue on the same before a Justice as he ought to have done for several months after he got said note and then brought suit in the circuit court the first term of which after he got said note was fixed by law & held in the latter part of May 1873 & defendant avers that after the plaintiff finally got judgment against said Peter and James T. Cross in said Circuit Court no execution was issued thereon till the 11th day of July 1873 and even then although both said parties Peter and James T. Cross still then had sufficient personal property subject to execution in said County to satisfy the same no efforts were made either by plaintiff or the Sheriff to cause their personal property to be levied on or sold, to satisfy said execution or pay said debt, defendant further says that after defendant obtained said judgment, in said Circuit Court against said Peter & J. T. Cross and before this suit was commenced to wit: in the month of November 1873 said J. T. Cross offered to pay and tendered to plaintiff one hundred dollars in part payment of said judgment and to secure the remainder to him to be paid in a short time thereafter by an undoubted security which the plaintiff refused to receive,

Defendant avers further that said Peter Croft being the principal on said note & residing in said County of Jefferson & having personal property subject to execution sufficient to pay said note and judgment at all times said J. F. Cross at many times after plaintiff got said note from defendant requested the plaintiff to proceed to try to and collect said debt from said Peter Cross, but the defendant avers that said plaintiff utterly refused on several different occasions after he obtained said note & before this suit was commenced to proceed to collect said debt from said Peter Croft and refused to and neglected to have any execution levied upon the property of said Peter Cross and refused to use any efforts to collect the same from him which he might & ought to have done by having debts due said Peter of which plaintiff was advised and of which there were abundant due him by solvent persons in said County, Garnisheed under execution against said Peter for the purpose of making said debt as well as by refusing to have other personal property of said Peter sold of which he had an abundance subject to execution sold to make said debt.

Defendant avers further that large sums of money more than sufficient to satisfy said debt were from time to time after plaintiff received said note and after he received judgment of the Circuit Court thereon & prior to the commencement of this suit due said James F. Croft and subject to garnishment

To pay said debt as well as a large amount of Real & personal property of which plaintiff might and ought to have made his said debt,

Defendant says further that although said note sued on was a negotiable note yet defendant avers that plaintiff wholly failed after the same was received by him from defendant and endorsed by defendant to him to have payment of the same demanded of said Peter & J. T. Lerap or defendant or either of them or notice of non payment given to defendant or to have the same protested for non payment or any notice of protest or non payment to be given defendant at any time although he well knew the places of residence and of business of each of said parties and although they each resided and did business at all times after said note was received by plaintiff in said County of Jefferson wherein plaintiff resided wherefore in consideration of all the premises defendant says he is discharged from any and all liabilities to pay said note or any part of it and that plaintiff is not entitled to recover and prays judgment for his costs,

Jas. J. Williams
Attorney for defendant.

Endorsed.

Filed January 13th 1874

W. S. Bryce Clerk

By Chas. Horne Secy.

" January 16th 1874

L James
Charles Vineyard } Annotate
Replication filed.

Replication

Louis James pliff
against
Charles Vineyard deft. } In the Circuit Court
of Jefferson County, Mo
January term 1874

Now comes plaintiff and doth reply to certain allegations contained in defendants answer to plaintiffs original petition filed herein, and says that it is not true as alleged in said answer that at the time deft. endorsed and delivered said note (the subject of this action) to plaintiff, the makers thereof Peter & James F Croft were both perfectly solvent, and ever since have been and still are. Plaintiff says that it is not true as stated by defendant in his said answer that plaintiff could bring an action upon said note against Peter & James F Croft, before a justice of the peace, immediately after the ~~execution~~ endorsement of said note to him by defendant have received judgment against them and upon execution on such judgment that the constable could have satisfied such execution by levying the same upon personal property of said defendants.

Plaintiff says that it is not true as deft. in his answer states that July 11th 1873, when an execution was issued up on a judgment in this

Court, upon said note in favor of the plaintiff, and against Peter & J. F. Croft, that they both had sufficient personal property subject to execution in Jefferson Co. Mo. to satisfy said execution.

Plaintiff says that it is not true as stated by deft. in his answer that after plaintiff had obtained his judgment in the said Circuit Court, against said Peter & J. F. Croft, and before this suit was commenced, to wit, in November 1873, said J. F. Croft offered to pay and tendered to plaintiff, One Hundred Dollars in part payment of said judgment and to secure the remainder to him, to be paid in a short time thereafter by an undoubted security, which the plaintiff refused to receive.

Plaintiff says that it is not true as stated by defendant in his answer that Peter Croft was the principal in said note, and resided in Jefferson County Mo. owning personal property subject to execution sufficient to pay said note and judgment at all times, and J. F. Croft after plaintiff got said note from defendant, requested the plaintiff to proceed to try and collect said debt from said Peter Croft, and denies that plaintiff refused at any time to proceed to collect said debt from said Peter Croft or try to collect the same from Peter Croft by execution or otherwise. Denies that he was ever advised of any debts

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due said Peter, by solvent persons, abundant to have satisfied such execution by garnishment, denies that he was ever advised that Peter Crop had ^{any} abundance of other personal property, subject to execution, to pay said debt.

Plaintiff says further that it is not true as defendant states in his answer that large sums of money, more than sufficient to satisfy said debt were from time to time, after plaintiff received said note, and after he recovered judgment in the Circuit Court thereon and prior to the commencement of this suit due said J. F. Crop, and subject to garnishment to pay said debt, as well as a large amount of Real and personal property out of which, plaintiff might and ought to have made his said debt.

Plaintiff says further that it is not true as defendant in his answer says that plaintiff wholly failed after the said note was received by him from defendant and endorsed by defendant to him to have payment of the same demanded of said Peter & J. F. Crop or defendant or either of them, or notice of non-payment given to defendant at any time, and denies that each Peter & J. F. Crop and defendant resided and did business at all times after said note was received by plaintiff in said County of Jefferson, wherein plaintiff resided.

And plaintiff having fully replied to defendant's said answer, prays for judgment against said defendant for the amount of said note and the interest thereon.

Thomas H. Bullin
att for Plaintiff

Endorsed.

"Filed Jan 16th 1874 W.S. Boyce Cl."

January 21st 1874

Record

L James
vs
Charles Vinyard } Leave granted plaintiff to
amend his petition by interlineation, instantly.

January 29th 1874

Judgment

Louis James
vs
Charles Vinyard } On state.
Now on this day come the parties
aforesaid by their respective attorneys, as well as
in person and both parties waiving a jury all and
singular the matters in issue are submitted to
the court, and the court sitting as a jury after
hearing the evidence finds the issues for the
defendant, It is thereupon considered by
the court that said defendant go hence with-
out day and recover his costs herein, and
have execution therefor.

January 29th 1874

Record

L James
vs
Charles Vinyard } Motion for a new trial,
Now upon a hearing of said motion
and the same being by the court herefully understood,
It is considered that said motion be overruled.

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Record

January 29th 1874

James
Charles Vinyard } Parties consenting, leave is granted
plaintiff to file an affidavit, bond and bill
of exceptions thirty days after the close of this
term, said bond to be approved by the clerk,
and thereupon the appeal herein is granted
to the Supreme court, and it is further ordered
by the court that the clerk of this court make
out and send certified to the clerk of said
Supreme court a true, complete and full
transcript of the record and proceedings in
said cause.

Bill of Exceptions.

Bill Ex

Lewis James plaintiff } Jefferson Circuit Court
against } In the State of Missouri.
Charles Vinyard defendant } January Term AD 1874.

Be it remembered that said cause coming on
to be heard, both parties appeared, and waived a trial
by jury, and by consent agreed to a trial by the court,
sitting as a jury.

Be it remembered that on the trial of this cause
the following proceedings were had, The Plaintiff
to sustain the issues upon his part offered evidence
as follows,

James

Lewis James of lawful age, being sworn deposeth
and says, "I am the plaintiff in this suit. The

defendant, ~~and myself~~ James F. Craf and myself
all live at Victoria Jeff. Co. Mo. When I pur-
chased this note from defendant Charles Vinyard,
one of the makers, James F. Craf held my note
for one hundred dollars. I saw James F. Craf ten
days afterwards, and he agreed to give up my
note, and that I should credit his note with
the amount. He then went off to St. Louis, saying
when he next returned he would bring my note.
He and his family were temporarily in St. Louis on a
visit but his residence was in Victoria Jefferson
County Missouri where I resided. Peter Craf was
unmarried, had no family & resided generally
at said town of Victoria when he J. F. Craf next
returned, which was in ten days or two weeks,
he refused to give up my note, and shortly
afterwards sold it to Pfennig. I do not know
what day he sold it. I knew James F. Craf's cir-
cumstances. He was the head of a family.
He owned one lot in Victoria, with a house upon
it. The house and lot are worth \$800 or 900 dollars.
There was a deed of trust on the lot to secure
\$500⁰⁰ dollars which money still remains unpaid.
J. F. Craf was a carpenter and worked for the Rail-
road Co. He had household and kitchen furniture
and his mechanic tools. I never knew of his owing
any other personal property from the time I purchased
this note, to this time. About a month and a half
after I got the note herein rec'd on, I sued James F. Craf
& Peter Craf in the Circuit Court of Jefferson County on said

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note and got a judgment against them and had execution issued thereon and the Sheriff advertised James F. Croft's Lot of land in Victoria for sale, But he did not sell it as Croft claimed it as a home stead and nothing was made, on said judgment, out of either James F. or Peter Croft.

He told me he had a cow to sell, and asked if I would buy her. I did not want to purchase. Peter Croft was in St. Louis when I got the note, and some time afterwards returned to Victoria. He had no particular home. He was first at one place and then another. He was working in St. Louis about the time I got this note but shortly after he came down to Hanover in this county near Victoria and worked there during the summer after I got the note. He was some times in Victoria. I knew him well. He was a single man - I never knew from the time I purchased this note - of either James F. or Peter Croft owning any personal property subject to execution. I paid full value for the note. Perhaps there was a small amount of the accrued interest knocked off. The plaintiff offered to prove that "when he bought the note of defendant he promised plaintiff that if James F. or Peter Croft did not pay the note, defendant would pay the note" - but defendant objected and the court sustained the objection & would not admit such testimony on the ground that it was

not averred in the Plaintiff's petition. To which ruling, the Plaintiff at the time excepted.

Rapp.

J. G. Rapp of lawful age being sworn on behalf of Plaintiff deposes and says " I live at Victoria Jefferson County. I know Plaintiff and defendant, I know James F. and Peter Lerof, have known them ten years, I never knew of Peter Lerof owning any personal property, He used to drive a yoke of oxen but I don't know who owned them, They were sold in 1872, during the Epizootic.

James F. Lerof was married, owned a house and lot in Victoria worth about 900 dollars. He was a carpenter and worked for the Railroad Company. I have been in his house, was only in one room, the furniture was good, I think the furniture in that room was worth \$150⁰⁰. never knew of James F. Lerof owning any other personal property.

Winey

Razib Winey, of lawful age, being sworn on behalf of Plaintiff deposes and says " I live at Victoria Jefferson County, Mo. Have known James F. & Peter Lerof since they were boys. James F. owned a house & lot in the town of Victoria which ought to bring \$1000⁰⁰. He has a family, is a carpenter and works on the Railroad. I never was in his house, never knew of his owning any personal property but one pig. Peter Lerof worked a little yoke of oxen

He had possession of them, the last I knew of them a year ago last fall, about the time the Epizootic was in St Louis. He worked last summer at Horine station (Hanover). He has been at Victoria the last few months driving two yokes of little oxen.

Jenni.

LK

Peter Jenni of lawful age being produced & sworn on part of Plaintiff, says "I purchased from James T. Croft a note given by Dr. Lewis James. I purchased it on March 27th 1873. The amount with interest was \$107⁰⁰."

Plaintiff here introduced and read in evidence a deed of trust from James T. Croft wife to Jefferson County Mo. for the use of the School fund in La. in Victoria, to secure five hundred dollars, which deed is as follows.

Deed of Trust.

This deed of Trust made and entered into this twenty fifth day of April one thousand eight hundred and seventy two by and between James T. Croft and Lenora Croft his wife, of Jefferson County Missouri parties of the first part and Abner Green of said County and State party of the second part and Jefferson County in County School funds and to use of inhabitants of School no thirteen party of the third part, Witnesseth that the said party of the first part, in consideration of the debt and trust hereinafter mentioned

and created, and of the sum of one dollar to
them paid by the said party of the second
part (the receipt of which is hereby acknowl-
ged) do by these presents grant bargain
and sell, unto the said party of the second
part, and to his heirs and assigns forever,
the following described tract of land
situate in the County of Jefferson and
State of Michigan to wit: Lot number one
in Block number three in the Town of
Victoria in said Jefferson County, as the
same is laid off and described in the Plat
of said town, now on file and of record in
the Records office of Jefferson County
aforesaid being the same Lot of Land
conveyed by Helen M Graff and John A
Graff her husband to said James F Croft
and Recorded in Book No. 3, page 187 of
the land records of said County, In trust
however for the following purpose, Whereas
the said James F Croft as principal and
Lewis James and Charles Vinyard as se-
curities have this day made and delivered
their promissory note to the said party of
the third part, whereby they promise
to pay said Jefferson County the sum of
five hundred dollars twelve months after
date and which note is in words and
figures as follows, "\$500⁰⁰ Twelve
months after date we or either of us prom-

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ise to pay to Jefferson County to the use of
the inhabitants of School Township No. 13.
\$122⁰⁰ and \$378⁰⁰ County funds making
the total of Five hundred dollars for value
received, to bear ten per cent interest from date
till paid, It is further agreed that in case of
default in payment of interest or failure by
the principal in this bond to give additional
security when thereto lawfully required both
the principal sum and interest shall become
due and payable forthwith, and that all inter-
est not punctually paid shall bear interest at
the same rate as the principal. Given under our
hands this 29th day of April 1872.

Approved this 29th day of April 1872. } James F. Croft.

Lewis James
Charles Vinzant.

Now if the said James F. Croft of the first part
or his said securities executors or administrators,
shall pay the sum of money specified in said
note with all the interest that may be due
therein, when said note shall become due and
payable, according to the tenor and effect
thereof, then this deed shall be void other-
wise the same shall remain in full force and
the said party of the second part in case of
his death or refusal to act then the Sheriff
of said Jefferson County may proceed to
sell the property hereinbefore described

or any part thereof, at public vendue to the highest bidder at the North front door of the Court house in Hillsboro in Jefferson County Missouri for cash first giving thirty days public notice of the time, terms and place of said sale and of the property to be sold, by advertisement in some newspaper printed in this State, or by six written or printed handbills pasted up in six public places in said County, and upon such sale shall execute and deliver a deed in fee simple of the property sold to the purchaser or purchasers thereof and receive the proceeds of said sale out of which he shall pay, first the costs and expenses of this trust and next whatever shall remain unpaid on said promissory note of either principal or interest and the remainder, if any, shall be paid to the said party of the first part or his legal representatives, and the said party of the second part covenants faithfully to perform and fulfil the trust herein created. In witness whereof, the said parties of the first part have herunto set their hands and seals the day and year first above written.

Signed Sealed and acknowledged in

presence of the undersigned

C. H. Bissett *67 Stamp, Que...*

James T. Croft *(Real)*
 Linora Croft *(Real)*

State of Missouri County of Jefferson,

Be it Remembered, that on this 27th

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day of April 1872 before me the undersigned a
Notary Public within and for said County
came James T. Croft and Lenora Croft his wife,
who are personally known to me to be the
same person 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 pur-
poses therein mentioned, the said Lenora
Croft having been by me first made
acquainted with the contents of said in-
strument of writing, on an examination
apart from her said husband acknow-
ledged that they executed the same and
relinquished her dower in the real estate
therein mentioned and conveyed freely
and without compulsion or undue influ-
ence of — said husband,

In witness whereof I have hereunto
set my hand and affixed my
seal of office.

Charles H. Bissett Notary Public,

Also. Plaintiff read in evidence the Record and
files in the case of Lewis James — vs — James T
& Peter Croft consisting of petition, summons, Shffs.
return, judgment, execution & sheriffs return,
which are as follows to-wit:

Petition

Lewis James Plaintiff
against

Peter Craf and James F. Craf
defendants.

In the Circuit Court of Jefferson County,
Missouri May Term 1873.

The plaintiff states that the defendants, by their negotiable promissory note herewith filed, dated the 20th day of April 1870, promised for value received to pay Charles Vinyard or order the sum of one hundred and forty ~~five~~ dollars, twelve months after the date thereof, with interest from date at the rate of ten per cent per annum. Plaintiff states that the said Charles Vinyard on the 30th day of January 1873, assigned by endorsement and delivered said note to the plaintiff. The defendants on the 8th day of February 1873, paid to plaintiff thirty two dollars and thirty five cents on said note, and the plaintiff states that the remainder of said note and the interest thereon are yet due to plaintiff and for which he asks judgment.

Abner Green attorney for Plaintiff

with

The State of Missouri vs.
County of Jefferson
The State of Missouri.

To the Sheriff of the County of Jefferson. Greeting:
We command you, that you summon Peter Craf

and James Flerap 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 of May next, then and there to answer unto Louis James upon his original petition, a copy whereof is herewith annexed and accompanies this writ, and have you then there this writ.

(LS)

Witness W. S. Boyce, Clerk of our said Circuit Court, with the seal thereof herewith affixed at office in Hillsboro this 15th day of May A.D. 1873.

W. S. Boyce Clerk Circuit Court.
By C. H. Horine Deputy

Return,

I executed the within writ at the County of Jefferson Mo. on Peter Flerap on the 24th day of April 1873, by delivering him a true copy of the writ and petition as furnished me by the Clerk he being the first named, and I executed the same on James Flerap on the same day by leaving a true copy of the writ at his usual place of abode in said County, with a white person of his family above the age of fifteen years

P. B. Map Sheriff

May 21st May Term 1873

Judgment

Lewis James
 Peter Croft - James T Croft } Now come the plain-
 tiff by his attorney and said defendants being
 three times called came not, though duly served
 with process but make default, neither have
 they answered the petition of plaintiff, order-
 ed that said default be entered and the cause
 is submitted to the court upon the petition and
 evidence adduced by plaintiff, and the court
 after hearing the evidence finds for plaintiff
 in the sum of one hundred and fifty & ³⁵/₁₀₀
 dollars, for his debt and damages, It is thereupon
 considered by the court that plaintiff recover
 of said defendants the said sum of one hundred
 and fifty ³⁵/₁₀₀ dollars the amount so found by
 the court as aforesaid, with interest from date
 of judgment at ten per cent per annum, and
 costs of suit and have execution therefor.

Execution.

County of Jefferson, Mo.

The State of Missouri.

To the Sheriff of the County of Jefferson, Greeting:

Whereas Lewis James on the twenty first day of May
 in the year of our Lord eighteen hundred and seventy
 three at our Circuit Court, hath recovered against
 Peter Croft and James T Croft the sum of one hundred
 and fifty & ³⁵/₁₀₀ dollars for his debt and damages
 with interest from date of judgment at ten
 per cent per annum and costs of suit

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herein expended, These are, therefore, to command you, that of the Goods and Chattels, and Real Estate of the said Peter Croft and James F Croft you cause to be made the said debt, damages and costs, and that you have the same before the Judge of said Court on the second Monday of September next to satisfy the debt, damages and costs aforesaid, and that you certify how you execute this writ, and have you then there this writ.

(LD)

Witness, W.S. Boyce, Clerk of our said Circuit Court at Hillsboro, this Eleventh day of July A.D. eighteen hundred and seventy three.

W.S. Boyce Clerk

By Charles Tom Morine Sept.

Return

This execution came to hand the 22 day of July 1873 and I did on the same day levy upon and seize the following described property as the property of James F Croft one of the defendants. To wit: Lot 1. Block No three in the town of Victoria Jefferson County Mo. as laid off and described in the plat of said town now on file in the Recorder's office of said County. Returned unsatisfied Croft claiming above property as a homestead Sept 16th 1873.

J. B. Mosey Sheriff

Plaintiff here rested.

The defendant to sustain the issues upon his part offered evidence as follows.

J. Croft.

James J. Croft of lawful age being sworn deposeseth and says.

I live at Victoria, on the 30th day of January 1873. I owned a house & lot in Victoria worth \$900.⁰⁰ or \$1000.⁰⁰ with furniture worth \$500.⁰⁰ I had a set of Carpenter tools, old but good, worth \$25.⁰⁰. Have had these effects from that time until now - at that date I owned & held a note on A. Stroup and Charles Vineyard the defendant given in the Spring of 1870 for one hundred dollars interest 10% up to Jan'y 30th 1873, there was thirty five dollars paid on said note, I received more on said note afterwards, It is about all paid now, at March 27th 1873 P. Jenni owed me about \$25.⁰⁰ on the note given by Lewis James, which I sold to him, I took it out in goods soon after - I was working at the time, and ever since have been for the rail road Company, worked by the day, made from \$60.⁰⁰ to \$75.⁰⁰ per month, about two months ago the Company owed me for over three months work, over two hundred dollars this was before the 5th of December, during the panic, It was on September, October & November's pay about one third

of the \$200.⁰⁰ was for last 30 days wages, I collected the \$200.⁰⁰ about Dec. 10th 1873. I had no other property during that time from Jan. 30th 1873. to Dec 5. 1873, except as above stated, I continued to hold the note on Vinyard & Stroup - Peter Lerap during that time owned three or wagons, at one time he owned two I think at the same time, He also owned one car and one ox - if not two oxen, I am certain he owned one ox and I believe two, Peter had a wagon a short time ago - He had a steer about the 5th of December last. I sued Stroup & Vinyard & obtained judgment - I offered Peter 8th 1873 to assign to Lewis James that judgt. in part payment of the note he held on me, but he would not accept it, there was one hundred dollars due on it at that time, after he had got judgment against me I made the same offer and he refused, I told him before he sued me, that he could make the money off of Peter Lerap, In November 1873. I offered to pay Lewis James \$100.⁰⁰ of the judgt. against me & Peter and give him a note with the defendant Charles Vinyard & L. S. Vinyard as security for the balance on condition that he would enter satisfaction after the judgment, both of the Vinyards are very solvent - He refused to do it, He offered to make such arrangement if I would pay \$120.⁰⁰ cash - I never showed him any money but I had it and so informed him I did not show the money because he refused to receive it, I did not have a note executed.

I made this same offer to him three different times - I had this conversation in November last,

Dr. James said if I would pay \$120⁰⁰ the amount of a judgment against him on his note I had sold to Penni, and give him a good note for the balance payable in six months, he would release the judgment against me.

Plaintiff's attorney, on cross examination asked witness as follows.

Ques. "Did not Dr. James in three days after the offer made by you to him as above stated by you propose to release the judgment against you on the payment of \$100⁰⁰ and the giving by you of a note with good security for the balance?"

To which question the defendant objected, and the objection was by the court sustained, to which ruling of the court the plaintiff then and there excepted at the time.

"James H. Croft further testifying says Peter owned a wagon Jan'y. 30th 1873, ^{worth} ~~with~~ \$25⁰⁰ dollars. He owned this wagon in March 1873, and also owned another wagon at the same time I think, which was at the shop for repairs. I know he owned one wagon. He had paid for the repairs as he told me. The wagon when repaired would be worth \$20. dollars. He also owned one ox worth \$25⁰⁰. He owns a wagon now. The deed of trust on my lot to secure \$500. dollars is still due, the interest is paid up - I have one bed, one bedstead and one lounge,

I never offered to deliver to the Shff. any property or to pay him or Mr. James anything on the judgment during the life of the execution, the Sheriff never asked me for the money on the execution or offered to levy on any personal property. I claimed my Lot as a home stead, on the day it was advertised to be sold and consequently the Sheriff did not sell it. - I never told Mr. James at any time that the Railroad Co owed me, but I am sure he knew it, It was a rule of the Company to pay every month, James lived at the Railroad and knew the Company was behind.

Mr. James was willing to credit the note to be got from Vinyard with the note he owed me. He said he had got the note to lift his own - He asked me to give up his note and let him credit the Vinyard note with it and I refused to do so, I told him I was only security on it & I was about he ought to try to make it out of Peter Croft, It was about the 12th of Feby 1873 that I refused to do so, my household & Kitchen furniture was worth \$250⁰⁰, In January 1873 I had a judgment on the note due me from Stroup and Vinyard and offered to assign it to James, in part payment of the Vinyard note, I did not tell the Sheriff that this judgment was existing, He never asked me for personal property to pay the execution or to levy on

I knew there was a judgment against me, in favor on James on the note he got from Vinyard I told James that he could make his judgment out of Peter Craf, that Peter had a wagon and an ox and was working for wages."

Vinyard

Charles Vinyard of lawful age, the defendant, being sworn, testifies and says,

"I have real estate worth \$10,000⁰⁰. I live at Victoria mo. I know James F Craf. He has the same property now he has owned for several years. His furniture is worth \$250⁰⁰. Peter Craf has had a wagon all the time, He now owns a wagon and a yoke of cattle, He had a cow after harvest last year, and offered it to Mr. James, as part payment of this note, I told the blacker this at Peter's request, that Peter would give him an order on Whitehead his employee monthly, until the debt was paid, and James refused, About two months ago I told Mr. James that he had better take the \$100⁰⁰ James F Craf was offering him. Peter Craf drives a yoke of oxen now & a wagon, he drives by my door every day - he has possession of them - he has a yoke of bulls and a steer, The bulls are worth \$50⁰⁰ the ox \$25⁰⁰ and the wagon \$35⁰⁰

Christopher. C.W. Christopher on part of defendant, of lawful age

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being sworn says,

"I told Lewis James at the request of James F. Croft, - about Dec. 1st 1873. that Croft would pay him \$100.⁰⁰ and give a note well secured for the balance of his judgment on condition that he would release said judgment against him - James said he would not do that, but would release the judgment and take such note for the balance of his judgment if Croft would pay \$120. dollars the amount of a judgment against said James.

Peter

Peter Croft

Peter Croft of lawful age being sworn on part of defendant, says.

"I have not owned an ox at any time since before Jan. 30th 1873. I owned a cow once since that time on condition. I had not paid for her - I was to have her on condition that I could sell her to get money for Mr James, or could sell her to James, otherwise she was not to be mine. I have owned three wagons since that time, but never owned but one at a time, sometimes I would have none. The wagons were worth about fifteen or twenty dollars each. I have been working during the last year for Mr Dorsey, driving his team, hauling wood and ties. I worked for \$20.⁰⁰ & \$25.⁰⁰ a month never had more than \$25.⁰⁰ due me at a time. I never worked for Whitehead. I once offered to sell James a cow and also once offered to pay him so much a month - He said all right - but

Jim had refused to trade nakes and he intended to make it out of him if he could.

The deft. read in evidence transcript of Judg. from J.P. on note in favor of Jas. Croft - vs - Stroup & Vinyard as follows,

Transcript. James F. Croft } Suit on note, bal. due & interest
 vs Austin Stroup & } to date \$112.⁵⁰
 Charles Vinyard } Dated Victoria Mo. March 30th 1870

One day after date we or either of us promise to pay to the order of James F. Croft one hundred dollars value received with ten per cent interest from date, signed Austin Stroup & Charles Vinyard, There was paid \$10. Jan'y 1st 1872. Plaintiff filed his claim for suit July 20th 1872. Summons issued same day returnable August 10th 1872, and on the 10th day of August 1872 Constable returned summons executed as the law directs and the cause coming on for trial and the parties appearing and the demand being on a note and no off set or defence the Justice adjudges the defendants to pay to the Plaintiff \$112.⁵⁰ for his debt and the costs of this suit which is \$2.⁰⁰ and that he have execution therefor. Execution issued this 12th day of August 1872 to R. Washburn Constable of Valle Township returnable in 90 days. Execution returned Nov 12th 1872, whereon was written by the Constable - no property found in my Township or County whereon to levy to satisfy the within

execution signed R Washburn Constable of Valle Township

B. S. Reppey Justice of the Peace,

State of Missoury }
County of Jefferson } ss. I, B. S. Reppey, a Justice of the Peace within and for the County of Jefferson and State of Missoury, do certify the foregoing to be a full, true and complete Transcript of the Entries and Proceedings in the case of James T. Cragg, versus Austin Stroup & Charles Vinyard as the same are of record in my docket, and that the papers thereto attached are all the original papers on file in my office.

Witness my hand, this 21st day of January A.D. 1874

B. S. Reppey Justice of the Peace,

The defendant here closed and the plaintiff offered the following evidence in rebuttal,

James.

Lewis James of lawful age, the plaintiff, being sworn testifies,

"I heard two or three years ago, before I got this note that Stroup and Vinyard owed James Cragg, but that Stroup had about paid it. Jim Cragg never offered, at any time to assign to me a judgment against Stroup & Vinyard on the note got of defendant, I did not know before today that he had sued them, at one time I told Jim Cragg that I knew of no property

owned by Peter Lerap, James never told me that Peter had any property."

The foregoing was all the evidence offered by the parties.

Whereupon the plaintiff prayed the Court to give the following declarations of law To wit:

Plff's Ins. 1st If the Court sitting as a jury find from the evidence that at the time defendant assigned the note in controversy to plaintiff, the makers thereof Peter Lerap and James F Lerap were to the knowledge of plaintiff insolvent; and that to the knowledge of plaintiff, neither Peter or James F Lerap owned personal property subject to execution nor had debts due them from solvent persons subject to garnishment and this continued up to the time that plaintiff sued said makers in the Circuit Court; then this plaintiff was not guilty of laches and neglect in not suing them before a justice of the peace between the time of acquiring said note of defendant and suing the makers in the Circuit Court; and his not thus suing them was not a failure on the part of plaintiff to use due diligence in collecting said note from the makers.

2nd - If the Court sitting as a jury find from the evidence that at the time plaintiff purchased this note from defendant, James F Lerap, one of the makers thereof was the head of a family, and held a note made by this plaintiff to him, such note was

not assets of James F. Croft which plaintiff could and should have made available in the collection of this note, unless James F. Croft had three hundred dollars worth of personal property and choses in action subject to execution & garnishment over and above and not including that note.

3rd If the Court sitting as a jury find from the evidence that James F. Croft sold and transferred the note held by him against plaintiff, before plaintiff could have recovered judgment against him by suit before a justice of the peace on the note in controversy, plaintiff was not bound to credit the note held by him, with the amount he owed James F. Croft on note.

4th If the Court sitting as a jury find from the evidence, that at the time plaintiff purchased the note in controversy from defendant the makers thereof Peter Croft and James F. Croft, both were insolvent, that James F. Croft was the head of a family and did not own above three hundred dollars worth of personal property nor over fifteen hundred dollars of real estate; that Peter Croft was utterly insolvent owning no property of any kind, and that both said makers continued so from that time forward up to the time of the commencement of this suit, and that plaintiff at the first term of Court Circuit Court for the County in which he and said makers resided, after such purchase

sued them on their note, and recovered judgment against them, and had execution issued on such judgment against James F. Cragg, but that he claimed what real estate he owned as a homestead and which was therefore exempt from execution and by reason of the insolvency of said Peter Cragg and James F. Cragg such judgment could not be enforced and proved wholly unavailing then the issues should be found for plaintiff.

5th. - The court declares the law to be that a tender of money by one party to another consists of an actual offer of the money, and the money actual shown, and that before the court sitting as a jury, finds that James F. Cragg offered the plaintiff, in payment of the judgment on this note in favor of plaintiff against him and Peter Cragg, the sum of one hundred dollars and to secure the balance by a note with good security, the court must find from the evidence that James F. Cragg had the money and showed it to plaintiff and offered it to him, and that it was legal currency of the United States and that the note for the balance was executed at the time and tendered to plaintiff thus executed with good security, and the plaintiff refused to accept the same.

6th. The court declares the law to be that in case a negotiable promissory note is assigned by the

payee after maturity it is not necessary that demand of payment be made and the note protested for non-payment, or notice given to the assignor, provided the assignee use diligence to collect the same from the maker or makers, - or that the makers of the note were insolvent at the time the note was assigned.

Yth. If the court, sitting as a jury, believes from the evidence, that a sufficient amount could not have been made, out Peter Lerap and James F. Lerap, the makers of said note, to pay for the trouble and expense of a suit, (had suit been brought before a justice of the peace at his first term, after the note was received) then it was not incumbent upon plaintiff to bring such suit against the makers of the note, and if such insolvency of the said makers of the note continued up to the time of bringing this suit, then it is immaterial whether plaintiff instituted such suit or not, he is entitled to recover against the assignor.

8th. The court declares the law to be, that if James F. Lerap, at the time the note in question was assigned to Plaintiff, did not own exceeding three hundred dollars of personal property and choses in action (over and above one hundred dollars of house-hold and kitchen furniture and four beds and the usual bedding and his mechanic tools) and did not own real estate

above the value of \$1500. dollars subject to execution, then he was in point of law insolvent and that if Peter Graft, the other maker of the note (was a single man) & did not own any property subject to execution, then the Plaintiff was not bound to bring suit at the next Justice's Court law day after receiving the note, or in the Circuit Court, in order to entitle him to recover against the assignor of said promissory note.

Which declarations of law the court refused to give, which refusal of the court to declare the law, as prayed by the plaintiff, the plaintiff then and there accepted,

The defendant ^{upon} ~~on~~ his part prayed the court to give the following instructions, No. 1. 2. 3. 4. 5 and 6.

Defts. Ans.

The court declares the law to be that the plaintiff cannot recover in this case without having instituted and prosecuted suit against the makers before a Justice of the peace at the first law day of some one of the justices having jurisdiction of the persons of the defendants after his receipt of the note from defendant, unless it appears from the evidence in the case that the makers and each of them were so insolvent that a suit would have been wholly unavailing; and it is not necessary that it should

appear that the whole amount of said note could have been made, if it appears that enough of the debt could have been made by suit to make it worth a suit in case the plaintiff had no other resource except the makers of the note to make his debt out of.

2nd The court further declares the law to be that if the makers of the note sued on were not so insolvent at the time plaintiff became the owner of it as to make it not worth while for plaintiff to bring suit against the makers (Peter & J. F. Croft) in case he had had no other means of collecting the note except out of said makers then in that event the plaintiff is not entitled to recover and the finding should be for the defendant.

3rd. The court declares the law to be that the plaintiff after receiving the note sued on from defendant was bound at his peril to make diligent inquiry from time to time up to the commencement of this action for the purpose of ascertaining whether or not the makers of the note (Peter & J. F. Croft) had property or money due them subject to execution sufficient to make said debt or any considerable portion of it and if said makers had during that time property subject to execution or debts due them subject to garnishment from which the plaintiff might have made said debt or any considerable portion of it and if plaintiff knew of the same or by

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diligent inquiry he might have ascertained it he cannot recover in this action & if the court so find, the finding should be for the defendant, 4th. The court further declares the law to be that if the court should find from the evidence that the makers of the note had not when it was transferred from defendant to plaintiff visible property equal in value to their indebtedness yet such fact if it existed is not of itself sufficient evidence to establish the insolvency of the makers,

5th The court declares the law to be that the plaintiff upon receiving the note in suit was bound to use the same measure of diligence in collecting the same of the makers Peter & J F Croft which a prudent man would use who had no recourse against any other party, and if by the use of such diligence he might have collected the amount of said note from the makers he can not recover in this action and the finding should be for the defendant,

6th. The court declares the law to be that unless the plaintiff demanded payment of the note in suit from Peter & J F Croft the makers after it was transferred to him by defendant in a reasonable time after the transfer thereof and gave notice of non payment thereof to defendant within a reasonable time after said demand and non-payment defendant he is not entitled to recover and the finding should be for the defendant,

All of which declarations of law asked by defendant were refused except instruction no 5 which the court having modified and placed in its present form gave, to the giving of which the plaintiff then and there excepted, and to the refusal of Nos. 1, 2, 3, 4 & 5 defendant at the time excepted,

Under the instructions, the court sitting as a jury found a verdict for the defendant, And on the 29th day of January 1874, the plaintiff filed his motion for new trial as follows:

Motion

Lewis James } In Jefferson Circuit Court.
Charles Vinyard } Now plaintiff comes and moves the court to grant a new trial in above cause for the reasons as follows.

- 1st The Court erred in refusing instructions asked by plaintiff.
- 2nd Court erred in giving the instructions for deft. which were given.
- 3^d Judgt. was against law & evidence.
- 4th Judgt. was against weight of evidence.
- 5th The judgment should have been for plaintiff and not defendant.

Green & McMullin for pliff.

Endorsed. "Filed Jan'y. 29th 1874. W.S. Bayce cl'k"

which said motion the court on the 29th day of January 1874 overruled and to which ruling and order of the

Court the plaintiff, then and there excepted at the
time. He therefore prays the court to allow and
sign his bill of exceptions, and that the
same may be ~~done~~ signed and sealed and
made part of the record in said cause and
which is done this 20th day of February A.D. 1874

Louis J. Drinning (seal)
Judge of the Jefferson Circuit Court.

Endorsed.

"Filed Feb 23rd 1874 W.S. Boyce clk
By C. Ho. Horine Dep't."

Affidavit

Louis James Plaintiff

against

Charles Vinyard defendant,

State of Missouri

County of Jefferson

In the Circuit Court of
Jefferson County, Missouri.

This affiant, Louis James,
the above named Plaintiff, being duly sworn, states
on oath, that his application for an appeal in the
above entitled cause, from the judgment of the
Circuit Court aforesaid, to the Supreme Court
of Missouri, is not made for vexation or delay
but because said affiant believes that he,
the said appellant is aggrieved by the judg-
ment aforesaid Circuit Court,

Sworn to and subscribed before
me Feb 16th 1874,

Louis James

W.S. Boyce Clk. Cir. Ct.

By C. Ho. Horine Dep't.

Endorsed "Filed Feb 23rd 1874 W.S. Boyce Clk. By C. Ho. Horine Dep't."

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Bond.

Louis James - plaintiff
against

Charles Vinyard defendant.

} In the Circuit Court
of Jefferson County
Missouri.

We the undersigned, Louis James, as principal
and Thomas Beute and Charles Vinyard as securities
acknowledge ourselves indebted to Charles Vinyard
the above defendant, in the sum one hundred dollars
to be void upon this condition: whereas, the said Louis
James has appealed from the judgment of the Circuit
court aforesaid, in an action between Louis James, plaintiff
and Charles Vinyard, defendant to the Supreme Court of
the State of Missouri, Now if the said Appellant, Louis
James, shall prosecute his said appeal with due
diligence to a decision in the Supreme Court, and shall
perform such judgment as shall be given by the Supreme
Court, or such as shall the Supreme Court may direct
the circuit court to give, and if the judgment of such
circuit court or any part thereof, be affirmed, that
he will comply with and perform the same, so
far as it may be affirmed and will pay all
demands damages and costs, which may be
awarded against him the said appellant by the
Supreme Court, then this recognizance shall be
void, otherwise to remain in full force -

Witness our hands and seals this 18th day of February 1874

Approved Feby. 23rd 1874

W.S. Bayce Clerk.

By C. H. Corine Depy

Endorsed: "Filed Feby 23rd 1874, W.S. Bayce Clk. By C. H. Corine depy."

Louis James

(seal)

Thomas Beute

(seal)

Charles Vinyard

(seal)

State of Michigan
County of Jefferson
I W. S. Boyce Clerk of
the Circuit Court within and for said County do certify
that the foregoing pages contain a true, complete
and full transcript of the Record and proceedings
in the Case of Lewis James plaintiff against
Charles Vinyard defendant as fully as the
same appear of record and on file in my said
office,

In Testimony Whereof I have hereto set
my hand and affixed the seal of said
Court at office in Hillsboro this
Second day of April A.D. 1874

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

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James
 Charles Vinyard } Into Circuit Court of
 Jefferson County Mississ.
 Fee Bill.

Files ^{1,25} copy set ³⁰ Or ¹⁵⁰ Summons ¹⁰⁰ \$ 3.05
 Copies ¹⁰ Dockets ⁵ aff ²⁵ Spas ⁷⁵ 1.25
 app ¹⁰ Bond ³⁰ Ent. motion ²⁰ Rule ²⁰ order ²⁰ 1.20
 Sub. ³⁵ Lock Judgt. ¹⁰ Ent. Judgt. ⁵⁰ .95
 Fee bill ⁴⁰ making fee bill ⁵⁰ 60
 Trans. Supreme Court, 11040 words @ 15 pr. 100. \$ 16.56
 Cert & seal to Trans. ⁵⁰ Copy of fee bill ¹⁰⁰ 1.50
 Postage ⁴⁵ Bill ³⁵ order granting appeal ³⁵ 1.15
 order for Trans. ³⁵ and ²⁰ rep ²⁰ 75
 leave to amend pet. 20 \$ 27.21

J. B. Hoop Sheriff.

Serv. one Summons ^{1,00} Serv. / Spas ^{3,50} \$ 4.50 \$ 4.50
 witnesses Jan'y 1, 1874

J. I. Croft	3 days 9 miles	\$ 3.72
W. Christopher	3 days 9 miles	3.72
Alex Dorsey	3 days 8 miles	3.64
B. Nixey	3 days 9 miles	3.72
J. G. Rapp	3 days 9 miles	3.72
W. Horine	3 days Producing papers	3.35
Total Cash on paid Court,		<u>21.87</u>
		\$ 53.58

A true copy from the fee book

Witness W. S. Boyce Clerk of said court with the seal thereof
 hereunto affixed April 6th 1874

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

3898

Lenie James

to

Chas. Maynard

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