

Jefferson County Circuit Court
Case Files - Civil
September 1874

Fleming, Andrew J.
Fleming, Margaret M.
Burgess, James

vs.

Sanderson, Elizabeth S.
Sanderson, E. C.

Set aside release of deed of trust

18 acres in S24 T42 R6E securing
20 promissory notes; depositions;
bill of exceptions

Box

33

Folder 24

To James Burgess Esq

Dear Sir!

I hereby
authorize you to enter satisfaction
upon the records, or to execute a deed
of release of so much of the property
owned by Mrs Chesley as is covered
by a certain deed of trust executed
by John S. Post & wife, and upon
property lying in ~~Franklin~~ ^{Jefferson} County
Missouri, to secure certain notes
therein described -

Said notes have been paid and
satisfied by Mrs Chesley through her
agent J. Chesley, ^{and through his agent, B. M. Milligan} and upon such
payment to me, who was then the legal
holder I surrendered the same to
Mrs Chesley, ^{through his agent B. M. Milligan} & hereby release the said
property for the same -

Said deed is dated the 1st
day of Jan'y A.D. 1865 and is recorded
in the office of the recorder of ~~Franklin~~ ^{Jefferson}
County in Book "V" and page 97
and you are the trustee mentioned in
said deed for John O'Hallen

Respy to - J. A. Wilson

by Saml. J. Bonner, agt

St. Louis February 11th 1874

I do not know that the foregoing description is the
same as the ~~old~~ deed of trust, which I received
the money on a \$3500 principal ^{note} & interest notes there
in described, made by Mr & Mrs Post & wife to
John O. Hallen trustee, on or about the
4th of May 1872 and I acting for David
a Wilson, of Sullivan County Mo
Sam^l J. Bonner & Co
St Louis February 11th 1874

order of
release of
a deed of trust
of W. S. Post & wife

Andrew Fleming &
Margaret M. Fleming His
Wife & James Burgess - Plaintiffs
vs
Elizabeth S. Sanderson &
E. C. Sanderson - Defendants

In the Circuit
Court of
Jefferson
County,
Missouri

And Andrew Fleming & Margaret M. Fleming are Husbands
Plaintiffs State that, ^{and wife, that} on and prior
to the first day of January 1865 one
Wm. S. Post was the owner of the
following described Real Estate Situate
in Jefferson County Missouri, To-wit, a
certain tract or parcel of Land Situate
in section twenty nine Township Forty
Two Range six East Beginning at
Low water on the west Bank of the
Mississippi River thence south
81 W. at 300 chains a post from
which an oak 6 bears N. 30 W. 17
links distant and a Hickory 8 S. 3 E.
47 links distant at 20.00 chs, the corner
from which a Hickory 16 bears S. 73.
E. 33 links distant and a black oak
7. N. 72 E. 24 links distant, thence south
19 1/4 W. 11. 36 to a post from which a Hickory
12 bears W. 78 W. 30 links and a black oak
5 bears W. 30 E. 26 links distant thence N.
81 E. 20.00 chs, to low water mark on the
west bank of the Mississippi River, thence

2
up said River with its meanders to the
place of beginning containing Eighteen acres
and Thirty Hundredths of an acre more or
less After deducting the right of way of
the Iron Mt. R.R. Co. 100 feet wide
✓ through said Tract. and Plaintiff aver
that being such owner said Wm. S. Post & his
wife Helen J. R. Post
on the first day of January 1865
Executed and delivered ~~to Col. John O. Fallon~~
a Deed of Trust bearing that date (a
copy of which
is herewith filed and prayed to be taken
as a part of this petition) by which
he conveyed said Real Estate to James
Burgess of said Jefferson County as Trustee
in Trust to secure to Col. John O. Fallon
or also of said County his (said Post's)
Twenty promissory negotiable Notes,
to-wit, Note No. 1 for \$3500.⁰⁰/₁₀₀ bearing
date January 1st 1865 payable to the
order of Col. John O. Fallon or 120 months
after its date bearing 10 per cent. interest per
annum after its maturity and also nine
other notes payable to said O. Fallon all
of date January 1st 1865 each said notes
being for \$105.⁰⁰/₁₀₀ being Numbers 2, 3, 4, 5, 6, 7, 8,
9 & 10 and each being payable respectively

in 12, 18, 24, 30, 36, 42, 48, 54, & 60 months
after their date bearing respectively 10 per
cent interest per annum after maturity
also ten other notes being all dated on
the same day viz January 1st 1865
numbered respectively 11, - 12 - 13 - 14 - 15 -
16 - 17 - 18 - 19 - & 20 - each of them being for
\$140, ⁰⁰/₁₀₀ and each being payable respectively
to the order of said O'Fallon 66, - 72 - 78 -
84 - 90 - 96 - 102 - 108 - 114 - & 120 months
respectively after their date and each
bearing Ten per cent interest after
their maturity, respectively, -

Plaintiffs further aver
that ~~the~~ subsequently to the execution
and delivery of said Deed of Trust by
said ^{Post} ^{and wife} to said O'Fallon as Vestui
que Trust and said Burgess as Trustee
and after the same had been duly
Recorded said Post and his wife
Helen A. K. Post by their Deed of date
December 22nd 1865 conveyed to one
D. H. Dorman a Tract of something over
fifty acres of Land which embraced a
portion of the Tract described in the
aforesaid Deed of Trust which had therefore
been given by said Post & wife to said Burgess
Trustee as aforesaid to secure the notes to
said O'Fallon as aforesaid that is to say

✓ Said Deed of Postwife to Dorman embraced and conveyed to said Dorman subject to the Deed of Trust before mentioned a portion of the Land in said Deed of Trust described amounting to Twelve $7\frac{1}{100}$ acres which are specifically described as follows, to wit, beginning at Low Water mark on the west bank of the Mississippi River in Fractional section 29 Township 42 Range 6 East & on the north line of a one acre tract owned by Mrs. Murphy thence N. 81° W. along the north line of said one acre 8 chains & 70 links to a Dogwood 5-inches South 45° W. 17 links distant - thence N. 9° E. 111 links thence N. 82° W. 8 chains & 40 links to the west line of an 18 acre tract thence South 19 $\frac{3}{4}$ ° W. 10 chains & 99 links thence N. 81° E. 20 chains to Low Water mark on the River thence up the River (the Mississippi) to the place of beginning containing Twelve $7\frac{1}{100}$ acres after deducting the one acre owned by Mrs. Murphy.

Plaintiffs state further that said Dorman and his wife by Deed of date April 9th 1867 conveyed the same Land subject to said Deed of Trust to one Elizabeth S. ~~Sanderson~~ ^{the wife of one E. C. Sanderson} Sanderson, who is made a defendant together with her said husband herein, and who now holds the legal title thereof subject to said Deed of Trust as before stated. — Plaintiffs state

✓ further that said Postwife on the 23rd day of March 1867 conveyed subject to said Deed of Trust that part of the eighteen and thirty hundredths acres conveyed by them to said Burgess Trustee as aforesaid to Daniel P. Allison who with

his wife in April 1867 conveyed the same to Melville W. Foster who by deed of May 19th 1871 conveyed the same to Jonathan Chesley who with his wife on the 17th of April 1872 conveyed the same to B. M. Million Trustee in Trust in Trust to secure to Margaret M. Fleming certain promissory notes described therein, all which conveyances were ~~made~~ subject to said Deed of Trust from from said Post & wife to said Burgess Trustee as before stated, and plaintiffs state that on May 16th 1874 said Million Trustee in pursuance of the terms of said Deed default having been made by the makers thereof in the payment of the notes which it was given to secure sold said Land to Andrew J. Fleming as Trustee for said Margaret M. Fleming who yet owns it, plaintiffs aver that said portion of said eighteen & thirty hundredths acres so purchased and now owned by said Andrew J. Fleming in Trust for said Margaret M. contains five ~~99~~⁸⁹/₁₀₀ acres and is described as follows

Beginning at low water mark on the ^{west bank of the} Mississippi River in fractional section 29¹/₂ Township 42 Range 6 East & on the north line of a one acre tract owned by Mrs. Murphy, thence N. 81° W. along said line 8 chains & 70 links & a dog wood 5 inches S. 45° W. 17 links distant, thence N. 9 E 111 links thence N. 82° W. 8 chains & 40 links to the west line of said 18 acre tract thence N. 19³/₄ E. 37 links to the N. W. corner of said 18 acre tract the old

6

corner trees cut down & new trees marked for corner trees
 a black oak 4 inches S. $47\frac{1}{4}$ E. 31 links distant a
 white oak 3 inches N. $49\frac{1}{4}$ W. $9\frac{3}{4}$ W. thence S 1° E.
 20 chains Low water mark on the Mississippi
 River thence down said River to the place of
 beginning containing five & $\frac{8}{100}$ acres

Plaintiffs state that after said Mrs. S. Post
 executed said promissory notes in favor of
 of said O'Fallon which were secured by
 said Deed of Trust he endorsed ~~the same~~
~~for value~~ seven of them for value
 and delivered them to

that is to say the
 note of Thirty five Hundred Dollars
 payable 120 months from its date
 viz from January 1st 1865 together with
 six of the other notes all bearing the
 same date each for one Hundred and
 Forty Dollars due respectively in 90-
 96-102-108-114- & 120 months
 from their date, all which bear
 ten per cent interest from their
 maturity and plaintiffs also
 aver that said seven notes
 being each unpaid and not having
 matured the plaintiff Margaret M.
 Fleming through her agent one
 B. M. Million became the purchaser
 thereof from the owner of the same,

on or about April 17th 1872 and is still
the Legal Holder thereof that is to
say said Jonathan Chesley being
on the 17th of April 1872 borrowed
of said Margaret M. Fleming fifteen
Thousand Dollars to secure
which he gave Deeds of Trust on
three several pieces of Real
Estate including that which he
had acquired from said Foster
on May 19th 1871 and which was
embraced in the Deed of Trust from
said Foster & wife to said Burgess
as Trustee as above set forth
which was encumbered by said
Deed of Trust from Chesley for the
benefit of said Margaret M. to secure
\$5000.⁰⁰ of said ~~\$4500.⁰⁰~~ \$15000.⁰⁰
together with six interest notes
of \$250.⁰⁰ each or \$6500.⁰⁰ in all
plaintiffs aver that upon making
said loan to said Chesley said Million
the agent of said Margaret M. discover-
ing ascertaining said Real Estate to
be encumbered by the Deed of Trust
executed by said Foster & wife as set
out above to prevent the Deed of
Trust about to be taken thereon for
the loan about to be made to said

from being unavailing by reason of said former deed
Chesley, with the consent of said
Chesley and by express agreement
with him
said Milion acting for said Margaret
M. Fleming purchased said (\$3,500) Three
Thousand Five Hundred Dollar note and said
six notes for one hundred and forty (\$140.00)
Dollars each which had been given by said
Post to O'Fallon and secured by said Deed of
Trust from said Post & wife to said Burgess
from the then holder thereof with the
express agreement and understanding
with said Chesley that they should be
held by said Margaret M. ^{as security} to the extent of their
✓ value for the Fifteen Thousand Dollars then
about to be loaned by her to him in addition
to the Deeds of Trust which he was to give her
and that said notes should be collected by her
and placed to said Chesley's credit on the
several notes which he should give her
evidencing her loan of Fifteen Thousand
Dollars to him plaintiffs aver that all the
several Deeds of Trust which said Chesley
gave to secure said Fifteen Thousand Dollars
to said Margaret M. ~~said \$15,000.00~~ have been
foreclosed and the several pieces of
property therein contained sold leaving
about Ten Thousand (\$10,000.00) yet due to
said Margaret M. Fleming on said

Fifteen Thousand Dollar Loan
Plaintiffs aver that the portion of said Land
Covered by said Deed of Trust from
said Post & wife to said Burgess as Trustee
of which said, ^{Elizabeth S.} Sanderson holds the Legal
Title of Subject to said Deed of Trust is of
the value of **Four Thousand**
Dollars and that portion thereof which said
A. J. Fleming holds the Title of in Trust for
said Margaret M. is of the value of
one Thousand ~~and~~ Dollars
and that in Equity said ^{Elizabeth S.} Sanderson ought
to contribute to the payment of the notes
which are secured by said Deed of Trust
and now held by said Margaret M.

Fleming as before stated in proportion
to the value of the Land held subject to
said Deed of Trust by ^{her} ~~him~~, as compared
with that portion of the same held by
said A. J. Fleming in Trust for said
Margaret M. as above stated, wherefore
Plaintiffs pray the Court to Decree that
said Elizabeth S. Sanderson's portion of
said Real Estate so embraced by said
Deed of Trust be charged by said Post &
wife to said Burgess as Trustee as
before stated be specifically charged
with the payment of three fourths
of the amount of the notes which are

held by said Margaret M. Fleming secured
by said Deed of Trust, before mentioned,
together with the interest now accrued
thereon as well as that which shall
hereafter accrue together with three
fourths of all costs attending this
action and of executing said Trust
and that the Court will by Decree
determine & fix the amount and
portion of said notes, interest and costs,
which ought in Equity to be charged,
upon ^{Elizabeth} said Sanderson's portion
of said Real Estate by reason of said
Deed of Trust and decree that the
same be sold for the payment
of the same,

Plaintiffs further aver that James
Burgess the Trustee in said deed of
Trust from Wm. S. Post and wife to
him on the 11th of February 1874
executed and delivered to Jonathan
Chesley a Deed of Release by
the terms of which he as such
Trustee purported to release said
Real Estate ^{Elizabeth's} now all that which
said ^{Elizabeth's} Sanderson now holds
the legal title of described herein-
before as being held by him ^{her} subject
to said Deed of Trust to Mrs Annie
Chesley said Jonathan's wife.
which instrument is recorded in
Book No. 8 of the Records of said
Jefferson County at pages 265
& 266 - but plaintiffs aver that
said Burgess executed and delivered
said instrument under and in
consequence of a mistake for
plaintiffs aver that he was induced
to execute and deliver said deed of
release or what purported to be such
~~in consequence of~~ by said Jonathan
Chesley who assured him that
all the notes secured by said deed
of Trust had been paid by said

Chesley as well as by a Letter
which he received bearing date on
the 11th day of February 1874 signed
D. A. Wilson by Samuel Bonner
agt, by which he was assured and
led to believe that said Wilson
was the holder & owner of all
✓ the notes secured by said Deed
of Trust and that they had been
paid to him by said Chesley and
by the terms of which Letter he
was requested to as such Trustee
to enter satisfaction of said Deed
of Trust upon the Record or to execute
a Deed of Release of the same. And
Plaintiffs aver that although
said notes had not ~~all~~ been paid
but were in fact then held by said
Margaret M. Fleming as before
set forth yet said Burgess being
at that time ignorant of that
fact and relying in good faith on
the statements of said Chesley as
also upon the statements in said
Letter contained and being deceived
and misled thereby, executed said
Deed of Release or paper purporting
purporting to be such as before

Stated

The Plaintiffs say therefore, ^{that} the same
having been executed by mistake of
the facts on the part of said Burgess
and being calculated to cast a cloud
upon any title to said Land arising
by sale ~~and~~ under said Deed of Trust
ought to be set aside and vacated by
Decree of this Court and said Trustee
James Burgess Trustee as aforesaid
fully reinstated and clothed with
all the powers originally conferred on
him as such by said Deed of
Trust and the Plaintiffs pray the
Court to so Decree to the end that
he may be fully empowered to
sell and convey said Land for the
purposes contemplated in said
Deed of Trust discharged of any
cloud thereupon by reason of
said pretended Deed of Release,

} Green & Williams
Attorneys for Plaintiffs

A. J. Fleming
vs & others

E. Q. Sanderson
et al.

Bill to adj ust
Equities &c

original

Filed Aug 27 1874
ms Joyce clk
By C. H. Lawrence
clerk

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 *Elizabeth S Sanderson* &
E. C. Sanderson

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 *September* next, then and there to
answer unto *Andrew J Fleming, Margaret m Fleming &*
James Burgess

upon *their* 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 *27th*
day of *August* A. D. 18*74*

W. S. Boyce Clerk Circuit Court.
By *L. M. Harris* Deputy.

I Executed the within writ at the County of
 Jefferson State of Missouri on the within named
 Defendant E. C. Sanderson by Delivering
 him a true copy of the writ and Petition
 and on the Mrs E. S. Sanderson by leaving
 here a copy with a White Member of the
 family of the family over the age of fifteen
 years with the same copy furnished me
 by the Clerk of said Court and was
 Served on the 29. day of Aug 1874
 on each of them on the above date

J. B. Mosher Sheriff

31

RETURNABLE

TO

JEFFERSON CIRCUIT COURT.

Sept.

TERM, 1874.

Andrew J. Fleming

Margaret M. Fleming

James Burgess

vs

Elizabeth S. Sanderson

E. C. Sanderson

original

Shuff - for 2.00

300
 3908

Andrew J. Flemming and
Margaret M. Flemming
His wife and James Burzer
Plaintiffs

Elizabeth S. Sanderson
and E. C. Sanderson
Defendants

In the Jefferson Circuit
Court in Vacation.

Now at this day come said De-
fendants and for answer to
the petition of the Plaintiffs her-
etofore filed in this behalf state
that they admit that W. S. Post
was the owner of the eighteen
acres of land first described
in said petition on the 1st day
of January 1865 but defendants
aver that at that time said
Post was also the owner of one
hundred and ten acres of land
in Section 29 Town 42 N. R.
E. E. including the said
eighteen acres and the fifty
acres which it is averred was
afterwards sold by said Post

to D. H. Dorman.

Defendants admit that said Post sequitur and delivered to John O'Fallon Jr. the deed of trust on the land, on the day and for the amount set out in said petition.

Defendants admit that on the 22nd day of December 1865 the said Post conveyed to D. H. Dorman the fifty acres described in said petition but Defendants deny that said Dorman took said deed subject to said deed of trust, for they say that said Dorman did not know that said deed of trust covered any portion of the land he bought of said Post. Defendants own that said Dorman bought said fifty acres of said Post and paid him therefor the sum of \$ and thereupon said Post sequitur and delivered to said Dorman a warranty deed for said land by which he covenanted with said Dorman ^{and his assigns} to warrant and defend the title thereto against the claims of all persons whomsoever

Defendants admit that said Dorman and wife conveyed by warranty deed to Elizabeth V. Sanderson the said fifty acres of land but they deny that she took said land subject to said deed of trust. They deny that she had any knowledge whatsoever that said deed of trust covered any portion of said fifty acres or that any such deed of trust existed. They own that she paid Dorman the sum of \$
for said fifty acres, its full value and took said warranty deed from Dorman as aforesaid. Defendants own that after the said Past had conveyed said land to said Dorman, viz: on the 23rd day of March 1867 the said Past conveyed by quit claim deed to Daniel P. Allison thirty acres of land a portion of which was covered by the sixteen acres included in said deed of husband and that in April 1867 said Allison conveyed said thirty acres to M. W. Foster.

dependants admit that on the 19th day of May 1871 the said M. W. Fortin conveyed said thirty acres to Jonathan Chesley. In reference to this last deed dependants state that at the time it was executed the said Fortin had paid all the interest notes secured by said deed of trust up to the date of said deed. That said Chesley agreed to pay said Fortin \$4000 for said land but in making the payment he deducted the sum of thirty five hundred dollars which was the principal secured by said deed of trust from the said sum of \$4000 and retained that sum to pay off said deed of trust and the said Chesley did then agree with said Fortin to assume and pay off the amount due on said deed of trust and ~~did~~ ~~insert~~ the said Fortin did by the consent and direction of said Chesley insert in his deed to said Chesley the following ~~at~~ recital viz: "Subject however

to a deed of trust given by W. S. Post
to John O'Fallon's Trust dated
January 1st 1865, the said Jonathan
Chesley assuming to pay \$300
being the principal of said deed
of trust and the interest on the
same from this date". Defendants
further state the said Chesley when
he borrowed the \$15000 mentioned
by Plaintiffs in said petition
paid off and discharged said
deed of trust in full as he had
agreed and assumed to do in the
deed took from said Post as
foresaid and that Mrs. Flemming
took said deed of trust for
\$15000 from said Chesley on
said land with full knowledge
of his agreement and liability
to pay off and satisfy said deed
of trust and in fact compelled
him to pay off and satisfy
the same before she would
loan him the said sum of
\$15000. Defendants deny that Mrs.
Flemming received said deed
of trust from said Chesley
as collateral security for the said
\$15000. They say said Chesley never

owned said deed of trust and therefore could not deliver it to any one or securing for one of his debts.

Defendants deny that the portion of said eighteen acres included in the fifty acres owned by E. A. Sanderson is worth or was worth in 1885 the sum of \$4000 or any sum above \$1000 or that the part owned by Mr. Flemming is only worth \$1000. But they own that the portion owned by Mr. Flemming is and was in 1885 worth \$6000. Defendants deny that Plaintiffs are entitled to contribution from Defendants for any portion of said deed of trust and the whole amount should have been paid by said Chesley according to the pricing of the deed and his agreement, as aforesaid.

Defendants deny that James Briggs through mistake released said deed of trust but he released it because it had been paid and ought to have been released.

Defendants own that the deed ~~deeded~~
by said Part to said Dorman was
duly recorded in the Recorder's
office of Jefferson County Mo.
on the 15th day of January 1866 and
that the deed given by said Dorman
to said ~~Part~~ C. S. Sanderson was
duly recorded in said office
on the 10th day of April 1867

Wherefore Defendants deny that
Plaintiffs are entitled to the relief
asked in said petition or to any
other and having fully answered
prayer to be discharged.

John L. Thomas & Bro
Atty for Defendants.

SUBPOENA--CIRCUIT COURT.

STATE OF MISSOURI,

County of Jefferson

ss.

THE STATE OF MISSOURI.

To

Mr. Wm. Ritter Jacob Hager, H. M. Parker

v

James Burgeff

YOU ARE HEREBY COMMANDED, That, setting aside all manner of excuse and delay, you be and appear in proper person before the Judge of our Circuit Court, at the Court House, in the Town of Hillsboro within and for said County, on A. D. 1873, then and there to testify and the truth to speak, in a certain matter of controversy now pending in our said court, wherein

Fleming Burgeff are Plaintiff,
 and Sanderson & Sanderson are Defendant,
 on the part of said Peff, ; and this you shall in nowise omit.
 And the person or officer serving this Writ is commanded to have the same at the time and place aforesaid, certifying thereon his return.

Witness my hand and seal of our said Court. Done at office
 in Hillsboro, in the County aforesaid, on this 29th
 day of Dec, A. D. 1874.

By

C. H. Horne

Clerk

D. C.

SUBPOENA

No. *170*

Circuit Court.

Term, 1875.

Jeff. Jamy
Hemming & Burgess

Subpæna.

Sanderson & Sanderson

Plffs.

Def.

WITNESSES.

Day of Trial *July 16 1875*

Wm. Ritter

Jacob Hager

Wm. Parker

James Burgess

288,376,370,375,379,384,386,390,
395,398,400,406,407,408,412,
413,418,422

Fee, \$

7, 13, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100

I HEREBY CERTIFY, that I served the within Writ in the County of *St. Louis*
the *8* day of *Dec* 1875, by *Reactive to James*
Burgess & Co. Hager & Ritter
and H. M. Parker not found in
my County

RETURN.

NOTICE TO TAKE DEPOSITIONS.

Wagner's Statutes, Page 523, Sec. 9—Page 524, Sec. 10—13.

Margaret Fleming &
A. J. Fleming &
James Burgess

Plaintiff...

AGAINST
C. C. Sanderson &
Elizabeth Sanderson

Defendant...

In the Circuit
Court of Jefferson
County of The State of Missouri
State of Missouri.

To the above named Defendants

You are Hereby Notified That depositions of witnesses to be read in evidence in the above entitled cause, on the part of the Plaintiffs will be taken at the Office of Garland & Green Notaries Public at North West Corner of 3rd & Pine Street in the City of St Louis in the County of St Louis and State of Missouri, on the 8th day of January 1875, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon of that day; and that the taking of said depositions, if not completed on that day, will be continued from day to day, at the same place, and between the same hours, till completed.

Service of the above notice is hereby acknowledged and issue of dedimus, and all exceptions, as to time, waived.

January 8th 1875
it being agreed that the
said depositions be taken
this day January 8th 1875

Wm. Sanderson

for defts

Green & Williams
Attorneys for Plaintiffs

Depositions of witnesses, produced,
sworn and examined on the 8th and
following day of January 1875, be-
tween the hours of eight o'clock
in the forenoon and six o'clock in
the afternoon of those days at the
office of Garland Greene, Notaries
public at Northwest corner of 3^d
+ Pine Street in the city of St. Louis
in the County of St. Louis + State of
Missouri before me James S. Garland
a Notary Public in and for the County
and State aforesaid in a certain cause
now pending in the Circuit Court of
Jefferson County, State of Missouri
between Margaret + A. J. Flynn Plaint-
iffs and C. C. + Elizabeth Anderson,
Defendants.

On the part of the Plaintiffs:

J. W. Blackman, of lawful age,
being produced, sworn and examined
on the part of Plaintiffs, deposes and
saith,

Question. What is your name
and where do you reside
Ans. My name is J. W. Blackman
I reside at 915 Glasgow St
in this city

Ques. Do you know Jonathan Chesley

Ans. I have known him since 1868

Ques. State if you know anything about Mr. Chesley borrowing any money from Margaret Fleming.

Ans. I met Mr. Chesley in March 1892, and he told me that he wanted to borrow Fifteen thousand dollars and wanted to know if I knew any one who wanted to loan that amount. I think it was March. I told him that I had heard Col. Million remark that he had twenty thousand dollars I think that was the amount. A short time after that we met at the corner of 3^d & Pine, Chesley, Million and myself and they had a conversation in regard to the loan. The loan was subsequently made of Fifteen thousand

dollar.

Ques. State if you please what was said in that conversation which you speak of between Million Chesley and yourself in regard to the security to be given for the loan.

Ans. As for myself I had but very little to say. I told Million that Mr. Chesley wanted to make a loan and I told Chesley that Million had some money to loan. I introduced the subject. They then had a conversation together in regard to location and perhaps value of the property of the property on which he desired to make a loan.

Ques. State what was said.

Ans. Chesley said that a part of the property was in the country and a part of it in the city, part of it was a farm of something like thirty or thirty five acres in Jefferson.

county where he lived - another piece was an island containing some over twelve hundred acres perhaps thirteen hundred and fifty the other piece was, consisted of improved property in the lower part of this city I think it was Esperance street that it was on.

Ques. State if you please how the money was to be secured on this property.

Ans. A few days after that Million asked me if I would go down there and look at the property with him. I told him that I would, that Chesley was in trouble and I wanted to see him out and would go with him. He went down to Chesley's, Million and myself, a short time after that and examined the farm on which Chesley lived, and went from there up to the island

2
and walked over that. We
then returned to St. Louis
and some little time
after that the loan was
made, as I understood
from Mr. Chesley, Mr. Fleming
and Col. Million.

Ques. State if you know of
any further security being
given by Chesley other than
a deed of trust on the prop-
erty spoken of, and if so
what it was

Objcted to because
if any security was given
it must have been in
writing and must be shown
by the written instrument
itself.

Ans. I understood from Mr.
Chesley, Mr. Fleming and Col.
Million that there was a
deed of trust and notes
amounting to something
like four thousand dol-
lars that were turned over
as additional security
in addition to the real
estate. The deed of trust

securing the notes amount-
ing to about four thousand
dollars covered a portion of
the property on which Mr.
Leshley was living at the
time the loan was made
and property adjoining
on the south. I met Mr.
Leshley on 5th & Pine, I
think it was in February
last and he told me that
he had an opportunity to
trade off the place where
he lived or the equity of
redemption of the place
and wanted me to see
Capt. Fleming and see
if he would release
that portion of the place
covered by the deed of
trust which he held as
collateral security. I
told him that I would
I subsequently saw Mr.
Fleming and asked him
to do it, but he declined.

Ques.

State if you please
what deed of trust you
refer to or what was

referred to by Mr. Chesley
as being held as collat-
eral security.

Ans. I refer to the deed of
trust made to secure
about four thousand dol-
lars in notes, and cover-
ed the southern portion
of the property on which
Chesley lived. My impress-
ion is that it was a pretty
old deed of trust I never
saw it that I remember
of. It also covered a
small portion of the farm
on the south of Chesley
owned I believe by a
man named Anderson.

Ques. State whether or not
you understood from
conversations with Mr.
Chesley who executed the
deed of trust and to whom
it was given and when.

Ans. Objected. as incompetent
I don't remember of his
ever stating the time when
the deed of trust was given
I remember the names of

two parties he mentioned connected with the notes one was maker and one endorser. One was a Mr. Post and the other was Mr. O'Fallon.

Ques. State if you please, that is, if you know who the money belonged to which you have spoken of as having been borrowed by Mr. Chesley.

Ans. Of Mrs. Margaret M. Fleming I think the wife of Capt Andrew J. Fleming.

All the above testimony ~~not~~ ~~and~~ above specially objected to is now objected to by Defendant's counsel as incompetent and irrelevant.

Cross Examination
Chesley was in bankruptcy, I believe.

Ques. Was he in bankruptcy at the time of the execution of this deed of trust
Objected to

Ans. I don't know at what time the deed of trust was executed whether it was before or while he was in bankruptcy or after proceedings were dismissed the record will show.

Ques. Was it voluntary or involuntary.

Ans. I think it was involuntary.

Objected to question and answer.

I do not know whether Sanderson owned the property at the time I went down with Million or not.

Ques. Was it known to you Million or Fleming that this deed of trust securing the notes now claimed to be collateral security covered any property not owned by Chesley, at that time.

Ans. I was understood by all that it only covered about an acre of ground upon which Chesley was

living at the time and
which he afterwards
incumbered to Fleming.

Ques. Did Chesley claim to
own any property at Sat-
~~ter~~ ~~ter~~ ~~ter~~ Jefferson
County other than that upon
which he was living and the
island at the time of the
application for the loan.

Ans. None that I know of
except a small piece on
the main land opposite
the island and this may
perhaps be in St. Louis county.
I do not know whether he
incumbered the small piece
last spoken of.

Ques. Was this debt which you
have spoken of now ^{claimed} ~~held~~
as collateral security a
portion of Chesley's liabilities?

Ans. A portion of it I suppose
was because that it was
secured by deed of trust exe-
cuted on a portion of the
property on which he lived
the balance was secured
I believed ~~on~~ upon other

property on the south. As a matter of fact I know nothing about it except what I have heard from Mr. Chesley and others. Chesley only claimed to own an acre of the property covered by the first deed of trust and now claimed as collateral security.

Ques. Then it was known to Million and you at the time of the application for the loan that Chesley was not the owner of the property conveyed by the first deed of trust and now claimed ^{to be held} as collateral security.

Ans. I knew but very little about the matter relating to this deed of trust until about a year ago when Mr. Chesley came to me and wanted me to get Mr. Flannery to release the corner of the property on which he Chesley lived at the time when the fifteen thousand dollar loan was made. He then

stated that the deed of trust for the notes which Fleming held as collateral was upon the property adjoining him with the exception of about an acre as Chesley said. All that I done in the matter of negotiating the loan was done gratuitously for the benefit of Chesley.

Ques. Did Chesley ever exhibit to you a statement of his assets and liabilities.

Ans. I think he did perhaps. in the spring a little while before the application for the loan was made, but not in connection with that

Ques Did that statement include these notes now claimed to be held as collateral security, as one of his liabilities.

Ans. I think not. I never had that statement in my possession. At the time Chesley and I met on the 5th and Pine in 1874. he said

to me that he wanted me to ask Fleming to release the deed of trust which he held as collateral so far as the same affected the Chesley farm for he had an opportunity to trade it off, if he could get this release, and he thought Fleming ought to do it as he was well secured outside of this deed of trust which he held as collateral. I saw Fleming several times and tried to get him to do it, but he refused on the ground that Chesley had deceived him as to the quantity of land contained in the island. Chesley having represented that there were eight or nine hundred acres more than there was Chesley did not ask me to have the whole deed of trust released.

Ques. Did you ever receive any money or claim which you held against him

Objected to as irrelevant
Ans. No, the money was paid
to the house of Walter W.
Smith & Co. by Chesley's off-
ice, I think, but don't
know. &

Ques. Do you know where he
Chesley got the money to
settle with his creditors

Objected to

Ans. I suppose it was the
money borrowed from Hem-
ing at the time he negoti-
ated the loan. I under-
stood that he wanted
the money for the purpose
of getting out of bank-
ruptcy. I don't know
the sum can't be paid to
his creditors.

Re-examination

Ques. Do you know of your
own knowledge what time
Mr Chesley went into bank-
ruptcy.

Ans. No, I don't know within
a few weeks, it was in

Ques. February, I think

Ques.

Was he in bankruptcy
at the time when the deed
of trust to Fleming's trust-
ee was executed to secure
this fifteen thousand dol-
lars.

Ans.

I don't know. I
don't know the date of
the deed of trust nor the
date of his discharge
D. W. Blackman

Subscribed and sworn to before
me on the day at the place and
between the hours first afore-
said

J. J. Garland,
Notary Public.

Mrs. Bramard A. Million
of lawful age, being duly sworn
and examined on the part
of the plaintiffs deposes
and says

Ques.

State where you reside
what is your business and
how long you have been
engaged in the same

Ans. My residence is No 406 St. 11th St. in St. Louis I am a real estate agent and negotiator of loans and have been engaged in that business between ten and eleven years. My office is at 218 Pine St. at the present time.

Ques. Did you know Jonathan Chesley and Margaret H. and Andrew J. Hemming in the spring of 1872

Ans. I was acquainted with all the parties at that date.

Ques. Had you any transaction with Mr. Chesley in the spring of 1872 as agent of Mr. or Mrs. Hemming and if so what transactions had you.

Ans. In the spring of 1872 I met Chesley in company with J. W. Blackman on the corner of 3d and Pine streets in this city. Blackman commenced the conversation and asked me if I had any money, that Chesley wanted

to borrow Fifteen thousand dollars. I then asked Chishy everything in relation to the property which he wanted to make the loan on, where located and so forth, the valuation. He stated that one piece in the southern part of the city, a small farm in Jefferson county also an island belonging to Jefferson county containing about thirteen hundred and fifty acres. He said the island was worth to tell the truth about it, fifty to a hundred thousand dollars. I told him to come and see me, and talk the matter over. I saw him several times within a few days afterwards, told him that I had a poor opinion of country property, that I wouldn't take into consideration until I saw Capt. Fleming. Capt. Fleming came into the city a few days afterwards. He told

me that he couldn't go to see the property, he had to leave for New Orleans and for me to go and look at it and act on my own judgment to make the loan if I thought the security was good. I went in company with J. H. Blackman and examined the property. I did not give my full consent until I saw Mr. Fleming again. The loan was then agreed to. I then had the titles to the several pieces of property examined and there was showed to be a deed of trust upon the small farm in Jefferson County which Chesley lived on. Fleming was then gone. Chesley said that that deed of trust only covered about an acre of his land and that he had nothing to do with paying it and that if he was to pay it he would be paying other people's debts, and said that

9
the notes ~~were~~ drawing eight
per cent interest payable
semiannually, and that it
could be purchased, he had
been negotiating about the
purchase of it, for less than
the face of it some two or
three hundred dollars less
than the face of it. He said
he wanted me to take it up
and hold as collateral
security for the payment of
the notes he was to give Mrs.
Hemmy, and for me to col-
lect or as I did collect the
interest notes give him cred-
it on their notes for the amount
and if the interest notes were
not punctually paid when due
to foreclose the deed of trust
when the first interest note
became due I sent for Mr.
Sanderson as Chesley had
told me from the first that
the deed of trust was on his
property that he was the
one to pay. Mr. Sanderson
came to my office, I spoke
to him about the matter

Mr. Sanderson said he did not know anything about it, and if there was any deed of trust on his property that he should look to a man by the name of Thomas in Hillsboro, that Thomas examined his title for him, he had Thomas' abstract showing a clear title. I insisted on him taking a copy of the deed of trust and ~~getting~~ ~~some~~ looking into it. He took some sketches of the description in the deed of trust. That was all that passed between me and Mr. Sanderson as well as I remember. I never attempted to force the collection of any of those notes as long as Chesley kept his interest notes paid up and when Chesley failed to pay his notes as they became due I then took the advice of an attorney the attorney advised to foreclose the deed of trust in court. The suit is now

10
pending in Jefferson county.
Ques. State, if you please, whether
you really negotiated a loan
of money to Jonathan Chesley
you acting as the agent of
Mrs. Fleming, if so for how
much and what kind of
security you took if any.

Ans. I negotiated a loan
for Jonathan Chesley as
agent for Margaret M. Flem-
ing in April, 1872 for fifteen
thousand dollars, the se-
curity was two houses and
lots in St. Louis, a farm
of about 33 acres in Jeff-
erson county near Sulphur
Springs and an island
belonging to Jefferson coun-
ty, Missouri or within it
rather in the Mississippi
river containing as he said
between thirteen and four-
teen hundred acres. On
this property I took 3 separ-
ate deeds of trust secur-
ing three separate lots
of notes.

Ques. Please describe the notes

Ans.
Ans.

Objected to
There were three for five thousand dollars each and eighteen for two hundred and fifty dollars each and one for six hundred dollars, this last was given as a bonus for dividing it into three separate loans. The eighteen were interest notes, the three were principal notes. The \$5000.⁰⁰ notes were payable three years after date. The interest notes were payable respectively in 6, 12, 18, 24, 30 or 36 months after date for semiannual interest. The \$600.⁰⁰ was payable 18 months after date.

Ans.

What other security if any did you take.

Ans. Objected to
I took a note for \$3500.⁰⁰ dated January 1st 1865 signed by Wm H. Post to the order of John O'Fallon Jr. and endorsed by John O'Fallon Jr.

together with six interest
notes made and endorsed
by the same parties. Of
same date payable re-
spectively in 90 months
96 months 102 months 108
months, 114 months and
120 months after their
date. These were interest
notes for interest on said
note for \$3500.⁰⁰ and are
for \$140.⁰⁰ each. The princip-
al note is due 120 months
after its date. These
notes were secured by a
deed of trust on some 15 or
18 acres of land, as well
as I remember I have
not seen the deed of trust
for some time. The land
lies in Jefferson county
on the Iron Mountain Rail-
Road near Sulphur Springs.

~~That whether these notes are secured by deed
of trust and what land were the~~
\$3500.⁰⁰ note and the interest
notes secured

Ques Objected to
State whether these last
mentioned notes were secured

by a deed of trust and on
what land if so secured.
Objected to.

Ans. They were secured by deed
of trust on land in Jeffer-
son County on the Iron
Mountain Rail Road a
short distance north of
Sulphur Springs, about
one acre of which belonged
to Jonathan Chesley and the
balance to Mr. Sanderson
adjoining Mr. Chesley on
the south. This is what
Chesley told me in the
Spring of 1872.

Ques. What was your purpose
in buying these notes
and ~~Objected to~~ to whom
did you get them

Objected to

Ans. I bought them at Ches-
ley's request and by agree-
ment with him as collat-
eral security for the pay-
ment of three \$5000.⁰⁰ notes
and the interest notes
heretofore described and
also one \$6000.⁰⁰ note

heretofore described. I got the notes from the banking house southeast corner of 3d and Locust and gave my check for the money. I took the notes and placed them in my safe. These are the same notes I spoke of a while ago as collateral

Ques. Explain if you please how much money you advanced to Jonathan Chesley upon the loan of \$15,000.00 spoken

of.

Ans. I paid out to him and on his account less my commission which was \$500.00, \$15,000.00. The amount that was paid for these notes which I hold as collateral security was a part of the \$15,000.

Ques. State what conversation if any you had with Mr. Chesley in relation to the collateral notes since the loan was made

by witness and is hereto
annexed marked "Exhibit
A" I received the ~~sub-~~
~~certificate~~ ~~tract~~ about the date
of the same.

The \$3500.00 note and
interest notes I still have
in my possession for
Mrs. Fleming

Not being able to complete
the taking of said depositions by
reason of insufficiency of time
and by consent of counsel, I
adjourn the further taking of
the same until to-morrow the
9th day of January 1875, there
to be continued at the place
and between the hours first
aforesaid

J. J. Garland
Notary Public

Pursuant to adjournment as above
stated I continued the taking of
the said depositions on this 9th day
of January, 1875 as follows,
The said Brainerd W. Million

appearing further testified as follows, to wit:

On cross-examination by Wells Flandershot, Esq.:

I went and looked at the property before the loan was made. I looked at all of it. At the time Chesley spoke to me about the \$3500.00 note he said that if he paid if he would be paying other people's debts. I do not remember whether he told me at that time that he had paid some of the interest notes on the \$3500.00 or not. I think he did tell me at another time that he had paid some of them. I don't remember whether this was before or after the loan for \$5000.00 was made. As well as I remember the only papers he gave me before the loan was made were the deeds to the separate pieces of property on which he wanted to make the

loan. I returned all the papers I had to him when the loan was completed, whether by express or otherwise I do not remember. I don't think there was any entry in any of my books made of the transaction of the loan to Chesley. I never make any entries of such transactions in my books. My book-keeper rendered Chesley an account of this transaction. I sent Sterling Webster, examiner of land titles down to Hillsboro before the loan was made, to examine the titles. Rully & O'Reilly examined the title to the St. Louis property. As well as I remember I had the deed by which Chesley acquired title to the Jefferson County property before the loan was made in my possession. A Mr. Donner came to my office with reference to this \$3500⁰⁰ deed of trust; his object was to inquire at each time when

I would be ready to take it up. I went to the bank and gave the bank a check for it and charged that up to Chesley and took it out of the \$15,000⁰⁰ loaned to him.

Re-examination by Mr. Williams for Plaintiff:

Ques. Did you ever examine the deed ~~deed~~ which Mr. Chesley held the property on which he lived, before making the loan

Objcted to.

Ans. I never examined any deed, nor read any deed that Chesley had

Ques. And why.

Objcted to.

Ans. Because I depend entirely and altogether upon the party I employed to examine the title and papers to the property, and upon the result of that examination I either loan or refuse

to loan. And upon the certificate of the examiners, Sterling Webster, hereto annexed marked "Exhibited" I made this loan.

B. W. Millier

Sworn to and subscribed before me on the day at the place and between the hour first above said.

J. C. Garland
Notary Public,
St. Louis Mo.

I, James C. Garland, a Notary Public within and for the County of St. Louis and State of Missouri, do certify, that in pursuance of the annexed notice, came before me J. W. Blackman and Brainerd H. Millier at the office of Garland & Greene, Notaries Public within and for the County and State aforesaid at north west corner of 3^d & Pine streets in the city of St. Louis in the County of St. Louis and State of Missouri, who were by me severally sworn to testify the

whole truth of their knowledge touching the matter in controversy aforesaid; that they were examined, and their examinations reduced to writing by me and subscribed by them respectively, in my presence on the days at the place and between the hours in that behalf first aforesaid, and their said depositions are now herewith returned. And I hereby certify that the said J. W. Blackman and C. A. Ellison are residents of said County and State.

Given at St. Louis in
the County of St. Louis
& State of Missouri under
my hand & official seal
this 14th day of January, 1875
J. H. Garland
Notary Public,
St. Louis Co., Mo.

3884

In the Jefferson
Circuit Court

Margaret Fleming
vs.
J. G. Fleming

Chas Elizabeth Henderson

Depositions of
J. W. Blackman
B. M. Millison
taken by
J. H. Garland,
Notary Public.

Fees \$15.⁵⁰
Paid by P. H. H.



Exhibit A.

We have plats and a full chain of title of every lot and tract of land in St. Louis City and County and are prepared to promptly furnish all information relating to Real Estate.

St. Louis, May 2nd 1872
 Brainerd M. Million Esq
 Sir

We have investigated from the date of entry
 from the United States

to the present date
 the title to a lot of land situated in the county of Jefferson State
 of Missouri, described as follows, to wit:

About 33 acres of land in fractional
 Section 29 in Township 42 North of Range Six
 East, being the same land fully described in
 the deed of trust of Jonathan Chesley & others
 to Margaret M. Fleming's trustee, dated April
 17th 1872 and now of record in said Jefferson
 County.

The fee simple title to said property is
 well vested in James Burges Jr. in trust for
 the sole and separate use of Annie Chesley, wife
 of said Jonathan Chesley, with full power in said
 Annie to direct the sale, disposal, conveyance
 and incumbrance thereof by deed of trust or otherwise.

Said property is unincumbered except
 as follows, to wit:

- 1 - Taxes for 1872 not yet payable
- 2 - Deed of trust executed by Wm. Post & wife to John
 O. Fallows trustee, dated Jan'y 1st 1865 recorded
 in book V page 97 to secure a note for \$3500.
 at ten years & twenty semi annual interest notes.
- 3 - Deed of trust to Margaret M. Fleming, dated

April 17, 1892 To secure a note for \$5000⁰⁰ at three
years & 6 interest notes of \$250 each

Sterling & Webster

"

CERTIFICATE OF TITLE OF

33 acres more or less in

Fractional Sect 29 Town

42 Range Six East

Owned by Annie Chesley

Trustee

STERLING'S
Abstracts of Land Titles.

Sterling and Webster,
Conveyancers and Examiners of Land Titles,
315 & 317 CHESTNUT STREET,
SECOND STORY.

STATE OF MISSOURI, }
COUNTY OF JEFFERSON.

To James Burgess, Jacob Nager, Andrew Nager,
H. M. Parker & Jno. O. Gallow. Wm. Fritter Esq.

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 13th day of May, 1875, 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 Fleming & Burgess are Plaintiffs, and Anderson & Sanderson are Defendants, on the part of Plffs. ; and herein you are in no wise to fail.

Witness, C. THO' HORINE, Clerk of our said Court, with the seal thereof hereto affixed, at office, this 10 day of May A. D. 1875.

C. Tho. Horine, CLERK.

Executed the within in Jefferson Co. etc. by
reading the same to the within named on the
~~11th day of May~~ day of May, 1875.
Fallon, William Fritter on the 11th
day of May, A.D. 1875.

by Wm. S. Westcott
J. S. Westcott

Jacob Haeger

Executed this and all the County of Jefferson at the
Court of said County on the 14th day of May 1875
to have to James Burgess Jr

May 5 1875

Heming & Burgess

Sanderson & Sanderson

P

Shiff B \$300

STATE OF MISSOURI,
COUNTY OF JEFFERSON.

To

You are hereby commanded, that setting aside all manner of excuse and delay, you appear before our Circuit Court, for the County aforesaid, on the *fourth* day of *April*, 187*7*, 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 *Fleming & Burgess* are *Plaintiff*, and *Sanderson & Sanderson* are *Defendants*; and herein you are in no wise to fail.

Witness, C. THO' HORINE, Clerk of our said Court, with the seal thereof hereunto affixed, at office, this *14th* day of *May* A. D. 187*8*.

C. Tho' Horine, CLERK.

m 1875

Fleming & Burgess

no

Sanderson & Sanderson

J B Dover

Sheriffs Fee 50

I enclose this writ of the County of
Jefferson in the State of Missouri the
first day of June A.D. 1875 by reading the
return of J. B. Dover

T. B. May Sheriff
by W. H. May Dea
at

STATE OF MISSOURI, }
COUNTY OF JEFFERSON.

To

James Burgess

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* day of _____, 187____, 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 *Fleming & Burgess* are _____
is Plaintiff, and *Sanderson & Sanderson* are _____
is Defendant, on the part of *Plff.* _____; and herein you are in no wise to fail.

Witness, C. THO' HORINE, Clerk of our said Court, with the
seal thereof hereto affixed, at office, this *14th* day
of *May* *A. D.*, 187*8*.

C. Tho' Horine, CLERK.

m 7 1875

Fleming & Burgess

"

Sanderson & Sanderson

"

Jas Burgess for

order 30'
actual 50'
1000 30'

Shut's Price 50

I received the report of the County of
De Kalb in the State of Wisconsin. The
day of May 1875 by reading the
same to the Burgess for

To the County of
De Kalb
by the Burgess for

Andrew J. Fleming and
Margaret Fleming his wife
and James Burgess, — Plaintiffs

Against
Elizabeth S. Sanderson,
and E. C. Sanderson

Defendants

In the Circuit Court of
Jefferson County
Missouri.

The Plaintiffs move the Court to set-aside the finding and Judgment, rendered in the above entitled Cause, and grant them a new trial, for the following reasons;

- 1- Because the Court refused to admit proper and legal testimony offered by the Plaintiffs.
- 2- Because the Court admitted illegal and improper evidence on part of the Defendants.
- 3- Because the finding of the Court was contrary to the evidence in the cause.
- 4- Because the finding of the Court was against the law of the case.
- 5- Because the Court misconstrued the law governing the case.
- 6- Because the finding and Judgment ^{of the Court} is

for the Defendants when it should have been for the Plaintiffs.

7 - Because the finding and judgment of the Court, is against the law and equity of the case, arising upon the facts in evidence.

8 - Because the finding of the Court, is against the evidence and the weight of evidence in the cause.

} A. Green, & J. J. Williams
Attorneys for Plaintiffs

388

Andrew J. Fleming
and others
vs.
Sanaerson Sanderson

Motion for
New Trial

Filed May 18th 1880
C. Tho. Hoine
Clerk

Andrew J. Fleming and Margaret }
Fleming his wife, and James Burgess, - Plaintiffs
Against
Elizabeth S. Sanderson, and }
E. C. Sanderson, - Defendants, }

} In the Circuit Court of Jef-
} ferson County Missouri,
May Term 1873 -

Be it remembered that at the May Term
1873, of the Circuit Court of Jefferson County aforesaid,
to wit, on the 17th day of May 1873, the above entitled
cause, coming on for trial, and neither party re-
quiring a jury, all and singular the matters at issue
between the parties, were submitted to the Court,

And the Plaintiffs to sustain the issues on their
part, introduced the following testimony:

John O'Hallon, Jr., - who, being sworn, states that Dr. Wil-
liam S. Post, on the 1st day of January 1863, made and
executed a Deed of Trust, by which he conveyed to James
Burgess, as Trustee, Eighteen acres of Land, situate near
Sulphur Springs in Jefferson County Missouri, and par-
ticularly described in said deed, - to secure the payment
of twenty promissory Notes, ^{to John O'Hallon, Jr.} one, for thirty five hun-
dred dollars, and the others, interest notes, payable
semi-annually, - I afterwards transferred said Notes,

The Eighteen acres of land, in 1863, was worth about

one hundred & fifty dollars, per acre, - The Eighteen acres
was afterwards sold, subject to the Deed of Trust, and 12
acres of it, is now owned by E. C. Sanderson or his wife,
and six acres of this 18-acre tract is now owned by
Margaret Fleming, - The six-acre tract, had a House
on it, at the time, worth about \$2,000, - ~~that tract was~~
~~house~~ ^{including improvements} - I estimated the whole
18 acres at \$5,000, - The proportionate value of the
two tracts, ^{including improvements} was about the same, \$150⁰⁰ per acre, -

A Plat of said two tracts, made by J. B. Dover, County surveyor
being shown witness, - he states this Plat correctly shows the location
and proportions of said two Lots of Land, -
said Plat is then read in evidence by Plaintiffs, and is as
follows, to wit, (here copy said Plat.)

Andrew J. Fleming, - being sworn, says, - I am hus-
band of Margaret Fleming, - In 1872, my wife loaned for
athan Chesley Fifteen thousand dollars, through my Agent,
Bramard M. Million. The security taken was three deeds
of Trust, on land, - I was from home when Chesley ap-
plied for the loan, I afterwards told Million to look
at the property to be secured, - he did so, - and said he
thought the security proposed sufficient, Chesley said
there was 1400 acres in the Island tract proposed to
be taken, - Chesley wanted the security put into three
deeds of Trust, - and it was so done, - a Deed of Trust,
^{was taken} on the Island tract for \$5,000, - a Deed of Trust on
^{the six acres including} thirty acres, ^{on the six acres he lived on,} (subject to the First Deed of
Trust) for \$5,000, - and a Deed of Trust, on a House

and Lot in St. Louis, for \$3,000, - At the time of this loan, Chesley agreed with my Agent, Million, that he should take out of the money loaned \$3,500, - and buy up the out standing Notes given by Dr. Post, & secured by his Deed of Trust, on the 18 acres, and hold the same as collateral security, until the whole \$15,000, - dollar loan was paid, - and Million did so, and has held the said Note, of \$3,500, and the interest Notes ever since, - and I have them here now, one Note, for \$3,500, - and six interest Notes, for \$140, - each, which notes are as follows (See copy same)

I have since had the property included in Chesley's three deeds of trust, sold, - and the proceeds ^{of sale} lacks about \$9,000, of paying up the amount (\$15,000) that I loaned Chesley, - The amount of land on the Island was only about 300, acres, instead of 1400 acres, as represented by Chesley.

In 1873, and 1874, Chesley wanted me to release the Post-Deed of Trust, on the ²⁴~~one~~ acres of land his house stood on (being part of the ^{eighteen}~~five~~ acres). He said I had security enough left on the other property in said Deeds, - I refused to do it,

James Burgess, ^{now} States, I am acquainted with the Fleming tract of land ($3\frac{80}{100}$ acres) and also, the tract owned by Mrs. Elizabeth Sanderson, (being ^{included in the Post deed of trust} 12 $\frac{11}{100}$ acres, - both comprising the 18 acre tract) Sanderson's tract was worth in 1863, \$130⁰⁰ per acre, and the Fleming tract \$125⁰⁰ an acre, - The house stands on ^{the} one-acre piece, which ^{is} part of the Fleming tract, -

(An order being shown written, dated February 11th 1874, signed by D. A. Wilson, by Saul Bommer, Agent, directed to James Burgess, - he says, this order shown me, was brought to me by Jonathan Chesley, at Sulphur Springs on February 11-1874, - he showed it to me, and wanted me to release the Post Deed of Trust, - he said he had paid all the Notes and taken them up, and he began looking over some papers (as he said, to find them) but could not find the Notes - he then said he had left them at home through mistake, - that he had the Post Note of \$3300, and the interest Notes, - That, Bommer who signed the order presented, was Agent for B. M. Million ~~million~~ - The Letter shown me, ^{is} ~~from~~ from Wilson by Bommer, Agent, - Chesley assured ^{me} he had the Notes, and that it would be all right, if I would sign the Release of the Post-Deed of Trust, which he brought me, already written out, - I then signed it, - and knew no better till some time in June following, when I got a Letter from Million, stating that he

held the Notes. I went up to St. Louis to see him, and found that he had the Note of \$3500, given by Post, and the interest Notes, and that he had had them all the time, since he, as Agent of Fleming loaned Chesley the \$15,000,

Plaintiff then read in evidence the letter of Bonner to Burgess & the deed of release of Burgess as follows (Here copy same)

William Fritter, - sworn, says I heard Jonathan Chesley and James Burgess, in February 1874, at Sulphur Springs, have a talk about satisfying the the Post-deed of Trust, and the Notes, - Chesley wanted Burgess to sign a Release of the Post-deed of Trust, - he said he had paid the Notes, and taken them up, and he pulled out some papers and looked over them, and said, by jingo, I have left them at home. He then showed the order signed by Bonner, an Agent of Wilson, and insisted that Burgess would sign the Release he had with him written out, - Burgess hesitated some time, but at length, signed the Release,

The order to James Burgess, of February 11th 1874 signed, D. A. Wilson by Saml. Bonner, Agent, requesting Burgess to sign the Release of the

Post-Deed of Trust, was here read in evidence as follows, To wit, (Clerk will here copy said order from Wilson, with Bommer's endorsement)

Jacob Hager, - On oath, States, in February 1874, at Sulphur Springs, I was present, when Jonathan Chesley came down on the night train, and wanted James Burgess to sign a Release, he had with him, of the Post-Deed of Trust, - he said he had paid the Notes all (one, for \$3,500 & interest Notes) and had them with him, - He pulled out some papers and looked over them, but could not find the Notes - but pulled out an order from Wilson, by Bommer, agent, to Burgess requesting him to release the said Deed of Trust, - Chesley said he would swear he had paid the Notes, and had them then at home, Burgess then after much persuasion signed the Release,

Plaintiffs then read in evidence the depositions
of Bramard M. Million, and L. M. Blackman
as follows, to wit, (here copy said depositions)

Plaintiffs then read in evidence the Deed of trust
given by Dr. William S. Port, and wife to James Bur-
gers, trustee ^{on 18 $\frac{30}{100}$ acres of land} to secure twenty promissory notes
to John O'Fallon ^{dated 1st day of January}
~~together with the record ~~and~~ appropriate thereof by record~~
1865 as follows, to wit (here copy same)

Twice
~~Plaintiffs then
read in evidence Deed of Trust of Jonathan Chesley to
Bramard M. Million, Trustee, to secure to Mrs. Mar-
garet Fleming ^{one} promissory note for five
thousand dollars ~~and~~, dated 17th day of April
1872 (here copy said Deed)~~

Plaintiffs also read in evidence a Deed, dated 23rd of
December 1865, from said William S. Port, ^{wife} to D. H.
Dorman, conveying to him 30 $\frac{87}{100}$ acres, ~~of which~~
~~was included in the original Deed of Trust by said~~
~~Port to James Burgers, trustee to secure ²⁰ notes to~~
~~together with ~~original~~ of record thereof~~
~~said O'Fallon as follows, to wit, (here copy same)~~

Also a Deed from said Dorman, dated April
9th 1867, to Elizabeth S. Sanderson, for the same, as fol-
lows, (here copy same)

Plaintiff then read in evidence a Deed of
23rd of March 1867 from said W^m S. Port, & wife to Daniel P.

Allison ^{with certificate of record thereof} conveying to him five acres and $\frac{80}{100}$ of an acre, of the Land included in the original Deed of Trust of said Post, to O'Hallon's Trustee, as follows, To wit, (here copy same)

Also a Deed from said Allison ^{with certificate of record thereof} in April 1867 to Melville W. Foster, conveying the same land, as follows To wit, (here copy same)

Also, a Deed from said Foster of May 19th 1871, for same land to Jonathan Chesley, as follows, To wit, (here copy same)

Plaintiffs also read a Deed of Trust of this ^{dated April 14th 1872} ^{with certificate of record thereof} same land from said Chesley, to Brainerd, Million Trustee, to secure a Note of 5,000 dollars, to Mr. Margaret M. Fleming, as follows, To wit, (here copy same)

Plaintiff also read in evidence a Deed ^{Trustee} from said Million dated 16th day of May 1874 ^{with certificate of record thereof} Andrew J. Fleming as Trustee for Margaret M. Fleming, conveying same land, ^{said Trustee, in trust for said Margaret M. Fleming,} ($\$ \frac{80}{100}$) To ~~her~~, as follows, To wit, (here copy same)

It was admitted by Defendants on the trial and by Answer that on the 23 day of March 1867, said William S. Post and wife, conveyed to Daniel P. Allison thirty acres of land, which included five and $\frac{80}{100}$ acres, of the land included in the Post Deed of Trust, to James Burgess, herein above copied. - Also Defendants admit that said Allison in April 1867 conveyed the same land to Melville W. Foster, and that Foster on the 19th day of May 1871, conveyed the same land (sub'j'ct to said Deed of Trust) to Jonathan Chesley; and that said Chesley on the 17th day of April 1872 made and executed a Deed of Trust, conveying the same land (five & $\frac{80}{100}$ acres) to B. M. Million as Trustee, to secure the payment of a promissory Note for five thousand dollars to Margaret M. Fleming. - And Defendants admit that on the 16th day of May 1874, said five $\frac{80}{100}$ acres of land was sold under said Chesley's Deed of Trust, by said Trustee,

and by him conveyed to Andrew J. Fleming, as Trustee,
to hold in trust for Margaret M. Fleming, the purchaser and
present owner of the same,

The Plaintiffs have closed their evidence, and

The Defendants then in support of the issues
on their part, introduced the following evidence;

Jonathan Chesley, - sworn, - says, I am 43 years of age,
reside in St. Louis, - lived formerly several years in Jef-
ferson County. I resided on the land I got from
M. M. Foster, (about six acres,) by deed dated May
19th 1871. It was encumbered at the time I got it, by
a Deed of Trust given by Dr. W^m S. Port, dated 1st day of
January 1863, to James Neergers, to secure some
twenty notes to John O'Fallon,

(Defendants asked what agreement was made
by him with Foster about paying off the Port Deed of
Trust - To which Plaintiffs objected, - on the ground
that such agreement was, without consideration
and therefore void, ~~and such evidence was~~ ^{that} ~~the~~ ^{was} ~~illegal~~
~~and incompetent~~ - But the Court overruled the
objection, and permitted ^{the witness} to testify as to the agree-
ment, - To which ruling of the Court, the Plaintiffs
at the time objected and excepted)

The witness then stated I agreed to pay off the
\$3300, ^{on} Note, ^{and the interest} ~~and the interest~~ ^{all interest accruing after my purchase} ~~Notes~~, - They were deducted
from the money I was to pay Foster for the land, -
The interest Notes then ^{M. H. Foster} ~~one~~ I took up, - Interest Notes
due respectively on ~~1st January 1865~~ - one, in 60 months,
1 in 66 months - 1 in 36 Mo, - 1 in 84 Mo, - 1 in 48 mo,
and 1 in 72 months, each for \$105, being shown
witness, he says he paid all these interest Notes,
I took up these before I borrowed the money of Mrs.
Fleming. On 15th April 1872, I borrowed of Mrs.
Margaret Fleming \$15,000, and secured the pay-
ment of the same as follows: \$5,000, by a Deed of
~~trust on this property, - (The six acre lot I got of Foster)~~
\$5,000, by Deed of Trust on an Island in the Missis-
sippi ^{river} - and \$5,000, on house & Lot, in St. Louis.
Barnard M. Million, Agent of Mrs. Margaret Fleming,
had my Deed for three weeks - Million was to
take money, out of the money borrowed, and pay off this
Deed of Trust, & Notes, - I went to ~~Wanner~~, Agent
of Wilson, and told him I had the money to buy up
the Deed of Trust - and the Note for \$3500 I bought
^{& the interest then due & not paid, amounted to \$33, making,}
up for \$3300 - Million was acting for me in
in all \$3333, in principal & interest
this matter as my agent, as well as, Mrs. Flem-
ing. Million paid the money and took up the
Part Deed of Trust and Notes, and kept them,
- laid them away in his safe, There was noth-
ing said between me and Million about keep-
ing the Deed of Trust until three months after giving
the Fleming Deed, I told him I had found a person

I wanted the deed of trust released so I could make a good deed who would take the place, and Million said he refused to release the deed of trust or deliver it to me until the money first. Before that time, the Isl and had been sold, I told him I wanted to get the Port Deed of Trust, so as to cancel it. He said he could not do it, but he was going to keep it, as collateral security for the \$15,000 loan; as the Isl and was not as big as I represented it, And he said he would not give it up. I told him my wife had paid the money, and if he would not give it up, I would get Mr. Bonner to release it on this portion of the land. That I had sold the Sulphur Spring place for \$12,000. - Then his Lawyer told the purchaser that Bonner's Release was not good, and that broke up the trade. Capt. Fleming said he was going to hold it (Port Deed of Trust) as collateral security on his loan to me, and he would not give it up. After this, I saw Million, and he said he would not surrender the Deed of Trust, or cancel it himself. I asked him to do so, - and he said no, he would not. I had no conversation with Million or Fleming before the loan, about turning over the Deed of Trust and Notes as Collateral. - The first I heard ^{about} it being held as collateral was about three months after the loan of the \$15,000, to me by Fleming. At the time of the loan, nothing was said about holding the deed of Trust as collateral, - all that was said was that he would pay off the Deed of Trust, out of

of the money he was to loan me. He kept the \$15,000, and was to pay off all my indebtedness on the land, and the evidences of debts &c against me, were to be kept by Million until I got through with my bankruptcy. There was no one to release the deed of trust, - with Million it was all the same, so it was kept safe, Million was a Real estate Agent - kept a clerk - but don't know his name - he gave me a memorandum of the amounts paid. It was handed to me, - The balance was all I got of the \$15,000 loan, - Million took \$3333, of the \$15,000 loaned & paid Bower, Milson's agent for the Part deed of trust & notes in full and took them up - & he paid me \$11667 part in cash & part in payment of some other debts I owed. I was in bankruptcy at the time & I could do nothing myself & when the deed of trust given by Part was paid there was no one to release it, but it was considered just as safe for Mrs. Flemming as her agent retained the deed of trust & was to retain it until the proper person could be reached to have it released.

Cross Examination - Foster wanted me to pay the incumbrance on the land, - The Port Deed of Trust was on the Sanderson Land as well as what I got from Foster, -

I did not know, at the time I got the deed from Foster that the Port Deed of Trust rested in part on land other than that I got from Foster - I had had at that time an Abstract of the title to the Land made - & I did not ascertain from the abstract that ^{the} Port Deed of Trust was on other land, than what I got of Foster,

Ques - At the time ^{you} got the deed from Foster, did you believe

the Port Deed of Trust rested alone on the land ^{you} got of Foster? - I did not know anything about it - I had ~~no~~ ^{not} opinion about it - I had then ~~seen~~ ^{not} seen the Deed of Trust from Port to O. Fallon - I saw the abstract, - The Abstract stated that the Port Deed of Trust was on ^{the} 18 acres - and the land I got from Foster was a part of the 18 acres, -

I borrowed the \$15,000 of Fleming, & \$3,333 was taken out of it to buy up the outstanding Notes on the Port Deed of Trust - I got them of ^{Principal} ~~Boomer~~ ^{Boomer} one Note for \$3,333⁰⁰ and - all the interest Notes are, - ~~I~~ I have not got the ^{in 1872} Note, or interest Note - If you paid them, ^{why} did you not take them at the time? - Million paid the \$3333⁰⁰ ^{has} out of my money, & held the Deed of Trust & Note ever because he would not let the deed of Trust go out of his hands since - I have paid on the Fleming Deed of Trust until it was ^{all} ~~released~~ ^{paid} of & ~~released~~ ^{paid} some money, - my homestead & the Island have been

sold under the Fleming deed of trust - & Fleming
 bought ~~the~~ them for \$1,000 each - Fleming got his money
 on the St Louis property - from a person who bought
 of me, & assumed to pay it. - I never told Mr.
 Blackman or Million that ~~the~~ I agreed at the
 time of the loan, that the Post deed of trust notes
 were to be held as collateral ^{security for the loan to me!} - I told Million at
 the time to keep the deed of trust & notes for safekeeping.
 - Although I had agreed to pay the deed of trust
 - & had paid it, yet I could not take it up
 because there was no one to cancel it - Rev. Dr.
 Wilson held the deed of trust, & he was not here to cancel
 them. - Bonner was his Agent & the person I paid
 the notes to, ^{eighteen months} afterwards, I found out the trustee
 could enter a release of ^{the} deed of trust, - I did not
 request Burgess to enter satisfaction of the Post
 deed of trust, - I did not, - only as I will explain
~~why, except~~ I went to Mr. Bonner ^{and told him} that those notes
 were laying at Million's, & he would not give them
 to me, - he said he would write to the trustee, giving
 a full explanation, & I delivered his letter to
 Burgess, - I told Burgess I had paid the note out
 of money I got from Million, & now he had ^{the deed of trust & notes} it
 in the safe & would not deliver it to me, & that I
 had sold the place for \$11,000, - ^{I told him if he was satisfied} & I wanted a deed of
 release on the part of ^{the} Land I owned, & Burgess said he
 would do so - Burgess gave ^a Release for the part
 Fleming ^{bought} ~~the~~ in, under my deed of trust to Fleming

Ques, Why did you not get Burgers to release the Deed of Trust on the whole land, as you were to pay it?—

Ans, Because I did not have the possession of the Deed of Trust, I thought after I sold my land I would get it, & then release it on the whole, — I got this at the time when it bears date, — The Release was in Feb, 1874, — & the money was borrowed in 1872, — I, in Feb, 1874 asked ^{Million} ~~Burger~~ to have the Deed of Trust satisfied — he first said he would, & next day said he would not, — I did not tell Burgers, when I was soliciting him to release the Deed of Trust that I had the possession of it, & the Notes, — I have no interest in the case, — I would rather Sanderson would gain the case because, I don't think he ought to pay ^{my other money} it, — I asked Capt. Fleming to release the Deed of Trust, —

Did you not tell Capt Fleming that he had enough security without this Deed of Trust, & he ought to release it? — I told Mr. Fleming that Mr. Million says he holds ^{the deed of trust} ~~that~~ as collateral security, & if he ^{would} ~~would~~ give me a release on what I sold I don't care ^{what} he done about the other land, & that I had sold the place ^{I lived on} for \$11,000, & that I could make him all right on the homestead, and probably the Island, — He said if I would pay him up, all I owed him, he would do it. —

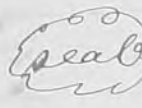
Did not you ask Capt Fleming to release ~~the Deed~~ the Deed of Trust on your land, as he had enough

security without it! I did not in that way, I told
him, if he would release the Deed of Trust on my
land, he could do what he pleased with the other
land, covered by the Post deed of Trust.

W. L. L. L.
B.
L. L. L. L.
L. L. L. L.
L. L. L. L.

The above and foregoing being all the evidence introduced by the Parties in the case, and the cause, after argument of counsel, being submitted to the court upon ^{the pleadings and} the evidence aforesaid, the court found for the Defendants, and entered judgment accordingly, which judgment is as follows, (here copy same,) To which finding and judgment of the court, the Plaintiffs at the time objected and excepted, -

The Plaintiffs then, on the 18th day of May 1873, filed their motion to set aside said finding and judgment of the court, and grant a new trial, for the reasons in said motion stated, - which motion is as follows, To wit, (here copy said motion) But, the court refused to set aside said finding and judgment, and overruled said motion for a new trial; To which decision of the court, in overruling said motion, and refusing to grant a new trial, the Plaintiffs at the time excepted; and now here in open court pray ^{that} this their Bill of Exceptions may be signed, sealed, and made a part of the record in said cause, which ^{is} accordingly done,

Wm B Robinson 
Judge of the 20th Judicial Circuit holding the
May term 1875 of the Jefferson County Circuit Court
by request of Hon Louis Robinson Judge of
the 20th Judicial Circuit of Mo

In Circuit Court
Jefferson County

A. J. Yelming
and others

vs,

Sanderson & Sanderson

Bill of Exceptions

correct

J. L. Hoover
for Dept

Green & Williams

Attys for Defts

Filed May 21st 1876

C. H. Moore

Clerk