

Jefferson County Circuit Court
Case Files - Civil
September 1874

Box 33 Folder 31

Mall, John

v.

Herman, Otto

Debt, Account

Debt of \$223.41 for work performed by John Mall
and minor son, Albert Mall, on brickyard of defendant
in August, September, and October 1873; includes
account

Otto Herman

To John Hall Dr.

1873.

Aug ^r	To 3 ³ / ₄ Days work on brick yard	
	at \$ 3.25, per day —	\$ 12. 18
Sept.	" 27 ¹ / ₄ Days work at \$ 3.25 per day —	88. 56
Oct.	" 24 ³ / ₄ Days work on do. at \$ 3.25 per day —	80. 43
Aug.	" 3 ³ / ₄ Days work by Albert Hall, minor	
	Son of said John Hall, at \$1.50 per day	5. 62
Sept.	" 26 ¹ / ₂ Days Ditto by same at \$1.50 " "	39. 75
Oct.	" 25 ¹ / ₄ Days Ditto by same at \$1.50, " "	37. 87
	Total	<u>\$ 264. 41</u>

Dr. By amount paid	\$	41. 00
Balance due	\$	<u>223. 41</u>

John Hall

is.

Otto Hermanns

Jeff's

Acct. \$ 233. 41

John Hall, - Plaintiff } In the Circuit
 Against } Court of Jeffer-
 Otto Herman, - Defendant } son County
 Missouri
 September Term 1874

The Plaintiff states that the Defendant owes him Two hundred and twenty three dol-
 lars and forty one cents, for work and labor
 done and performed by Plaintiff and his
 minor Son, Albert Hall, on the brick yard of
 Defendant, in the months of August, September,
 and October in the year 1873, at the request
 of Defendant, after all just Credits have been
 given him for payments made. The partic-
 lars of which, and the Credits, will appear
 by an Account herewith filed, and which
 are as follows;

Otto Herman

To John Hall Dr.

1873	To 3 3/4 Days work on brick yard	
Aug. 1	at \$3.25 per day	\$ 12.18
Sep.	" 27 1/4 Days work at \$3.25 per day	88.56
Oct.	" 24 1/4 Days work on do, at \$3.25 per day	80.43
Aug.	" 3 3/4 Days work by Albert Hall, minor	} 5.62
	Son of said John Hall, at \$1.50 per day	
Sep.	" 26 1/2 Days ditto by same at \$1.50 "	39.75
Oct.	" 25 1/4 Days ditto by same, at \$1.50 "	37.87
	Total	\$ 264.41

To amount brought forward \$ 264. 41
Cr. By amount paid \$ 41. 00
Balance due \$ 333. 41

The Plaintiff states that said sum of Two
Hundred and twenty three dollars and forty one
cents, is yet due and owing to him, by Defendant,
after all credits have been given, and for which sum
Plaintiff asks Judgment.

Abner Green
Attorney for the Plaintiff

In Jefferson Circuit Court
Sep. Term 1874

John Hall
vs.
Otto Herman

Petition, on Acct,
Let-dummons issue
A. Green
for Plff

Filed Aug. 18th 1874
W. S. Boyce, Clk
R. O. Ho. Marine
Deput.

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 *Alto Herman*

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

John Mace

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 *18th* day of *August* A.D. 1874

W. S. Boyce Clerk Circuit Court.

By *Chas. Horne* Deputy.

21
4072

RETURNABLE

TO

JEFFERSON CIRCUIT COURT.

Sept. 1. TERM, 1874.

John Hall

vs

Otto Hermann

Original

3616 21st Aug 1874

Executed the within at the county of Jefferson in the State of Missouri this 21st day of August 1874^{ad} by leaving a copy of the within writ and petition as furnished one by the clerk of the court at the within named Otto Hermanns usual place of abode with a white member of the family over the age of fifteen years

T. B. Mozo Sheriff

By Wm. T. Mockbee Depy

John Mall, plff,

against

Otto Hermain, defd.

In the Circuit Court
of Jefferson Co, Mo.

Sept. Term 1874.

Now comes the defendant by his attorney,
and moves the court, to require the plaintiff,
to give security for the payment of the costs,
in the above entitled action, for the following
reasons, to wit:

1st that the plaintiff is unable, to pay the
said costs,

2^{ndly} that the plaintiff is so unsettled, as to
endanger the officers of the court with
respect to their legal demands,

Henry F. Ahlvere,
Atty. for defendant,

In the lastest Court
of Jefferson Co, Mo,
Septber. Term 1874.

John Mael,
Plaintiff,

against
Otto Hermann,
Defendant,

—
Martin
for security for
costs.

—

Filed Sept. 15 1874
W. S. Boyce
Clerk

John Mall, plaintiff,
against
Otto Hermann, defd.

In the Circuit Court
of Jefferson County, Mo.
Sept. Term 1874.

Now comes defendant by his Attorney and by leave of Court obtained at the last term (the Sept. Term 1874.) thereof, files this his answer to plaintiff's petition.

Defendant denies, that he owes plaintiff two hundred and twenty three dollars and forty one cents, or any other sum of money, for work and labor done and performed by plaintiff and his minor son, Albert Mall, on the brick yard of defendant, in the months of August, September and October in the year 1873, or at any other time, at the request of defendant, after all just credits have been given defendant for payments made, as for all as plaintiff states in his petition, and defendant denies, that he is owes plaintiff any thing for and on account of the work specified in the account, embodied in said petition, and denies that he owes plaintiff the amounts set opposite the days of work in said account, or any other amounts of money for said work; and defendant denies, that the sum of two hundred and twenty three dollars, and forty one cents or

any other sum of money is due plaintiff
on account of the work, specified in the
account, embodied in plaintiff's petition,

Defendant for recoupment and counter-
claim to plaintiff's action states the follow-
ing;

Defendant states, that heretofore to wit: prior
to the month of August 1873. he kept a brick
yard at the town of Decoto, in said Jefferson
County, and was then and there manufact-
uring brick for the purpose of selling
them to other people; and that he continued
said business of manufacturing brick
during and after the time, plaintiff states,
he had done work on brick yard for
defendant; that during or prior to the month
of August 1873, he, defendant, had concluded,
to make, mould, ~~and~~ set up and burn a brick
kiln, containing about 160,000 brick,
more or less, and that he was in need of
the services of a man, who understood the
moulding and burning of brick; that
during ~~and~~ or prior to the month of
August 1873, the plaintiff came to him,
defendant, and asked defendant, to engage
and employ plaintiff and his said son
Albert, in the manufacture of brick; that
plaintiff represented to and assured

defendant, that he, plaintiff, was by profession
a maulder and burner of brick and under-
stood his said profession well, and that
his said son was capable of doing other work
and defendants brick yard; Defendant
further states, that plaintiff was then un-
known and a stranger to defendant, and
that defendant, having trust and confidence
and believing in the truth of plaintiffs
said representations, then and there employ-
ed and engaged plaintiff as a maulder
and burner of brick on his, defendants
brick yard; and defendant states, that
then and there the following contract and
agreement was entered into by and be-
tween plaintiff and defendant; ~~before~~
plaintiff was to maul and burn for
defendants or defendants' said brick yard
a kiln of brick, containing about 160,000
brick more or less, in a good and work-
manlike ^{skillful} and professional manner, and
that plaintiffs son, a minor, was to do
other work on said brick yard, such,
as there might be for him, to do on said
brick yard; and that defendant was to
pay plaintiff hereafter, as follows, to wit:
for the work of plaintiff as maulder and
burner of brick \$ 3.25. per each day of
his work, and for the work of his son

\$ 1.50. per each day of his work,

Defendant further states, that he has always been willing and still is willing to perform the contract on his part, but that plaintiff has failed and neglected to perform and comply with the contract and agreement on his part, in the following way to wit: after a brick kiln, containing 160,000 (one hundred and sixty thousand and brick) had been put up, and plaintiff undertook to burn the same as above stated, he the plaintiff, burned said kiln in such an unprofessional, and unskillful, neglectful and unworkmanlike manner, that in consequence thereof, only about 55,000 brick were well burned, and could be sold by defendant at a regular price then, to wit: \$ 8.00 per thousand; that about 20,000 brick were partly injured, and could be sold only at a reduced price, to wit: \$ 5.00 per thousand, and that the balance of said kiln of brick, about 85,000 bricks were entirely worthless, and unsalable, and defendant therefore states, that the direct damage, which he has sustained by reason of the false and fraudulent representations of the plaintiff, above which he made to him, to induce him, to engage plaintiff, as aforesaid, and by reason of the un-

professional, unskillful, neglectful and unworkmanlike manner, in which plaintiff burned said kiln of brick, he is seven hundred and forty dollars, (and defendant further states, that that by reason of the said breach of contract and agreement on the part of plaintiff, as aforesaid, he has sustained indirect damage to the amount of two hundred and sixty dollars, in this, that the business of defendant as manufacturer of brick for sale as aforesaid, was injured by said breach of contract on the part of plaintiff as aforesaid, in as much as he, defendant, in consequence thereof was unable to comply with contracts he had then made for the sale and delivery of brick to ~~his~~ other persons, and in as much as he could not meet the demands of brick, made of him in the course of time, as he would have been able to do, had plaintiff fulfilled his part of said contract, as he agreed to do.) defendant states, that this his recoupment and counterclaim grows out of the same contract stated by plaintiff in his said petition, that the work, which plaintiff states in his petition, was and an account

of which plaintiffs claims to have
a right to recover, was done under
the contract, made between plaintiff
and defendant as aforesaid, but which
was broken by plaintiff as aforesaid,

Defendant therefore for recoupment
and counterclaim to plaintiffs ac-
tion asks judgment for ~~one~~ ^{seven} ~~hundred and forty~~
~~and~~ ^{and} ~~dollars~~ damage against plaintiff
and costs of suit.

Henry F. Ahlner,
Atty. for defendant,

In At. Hermit Hunt
of Luffness, etc. No.

John Mac
per

no.

Otto Hermann
deput.

Answer of
Defendant,

Filed Dec. 21 1874

W. S. Boyce
Clerk

SUBPOENA--CIRCUIT COURT.

STATE OF MISSOURI,

County of *Jefferson* } ss. THE STATE OF MISSOURI.
 To *Gustav Burtow (at depth have) Fred Wappler (inquire of left)*
Fred Lang (Rock Township) Gustav Ludwig (De Soto)

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 *Hillsboro* of the *15* day of *January* A. D. 1875, then and there to testify and the truth to speak, in a certain matter of controversy now pending in our said court, wherein

John Mally is Plaintiff,
 and *Alto Hermann* is Defendant;
 on the part of said *Sept*; 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 *4th*
 day of *January* A. D. 1875.

By

Wm. H. Conner
 Clerk.

D. C.

SUBPŒNA

No. [REDACTED]

Jefferson Circuit Court.
Jany Term, 1875.
John Mace

Subpœna.

Otto Herman

Def's. } WITNESSES.

Day of Trial

Gustav Burtow *Sund Jany*

Fred. Wappler *Jany 1875*

Fred Lang

Gustav Viding

R E T U R N .

I HEREBY CERTIFY, that I served the within Writ in the County of *Jefferson*
the 5th day of *February* 1875, by *Reuben C. Deane*
to the within named *Quarles - Burtow* *Fred Wappler*
~~to the within named~~ *Fred Lang* and *Quarles Viding*
~~not found in my hands~~ *Served on the 11th*
of January 1875 *by J. A. Mottchedick*
Fee, \$ *2.00*

Wall, petff. In the Circuit Court
vs. of Jefferson County,
Ole Hermann, depd 3 Missouri,
January Term 1875.

Now comes defendant by his Attorney,
and moves the Court, to dismiss the above
entitled suit for the following reasons,
to wit:

because the plaintiff has not, as he
was last term of Court ruled to do,
filed the undertaking of some responsi-
ble person, being a resident of this
State, binding himself to pay all costs
which had accrued or might accrue
in such action, and because he
has not filed such undertaking on
or before the day in said rule named,
nor since that time.

Henry F. Shapers,
Attorney for
defendant.

No 86.

John Mally
Grandiff,

W.

Wts Hermann
deput.

Motion
to dismiss suit
because security
for costs not
filed.

Filed Jan 11 1876
W. H. Adams
clerk

John Mall, - Plaintiff } In the Circuit
Against } Court of Jef-
Otto Hermann, - Defendant } ferson County
Missouri

I ~~At~~ John Krauss a resident of St. Louis
County Missouri, ~~and~~ ~~a resident of~~
~~Jefferson County Missouri~~, do hereby acknowl-
edge ourselves bound to pay all costs, which
have accrued, and which may accrue in the
above entitled cause, and be adjudged
against the Plaintiff,

Witness our hands this 11th day of
January 1875.

John Krauss

John Hall
vs,
Otto Hermann

Security
for costs

Filed January 11th 1885
Wm. H. H. H. H.
Clerk

Carondelet Savings Bank.

St. Louis, January 11th 1875

To the Honorable Judge
of the Circuit Court at
Hillsboro Mo.

Sir

This Bank will be
responsible for security up to the
amount of One Thousand Dollars
John Krauss Esq. from this place
may give in case of John Mall

Respectfully

A. L. Bergfeld
Pres.



Filed June 11 1876
Charles H. Stone
C.H.S.

John Mall, - Plaintiff } In the Circuit
Against } Court of Jefferson
Otto Herman, - Defendant } County, Mo.,
January Term 1873

The Plaintiff, for Replication to that part of Defendant's Answer, which sets up a Counter-Claim, by way of recoupment for damages claimed, denies that he prior to the month of August 1873, or at any other time, he entered into a Contract with the Defendant, by which Plaintiff agreed to mould and burn for Defendant on his brick yard a Kiln of brick, containing about 160,000, of brick, or any number whatever, in a good, workmanlike, skillful, or professional manner; or that Plaintiff's son, was to work for Defendant under any such pretended Contract, - or that Defendant was to pay Plaintiff \$3.25 per day, and his son \$1.50 per day under any such contract as alleged by Defendant, - Plaintiff denies that he made any such Contract, or any Contract by which he agreed to mould brick and burn a brick Kiln for Defendant, - Plaintiff states that the only contract he made with Defendant at all, was simply a contract by which the Defendant hired the Plaintiff to work on his brick yard

as a mere hired hand at \$3.25 per day, as a
moulder ^{and burner} of brick, and his son at \$1.50 per
day, - and there was no definite time agreed
upon, as to how long Plaintiff was to work,
- And Plaintiff denies that there was any
thing said about doing the work in a good work-
manlike manner, - He ^{and his son} only worked by
the day, and could quit when he pleased
without any breach of contract, - And Plain-
tiff denies that he prepared said work of
moulding & burning said brick in an un-
skilful, or unworkmanlike manner, - or in
an unprofessional manner, - He denies that
that there was only 33,000 of said brick so-
lent by him that they could not be sold
for the regular price, \$8.00 per thousand,
or 20,000 brick that was partly injured,
so as to reduce their price to \$5.00 per
thousand, and denies that there was
85,000 of said brick that were worthless,
And denies that Defendant has sustained
damage ^{to the amount of} \$740.00, or any damage whatever by reason
of any work done by Plaintiff in moulding
and burning said brick, - and denies
that he made any false or fraudulent
representations to Defendant in regard to
Plaintiff's skill and qualifications as a
brick moulder & burner, - On the Con-

Travny, Plaintiff states, that he is well
skilled in such work, and Plaintiff
avows that he performed the work for
Defendant in moulding and burning
said brick in a good, workmanlike, skill-
ful & professional manner, — And
Plaintiff denies that that recoupment and
Counter Claim (that Defendant states in his
Answer) grows out of any Contract that
the Plaintiff made with Defendant, ^{and denies that Defendant is entitled to recoup any sum whatever} — and
^{denies that any} Counter Claim, or Claim for damages, arises
out of the Contract Plaintiff made with
the Defendant to work for him by the
day at \$3.25 per day and his son at
\$1.50 per day, ^{for that Defendant is entitled to any counter claim for damages} — And Plaintiff denies that
he failed to comply with any Contract
he made with Defendant, — And the
Plaintiff denies that Defendant is en-
titled to one thousand ^{dollars} or one Cent claim
^{or any sum whatever} by way of recoupment, or Counter
claim against Plaintiff, by reason of
any breach of Contract made by Plaintiff
with Defendant, — And Plaintiff denies
that Defendant ^{has} any just claim or de-
mand against Plaintiff's account sued
on, — Plaintiff therefore claims Judgment
for two hundred and twenty three dollars & forty one
cents, as in his original petition prayed.

3 ^{Attn: Green}
Attorney for Plaintiff

STATE OF MISSOURI, }
COUNTY OF JEFFERSON.

To

Fred Dohman & Wm. Waller

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 19th day of January, 1873, 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 Jno Waller is Plaintiff, and Cato Hermann is Defendant, on the part of Waller; 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 18th day of January A. D., 1873.

C. Thos. Horine, CLERK.

I served the Subpoena on the within
 named Fred Dahlmann in Jefferson
 County State of Missouri on the
 18 day of January 1875. B. B. Rogers
 By J. W. P. Smith
 B. B. Rogers
 Deft Sheriff

Mall

to

Hermann

p

$$\begin{array}{r} 12 \\ - 35 \\ \hline 2.07 \end{array}$$

$$\begin{array}{r} 4.80 \\ 7.50 \\ \hline 12.30 \end{array}$$

Shirley F. Jones et al

STATE OF MISSOURI, }
COUNTY OF JEFFERSON.

To *William Walter. Wm Loesch, George Plunk*
J. W. Sletcher

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 *12th* day of *May*, 187*5*, at Hillsboro, then and there to testify and the truth to say in a certain matter of controversy now pending in our said Court, wherein *John Mall* is Plaintiff, and *Otto Hermann* is Defendant, on the part of *Sept*; 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 *9th* day of *May* A. D., 187*5*.

C. Th. Horine, CLERK.

May 5 18/5

Mail

to

Herman

S.

Wm Walker &

Wm Laesch &

George Flink &

J W Fletcher &

Lesoto

Sherriff Fee \$2.00

I executed this with art to security of the person
in the absence of his own this Saturday of May 18/5
by reading the name to the witness
named Wm Walker, Wm Laesch, George Flink
and J W Fletcher.

T. D. M. J. Smith
By Wm J. M. J. Smith

STATE OF MISSOURI, }
COUNTY OF JEFFERSON.

To Fred Wappler, Fred Lange, Gustav Buckow
Charles Walter

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 12th 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 John Mall is Plaintiff, and Otto Adernan is Defendant, on the part of Sept. ; 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 3rd day of May A. D., 1875.

C. Tho' Horine, CLERK.

May 18/5

mail

no

Herman

2

5

Fred Wappler &

Fred Lange &

Gustav Buetow &

Charles Walter &

Desoto

Shuff Free

2nd

I recollects with all the sound of my heart in the
that of prison this 8th day of May and 1855
seeing the same to the within named Fred
Wappler Fred Lange Gustav Buetow and Charles
Walter

W. Wappler & Co.

By W. Wappler & Co.

John Mall, petff.
vs
Otto Hermann, defd

3

Now comes the defendant in the above case and
asks a continuance ^{on the ground of the absence of a witness,} thereof and for that purpose
makes oath and says:

that the name of such absent witness, whose tes-
timony is wanted by him, is Frederick Lange,
that his testimony is material in the cause,
that no other witness is in attendance, or
within the reach of the process of the court,
upon whose testimony he can safely rely, to
prove the particular facts, that the absent
witness, as aforesaid, is expected to prove,
that the applicant believes, he cannot safely
go to trial without the testimony of such
absent witness, that he is not absent by
the consent, connivance or procurement
of the party applicant, that defendant caused
a subpoena to be issued for said witness
~~and~~ ^{but} that said witness has only very lately
moved away from his former place of
abode in to the city of St.
Louis, as defendant has been informed, that
defendant did not know or discover, that
said witness had moved away as aforesaid
till after the subpoena was issued for him,
that defendant has not learned the whereabouts

of said witness in St. Louis, but
believes he can find out the same
before next term of this court,
and obtain then his personal presence
in court, or his depositions,

Sworn to and
subscribed before
me this 12th day

Otto Hermann.

May 18, 75.

E. Thos. Horine
Clerk

John M. M.

Otto Hermann.

Applicant
and affiant for
execution by
dependent.

Filed May 12, 1875
E. Thos. Horine
Clerk.

STATE OF MISSOURI, }
COUNTY OF JEFFERSON.

To

Henry Atchink

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~~ *Twelfth* 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 *John Hall* is _____ is Plaintiff, and *Geo Sherman* is Defendant, on the part of *Sept* _____; 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 *21* day of *Jan* *1878*.
A. D., 1878.

C. Th. Horine, CLERK.

John. Mall
vs

Atto. Hermann

Sheriff p^y 30

I executed the within Sherriff by Reading
to Henry Maltbrink Jan 21 1856

W. B. M. J. Sherriff

STATE OF MISSOURI, }
COUNTY OF JEFFERSON.

To *Mr. Walter, Geo. Burdett, Fred Wappler,*

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 *18th* day of *Sept.*, 1873, at Hillsboro, then and there to testify and the truth to say in a certain matter of controversy now pending in our said Court, wherein *John Mall* is *Plaintiff*, and *Alto Herman* is Defendant, on the part of *Def.*; 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 *6th* day
of *Sept.*, A. D. 1873.

C. Tho' Horine, CLERK.

S. T. 1875

Mall
to
Herman

D

D

Wm. Haller
Geo. Butaw
Fred Wappler

Filed Sept. 13th 1875
C. Ho. Horine
Clerk

Shuff Fee \$1.50

I appeared this morn by offering to read the
same to the within named witnesses which
the Defendant acknowledges Lewis

D.B. Wappler
By Wm. Wappler Clerk

STATE OF MISSOURI, }
COUNTY OF JEFFERSON.

To Gus Udung, Fred Long, Am Lorch
v Geo Fink

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 Sept., 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 Geo. Mall is Plaintiff, and Otto Hermann is Defendant, on the part of Def^t; 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 6th day of Sept., A. D., 1875.

C. Tho' Horine, CLERK.

S. T. 18/5

male

20

Herman

D.

Gus Udning

Fred Long

Wm Losh

Geo Flint

Sheriff Dec

Filed Sept 13 78/5
to the Marine
Clerk

I Expect ^{with} this 13th afternoon to read
to same to wit the named witnesses
and the Defendant acknowledges same
for them

W. J. Woodbury
J. W. Woodbury Sept

John Mall, - Plaintiff } In the Circuit
Against } Court of Jef=
Otto Herman, - Defendant } ferson County,
January Term 1873-

The Plaintiff moves the Court to strike out the following portion of Defendant's Answer, to wit, - all of the latter part of the answer, that comes after this part, to wit, "Now comes Defendant by his Attorney and by leave of Court obtained at the last Term (the September Term 1874) thereof, files this answer to plaintiff's Petition. Defendant denies that he owes plaintiff two hundred and twenty three dollars and forty one cents, or any other sum of money for work and labor done and performed by plaintiff and his minor son, Albert Mall, on the brick yard of defendant in the months of August, ~~and~~ September and October in the year 1873, or any other time at the request of Defendant after all just ~~debts~~ Credits have been given Defendant for payments made all as plaintiff states in his Petition, - and Defendant denies that he owes plaintiff any thing for and on account of the work specified in the account embodied in said Petition, and denies that he owes plaintiff

the amounts set opposite the days of work in said account, or any other amounts of money for said work, and defendant denies that the sum of two hundred and twenty three dollars and forty one cents, or any other sum of money is due plaintiff an account of the work specified in the account of ~~the work~~ embodied in plaintiff's petition," — for the following reasons;

1 - Because said latter part of the Answer, claiming a recoupment as damages on a contract, is no defence to this action, —

2 - Said part of the Answer does not show a contract by Plaintiff to make and burn a brick Kiln for any specified sum of money — does not show and any contract to work by the job,

— 3 - The allegations therein show that Plaintiff and his son, simply worked by the day, and therefore none of the damages claimed forms a legitimate defence,

4 - Indignated damages cannot be pleaded as an offset, or by way of recoupment, —

Abner Green
Attorney for Plaintiff

Dr Lofferson Circuit
Court Jan, Term 1873-

John Mall
vs,
Otto Hermann

Motion to
Strike part of
Answer

John Mall, plaintiff,
against
Otto Hermann, deft.

The Court instructs the Jury as follows:
If the Jury believe from the evidence, that
a contract or agreement was had between
plaintiff and defendant, according to which
plaintiff was to mould and burn for defen-
dant a kiln of brick, containing about
160,000 bricks, in a good and workman-
like manner, and plaintiff's son was to
do other work on the brickyard of defen-
dant, in consideration of \$3.25. per day
for the services of plaintiff and \$1.50. per
day for the services of plaintiff's son,
to be paid by defendant; that plaintiff
did burn a kiln of brick for defendant,
containing about 160,000 bricks, but
not in a good and workmanlike man-
ner, then, the defendant is entitled to
whatever damage he has sustained by
reason of the plaintiff's not burning said
kiln in a good and workmanlike manner,
not exceeding the amount claimed in the answer.
If such damages amount to more,
then plaintiff would be entitled to, if
he had burned said kiln in a good and
workmanlike manner, ^{to wit \$223.41} the jury will give

Givern

defendant a verdict for the balance,
amount of damages, ^{not exceeding the amount claimed in the plea} if any, which he has sustained, over and ~~at~~
above said amount of \$223.41.

And the jury are further instructed
that, to ascertain such damage, they
must find from the evidence ^{first} what
the brick kiln would have been
worth if the same had been burned
in a good and workmanlike manner,
and secondly what said kiln was
worth, as it was burned, and the
difference between the two amounts
thus found, is the damage, defendant
has sustained, but in no event will the
jury find the damages in a greater
amount than that claimed in
the answer.

Given

~~Given~~ Given

If the Jury should believe from the evidence that the Plaintiff did mould and burn said Kiln of brick in a good and workmanlike manner, - and that such Kiln contained a considerable number of bad faulty brick, which was occasioned by causes not explained by the evidence, but not arising from any negligence or wrongful conduct of Plaintiff, then the Jury should not allow any part of the damages claimed by Defendant,

John Hall
vs,
Otto Hermann

The Court instructs the
Jury as follows;

1— If the jury believe from the evidence
that the Defendant employed the Plaintiff
to mould, put up, and burn for Defendant
a Kiln of brick, containing about 160,000,
of brick, in which work Plaintiff was
to superintend ~~and~~ ^{said} work, and was to
be paid for his labor \$3.25, per day, and
for his son's labor \$1.50, per day, and
that Plaintiff did not contract or
bind himself to be responsible for any
amount of bad brick, that said Kiln
should contain, but merely worked
by the day, then Plaintiff is not
liable for the damages claimed by
Defendant for such amount of bad
brick contained in such Kiln, unless
the jury should believe the same was
caused by the negligence of Plaintiff.

Gives

W. H. H. Thomas
Foreman

Refused

2 - If the Jury should believe from the evidence that the Plaintiff, ~~was~~ was employed by the Defendant to mould and burn a brick Kiln, containing about 160,000, of brick, and was to be paid for his services by the day and that he did not bind himself by Contract with Defendant to be responsible for the bad brick that said Kiln should contain, then, unless the Jury should believe that such unsalable or bad brick in said Kiln was accasioned by the negligence of the Plaintiff, they should find for the Plaintiff.

And
y

Wm

Pittsford
Vermont

3-

Unless the Jury believe from the evidence that the Plaintiff bound himself by contract with the Defendant to make and burn a Brick Kiln, containing 160,000, and agreed that unless such Kiln should all be good merchantable brick, then he is not liable for such amount of bad brick as such Kiln may have contained unless they were caused by Plaintiff's negligence, - and the Jury should find for Plaintiff the value of his and his son's services, which Defendant admits he performed, with six per cent from the date Plaintiff demanded the same if you find he did demand the same

Given

Given

4- Although the Jury may believe from the evidence, that a portion of the brick burned by Plaintiff for the Defendant, were not good salable brick, yet if the Jury believe the Plaintiff was only hired by the day to ^{make} ~~superintend~~ and burn a kiln of bricks ~~the making and burning of~~ brick for the Defendant, then the Defendant is not entitled to recover damages for the amount of bad brick in such kiln, - unless the Jury believe they were caused by the Plaintiff's negligent or wrongful conduct,

John Mall }
 etto Herman } costs made by Herman

Sept 5 1875 Bryce clk

motion ²⁰ order ³⁵ leave to ans ²⁰

75^c

75

Jan 5 1875

Horine Clerk,

motion ²⁰ ~~leave~~ motion ²⁰ order ³⁵

75

aff'd ²⁵ cont. ²⁵

50

Sept 5 1875

inst ⁵⁰ (clock inst. ¹⁰ 6 Spas ¹⁵⁰)

2.10

11 files ⁵⁵ 2.13 10 costs ⁵⁰ sat. ²⁵

1.40

\$ 4.75

13 mop shff.

20 Spas ^{10.00} calls ⁵⁰ June ^{1.00}

\$ 11.50

Jan 5 1875

Red Warbler 5 days 32 miles \$ 7.56

Red Long 6 " 60 " \$ 12.30

August Widing 6 " 60 " 12.30

Mustard Butaro 5 " 32 " 7.56

3 Mining Interferer 1 " 9 " 2.07

May 5 1875

John Fletcher 1 " 14 " 2.12

\$ 43.91
 \$ 61.91

4072

Mall

^dHerman

Coats

made by Herman