

Jefferson County Circuit Court
Case Files - Civil
May 1876, No. 66

Box 35 Folder 72

Cole, John C.

vs
Valle Mining Co.

Damages

\$17,000 damages for obstructing and
polluting Joachim Creele that ran
plaintiff's grist mill

Jefferson County p.

John C. Boole
vs Plaintiff
Valle Mining Company
Defendant } In the Circuit Court
of Jefferson County.
May Term 1876.

Plaintiff states that the defendant
on the first day of ^{January} ~~July~~ 1869¹⁸⁷¹ was
and still is a Corporation duly
created by the laws of the State of
Missouri: that long prior to and
during all the time since said first
day of ^{January} ~~July~~ 1869¹⁸⁷¹ Plaintiff was and
still is the owner of, and in posses-
sion of a large tract of land situated
in Platte Township in Jefferson County
Missouri: that a large portion of
said land is improved and is and
for a long time - not less than ^{twenty} ~~thirty~~
years last past - has been used by
the Plaintiff and others from whom he
derives title thereto, as a farm, and
that upon said farm there is a
dwelling house in which the Plaintiff
resided with his family, for a long
time prior to said first day of ^{January} ~~July~~
1869¹⁸⁷¹ and in which since that time

3-

said building a water wheel and the machinery and fixtures necessary for grinding grain and manufacturing flour and meal and for carrying on the business of a grist-mill and that he connected said reservoir with said mill by a long ditch or canal and by a flume of timber and planks and at great cost and expense put said mill in complete order for doing the business of a grist-mill and Plaintiff says that said dam, reservoir, canal, mill building and all the works connected with the same are situated upon the said land so owned by him: and that for a long time prior to and since said first day of ^{January} 1871 ~~July~~ 1869 he has used said building and said works connected therewith for grinding grain, manufacturing flour and meal, and as a grist mill and Plaintiff says that said mill and the works connected therewith are fed and run by and are entirely dependant upon said reservoir and upon said stream and the water flowing therein

and that said farm and the dwelling house and the outhouses are entirely dependant upon said stream and said canal for their supply of water.

And plaintiff further says that for more than thirty years there has been a dam and grist-mill situated and in operation upon said stream and upon said land now owned by plaintiff and at or near the same place where the said dam and mill and other works are now situated.

Plaintiff for cause of action says that the defendant is and has been engaged in the business of mining, cleaning and smelting lead and other ores and that for the purpose of separating said ores from the earth and other substances and impurities with which they were mixed the defendant did during the month of ^{January} ~~July~~ 1869 and at various and many other times since that time, in violation of the plaintiff's rights to the use of the water of said stream and to his

great injury and damage, build and cause to be built in and upon said Joachim Creek, at a point above plaintiffs said mill and pond and the works connected therewith dams and obstructions of wood, earth, stone and other substances and that during said month of July and at many and various times since that time, in violation of plaintiffs said rights and to his great injury and damage, the defendant has conveyed to and thrown and placed in said stream and washed therein large quantities of ore and mineral mixed with earth and various other substances and impurities. Plaintiff ^{says} that by and on account of said dams and obstructions so placed in said stream and on account of the large quantities of earth, mineral and other substances so placed in said stream by defendant, the quantity of water naturally flowing in said stream to plaintiffs lands and to the reservoir, mill and other works connected with the same has

been greatly and unlawfully diminished, and that by means of the earth, minerals and other substances so thrown and placed in said stream and so carried down by the current thereof, his said mill and the works connected therewith have been greatly injured and damaged and the revenue and permanent value thereof greatly impaired and that said reservoir has been nearly or quite filled up with the earth and other substances so brought down said stream and its use and value for collecting and retaining water for said mill almost or entirely destroyed; that said canal and flume have to a great extent been filled by such earth and other substances so brought down said stream and that the water wheel and other works connected with said mill have been clogged and impeded by such earth and other substances and that by and on account of the injury, damage and impediment so done and caused to said mill and the works there-

7-
with connected and by said
diminution of the water, the plain-
tiff has been prevented for a
large portion of the time since
said first day of ^{January 1871} July 1869 from
running said mill at all and
for a large portion of the time
has been compelled to run the
same at a much less rate of
speed than the same could have
been run but for said acts, in-
jury and damage so done by
the defendant; and that during
the time the mill was so run
at such diminished rate of speed
the amount of grinding and bus-
iness done by the mill and the
amount of revenue and profits
arising from the mill and said
business was much less than
it would have been but for
said injury, damage and impe-
diments done and caused by the
defendant; And plaintiff says that
by means and on account of said
earth and other substances so by
defendant placed in, and so brought
down by said stream he has been
deprived of and has lost a large

Part of the revenues and profits which he would otherwise have received from said mill and the works thenwith connected and that said mill and works have thereby been permanently and irreparably damaged and the value thereof greatly diminished: And Plaintiff says that said defendant unlawfully did the acts and committed the grievances above stated well knowing that the property of the Plaintiff would be thereby damaged and his lawful rights to the use and advantage of said water would be interfered with and destroyed by said acts of defendant.

Plaintiff says that he has been damaged by such losses upon the revenues, profits and business of said mill and works and by the permanent damage done to said mill and the works thenwith connected in the sum of Fifteen Thousand Dollars.

And for further cause of action Plaintiff says that by said minerals or ores and other substances and impurities so placed and thrown in said stream and by the

9-
earth and other substances so brought
down said stream, the water of
said stream, which was before pure
and wholesome, has been rendered
foul unwholesome and poisonous
and unfit for use upon the farm
and in his dwelling house: that
it is injurious and has injured
his stock upon his farm and is
unfit for drinking, washing and
other domestic purposes upon his
farm and in his dwelling house.
and that he has been put to great
trouble and inconvenience and
expense upon his farm and in his
dwelling house by said injury and
damage to said water: And Plaintiff
says that by the said accumulation
of earth mud mineral and other
substances in said reservoir and
in said canal and in said stream
so caused by the unlawful acts of
said defendant, the flow of the wa-
ter has been obstructed and the wa-
ter has been confined and has fre-
quently become stagnant poisonous
and unhealthy and has injured
and poisoned the air and has
thereby made the place of his said

residence unhealthy and has injured the health of himself and family. And he further says that prior to the casting of said earth and other substances into said stream and the washing of said ores therein by this defendant there were in said stream, where the same runs through his land and in said reservoir, many valuable fish and that the same have been destroyed and driven out of the same by the washing of said ores and by the earth and other substances so cast therein by defendant. and that his farm and other property has been damaged and the revenues and profits thereof decreased and the value of his farm and other property thereby greatly and permanently diminished.

Plaintiff says that by the said acts of the defendant he has been further damaged in the revenues income and profits from his farm and other property and in the permanent decrease in the value of said farm and other property and on accounts

11- of the trouble inconvenience and expense thereby caused to him in his domestic and household affairs and on account of the injury to the health of himself and his family in the further sum of Two Thousand Dollars.

Wherefore plaintiff asks judgment for Seventeen Thousand dollars and costs.

Daniel T. Potter and
Thos H. McMullin
Attys for Plaintiff.

Circuit Court

Jefferson County.

John C. Cole

vs

Valle Mining Company

Petition

Filed April 20 1876

C. H. O. W. W. W.

Clerk

\$4 paid by Patter

Robert D

McGulkin

Attys for P. W.

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 *Vall Mining Company*

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

John C. Cole

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

Witness, C. THO. HORINE, Clerk of our said Circuit Court, with the seal thereof hereunto affixed, at office in Hillsboro, this *20* day of *April*, A. D., 187*6*.

C. Tho. Horine, Clerk Circuit Court.

66
4522

RETURNABLE
TO
JEFFERSON CIRCUIT COURT.

May TERM, 187.

John L. Loebe

vs

Valle Mining Company

original

Sheriff fee \$1.00

I Executed this writ at the County of Jefferson
in the State of Missouri on the twenty-second
day of April A.D. 1876, by delivering to
Louis Rogier the managing agent and Super-
intendent of the Valle Mining Company
a true copy of the within writ and annexed
petition as furnished me by the Clerk of
the Circuit Court of said County.

Given under my hand & date aforesaid.

T.B. Mox Sheriff
By J.P. Mox Deputy

John C. Cole, - Plaintiff
Against
Valle Mining Company, Defendant }
In the Circuit Court
of Jefferson County
Missouri, - May Term 1876,

Now comes the Defendant and demurs to the Petition of Plaintiff, for the following grounds of objection;

1st Because the said Petition does not state facts sufficient to constitute a cause of action;

2, - It is not averred in the Petition that the Plaintiff, or his vendors or persons under whom he claims to have derived title to the land, through which the said Joachim Creek runs, erected the dam across said Creek, in pursuance of law, or that any judgment of any Court of competent Jurisdiction was first had and obtained, granting permission or authorizing him or them to erect a dam across said water course, for the purpose of building a mill thereon.

3 - There is no averment in said Petition that Plaintiff or his predecessors acquired any right, by judgment of Court, or otherwise to any exclusive privileges to the use and

benefit of said water course, to any indefinite extent above the point where said stream of water enters his land, - nor any reason alleged why Defendant is not equally entitled to the reasonable use and benefit of said water course where it runs through the lands of Defendant.

4 - There is no allegation in the petition that Defendant has diverted the said water course from its natural channel, so as to prevent its running into Plaintiff's mill dam, - nor that Defendant has diminished the quantity of water that flows therein.

5. There is no averment in the petition that Plaintiff or his predecessors erected said dam across said stream of water and built said mill prior to the time the Defendant erected its dams ^{across the same} for washing mineral.

6. - Said petition alleges no reason why Defendant should be debarred from the privilege of the use of said water course, for the purpose of washing mineral, where it runs through Defendants land, in order that Plaintiff should have the exclusive use of ^{said} stream of water where it runs through his land.

7- The petition of Plaintiff is too indefinite in regard to the distance the Defendants dams for washing mineral are located above Plaintiff's mill dam, to indicate a probability that the mineral dirt could wash down in such quantities as to do any damage to Plaintiff's mill dam.

8- The Petition is too indefinite in the description and location of Plaintiff's land, and fails to give any description of the location of Defendant's land, or the distance the alleged mineral washing places are located from Plaintiff's mill dam.

9- From the allegations of said petition it appears that the vendors of Plaintiff erected said mill dam across said stream of water without authority of law, and that the same is therefore a nuisance and liable to be abated as such.

10- The petition is too indefinite in regard to the distance Defendant's dams for washing mineral are located above the dwelling house of Plaintiff, to show even a remote probability that the water might be corrupted by the washing of mineral in said stream of water, so as to render it unfit for culinary purposes.

11. The allegations of said Petition that the dams erected by Defendant across said stream of water for washing mineral, diminishes the quantity of water naturally flowing down said water course, is not sufficient in law to constitute any cause of action, - as it is not averred that any portion of said water is diverted from the natural channel of said water course, - nor that any material portion of such water is consumed, or have anything more than a mere trivial and insignificant portion of such water is, or can be, consumed or diminished merely by the water running through such mineral cut, and continuing then its flow in the natural course of such stream.

12, - Said Petition is too indefinite, as it fails to allege any definite length of time, or number days Plaintiff's Mill was stopped or prevented from running, by reason of any diminution of water in such stream caused by Defendant, - or any specific loss of money or damage by any such diminution of water,

- 13 - No valid ^{legal} or tenable reason is alleged in said Petition why Defendant should be deprived of its right to the use of such

water course for all reasonable and
beneficial purposes, in order that Plain-
tiff should have the exclusive use of
the water flowing therein for drinking,
washing, and other domestic purposes,
and for watering his stock.

W A. Green, & F. A. Rozier
Attorneys for Defendant

John C. Kato
vs.
Oattle Mining Company

Demurrer
to Pothan

Filed May 10 1876
L. M. McNamee
Clerk

526, 542, 544, 557, 561, 610, 636, 638, 639

Jefferson County, Mo.

John C. Cole Plaintiff
vs.
Valley Mining Company Defendant } In the Circuit
Court of Jefferson
County.

May Term 1876.

first
Plaintiff states that the Defendant on the first day of July 1869, was and still is a corporation duly created by the laws of the State of Missouri, that long prior to and during all the time since said first day of July 1869, Plaintiff was and still is the owner of and in possession of a large tract of land situated in Platte Township in Jefferson County, Missouri, that a large portion of said land is improved, and is and for a long time not less than twenty years last past, has been used by the plaintiff, and others from whom he derives title thereto, as a farm, and that upon said farm there is a dwelling house, in which the Plaintiff resided with his family, for a long time prior to said first day of July 1869, and in which, since that time, he and they have continued, and still continue to reside, and that upon said farm, there are also outbuildings belonging to said Plaintiff. Plaintiff further says, that a stream of water known

as Joachim Creek flows naturally over and through his said land, and that as owner of said land, and of said stream of water where it flows over and through ^{his} said land he has a right to the reasonable use of the waters of the same upon his farm and in his dwelling house and out buildings, and for the purposes of a water power in driving and running a grist mill and other mill and machinery.

Plaintiff says that prior to said first day of July 1869, and prior to the grievances herein set forth, he erected upon said stream and upon his said land at great cost, a dam thereby forming a large pond or reservoir and erected a large building for a grist mill, and put up in connection with said building a water wheel, and the machinery and fixtures necessary for grinding grain and manufacturing flour and meal, and for carrying on the business of a grist mill and that he connected said reservoir with said mill by a long ditch or canal and by a flume of timber and planks, and at great cost and expense put said mill in complete order for doing the business of a grist mill and plaintiff says

that said dam, reservoir, canal, mill, building and all the works connected with the same are situated upon the said land so owned by him; and that for a long time prior to and since said first day of July 1869 he has used said building and said works connected therewith for grinding grain manufacturing flour and meal, and as a grist mill, and plaintiff says that said mill and the ~~works~~ connected therewith are fed and run by and are entirely dependent upon said reservoir and upon said stream and the water flowing therein and that said farm and the dwelling house and the outhouses are entirely dependent upon said stream and said canal for their supply of water.

And Plaintiff further says that for more than thirty years there has been a dam, and grist mill and in operation upon said stream and upon said land now owned by plaintiff, and at or near the same place where the said dam and mill and other works are now situated).

Plaintiff for cause of action says that the Defendant is and has been engaged in the business of mining ^{cleaning} and smelting lead and other ~~ores~~ and that for the purpose

of separating said ores from the earth and other substances ~~with~~ and impurities with which they were mixed, the defendant did during the month of July 1869 and at various and many other times since that time in violation of the plaintiffs right to the use of the water of said stream, and to his great injury and damage build and cause to be built in and upon said Joachims Creek at a point above plaintiffs said mill and pond and the works connected therewith dams and obstructions of wood, earth, stone and other substances, and that during said month of July and at many and various times since that time, in violation of plaintiffs ~~said~~ rights and to his great injury and damage the defendant has conveyed and thrown and placed in said stream, and washed therein large quantities of ore and mineral mixed with earth and various other substances and impurities.

Plaintiff says that by and on account of said dams and obstructions so placed in said stream and on account of ^{the} large quantities of earth mineral and other substances so placed in said stream by Defendant, the quantity of water

1
naturally flowing in said stream to plain-
tiffs lands and to the reservoir, mill,
and other works connected with the same,
has been greatly and unlawfully diminished
and that ~~by~~ means of the earth, min-
eral and other substances, so thrown and
placed in said stream and so carried down
by the current thereof, his said mill and
the works connected therewith have been
greatly injured and damaged, and the
revenue and permanent value thereof
greatly impaired and that said reservoir
has been nearly or quite filled up with
the earth and other substances so brought
down said stream and its use and value
for collecting and retaining water for said
mill almost or entirely destroyed, that
said canal and flume have to a great
extent filled with such earth and other
substances so brought down said stream
and that the water wheels and other works
connected with said mill have been clogged
and impeded by ~~such~~ ~~at~~ earth and other
substances and that by and on account
of the injury damage and impediment
so done and caused to said mill and
the works therewith connected, and said
diminution of the water the plaintiff

has been prevented for a large portion of the time since said first day of July 1869 from running said mill at all and for a large portion of the time has been compelled to run the same at a much less rate of speed than the same could have been run but for said acts, injury and damage so done by the defendant; and that during the time the mill was so run at such diminished rate of speed the amount of grinding and business done by the mill, and the amount of revenue and profits arising from the mill and said business was much less than it would have been but for said injury damage and impediments done and caused by the defendant; And plaintiff says that by ~~reasons~~ means and on account of said earth and other substances so by defendant placed in, and so brought down by said stream he has been deprived of and has lost a large part of the revenues and profits which he would otherwise have received from said mill and the works therewith connected and that said mill and works have thereby been permanently and irreparably damaged and the value thereof greatly diminished; And Plaintiff says that

said defendant unlawfully did the acts and committed the grievances above stated well knowing that the property of the plaintiffs would be thereby damaged and his lawful rights to the use and advantage of said water would be interfered with and destroyed by said ^{acts of} defendant.

Plaintiff says that he has been damaged by such losses upon the revenues, profits and business of said mill and works and by the permanent damage done to said mill and the works therewith connected in the sum of Fifteen Thousand Dollars.

And for further cause of action plaintiff says that by said minerals or ores and other substances and impurities so placed and thrown in said stream and by the earth and other ~~minerals~~ substances so brought down said stream the water of said stream which was before pure and wholesome, has been rendered foul, unwholesome and poisonous and unfit for use upon the farm and in his dwellinghouse; that it is injurious and has injured his stock upon his farm and is unfit for drinking, washing and other domestic purposes upon his farm and in his dwellinghouse; and that he has been put to great trouble and inconvenience and expense upon his farm and in his dwellinghouse by said injury and damage to

said water. And Plaintiff says that by the said accumulation of earth and mineral and other substances in said reservoir and in said canal and in said stream so caused by the unlawful acts of said defendant, the flow of the water has been obstructed and the water has been confined and has frequently become stagnant, poisonous and unhealthy and has injured and poisoned the air and has thereby made the place of his said residence unhealthy and has injured the health of himself and family. And he further says that prior to the casting of said earth and other substances into said stream and the washing of said ores therein by this defendant there were in said stream where the same runs through his land and in said reservoir many valuable fish and that the same have been destroyed and driven out of the same by the washing of said ores and by the earth and other substances so cast therein by defendant. And that his farm and other property has been damaged and the revenues and profits thereof decreased and the value of his farm and other property thereby greatly and permanently ~~diminished~~ diminished.

Plaintiff says that by the said acts of the defendant he has been further damaged in the revenues income and profits from his farm and other property and in the permanent decrease in the value of said farm and other ~~circumstances~~ property and on account of the trouble inconvenience and expense thereby caused to him in his domestic and household affairs, and on account of the injury to the health of himself and ^{his} family in the further sum of Two Thousand Dollars.

Wherefore plaintiff asks judgment for Seventeen Thousand Dollars and costs,

David T. Potter and
Thos. H. McMullin

Attys for Plaintiff.

A true copy of the original petition

In testimony whereof I have
hereunto set my hand and affixed
the seal of the Circuit Court of
Jefferson County Missouri at
office April 20th 1876.

L. Thorpe

Clerk

John L. Leole Plaintiff
Against
Valle mining company
Defendant

Thomas H McMullin on oath
states that on the 20th day of April
1876, there was filed in the office of the
clerk of the Circuit Court in and for
Jefferson County in the State of Missouri
a petition in the above entitled cause

That this affiant is the attorney
of said John L. Leole plaintiff therein

That said petition has been lost,
destroyed or stolen or carried away

That the following is a true and
correct copy of the said petition, viz

(True read copy attached)

and affiant hereby asks to have said
petition supplied, as provided in the statutes
in such cases =

Subscribed sworn to

before me May 12 1876,

C. H. H. H. H.

Clerk C. H. H.

Thomas H McMullin

John C. Cate
vs
The Valle Mining
Company

Filed and by consent
to be taken as the
original petition
May 12 1876
L. H. Horne
Clerk

John C. Cole Plaintiff
against
The Valley Mining Co.

} In the
Cir Court
of Jefferson
Co. Mo. Sept
Term 1876

Now at this day comes the
defendant and for general
answer to Plaintiffs petition
denies each and every material
allegation in said petition

F. A. Rogier
with John L. Thomas, Attys
atty for Defr

John L. Coole
vs
The Valley Mining Co.
~~~~~

Answer of Deft.

Filed Aug 11-1876.  
C. H. O. Morris  
Clerk

STATE OF MISSOURI,

COUNTY OF JEFFERSON.

To

Wm. Holman, Wiley Holman, John Fletcher  
A. F. Stephens and Chas. A. Horine,

You are hereby commanded, that setting aside all manner of excuse and delay, you appear before our Circuit Court, for the County aforesaid, on the 20 day of September, 1876, 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 C. Cole is Plaintiff, and The Galle Mining Company is Defendant, on the part of J. H. ; 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 14 day of September A. D. 1876.  
C. Tho. Horine, CLERK.

20th

Cole

Wells Mining Co

P

14 Wm Holman  
 15 Riley Holman  
 16 John Fletcher  
 17 A. J. Stephens  
 18 Chas. J. Jones  
 Filed Sep 14 1876  
 C. M. Hornum clk  
 J. C. Marston Exp. 1.  
 Sheriff

I was called this night by meeting  
 the same in the presence and hearing  
 of Wm. Holman, Riley Holman, John  
 Fletcher, A. J. Stephens and Charles  
 Holman the within named this 1st  
 day of Sept at 1876 in Jefferson  
 County Iowa

fees \$ 2.50 }  
 1

Chas. J. Jones  
 Comptroller of  
 Public Lands

STATE OF MISSOURI,  
COUNTY OF JEFFERSON.

To

*James J. Over* *John J. Over* and *Thomas J. Over*

You are hereby commanded, that setting aside all manner of excuse and delay, you appear before our Circuit Court, for the County aforesaid, on the 20 day of September, 1876, 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

wherein

*John C. Over*  
is Plaintiff, and *Valley Mining Company*

is Defendant, on the part of *Plaintiff*; 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 20 day

of September A. D. 1876.

*C. Thos Horine*,  
CLERK.

Col  
Valle Mining Company

S.

Mr M. M. Murtry

Mr F. Beamer not at home

Wm. Rowe

Wm. Perry — Foreman

Thos. Perry

Filed Sept. 18-1876  
Chas. Horine  
Clerk

Acct 8

St. Mark's Church  
Lans to be of  
new church

I received the new thin wood by  
receiving the same in the presence of  
Messrs. Wm. & Isaac Stas. Perry, Wm.  
the within, named on the 12 day of  
Sept 1876 in Jefferson County Mo

STATE OF MISSOURI, }  
COUNTY OF JEFFERSON.

To

James Shackwell, Wm W Walker  
Sachiel Cole and John R Farrar

You are hereby commanded, that setting aside all manner of excuse and delay, you appear before our Circuit Court, for the County aforesaid, on the 20 day of September, 1876, 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 C. Cole is Plaintiff, and The Valle Mining Company is Defendant, on the part of PLD; 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 4th day of September A. D., 1876.

C. Tho. Horine, CLERK.

2015

Cole

Little Mining Co

J

James Blackwell Sandy  
Wm H Walker  
Salgehiel Cole  
John R Farrar

filed Sept. 18-1896  
Chas Horne  
clerk

Dec 11

the Washburn  
Carruthers

I received this writ by reading  
the same in the presence and hearing  
of John R Farrar Esq. H Walker  
and the within  
named on the 12 day of Sept 1896  
in Jefferson County Mo

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 22 day of September, 1876, 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 R. Davis is Plaintiff, and The Valle Mining Co.

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 1st day of September A. D., 1876.

C. Tho' Horine, CLERK.

Cole  
vs  
The Valley Mining Co.

2

F. H. Pratt

lack of adequate service  
on the western and  
because of necessity of  
service to an  
officer, Sept 7 1876.  
H. M. M. M.

STATE OF MISSOURI, }  
COUNTY OF JEFFERSON.

To David D. Goff, Henry Roberts, John Fletcher, W. N. Walker,  
Satanah Cole (and R. J. Davis),

You are hereby commanded, that setting aside all manner of excuse and delay, you appear before our Circuit Court, for the County aforesaid, on the 20 day of September, 1876, 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 D. Cole is Plaintiff, and The Valley Mining Company is Defendant, on the part of Defendant; 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 7th day of September A. D., 1876.

C. Tho' Horine, CLERK.

I send the within by noting the same  
 to the within named David Abbott. <sup>Wash</sup> by  
 return, John Fletcher, W. H. Walker. As within  
 date of R. B. 13 are  
 not enclosed now }  
 to before me this 21<sup>st</sup> }  
 Sept. 1876, and  
 qualified July 8<sup>th</sup> 1871  
 & was sworn ex officio  
 July 1879 J. H. Johnson

John C. Cob  
to  
The Valley Mining Co.

STATE OF MISSOURI,  
COUNTY OF JEFFERSON.

To

*John Emerman*

You are hereby commanded, that setting aside all manner of excuse and delay, you appear before our Circuit Court, for the County aforesaid, on the *20th* day of *Sept.*, 187*6*, 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 C. Cole* is Plaintiff, and *The Valley Mining Company* is Defendant, on the part of *plaintiff*; 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 *7th* day of *September* *A.D.*, 187*6*.

*C. Tho' Horine*, CLERK.

Boole  
Valley Mining Co.

Send the within out in Washington  
briefly in Sept 14<sup>th</sup> 1875 by reading  
the same to the within named John  
Emerson

John M. Anthony off  
of Washington Co

STATE OF MISSOURI }  
COUNTY OF JEFFERSON.

To *James Blackwell,*

You are hereby commanded, that setting aside all manner of excuse and delay, you appear before our Circuit Court, for the County aforesaid, on the *20* day of *Sept*, 187*6*, 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 Cole* is Plaintiff, and *Waller Mining Co* is Defendant, on the part of *pgff*; 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 *13* day of *Sept* *A. D.*, 187*6*

*C. Tho Horine,* CLERK.

Served on the 11 day of Sept

1876

J. B. Mop. Staff

Sheff Per 50

Cole  
Valley Mining Co.

John C. Cole Plaintiff  
Against  
Valle Mining Company  
Defendant }

In the Jefferson Circuit  
Court.

Now comes said Defendant by  
its attorneys and for an amended  
answer to the petition of the Plaintiff  
state that it denies each and  
every allegation in said petition  
contained.

For further answer to said petition  
Defendant states that no action  
sued for nor accrued to Plaintiff  
within five years or ten years  
next before bringing this suit.  
For further answer to said pe-  
tition Defendant states that it  
and those through and under whom  
Defendant claims title have used  
the waters of Joachims Creek for  
the purpose of working its and their  
ores and mineral distention &  
interruption for more than twenty  
years continuously before the bringing  
of this suit, they claiming the right

to do so adversely to Plaintiff and all  
others for all that period

J. A. Rozin

With John M. Mowbray & Co

Atty for sept

John C. Leale

27

Valley Mining Com-  
pany—

Amended Answer

Filed Sept 14 1876

C. H. H. H. H.

Clerk

John C. Cole Plaintiff } In the Circuit  
against } Court of  
Valle Mining Company } Jefferson  
Defendant } County Mo.

Now comes said Defendant  
by its attorneys and for an  
amended answer to the  
petition of the Plaintiff states  
that it denies each and every  
allegation in said petition  
contained

For further answer to said  
petition Defendant states  
that no action sued for  
has accrued to Plaintiff  
within five or ten years next  
before the bringing this suit  
For further answer to said  
petition Defendant states  
that it and those through and  
under whom Defendant claims  
title have used the waters of  
Joachim Creek for the purpose  
of washing its and their ores and  
mineral dirt without interruption  
for more than twenty years  
continuously before the bringing  
of this suit, they claiming the

right to do so adversely to Plaintiff  
and all others for all that  
period

H. A. Rozier  
with John L. Thomas Esq  
attys for def.

John C. Cole

vs  
Valley Mining Co

Amended Answer

Filed Nov. 15-1876.

W. H. H. H. H.

Clk

STATE OF MISSOURI,  
COUNTY OF JEFFERSON.

To *J. P. Pratt*

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 *12<sup>th</sup>* day of *January*, 1877, 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 *J. P. Pratt* is Plaintiff, and *The Valley Mining Co* is Defendant, on the part of *Plaintiff*; 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 *16* day of *December* A. D., 187*6*

*C. Thos Horine*, CLERK.

Cash

no

Valle Mining Co

---

HL

F X Pratt

I acknowledge service in  
this Sp. and waive  
the necessity of service  
by and officer Aug 1<sup>st</sup> 1897.

Francis X Pratt

STATE OF MISSOURI, }  
COUNTY OF JEFFERSON.

To John F. Fletcher, R. A. Stewart, Wm. H. Walker  
Chas. Wier & pl. M. A. Beames,

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 12<sup>th</sup> day of January, 1874, at Hillsboro, then and there to testify and the truth to say in a certain matter of controversy now pending in our said Court, wherein John C. Cole is Plaintiff, and The Valley Mining Company is Defendant, on the part of Plaintiff; 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 16<sup>th</sup> day of December A. D., 1876.

C. Thos Horine, CLERK.

Presented this sp. a. at the County of Jefferson  
State of Missouri on 12th day of December on the 18th day  
of December 1876 and John Fletcher on the 19th day of  
December 1876 and Charles Mann & M. J. Beam  
the day 20th of December 1876 by reading the same  
in the presence and hearing of the above  
named persons were by signing a copy  
at the above place of record of W. H. Walker

John Williams Sheriff

by John L. Meane Deputy

Cole  
vs  
Vance Mining Co

Filed January 8th 1877  
Chas. L. Lorie Clerk

Shiriff fees & Spoc. \$2.50

STATE OF MISSOURI, }  
COUNTY OF JEFFERSON.

To *Sullivan Fragier and Isaac B. Baker*

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 *January*, 1877, 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 C. Calk* is Plaintiff, and *The Valle Mining Company* is Defendant, on the part of Plaintiff; 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 *16th* day of *December* A. D., 1876.

*C. Tho' Horine*, CLERK.

Cole  
Valley Mining Co.

Sull Frasier  
Isaac S. Baker

~~Sheriff fee \$5.00~~

Sheriff fee 50

Executed the within plea by offering  
to read the same to Isaac S. Baker  
who waived the reading of  
the same Jan'y 12<sup>th</sup> 1877

John Williams Sheriff  
By J. G. Johnston Deputy

I executed the within subpoena  
on the within named full  
Frasier by reading the same  
in his presence and hearing at  
the County of Jefferson on the  
11 day of January 1877.  
John Williams Sheriff  
By J. G. Johnston Deputy

STATE OF MISSOURI, }  
COUNTY OF JEFFERSON.

To Salathiel Cole, Son of Stephens, James Blackwell  
Jimm McMurtry, William Hollman, Riley Hollman

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 12<sup>th</sup> day of January, 1877, 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 C. Cole  
is Plaintiff, and The Valla Mining Company

is Defendant, on the part of Plaintiff; 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 16<sup>th</sup> day  
of December A. D. 1876

C. Th. Horine, CLERK.

I executed the within spw. at the County  
 of Jefferson State of Mississippi on the 19<sup>th</sup>  
 day of Dec. 1876. by reading the same in the presence  
 and hearing of Sathiel Leale, Mr. Holman and  
 Riley Holman, and I further executed said  
 spw. on the 20<sup>th</sup> day of Dec. 1876 by reading  
 the same in the presence and hearing of  
~~James Blackwell and Asa Stephens and by~~  
~~hearing a copy of the same before a body of~~  
~~men in the country that found in my~~  
 County.

By - John Williams Sheriff  
 John S. Hearn Deputy

Leale  
 Valle Maing Co

Filed January 15<sup>th</sup> 1877  
 C. H. Horne Clerk  
 By J. F. Green Deput

Sheriffs & H. as of 2.75  
 Lonest. 24

3.00

STATE OF MISSOURI, }  
COUNTY OF JEFFERSON.

To: David H. Gaff, Attorney at Law, John Fletcher  
Wm. H. Walmer, Substantial Coal & Oil Dealer

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 January, 1877, 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 H. Cole is Plaintiff, and The Hills Mining Company is Defendant, on the part of Defendant; 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 16th day of December A. D., 1876.

C. Tho' Horine, CLERK.

• I secured the within spe, at the county of Jefferson  
State of Missouri at the 19th day of December 1876  
by reading the same in presence and hearing  
of David W. Gott, Henry Roberts, John Fletcher  
Catharine Cole and others. Said spe. on the  
10th day of December 1876 by Reading the same  
in the presence and hearing of R. B. Bogo  
and by leaving a copy of the same in place of above  
of W. H. Walker

by John Williams Sheriff  
John S. Mean Deputy

Sheriff's Fee to spec. \$3.00

Filed January 9th 1877  
C. H. Horrie  
Clerk

Cole  
Vallentyne & Co

John C. Cole Plaintiff

vs

Valle Mining Company  
Defendant

In the Jefferson Circuit  
Court. In Vacation.

Now at this day comes said  
Defendant and for answer to the  
petition of Plaintiff as amended  
states that it denies each and  
every allegation in said petition  
except as hereinafter admitted on  
answer specifically.

Defendant admits that Plaintiff  
is in possession of a mill on Jackson  
Creek and has been operating the  
same for a number of years but  
Defendant avers that the mill  
and dam erected by Plaintiff  
as is in said petition alleged  
were erected and are now operated  
in contravention of the statute  
in such cases made and provided  
and that Plaintiff never had his  
right to erect said dam and  
mill established by the order

and decree of the Circuit Court of  
said County and that said mill  
and dam having been erected  
and maintained by Plaintiff without  
authority of law are public nui-  
sances and liable to be abated as  
such.

Defendant further states that  
it is the owner in fee simple of  
the land covering the sources  
of said Creek and that it erected  
and built what are known as work  
places on said Creek but wholly  
on land belonging to Defendant  
where the mineral and mineral  
deposits of Defendant might be worked.  
Defendant states that it is a corpora-  
tion organized solely for the purpose  
of mining for lead and other ores  
and smelting and manufacturing  
the same into lead and other met-  
als for sale and in carrying on  
this business a great number of men  
is employed constantly and that  
a large proportion of the lead ore  
mined by Defendant and its employees  
is so impregnated and mixed with  
earth and rock that it is utterly

worthless except it be cleaned by working  
it in such places as Defendant's  
work places, there being no other  
process known by which the lead  
ore can be separated from the  
earth and rock mixed with it  
by which Defendant could derive any  
profit or by which the expenses of  
such separation would not exceed  
the value of the ore so separated.  
Indeed Defendant states that  
the use of running water in large  
quantities is indispensable to the  
carrying on of Defendant's business.  
Defendant further states that it  
and those under whom it claims  
title for a period of over fifty years  
continuously to the present time  
without interruption or hindrance  
have had, and have been used and  
accustomed to have and of right  
<sup>ought</sup> to have and said Defendant still  
of right ought to have for itself  
and themselves, its and their  
tenants, employees and occupants  
of Defendant's said land the said  
work places and the water of said  
Creek for the purpose of separating  
the ore from the earth and rock of said

on Defendant's land aforesaid.  
Defendant states that it and those whose  
sites it now has in said land had  
used said work places for the purposes  
aforesaid for more than twenty years  
prior to the building of said mill and  
dam by Plaintiff and when Plaintiff  
so erected the same he all knew  
that Defendant and those under  
whom it claims were using and  
~~had~~ for more than twenty years  
prior thereto had used said  
work places and the waters of  
said Creek to separate its and their  
load ore from the earth of said  
and all knew the effect of any  
that such working of said ore and  
dirt would have on his said  
dam and mill. Defendant  
states that it has used and still uses  
the waters of said Creek for the purposes  
of separating its ore from the earth  
and rock with prudence and care and  
in a reasonable manner so as to do or little  
damage <sup>to</sup> other riparian owners  
below said work places as aforesaid.  
Defendant states that Plaintiff's  
mill and dam are situated

on said Creek over one mile  
from the said work places of  
Defendant and Defendant  
most positively denies that any  
earth or other substances from  
said work places are carried  
by the action of the water of said  
Creek or otherwise to Plaintiff's  
dam or mill and it states  
that if Plaintiff's dam is filled  
with earth or other substances  
the same were carried there  
by <sup>the</sup> natural work from the  
adjacent hills, not from  
Defendant's said work places.

Defendant states that the said  
Creek flows through a lead mining  
district and it has been the  
universal custom in said  
district and adjacent territory  
for more than one hundred  
years ~~to work~~ <sup>last part</sup> for miners to work  
their mineral sites in said  
Creek and other streams of  
water in said district and  
adjoining territory, which custom  
has been continuous and without  
interruption and thought of miners

to use said stream has never been denied by mill owners, the owner or others till this suit was instituted and without which right the mineral lands of defendant would be valueless.

Defendant states that it and those whose estates it now both have used and claimed the right to use the waters of said stream for the purpose aforesaid continuously uninterrupted & adversely for more than ten years next before bringing this action claiming such right and exercising such right continuously openly, notoriously and adversely against Plaintiff and all others.

And Defendant states that Plaintiff has <sup>no</sup> right to maintain this action for Defendant states that his right to maintain it if any he ever had accrued to him more than ten years next before the bringing of this suit.

~~And having fully answered prayers to~~



John L. Cole  
2  
Valle Mining Company

---

Answer

Feb. 24<sup>th</sup> 1877.  
Le Thi Marine  
Clerk

---

Geo. Cole

Augustine J. Sandy

STATE OF MISSOURI, }  
COUNTY OF JEFFERSON.

To William Mc Murtry

You are hereby commanded, that setting aside all manner of excuse and delay, you appear before our Circuit Court, for the County aforesaid, on the 17th day of May, 1877, 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 C. Cole is Plaintiff, and the Valley Mining Company is Defendant, on the part of Cole; 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 28th day of April, A. D., 1877.

C. Tho' Horine  
CLERK.

The within Subpoena served in the county of  
De Witt State of Missouri on the 30<sup>th</sup> day of April  
A.D. 1877 by Reading to and in the presence of  
William M. McMurtry.

Fee - 50

Paid by Wm M. McMurtry

Cole  
vs  
Valley Mining Co,

P  
Wm M. McMurtry

Homper 50

STATE OF MISSOURI, }  
COUNTY OF JEFFERSON.

To *Isaac S. Baker, Adm'r, M. F. Danner*

You are hereby commanded, that setting aside all manner of excuse and delay, you appear before our Circuit Court, for the County aforesaid, on the *17th* day of *April*, 1877, at Hillsboro, then and there to testify and the truth to say in a certain matter of controversy now pending in our said Court, wherein *for C. Baker* is Plaintiff, and *The Valle Mining Co.* is Defendant, on the part of *Plaintiff*; 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 *27th* day of *April*, A. D., 1877.

*C. Tho' Horine* CLERK.

M 77

Cole

to

Waller Mining Co

P

S Frasier      Survey  
Isaac Baker  
Al Coon

Sherriff fee \$150

74  
3  
5  
10

STATE OF MISSOURI, }  
COUNTY OF JEFFERSON.

To M. J. Beamer, M. A. Walker, S. Leake, A. J. Stephens, James Blackwell  
Chas. Wines, Wm. Hollman & Jas. F. Fletcher

You are hereby commanded, that setting aside all manner of excuse and delay, you appear before our Circuit Court, for the County aforesaid, on the 17th day of May, 1877, 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 Jas. C. Cole is Plaintiff, and The Valle Mining Co. is Defendant, on the part of Pliff; 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 27 day of April, A. D., 1877.

C. Tho' Horine, CLERK.

Separated the within (Spa) in Sept. 1850. Me on the 8<sup>th</sup> day  
of May 1877 by reading same in the presence and hearing of  
M. J. Beamer, A. F. Stephens & Cole James Blackwell and  
Wm Hollman and by leaving a true copy at the  
usual place of abode of John Fletcher

W H Walker not ~~present~~ in this county

John Williams Sheriff  
John A. Weaver Deputy

M. 77

Cole

Valle Mining Co.

P

M. J. Beamer &

W. H. Walker

S. Leate &

A. F. Stephens &

James Blackwell &

Chas. Mines &

Wm. Hollman &

John A. Fletcher &

Sheriff fee 2 (5 p. 100) \$50

1 month

\$4.00

Filed May 14<sup>th</sup> 1877

C. W. Hoxine

Clerk

STATE OF MISSOURI, }  
COUNTY OF JEFFERSON.

To J. D. Grall, Joshua Cope, W. H. Walker  
Wm. Rowe, Wm. Holman

You are hereby commanded, that setting aside all manner of excuse and delay, you appear before our Circuit Court, for the County aforesaid, on the 17th day of May, 1877, 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 C. Cade is Plaintiff, and The Valle Mining Co. is Defendant, on the part of seef; 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., 1877.

C. M. Horne

CLERK.

Encanted the within Spas. as follows viz:  
By reading the same in the presence and hearing  
of the following persons and in the date specified

To viz Wm Power May 11<sup>th</sup> 1877 Wm Walker

May 11<sup>th</sup> 1876 Wm Holman and Joshua

Cape May 12<sup>th</sup> 1877 and J V Pratt

May 14<sup>th</sup> 1877

from to and subscribed Henry Roberts  
Refused and May 17 1877

Geo. W. M. Clerk

May 77

Cake

The Valley Mining Co.

A D

J V Pratt

Served on Bond May 11<sup>th</sup>  
by reading

Served on Walker May 11<sup>th</sup>  
by reading -

Served on St John and  
Hoake by reading

May 12<sup>th</sup>

Served on Pratt May  
14<sup>th</sup> by reading

H Roberts for serving  
Spas \$750

STATE OF MISSOURI, }  
COUNTY OF JEFFERSON.

To *Isaac Ellett Henry Roberts, John Fletcher*  
*Wm M Walker, Samuel Cole and R J Boas*

You are hereby commanded, that setting aside all manner of excuse and delay, you appear before our Circuit Court, for the County aforesaid, on the *17th* day of *May*, 1877, 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 DeLoe* is Plaintiff, and *The Valley Mining Co.* is Defendant, on the part of *DeLoe*; 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 *4th* day of *May*, A. D., 1877.

*C. Tho' Horine* CLERK.

I exhibited the within (Specs) in Jefferson County Mo  
on the 8<sup>th</sup> day of May 1877. By exhibiting same in  
the presence of the agent of Henry Roberts & Co  
and R J Boas. And further exhibiting same in Jeff.  
Co Mo on the 8<sup>th</sup> day of May 1877 by leaving a true  
copy at the residence of a brother of D W Goff  
and John Fletcher. Wm H Walker has made one  
of this county as he could not be served.

by John Williams Sheriff  
of J. L. Moara Deputy

4 May 77

John Leale

v

The Valley Mining Co

D.

D. W. Goff &  
Henry Roberts &  
John Fletcher &  
Wm H Walker  
S Leale &  
R J Boas &

Shiriff's Fee (45/100)

1 month

Filed May 14<sup>th</sup> 1877  
O. H. Horne  
clerk

\$2.50  
50  
\$3.00

John C. Cole Plff { Jeff. Cir. Ct,  
Talle Mining Company } May 1877  
Def

The Plaintiff <sup>denies</sup> each and every  
material allegation in the answer of  
defendant

The Plaintiff denies each and  
every averment of new matter in the  
answer of defendant =

And prays judgment  
Stewart and Potter

+  
By me & McMillin  
attys for Plff

Cole  
Valle Mining Co

Replicatum

Filed May 17 1877

@ Tho. Haine

clerk

STATE OF MISSOURI, }  
COUNTY OF JEFFERSON.

Do

Engene Amor

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~~ *For 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 *Joe C. Dale* is Plaintiff, and *The Valley Mining Co* is Defendant, on the part of *Dale*; 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<sup>st</sup>* day of *May*, A. D., 187*7*.

*C. Tho' Horine* CLERK.

Cole  
13  
Valley Mining Co

Eugen Amos

John Williams  
Sheriff  
per 50

I served the writ in Jefferson County Missouri  
the 21<sup>st</sup> day of May 1877 by the reading  
the same to E. Amos

John Williams  
Sheriff

Cole  
Vallu Mining Co

No one

The Court declares the law to be that the right of private property in a water course follows the ownership of the soil: that this right of property is not so much a right to the fluid, as a right to the current of the stream; not in the right to the use of the flow of the water in its natural course. Plaintiff had an unquestionable right to erect a dam and mill upon his own land, and to use the water passing through his land; that defendant had an equal right to erect dams upon, and use the water passing through its land. Though no one is allowed to use a water course in an unreasonable manner though it is on his own land, and thereby injure his neighbor, without being answerable in damages for the consequences.

1888  
angel

Qin

4/15/199  
angel

2 Bours

2379

look  
by  
Walter Henry D

Edg. Insolvency

Adams  
P. 220, 5129  
Note 1

2d Gray  
394

10th Johns  
241  
P. 260  
Sec 115, P. 99  
Cases cited

The Court declares the law to be, that the use of the water of a stream by the owner of the land through which it passes, must be a reasonable use; having a due regard to the like reasonable use by all other proprietors both above and below him. Indetermining what is such reasonable use the Jury must pay a just regard to the force and magnitude of the current, its height and velocity, the state of improvement in the country with regard to mills and machinery, and the use of water as a propelling power; the distance Defendants wash places were situated above Plaintiffs dam, the fall and character of the bed of the stream, the facilities of the Defendant to have washed its dirt at other places, and in a different manner with profits to itself. and all other circumstances bearing on the question of fitness and propriety in the use of the water. Thus what might be a reasonable use of a large stream, carrying a large volume of water, might be an unreasonable and injurious use of a small stream, carrying a small volume of water. It was the duty of the Defendant to so construct its dams and so use the water that plaintiff below would not be materially injured and burdened by the use of the Defendant, but could participate in

the reasonable enjoyment of the same water.

S 117 P. 292 The true test however of the principle  
4<sup>th</sup> Mason and extent of the use is simply whether  
401 or not it is to the material injury of  
the other proprietors.

X

No four

If the jury believe from the evidence that the defendant, within five years next before the filing of the petition in this cause, did by an unreasonable use of the water on their lands, corrupt and pollute the water flowing upon the land of plaintiff, below where defendant used it, and plaintiff was injured thereby, defendant is liable for the damages sustained by the plaintiff therefrom, And in considering the reasonableness of defendant's use, the same rules should govern as in respect to diminution and obstruction of water in a stream. The size and character of the stream, the uses to which it can be or is applied, the nature and importance of the use claimed and exercised by the defendant as well as the inconvenience or injury to the plaintiff, are all subjects involved in the inquiry

Given

No six

If the Jury find from the evidence in this cause, that the plaintiff John C. Cole, on the 20<sup>th</sup> day of April 1871 owned a tract of land in Jefferson County Missouri, through which flowed a stream of water known as Joachims Creek and upon which land and across which stream plaintiff had a dam for the collection, reserving and accumulation of the water of said stream, to be used in ~~running~~ <sup>propelling</sup> a mill which plaintiff also had upon his said land, ~~was~~ run by and depending for power upon the water of said stream, and the said dam and reservoir; that upon his said land the plaintiff had a <sup>farm</sup> and dwelling house in which he resided with his family, and depended upon and used said stream of water for culinary and domestic purposes in his household; and if you find that such uses of <sup>the water of</sup> said stream by the plaintiff were reasonable

And if the Jury further find from the evidence that the defendant, upon its mining lands situated on the same stream, above the plaintiffs lands, used the water of said stream, in its business of a mining company, by building dams across the same and washing mineral dirt in the water of such stream; by reason of which use by the defendant the water in said stream was corrupted and polluted, and so came down to Plaintiffs land and farm, to his injury, inconvenience

and damage; and the reservoir, mill race and flume of plaintiff became filled up with refuse dirt and other substances, cast into and near said stream by defendant, and by said stream carried down and deposited therein to his injury, inconvenience and damage,

And that the use, made by defendant of the water of said stream, was unreasonable; thus the finding of the jury should be for the plaintiff, and they should assess his damages, at any sum, they may, from the evidence, find he has sustained within the five years next preceeding the bringing of his action, by reason of such acts of defendant within said period, that the plaintiff could not have averted and prevented with reasonable care and diligence

9  
The Jury are instructed that the petition  
of plaintiff contains two counts or  
causes of action and if you find  
the issues for the plaintiff on either  
or both of said counts you will make  
a separate finding on each one  
of them but if you find the issues  
for the defendant on both of said  
counts or cause of action you will  
return a <sup>general</sup> verdict simply stating  
that fact -

The court instructs the jury that upon  
the pleadings, evidence in this case  
the Plaintiff is not entitled to recover.

To one

Given

the court instructs the jury that each riparian proprietor has the right to use the water flowing over and through his land in a reasonable manner. It is not under all circumstances ~~and~~ an unreasonable or unlawful use of a stream to throw or discharge into it waste or impure matter, whether such a use would be reasonable or not in a given case is a question for the jury upon its circumstances. And if the jury believe from the evidence in this cause that Defendant washed its mineral and mineral dirt in Joachin Creek above Plaintiff's Mill and Mill dam and farm and dwelling in a reasonable manner they should find for Defendant, though they may further find from the evidence that some of said dirt so washed was carried by the action of the stream into Plaintiff's dam race way and mill by which Plaintiff might have suffered some inconvenience in the operation of his mill and the use of the water of said stream for

culinary purposes. And in determining the question as to whether Defendant used said stream in a reasonable manner they are at liberty to take into consideration the distance of its wash places from Plaintiff's mill dam and ~~farm~~, the extent of the benefit Defendant derives from the use of said stream for washing its mineral dirt therein the inconvenience suffered by Plaintiff and all the circumstances in the case. And if the jury find from the evidence that under all the circumstances in this case Defendant's use of the stream as defined in this ~~instance~~ instruction was reasonable then the verdict should be for Defendant.

Angell on Water Courses Sec 140 d

Costs

Pathe Mining Co

\$445.00

The court instructs the jury that the burden of proof in this case is on the Plaintiff and before he can recover he must affirmatively show and satisfy the jury by a preponderance of testimony

1<sup>st</sup> That waste materials were carried from Defendants wash places into Plaintiff's mill pond

2<sup>d</sup> That such materials were so washed there within five years next before the bringing of this action,

3<sup>d</sup> That Plaintiff has sustained some damage by reason of such waste materials being washed into his mill pond within the time aforesaid and unless they <sup>so</sup> show and satisfy the jury the verdict should be for the Defendant

Gives

The court instructs the jury that it was the  
 duty of Plaintiff as a riparian owner  
 in the erection of his mill and mill  
 dam and race way to so construct them  
 as not to require other riparian owners  
 above him to refrain from the reason-  
 -able use of the same stream in ben-  
 -eficial operations and if the jury  
 believe from the evidence in this cause  
 that Plaintiff could have constructed water  
 ways and out-lets in his dam by the ex-  
 -penditure of a reasonable sum of money  
 so that the accumulations in his reservoir  
 could have been carried off then it was  
 his duty to have done so and if the  
 jury find ~~from the~~ further that he failed  
 to do this then they should find for  
 Defendant. And in determining whether  
 the cost of the construction of such  
 water ways and outlets was reasonable  
 the jury should take into consideration  
 the nature of the stream and the ~~territory~~  
~~of the dam~~ it drains and the other cost  
 of the dam and mill and their value and  
 the revenues he could derive from them,  
 together with all the other circumstances in  
 the case

Given

We the jury find the issues in  
the first count of petition for the  
plaintiff and assess his damages at  
the sum of two thousand and fifty eight  
 $\frac{39\frac{1}{2}}{100}$  Dollars

We further find the issues in  
the 2<sup>nd</sup> count of plaintiff's petition  
for the plaintiff and assess his damage  
at the sum of  
Dollars

D. S. Smith Foreman

Cole  
v  
Vulcan Mining Co

Verd

Filed May 21 1877  
O. H. H. H. H.  
Clerk

Coke & Valley Mining Co.  
Statement of costs due by the Co.

|                           | May P. 1876     | May P. 77 | Total |
|---------------------------|-----------------|-----------|-------|
| Mining Clerk              | 6.95            | 4.40      | 11.35 |
| I.B. Mose. Mff.           | 1.20            |           | 1.20  |
| John Williams Mff.        |                 | 11.55     | 11.55 |
| Henry Roberts Serv. Spad. |                 | 2.50      | 2.50  |
| Juny feed                 |                 | 6.00      | 6.00  |
| Sataniel Cole. Mff.       | 5 day. 34 miles | 7.56      | 7.56  |
| Mr Holman                 | 5 " 40 "        | 8.20      | 8.20  |
| Asa F Stephens            | 5 " 40 "        | 8.20      | 8.20  |
| Chas. Miner               | 2 " 40 "        | 5.20      | 5.20  |
| Joe Blackwell             | 5 " 40 "        | 8.20      | 8.20  |
| Mr Rowe                   | 5 " 36 "        | 7.88      | 7.88  |
| Mr M Mcmurry              | 5 " 200 "       | 18.50     | 18.50 |
| M F Beames                | 5 " 16 "        | 6.28      | 6.28  |
| Henry Roberts ✓           | 4 " 36 "        | 6.88      | 6.88  |
| R. J. Bous                | 5 " 16 "        | 6.28      | 6.28  |
| W. D. Goff. ✓             | 5 " 36 " Op.    | 9.13      | 9.13  |
| J. L. Pratt ✓             | 3 " 70 " "      | 9.35      | 9.35  |
| Geo F Fletcher ✓          | 3 " 34 "        | 5.72      | 5.72  |
| R H Stewart               | 2 " 44 "        | 6.02      | 6.02  |
| Sull Frazier              | 2 " 6 "         | 2.48      | 2.48  |
| L. S. Baker               | 2 " 26 "        | 4.08      | 4.08  |
| Joshua Cape               | 5 " 32 "        | 7.56      | 7.56  |

160.12  
 160.12  
 21.00  
 156.12  
 70.88  
 227.00

Deduct Henry Roberts. fee \$ 6.88  
 " W D Goff . 9.13  
 " J L Pratt 9.35  
 " Geo F Fletcher 5.72  
 \$ 31.08

31.08  
 195.92

Cable

to

Valley Mining Co