

Jefferson County Circuit Court
Case Files-Civil

Folder 1082

Box 38 Folder 54

May 1887

Wiley, S.S.

vs.

Morse, John H.

Debt, notes

Debt \$300, \$250; St. Louis
Court of Appeals

~~\$~~300⁰⁰

Wm's Mill No Sept-26-1818
Declar Month after date are
known to pay to the order of
Thomas Haley Thos Howard
Dolan for Latin road with ten
10 per cent interest per annum till
paid

J. A. Moore No.

\$30.⁰⁰

Oct-18-1879

Paid on the within Thirty
dollars Int for one year

\$30.⁰⁰

Oct-25-1880

Paid on the within
Thirty Int for one year.

Chas. J. Miley

\$ 250.⁰⁰
100

October 10th 1878

Dear month after sale we borrow
to pay to the order of J. S. Wiley
and Medicine and fifty dollars for
other necessary with interest at the
(10) per cent for annum from date
date paid.

J. H. Moore & Co.

~~\$25.00~~

Oct-18-1879

Paid on the within
Twenty five dolls Int for
one year -

~~\$25.00~~

Oct-25-1880

Paid on the within Ten. by
dolls int-for one year

State of Michigan, County of Jefferson ss.
In the Circuit Court.

To May Term 1887.
S. S. Wiley plaintiff

against

} Action on notes.

John H. Morse defendant.

Plaintiff states that on and prior to the 26th day of September 1878 the defendant herein, and one Samuel M. Barrows were partners in trade doing business under the firm name and style of J. H. Morse & Co.; that on said 26th day of September 1878 the said J. H. Morse & Co. executed and delivered to Thomas J. Wiley its promissory note, herewith filed dated as aforesaid, by which it promised, for value received to pay to said Thomas J. Wiley or order the sum of three hundred dollars, twelve months after the date thereof with interest at the rate of ten percent per annum till paid; that Samuel M. Barrows aforesaid has departed this life and that the defendant John H. Morse is the sole and surviving partner of said firm; that said Thomas J. Wiley by endorsement thereon, assigned said note and delivered the same to plaintiff who is now the legal owner and holder of said note; that defendant paid on said note Oct. 18th 1879 the sum of thirty dollars & on Oct. 25th 1880 the sum

of thirty dollars; that the balance of said note and accrued interest thereon, is still due to plaintiff and unpaid, and for which plaintiff asks judgment & for costs. That on and prior to the 10th day of October 1878 the defendant therein and are Samuel M Barrows were partners in trade doing business under the firm name & style of J & H Morse & Co.; that on said 10th day of October 1878 the said J & H Morse & Co. executed & delivered to plaintiff its promissory note herewith filed dated as aforesaid, by which it promised, for value received to pay to the order of plaintiff the sum of two hundred and fifty dollars twelve months after the date thereof with interest at the rate of ten percent per annum till paid; that Samuel M Barrows aforesaid has departed this life and that the defendant John H Morse is the sole & surviving partner of said firm; that defendant paid on said note Oct. 18th 1879, twenty five dollars & on Oct. 25th 1880, twenty five dollars; that the balance of said note & accrued interest thereon still remains due to plaintiff and unpaid and for which plaintiff asks judgment and for costs.

Thomas & Morine
Attorneys for Plaintiff.

No

To Mary Leam 1887
Jefferson Circuit Court,

J. S. Wiley
Plaintiff

vs

John H. Moore
Defendant

Set. on notice

The clerk will give
process at once
Thomas returned
Jan 25th.

Filed Apr 1st / 1887
J. B. Nease
clerk

THE STATE OF MISSOURI } ss.
County of Jefferson.

The State of Missouri,

To the Sheriff of Jefferson County---Greeting:

We command you, that you summon.

John A. Morse

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

S. S. Wiley

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

D. B. YEAZEN
Witness, ~~C. THO. HORINE~~, Clerk of our said Circuit
Court, with the seal thereof hereunto affixed, at
office in Hillsboro, this *11th* day of
April A. D., 18*87*

_____, Clerk Circuit Court.

I hereby certify that I executed the within writ
in the county of Jefferson and the state of
Missouri and the 18th day of April 1887 by delivery
of a copy of the within writ to the
as furnished me by the circuit clerk in the
hands of the writer named John H. Morse
Free \$100

George W. M. Fry
Sheriff of Jefferson
St. Louis, Mo.

No. 4
To May Term 1887
Jefferson Circuit Court

J. J. Wiley
Plaintiff

= vs =

John H. Morse
Defendant

Cm. Notes

Summons

Original

Filed May 22, 1887

at St. Louis
Mo.

State of Mississipi County, of Jefferson Co.
In the Circuit Court.

To May Term 1887.
S. S. Wiley, plaintiff

against

John H. Morse defendant.

Now on this day comes the plaintiff by his attorneys and moves the court to strike out the following portion of defendant's answer to the first count ⁱⁿ of the petition in this cause ~~beginning~~: Beginning with the word "and" in the 167th line of said answer, to wit:

"and that said Samuel M. Barrows at his death, left a large Estate, consisting of lands and personal property, situated in Jefferson County, Mississipi, in which he had his residence, at the time of his death, which was largely in excess of all debts for which his Estate was liable, and defendant states that within a short time after the death of said Samuel M. Barrows, the Probate Court of Jefferson County, Mississipi, appointed Ella Barrows, his widow, Administratrix of his Estate, who duly qualified as such, and partially administered said Estate; but that before she finally settled it her letters as such Administratrix were revoked by her marriage, and that said Probate Court, thereupon, appointed one John H. Morse Junior, as Administrator of said Estate who duly qualified, as such and as such, completed the Administration of said Estate, and made final settlement thereof, upon due and sufficient notice, which final settlement was made in said Probate

Count and was approved by it, in the year 188

"Defendant further states that said Thomas J Wiley, at the time of advancing to Samuel M Barrows the consideration for which said promissory note was given, and at the time of receiving said promissory note from him well knew who composed the firm of J H Morse & Co, as is hereinbefore stated, and when said Samuel M Barrows died knew of his death, at the time it occurred, and defendant further states that after letters of administration were issued to said Ella P Barrows, as such administratrix, she within thirty days after they were issued commenced the publication, in the Jefferson Democrat a newspaper published in Jefferson County, Missour, of a notice, which was published continuously in said newspaper, for three ~~years~~ consecutive weeks, that said letters had been granted to her, stating the date of the same, and requiring all persons having claims against said estate of Samuel M Barrows to exhibit them for allowance to said Administratrix within one year from the date of said letters, or that they might be precluded from any benefit of said estate and that if such claims be not exhibited within two years from the time of such publication, they should be forever barred. And defendant avers that said promissory note was never exhibited to said Ella P Barrows for allowance against said estate, while she was administratrix of the same, or to John H Morse Junior, while he was administrator thereof, and that it was never presented, for

allowance, to the probate Court of Jefferson (unfettered) or allowed by said Court against said Estate.

"And defendant avers that although, both said Thomas Wiley and Plaintiff have resided near him ever since the time of the date of said promissory note, neither of them, at any time, informed him of the giving, or existence of the same, or of any consideration for which it was given, and defendant avers that he never knew of the existence of said promissory note, at any time or had any information concerning it, or of any consideration for which it was given, till informed of its existence by Plaintiff's attorneys in the month of March 1887 just before this action was commenced. And defendant avers that if he should be now compelled, by a judgment of this Court, to pay said promissory note a great injury and wrong would thereby be perpetrated on him, for which no relief could be obtained by him, either from the Estate of Samuel M Barrows, which has been finally settled or otherwise."

because the portion of said answer traversed by this motion is immaterial, irrelevant and not responsive to the issues in this cause: and if true is no defence to this action, and therefore ought to be stricken out.

And also to strike the following part of defendant's answer to the second count in the petition in this cause beginning with the word "and" in the 453^d line of said answer to wit,

and that said Samuel M Barrows, at his death, left a large estate: consisting of lands and personal property, situated in Jefferson County Missouri, in which he had his residence at the time of his death, which was largely in excess of all debts and liabilities of his estate, and that his estate was abundantly solvent. and defendant states that within a short time after the death of said Samuel M Barrows, the Probate Court of Jefferson County Missouri appointed Ella P Barrows, his widow, Administratrix of his Estate, who duly qualified as such, and partially administered said Estate; but that before she finally settled it her letters as such Administratrix were revoked by her marriage and that said Probate Court thereupon appointed one John N Morse Junior, as Administrator of said Estate, who duly qualified as such, and as such completed the Administration of said Estate, and made final settlement thereof upon due and sufficient notice, which final settlement was made in said Probate Court and was approved by it, in the year 1881. Defendant further avers that plaintiff, at the time of advancing to said Samuel M Barrows the consideration for which said promissory note was given and at the time of receiving said promissory note from him, well knew who composed the firm of J. N. Morse & Co as is hereinafore stated, and when said Samuel M Barrows died knew of his death at the time it occurred, and defendant further states that after letters of Administration were issued to said Ella P Barrows as such Administratrix, she, within thirty days from the time of the issuing of the same, commenced the publication, in the Jefferson

Democrat, a newspaper published in Jefferson County-
Missouri of a notice, which was published continuously,
in said newspaper, for three consecutive weeks, that
said letters had been granted to her, stating the date
of the same, and requiring all persons having claims
against said Estate of Samuel M Barrows to Exhibit
them for allowance to said Administration within one year
from the date of said letters, or that they might be
precluded from any benefit of said Estate, and that
if such claims be not exhibited within two years from
the time of such publication, they should be forever
barred. And defendant avers that said promissory
note was never exhibited to said Ella P Barrows, for al-
lowance against said Estate, while she was Administra-
trix of the same or to John H Morse Junior while he was
Administrator thereof, and that the same was never pre-
sented to the probate Court of said County, for allowance,
or allowed against said Estate. And defendant avers that
although plaintiff has resided near him ever since the
time of the date of said promissory note, he did not, at any
time, inform defendant of the giving or existence of said
promissory note, or of any consideration for which it was
given; and defendant avers that he never, at any time
knew of its existence or had any information concerning
it, or concerning any consideration for which it was given,
until in the month of March 1887. And defendant avers
that if he should now be compelled, by judgment of this Court
to pay said promissory note a great injury and fraud

would thereby be perpetrated on him, for which
he could not obtain any relief from the Estate of
Samuel M Barrows, which was finally settled
before he knew of the existence of said promissory
note, or otherwise. "And

because the portion of said answer traversed
by this motion is immaterial, irrelevant and
not responsive to the issues in this cause; and
if true is no defence to this action, and
therefore ought to be stricken out.

Thomas & Horne

Attys for Plaintiffs.

S. S. Wiley
Plaintiff

vs }

John H Morse
def.

Motion to strike out
portions of def's. ans.
to 1st & 2d counts of
petition

Filed May 16th 1887

D. B. Veazey
Clerk

Thomas & Horne
for def.

SUBPOENA.--CIRCUIT COURT.

STATE OF MISSOURI, COUNTY OF

Jefferson

ss.

No. *63*

THE STATE OF MISSOURI, to

*Wm. Evans**D. W. Moore**John & Moore & Co**Ella P. Ruttle**You are Hereby Commanded*, That setting aside all manner of excuse and delay, you be and

appear in proper person, before the Judge of our Circuit Court, at the Court House in the town

of *Stellbom*

, within and for said County, on

*Wednesday*the *18th* day of*May*A. D. 18*87*, then and there

to testify and the truth to speak, in a certain matter of controversy now pending in our said Court,

wherein

John & Moore is

Plaintiff,

and

John & Moore is

Defendant,

on the part of said

defendant-

, and this you shall in no

wise 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 the seal of our said Court. Done at

office in *Stellbom*

in said County, this

14

day of

*May*A. D. 18*87**Wm. Evans*

CLERK.

By

DEPUTY CLERK.

SUBPENA.

No. _____

CIRCUIT COURT

Of Jefferson Co., Mo.,Term, 1887S. S. Wiley

vs.

John H. Morse

PLAINTIFFS

WITNESSES.

DEFENDANTS'

Day of Trial

May 18Lehas EvansD. W. MorseJohn H. Morse JrElla P. Tuttle

Filed May 17/1887

D. B. Teague
Clerk

RETURN.

I hereby certify that I served the within Writ in the County of
 and State of Missouri on the 16th day of May, 1887, by
 reading the same in the presence and hearing of
 the witnesses named Lehas Evans & Ella P. Tuttle and
 of further served the same on the 17th of May by reading
 it in the presence & hearing of the within named John H. Morse
 and John H. Morse Jr.

S. S. Wiley, Sheriff,
 By W. H. Parker, Deputy,

SUBPOENA.--CIRCUIT COURT.

STATE OF MISSOURI, COUNTY OF

Jefferson } ss.

No.

THE STATE OF MISSOURI, To

*J. N. Douglas**You are Hereby Commanded*, That setting aside all manner of excuse and delay, you be andappear in proper person, before the Judge of our Circuit Court, at the Court House in the *Shannon*of *Shannon*

within and for said County, on

Wednesday

the

18

day of

*May*A. D. 18*87*,

then and there

to testify and the truth to speak, in a certain matter of controversy now pending in our said Court,

wherein

Wm. Riley

Plaintiff,

and

J. H. Moore

Defendant,

on the part of said

Defendant

, and this you shall in no

wise 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 the seal of our said Court. Done at

office in

Shannon

in said County, this

17

day of

*May*A. D. 18*87**7*

Clerk.

By

Geo. Pratt

Deputy Clerk.

SUBPENA.

No. _____

CIRCUIT COURT

Of _____ Co., Mo.,

Term, 18 _____

J. D. Miles

vs.

J. H. Morse

PLAINTIFFS' }

WITNESSES.

DEFENDANTS' }

Day of Trial _____

J. T. Douglas

Serve this by
 reading to Mr.
 Douglas

Filed May 17/1887

D. B. Weaver
clerk

FEE, \$ 50

RETURN.

I hereby certify that I served the within Writ in the County of _____
 and State of Missouri, on the 17th day of May, 1887, by

Reading the same in the presence and
 hearing of the within named J. T. Douglas

George M. Duffie
 Sheriff of Jefferson County, Mo.
 By _____
 Deputy

SUBPOENA.--CIRCUIT COURT.

STATE OF MISSOURI, COUNTY OF

} ss.

No.

62

THE STATE OF MISSOURI, To

Thos. J. Wiley

You are Hereby Commanded, That setting aside all manner of excuse and delay, you be and

appear in proper person, before the Judge of our Circuit Court, at the Court House in the town

of *Appleboro*

, within and for said County, on

*Wednesday*the ~~17th~~ *18th* day of*May*

A. D. 1887, then and there

to testify and the truth to speak in a certain matter of controversy now pending in our said Court,

wherein

J. S. Wiley is

Plaintiff,

and

John St. Moore is

Defendant,

on the part of said

Plaintiff

, and this you shall in no

wise 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 the seal of our said Court. Done at

office in *Appleboro*

in said County, this

14th day of*May*

A. D. 1887

By

DEPUTY CLERK.

W. B. Deacy CLERK.

SUBPENA.

No. _____

CIRCUIT COURT

Of Jefferson Co., Mo.,
May Term, 1887S. S. Wiley

VS.

John A. Morse

PLAINTIFFS' }

WITNESSES.

~~DEFENDANTS'~~ }

Day of Trial

18th
May 7th 1887Thos. J. Wiley

Filed May 17/1887

D. B. Neayer
ClerkFEE, \$.50

RETURN.

I hereby certify that I served the within Writ in the County of Jefferson
and State of Missouri, on the 17th day of May, 1887, by
reading the same in the presence of and hearing
of two disinterested persons, J. Wiley.

D. H. McFay, Sheriff
By J. H. H. for the Deputy

S. S. Wiley Plaintiff } In the Circuit
John H. Morse Defendant } Court of
Jefferson
County
Missouri

Now at this day comes the Defendant and moves the Court to set aside the finding and decision of the Court rendered in the above cause and to grant a new trial of the same for the following reasons, to wit:

1. Because the Court erred to the prejudice of Defendant in admitting the testimony of J. S. Wiley the Plaintiff who was not a competent witness in the cause.
2. Because the Court erred in refusing to declare the law as asked by Defendant.
3. Because the Court erred in declaring the law as declared on the Court's own motion.
4. Because the Court erred in finding the issues for

the Plaintiff when the decision
ought to have been for the
Defendant.

5. Because the decision
was against the law
and against the evidence
J. S. Williams
Attorney for Defendant

J. S. Wiley

vs

John H. Morse

motion for
a new trial

Filed May 21/1887

W. D. Mearns
Clerk

S. S. Wiley Plaintiff
against
John H. Morse Defendant
In the Circuit Court of
Jefferson County Missouri
May Term A.D. 1887

Now at this day comes
the Plaintiff and for repli-
cation to Plaintiffs answer
denies generally each and
every allegation of new
matter set up in said
answer.

Thomas & Horne
Atty for Plaintiff

Ed. M. Lee
ppp.

vs

John A. Moore

vs
Jeph

Reproduction

Filed May 18th 1887
J. B. Meager
Clerk
w.

S. S. Wiley
John^{rs} St Morse

The court sitting as jury, declares
the law to be; that the notes sued on
in this case, being signed by the firm
name of John St Morse & Co., and delivered
to plaintiff is prima facie evidence
that it was a firm debt and ^{that} the
money evidenced by the notes went
into the firm and was used in its business,
and that the burden of proof rests
upon the defendant to show that
said money did not go into the
firm's assets and that the
plaintiff knew it, that Barrow
was getting said money for his
individual benefit and not
for the firm and without the
consent ^{or authority} of the defendant.

19.50
27.50
3.50

50.50

Miles
7
Morse

1887
Repaired
Dm.

Filed May 21/1887
J. D. Mearns
Clerk

S. J. Wiley
vs
John H. Morse }

1. The Court declares the law to be that if the notes sued on were given by Samuel M. Barrows, in the firm name of J. H. Morse & Co. for his individual debt, without the consent of Defendant, then in that event the Plaintiff is not entitled to recover on either of the notes, and if the Court shall so find from the evidence its finding should be for the Defendant as to both of said notes.
2. The Court further declares the law to be that if Samuel M. Barrows gave the notes sued on in the firm name of J. H. Morse & Co. without the knowledge, or consent of Defendant, and not on account of the business of the firm, and if neither the proceeds of the notes, or the consideration for which they were given, went into the business of the firm, then in such event the Plaintiff is not entitled to recover on either of the notes, and if the Court shall so find from the evidence its finding, as to both notes, should be for the Defendant.

3. The Court further declares the law to be that, if Defendant and Samuel M. Barrows were Equal partners in the firm of J. H. Morse & Co. And if said Barrows died leaving an Estate, over and above exemptions allowed by law, sufficient for the payment of all his debts, including the notes sued on. And if his Estate, including his interest in the assets of the firm of J. H. Morse & Co. was duly administered, and finally settled in the Probate Court, with the knowledge of Plaintiff, and due notice published of the grant of letters of administration, and of final Settlement of the Estate. And if Plaintiff failed to present said notes, or either of them, to the administratrix, or administrator of said Estate, or to the Probate Court, for allowance against said Estate, or to have them, or either of them, allowed against it. And if Defendant was never informed, and did not know of the Existence of said notes, or either of them, till after the final Settlement of said Estate. And if he did not receive any benefit from them, as a member of the firm of J. H. Morse & Co. or otherwise, then in that event the Plaintiff is not entitled to recover on either of said notes, and if the Court so finds from the evidence its finding should be for Defendant, as to both of said notes.

Miles
7
None.

Revised Jan.

Filed May 21/1887
at Chicago
J. D. Keagy
clerk

H. C. Wiley

John H. Morse.

The Court finds from the evidence in this case that during the year 1879 and for many years prior and subsequent thereto John H. Morse and Samuel M. Banows were partners in trade as merchants under the firm name & style of ~~John H. Morse and Co.~~ ^{"J. H. Morse & Co."} that the notes in dispute were signed by Samuel M. Banows for money loaned ^{by plaintiff} that Banows was the business manager of the firm transacting the bulk of the business: that Banows died in March 1881 and his estate was finally settled up in 1885 leaving a large amount of real & personal estate amounting to \$15000 to be turned over to his heirs: that there never was any administration of the partnership estate of J. H. Morse & Co by any one but its affairs were settled up in the individual estate ^{of Banows} of that J. H. Morse never knew of the existence of the notes in suit till February 1887 and that plaintiff supposed all the time that Morse knew of the existence of these notes and had arranged with Banows estate. Plaintiff also thought the firm was bound to him for the

payment of the notes but he never had them allowed against Barrows estate. The firm of J. H. Morse & Co. kept no account showing the cash receipts from loans or other sources nor the cash payments. ~~however~~

J. M. Barrows was in the habit of signing the firm named "J. H. Morse & Co" to notes for the firm business. There was no evidence as to how the money represented by these notes was used whether for the firm of J. H. Morse & Co or not.

~~Upon these facts thus found the Court declares the law to be that plaintiff is entitled to recover the full~~ The Court further finds that said notes have not been paid except the credits endorsed thereon in the hand writing of J. M. Barrows in October 1880.

Upon the ~~facts~~ ^{supra} thus found ^{the plaintiff} the Court declares the law to be that plaintiff is entitled to recover the full amount of the notes and interest except the credits endorsed thereon.

My
Dear

Dr. Guier
Dear
John

Filed May 21/88
J. H. K. K. K.
Dear

S. S. Wiley

John H. Morse }

In this case I feel satisfied that J. J. Wiley was a competent witness for plaintiff. He never had any interest in the note and admits that he is not liable on the note to plaintiff.

I believe also that S. S. Wiley was a competent witness in his own behalf in rebuttal of defendant's evidence. It is true S. M. Banows is dead. But what is the context or cause of action in issue and on trial in this cause? He answers over that Banows signed the note for his individual debt and not for a firm debt and it also alleges payment. The pleading in this case fix the liability of Banows. There is no issue raised as to him, except that the notes in suit have been paid. The main issue is not whether Banows is liable but is Morse liable. It is to the interest of Morse to show that Banows ought to pay the whole debt while it is to the interest of Wiley to show that Morse is also liable. Banows is not a party nor is his representative. The context is according to the issues raised solely between Morse & Wiley. and I believe the following case sustain

the theory that plaintiff is a competent witness in his own behalf on this trial.

Staten v Ryan 41 Mo 510
Looker v Davis 47 " 140
Angell v Kester 64 " 142
Amouett v Montague 63 " 201 & 75 Mo 43
Fulkerson v Mountain 68 Mo 468
Bates v Forcht 89 " 121
Butts v Phelps 79 " 302
Pritchett v Reynolds 121 " App. 674
Minn v Shuman 2 S. W. Rep 435.

I don't think there is anything in the point that Wiley waited till Bancroft's estate was settled. He was as innocent as Morse. Wiley thought Morse had arranged that with the estate Morse did not know of the existence of the Wiley debt. The equities being equal the law will prevail.

John L. Hume
Judge.

Miles
more
shining
the Court

Filed May 21/88
J. D. Leary
Clerk

S. S. Wiley
Plaintiff } In the Circuit
against } Court of Jefferson
John H. Morse } County, Missouri.
Defendant }

This affiant the Defendant on
his oath states that the
appeal by him in the above
entitled Cause is not made
for vexation or delay but
because the affiant believes
that the appellant is aggrieved
by the judgment and decision
of the court.

Subscribed and
Sworn to before
me May 21st 1887 } J. H. Morse
D. B. Neazy }
Clerk Cir. Ct.

J. J. Wiley

vs

John H. Moore

Affidavit for
appeal

Filed May 21st 1887
J. J. Wiley
clerk

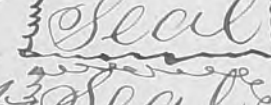
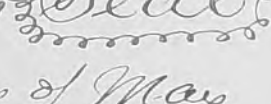
S. S. Wiley
Plaintiff } In the Circuit
against } Court of Jefferson
John H. Morse } County Missouri.
Defendant } May term 1887.

We John H. Morse, as principal, and
and
as securities, acknowledge our selves
to owe, and stand indebted, unto
S. S. Wiley, the Plaintiff, in the above
Entitled Cause, in the sum of
Eighteen hundred Dollars, upon
the following named conditions,
to wit:

Whereas John H. Morse,
the above named Defendant, has
appealed from the judgment of
the Circuit Court of Jefferson
County Missouri, rendered in
the above Entitled Cause, at the
May term of said Court for the
year 1887, by which judgment,
as rendered by said Court, the
said Plaintiff recovered against
him judgment for an aggregate
sum, Exclusive of costs, of
Nine Hundred and fourteen & $\frac{40}{100}$
Dollars. Now if said John H.
Morse, the appellant, shall prosecute
his said appeal with due diligence
to a decision in the Appellate
Court, and shall perform such

Judgment as shall be given by
said Court, or such as said Court
may direct the Circuit Court to give,
and if the judgment of said Circuit
Court, or any part thereof, be
affirmed, and he shall comply
with, and perform the same, so
far as it may be affirmed, and
if he shall pay all damages, and
costs, which may be awarded
against the appellant by any
Appellate Court, then this
recognizance shall be void,
otherwise it shall remain in
force.

In testimony whereof we
hereunto sign our names, and
affix our seals, this 24th day
of May A.D. 1887.

John H. Morse 
W. P. Williams 
John H. Morse 
Henry St. John 

Taken and approved this 30th day of May
1887

D. B. Steacy Clerk

J. J. Wiley

vs
John H. Moore

Appeal Bond

Filed May 31/1887

W. B. McLaughlin
Clerk

John H. Morse } In the Circuit
Plaintiff } Court of Jefferson
against } County Missouri.
S. S. Wiley } To the September
Defendant } term 1887.

Plaintiff states that prior to the year 1878 he and Samuel M. Barrowz formed a partnership, under the firm name of J. H. Morse and company, for the purpose of carrying on the business of retail merchants, at a store to be kept by them, at Morse's Mills in Jefferson County Missouri; and that they, as partners, under said firm name, thereupon engaged in said business, at their store, at said place, and continued the same until in March 1881; when said partnership was dissolved, by the death of said Barrowz.

Plaintiff states that, by the partnership agreement between himself and said Barrowz, the business of said firm was to consist in the purchase of goods and merchandise, and selling the same at their store, for profit.

Plaintiff further states that, in the month of September 1878, said Barrowz bought a lot of hogs,

for his individual use, from one Thomas J. Wiley, and drew a promissory note, payable to the order of Said Wiley, for three hundred Dollars, dated September 26th 1878, falling due twelve months after date, bearing interest at the rate of ten per cent per annum till paid, and signed the firm name of said firm of J. H. Morse and Company to it, and delivered to Said Wiley, in payment for said hogs.

Plaintiff states that he was not aware of said transaction, or of the giving of said promissory note, and that said Wiley received said promissory note from said Barrows, knowing that said Barrows had drawn it, and signed the firm name of the firm of J. H. Morse and Company to it, and without any reason to presume that Plaintiff, who was known to him to be a member of said firm, knew of, or approved the use of the firm name of said firm in connection with it. But on the contrary, as Plaintiff avers, said Wiley received said promissory note with ample notice, and knowledge, that it

was not given in connection with, or for the purposes of the business of said firm; and that he had good reason, at the time, to suppose that Plaintiff neither knew of, or assented to, the signing of the same, with the firm name of said firm; and to know that said firm was not liable for the payment of it; for Plaintiff avers that the purchase, by said Barrows, of said hogs, was not in the line of the business in which said firm was engaged, or for which said partnership between Plaintiff, and said Barrows, was formed; but was entirely foreign to it; and that said Wiley knew such to be the case, when he sold said Barrows said hogs, and when he received said promissory note from him. And that he furthermore knew, at that time, that said hogs were bought by said Barrows for his individual use; and not for the firm of J. W. Morse and company.

Plaintiff avers that two credits appear endorsed on the back of said promissory note, each being for thirty Dollars; of date respectively October 18th 1879, and October 25th 1880.

Plaintiff further states that in the month of March 1887, which was more than seven years after the maturity of said promissory note, said Thomas J. Wiley transferred the same, by endorsement to Defendant, by writing his signature across the back of it, and delivering it to the Defendant. and Plaintiff avers that it had not been, prior to that time, in anywise endorsed, or assigned, to Defendant, or any other person, or Corporation. And Plaintiff avers that when Defendant received said promissory note, from said Thomas J. Wiley, he knew the facts connected with its execution, and the consideration for which it was given to said Thomas J. Wiley, as hereinbefore stated.

Plaintiff further states that the firm of J. H. Morse and Company did not, at any time, receive any part of the consideration for which said promissory note was given, or any benefit whatever from the same; and that he never learned of the giving of said promissory note, or knew of its existence, until in March 1887, which was more than seven years after its maturity.

Plaintiff further states that said Samuel M. Barrows, in the month of September 1878, bought a lot of hogs; for his individual use, from the Defendant, and drew a promissory note, payable to the order of Defendant, for two hundred and fifty Dollars, dated October 10th 1878, falling due twelve months after date, bearing interest at the rate of ten per cent per annum till paid; and signed the firm name, of said firm of J. H. Morse and Company to it; and delivered it to Defendant, in payment for said hogs.

Plaintiff avers that he was not aware of said transaction, or of the giving of said promissory note; and that Defendant received said promissory note, from said Barrows, knowing that said Barrows had drawn it; and signed the firm name of the firm of J. H. Morse and Company to it; and without any reason to presume that Plaintiff, who was known to Defendant to be a member of said firm, knew of, or approved, the use of the firm name of said firm, in connection with it.

But on the contrary, Plaintiff avers, that Defendant received said promissory note, knowing

at the time, that it was not given in connection with, or for the purposes of, the business of said firm of J. H. Morse and Company; and that he, at the time, had good reason to suppose that Plaintiff, neither knew of, or assented to, the signing of the same, with the firm name of said firm; and to know that said firm was not liable for the payment of it; for Plaintiff avers, that the purchase of said hogs, by said Barrows, was not in the line of the business, in which said firm was engaged, or for which said partnership, between Plaintiff, and said Barrows, was formed; but was entirely foreign to it; and that Defendant knew such to be the case, when he sold said hogs to said Barrows, and when he received said promissory note from him. And that he further knew, at that time, that said hogs were bought, by said Barrows, for his individual use; and not for the firm of J. H. Morse and Company.

Plaintiff avers that two credits, appear endorsed on the back of said promissory note,

each being for twenty five Dollars, dated respectively October 18th 1879, and October 25th 1880. Plaintiff states that the firm of J. H. Morse and company never, at any time, received any portion of the consideration for which said promissory note was given, or any benefit whatever from it. And Plaintiff avers that ^{he} never knew that said promissory note had been given, until in March 1887, which was more than seven years after its maturity.

Plaintiff states that in April 1887 the Defendant instituted a suit against Plaintiff, on said two promissory notes, in the Circuit Court of Jefferson County Missouri; that the Petition in said action contained two counts, or alleged causes of action, one based on each of said promissory notes; that the Count, or alleged cause of action, in said petition, based on said promissory note, which was drawn payable to the order of said Thomas J. Wiley, contained allegations as follows, to-wit: that Defendant in said action, the Plaintiff herein, and Samuel M. Barrows, were, on and prior to, the 26th day of September 1878 partners in trade, doing business under the firm name, and style of J. H. Morse and

company, and that said firm, on the 26th day of September 1878, executed, and delivered, said promissory note to said Thomas J. Wiley. Plaintiff avers that it is also alleged in said count, or alleged cause of action, that said firm of J. H. Morse and company, by said promissory note, promised, for value received, to pay to the ^{order of} said Thomas J. Wiley, twelve months after the date thereof, three hundred dollars; together with interest thereon, at the rate of ten per cent per annum till paid; that said count, or alleged cause of action, contained an averment of the assignment of said promissory note, by endorsement, by said Thomas J. Wiley, to the Plaintiff in said action, the defendant herein, and an averment of the credits thereon; and contained a prayer for judgment, against defendant, for the amount of said promissory note, and interest; less said credits; averring that the same was due to Plaintiff in said action, defendant herein, and unpaid; alleging the death of said Samuel M. Barrows, and that defendant in said action, the Plaintiff herein, was the sole surviving partner of said firm.

And Plaintiff states that ⁱⁿ the count, or alleged cause of action, in said Petition,

founded on said promissory note, which was drawn payable to the order of Defendant, the Plaintiff in said action, it was alleged that the Defendant in said action, the Plaintiff herein, and Samuel M. Barrow, were on, and prior to, the 26th day of September 1878 partners in trade, doing business under the firm name, and style of J. H. Morse and Company; and that said firm, on the 10th day of October 1878, executed, and delivered, said promissory note to the Plaintiff in said action, the Defendant herein. Plaintiff states that it is also averred in said Count, or alleged Cause of action, that said firm of J. H. Morse and Company, by said promissory note, promised, for value received, to pay to the order of the Plaintiff in said action, the Defendant herein, the sum of two hundred and fifty Dollars; twelve months after the date thereof; together with interest thereon, at the rate of ten per cent per annum till paid; that said Count, or alleged Cause of action, contains an averment of the credits on said promissory note; and contained a prayer for judgment, against the Defendant in said action, the Plaintiff herein, for the amount of said promissory note, less said credits thereon; alleging that the same, with the interest thereon, less

Said credits, was due to the Plaintiff in said action, the Defendant herein, and unpaid; alleging the death of said Samuel M. Barrow; and that the Defendant in said action, the Plaintiff herein, was the sole surviving partner of said firm of J. H. Morse and company.

Plaintiff avers, that said action was returnable to, and triable at, the May term of said court for the year 1887, and that Plaintiff, the Defendant in said action, at said term filed his answer, in said court, to said petition, verified by his affidavit; setting out, in detail, the facts, in relation to the partnership between himself, and said Samuel M. Barrow, as the same are hereinbefore stated, and specifically denying that said promissory notes, or either of them, was executed, or delivered, by the firm of J. H. Morse and company. And denying that said firm ever, at any time, received any portion of the consideration, for which they, or either of them, was given, or any benefit from them, or either of them, and averring that the Defendant in said action, the Plaintiff herein, did not know

of the giving of said promissory notes,
or either of them, and that he never, at
any time, knew of the existence of them,
or either of them, until in the month
of March Eighteen hundred and
Eighty Seven; averring, that knowing
the hand writing of said Samuel M.
Barrow, and having been shown
said promissory notes, in March
Eighteen hundred and Eighty Seven,
he knew, from an inspection at
that time, of them, that said Barrow
had drawn them, and signed them,
with the firm name, of the firm of
J. H. Morse and company; but alleging,
in said answer, that they were not;
and that neither of them was, given
for, or on account of, said firm, or
of any business of said firm, or
of any debt, or liability, or liabilities,
of it; but that they were both given
for individual debts of said
Samuel M. Barrow; averring
further, in said answer, that both
said Thomas J. Wiley, and the Plaintiff
in said action, Defendant herein,
when they respectively received said
notes, ~~said~~ to wit: said Thomas J.
Wiley, when he received said
promissory note, drawn payable
to his order, and said Plaintiff,
the Defendant herein, when he
received said promissory note,

Payable to his order, received them, respectively, from said Samuel M. Barrows; each knowing, at the time, that said promissory notes, respectively, were drawn by said Samuel M. Barrows; and signed by him, with the firm name of the firm of J. H. Morse and Company; and delivered by him to them, respectively, for his own individual debts; and not for, or on account of, any business of said firm, or of any debt, or debts, or liability, of it; averring further that both said Thomas J. Wiley, and Plaintiff in said action, Defendant herein, respectively, received said promissory notes, from said Barrows, each well knowing the business, in which the firm of J. H. Morse and Company was engaged, and the nature, and objects, of said firm, and the extent of the partnership between Defendant in said action, the Plaintiff herein, and said Barrows; and neither of them having any reason to presume that Defendant, in said action, the Plaintiff herein, knew of, or assented to, the use of the firm name of said firm in connection with said promissory notes, or either of them; averring further that Plaintiff in said

action, Defendant herein, received said promissory note drawn payable to said Thomas J. Wiley, by endorsement from said Thomas J. Wiley, more than seven years after its maturity, without consideration, and with knowledge of all the facts connected with its execution, and consideration. Plaintiff avers that, at the time of filing said answer, and of the trial of said cause, which occurred at the May term 1887 of said Court, he knew nothing of the facts connected with the giving of either of said promissory notes, or of the consideration for which either of them was given; but from an inspection of them knew that they had been given by Samuel M. Barrows, in the firm name of the firm of J. H. Morse and Company; as they were in his hand writing, and being aware that neither of them had been given on account of any business, or liability, of said firm, believed them to have been given by said Barrows for individual debts of his own. And Plaintiff states that he did not allege in his said answer that said promissory notes were given by said Barrows for hogs, purchased by him, for his individual use, from said Thomas J. Wiley, and the Plaintiff in said action, the Defendant herein, as is herein before stated, for the reason

that he did not then know such to have been the fact, and did not learn such to fact, until after the adjournment of the term of court at which said action was tried. Plaintiff avers that he learned of the existence of said promissory notes from the attorney for Defendant, the Plaintiff in said action, only a short time before said suit was commenced, and immediately thereafter commenced to investigate the matter, to ascertain, if possible, the facts connected with their execution, and what considerations they were given for; that he carefully, and thoroughly, examined the books of the firm of J. H. Morse and Company, which had been exclusively kept by said Barrows, and ascertained that they contained no reference to any transaction, with either said Thomas J. Wiley, or Defendant herein, out of which either of said promissory notes could have originated; and made inquiries of the widow of said Barrows, and of every person whom he thought might likely know anything about either of said promissory notes, or what they, or either of them, were given for, and continued his efforts in that direction, and to that end, up to, and after the trial of said suit, and after said suit was brought, and before filing his answer to the Petition in the cause,

Sent messengers to the Plaintiff in said action, and said Thomas J. Wiley, and in that way sought information from them concerning the giving of said promissory notes, and the consideration for which they were given; but was unable to learn from ~~them~~ either of them, or from any other person, or source, any facts concerning the giving of either of said promissory notes, or ~~the~~ the consideration for which either of them was given. And Plaintiff avers that said cause coming on for trial, at the May term 1887, of said Court, he was compelled to go to trial of said cause, without being able to himself testify to any facts in relation to the purposes, or consideration, for which either of said promissory notes were given; or to prove the same by any other witnesses, or testimony. Plaintiff states that said Thomas J. Wiley, and the Plaintiff in said action, both testified, as witnesses, on the trial of said cause; that said Thomas J. Wiley testified that he never owned said promissory note drawn payable to his order, and did not know what consideration it was given for. and Plaintiff states that the Plaintiff in said action testified

that both of said promissory notes were drawn by said Samuel M. Barrows, and signed by him with the firm name of the firm of J. H. Morse and Company, and delivered to the Plaintiff in said action, and that the consideration of both of them was cash loaned, by the Plaintiff, in said action, as he understood at the time, for the use of said firm. Plaintiff states that the result of the trial of said cause, on said date of the testimony, was that the court, trying the case without a jury, found the issues in the cause for the Plaintiff therein, and against this Plaintiff, the Defendant therein, as to each of said promissory notes; finding for said Plaintiff therein, in the sum of Four hundred and ninety nine & $\frac{33}{100}$ Dollars, on account of said promissory note drawn payable to the order of said Thomas J. Wiley; and for four hundred and fifteen & $\frac{07}{100}$ Dollars, on account of said promissory note drawn payable to the order of the Plaintiff in said action, Defendant herein, aggregating nine hundred and fourteen & $\frac{40}{100}$ Dollars; and rendered judgment in favor of the Plaintiff in said cause, the Defendant herein, and against the Defendant in said action, the Plaintiff herein, ~~for and against~~

for said aggregate sum of nine hundred and fourteen $\frac{40}{100}$ Dollars.

Plaintiff avers that if he had been able to prove by said Thomas J. Wiley, or the Plaintiff in said action ^{or by other testimony} on the trial of said Cause, that Samuel M. Barrows bought hogs from said Thomas J. Wiley, for his individual use, which was a transaction not in the line of the business of the firm of J. M. Morse and Company; and drew, and signed, with the firm name of said firm, the promissory note sued on in said action, which was drawn payable to ^{the order of} said Thomas J. Wiley, and delivered it to said Wiley, in payment for said hogs; and that said Wiley knew such facts, when he sold said hogs, and received said promissory note; and had no reason to presume that Plaintiff knew of, or assented to, such use of said firm name the finding, and decision of the Court, upon said promissory note, would, and ought to have been, for Defendant in said action. But Plaintiff avers that, at the trial of said Cause, he did not know what said promissory note was given for; and could not prove such facts by said Thomas J. Wiley, or the Plaintiff in said action ^{or otherwise}, but that, since the term of Court at which said Cause was tried and adjourned, he learned ^{such facts} ~~these~~ and ascertained the witnesses by whom he

can prove them. Plaintiff further states that if he had been able, at said trial, to prove by Plaintiff in said action, that Samuel M. Barrows bought hogs from him, for his individual use, which was a transaction not in the line of the business of the firm of J. H. Morse and company, and drew the promissory note sued on in said action, and signed it with the firm name of said firm, and delivered it to Plaintiff in said action in payment for said hogs, and that Plaintiff in said action knew such facts, when he made sale of said hogs, and received said promissory note, and had no reason to suppose that Plaintiff herein knew of, or sanctioned, such use of the firm name of said firm, ~~the firm name~~ or if Plaintiff had been able to otherwise establish such facts, on said trial, the finding, decision, and judgment, of the court, upon said promissory note, would, and ought of right to have been, for the Defendant in said action, and against the Plaintiff therein; but Plaintiff avers that at the time said ~~case~~ cause was tried he did not know what said promissory note was given for, and could not prove said facts, by the Plaintiff in said action, or otherwise, but that since the adjournment of the term of court at which said trial was had he has

learned said facts, and ascertained the witnesses by whom he can prove the same.

Plaintiff further states that, by the bringing of said suit against him, and the rendition against him of said judgment; procured by the means, and under the circumstances herein before stated, a great injury and wrong, has been done to Plaintiff. And Plaintiff avers that Defendant is about to sue out execution on said judgment, and to enforce the collection of the same against Plaintiff, by which a great, and irreparable, injury ~~would be~~ and wrong, will be perpetrated on Plaintiff, unless Defendant is, by the Court, restrained, and Enjoined, and prevented, from doing so.

In consideration of the premises Plaintiff prays the Court to adjudge, and Decree, said judgment, in favor of the Plaintiff in said action, the Defendant herein, to be fraudulent and void. And that the Court will render a Decree perpetually restraining, and Enjoining, the Defendant, the Plaintiff in said judgment, from taking out execution on said judgment,

and from enforcing any such
execution against Plaintiff
herein, or from in any way
proceeding to enforce the
collection of said judgment,
or any part thereof, against
Plaintiff. And that the Court
will grant such other, and
further relief, in the premises,
as may be just, and proper.

Jos. J. Williams
Attorney for Plaintiff.

John H. Moore
as
J. J. Wiley
Amended
Petition
of Plaintiff

Filed November 10th 1887

W. D. C. C. C.
Cern

X The witness here stated in various questions put by the Court that he never had any in legal in the note in suit or either of them; that he had agreed to ~~sell~~ ^{sell} some land ~~to~~ ^{for} his brother; (the plaintiff) & was to take the note which is made payable to him in payment for the land but the Court had called through a he never got the note he evidently considered it as a formality to perfect plaintiff's title to it, & said he had no interest in the note. It is not likely that he would be ordered to answer.

L. S. Wiley
Plaintiff
against
John H. Morse
Defendant

In the Circuit
Court of Jefferson
County, Missouri
New Term 1887

Be it remembered that on the trial of the above entitled cause the Plaintiff to sustain the issues on this part offered to introduce Thomas J. Wiley the person mentioned as ~~pay~~ payee in one of the promissory notes sued on as a witness. Defendant at the time objected to the ~~testimony~~ admission by the court of the testimony of said witness in so far as the same might relate to the promissory note in which he was named as the payee on the ground that Samuel M. Barrows one of the original parties to said note being dead said Thomas J. Wiley was incompetent as a witness to testify in relation to it ~~but~~ ^{and thereupon} the court overruled said objection and permitted said witness to testify in relation to said promissory note as well as also to the other note sued on to which action of the court Defendant at the time excepted. Said witness then testified that he did not see said promissory note in which he is

the note in witness in his hand writing

The Plaintiff then read the note without in evidence

to try with the evidence shown as follows (the Clerk will here

copy the notes in suit & endorse them)

mentioned as payee till long after it was given that although it was drawn payable to him he did not furnish any consideration for it and endorsed it to Plaintiff in February or March 1887. He further testified that when Samuel M. Barrows died he was aware that Plaintiff held the notes sued on which he supposed were given for hogs but did not really know what they were given for and that a few days after the death of Barrows he was at Defendants store when as he testified, Defendant told him not to have his note allowed against the Estate of Barrows as he would settle it, and that he, witness, then asked him what he was going to do about the note held by Plaintiff and that Defendant said he would settle with Plaintiff also and that he went on his way home by the Plaintiffs house and told him what the Defendant had said & he testified further that he knew S. M. Barrows had written that Plaintiff then offered to be sworn as a witness in his own behalf. Defendant objected to Plaintiff being permitted to testify in his

He depends on them offends himself as a witness but plaintiff objected to his ~~certifying~~ ^{certifying} ~~subscribing~~ ^{certifying} plaintiff's mouth is closed & he thought he permitted to testify but the Court nevertheless objected & permitted defendant to testify to which plaintiff at the time objected

said cause in his own behalf on the ground that Samuel M. Barrows being dead Plaintiff was not a competent witness in said cause in his own behalf. The court sustained said objection and refused to permit Plaintiff to testify as a witness in the cause. ^{Plaintiff then cleared his testimony} whereupon Defendant asked the court to ~~instruct the jury~~ declare the law as follows, (~~Here copy~~ to wit: "The court declares the law to be that upon the pleadings and evidence in the cause the Plaintiff is not entitled to recover." The court refused to so declare the law to which action of the court Defendant at the time accepted.

at the time & place:
X ~~Plaintiff~~ Defendant then
was sworn as a witness in said
cause in his own behalf and
testified as follows:

Samuel M. Barrows
and my self were partners as merchants
keeping a general store at my mill
in Jefferson County, Missouri and not
otherwise. Said Samuel M. Barrows
and my self each carried on other
business in which we were not
partners. I never heard of either
of the notes sued on till in March 1887
when Plaintiffs, attorneys, wrote me
saying they had them for collection.

I remember the occasion to which I suppose Thomas J. Wiley's testimony refers, when I spoke to him about not having his note allowed against Barrow's Estate. The firm of J. H. Morse & Co. owed Thomas J. Wiley a note of eight hundred dollars and some accrued interest it was this note I referred to in my conversation with Thomas J. Wiley. I knew of no other. Nothing was said about Plaintiff holding any note, or notes and I was not aware of his holding or claiming to hold any. Mr. Barrow kept the Books of the firm of J. H. Morse & Co. during all the time he and I were partners, I have carefully examined the Books and find nothing in them in any way showing that the consideration of the notes sued on or of either of them or of any part of it ever at any time went into said firm. Samuel M. Barrow died March 6th 1881. I continued merchandising at the same place and Plaintiff continued to deal with me at my store more or less buying goods sometimes on credit from the death of Mr. Barrow up to as late as August of last year, 1886.

he paid me his Store Bills from time to time in cash but ~~at no~~ ~~time~~ did not at any time inform me that he held the notes or either of them sued on and never demanded payment of me of any principal or interest on them or either of them. In 1884 I borrowed a fifty dollar County Warrant of Plaintiff and paid him for it afterwards but he did not mention the notes sued on or either of them. ~~I am well satisfied that no consideration of the notes sued on ever went into the business of the firm of J. H. Morse & Co.~~ Samuel M. Barrows left a large Estate worth as much as fifteen Thousand Dollars after all his debts were paid. During the administration of the Estate of Mr. Barrows I filed in the Probate Court a Statement showing all the debts of the ~~Est~~ firm of J. H. Morse & Co. as I understood them. I did not mention the notes sued on as I knew nothing of them, the Statement as filed is as follows. (Clerk here copy said Statement) ^{It was here admitted that} Letters of Administration were issued to Fella P. Barrows as Administratrix of the Estate of Samuel M. Barrows in March 1881 and final Settlement made on due notice at the

February term of that Court for the year 1885 and that the partnership assets of the firm of J. H. Morse & Co. were charged against said Administratrix on her Inventory and appraisement, half of the value of the same as appraised being carried out and charged against her and that such half interest of the same was administered by said Administratrix and John H. Morse Jr. who succeeded her as Administrator of said Estate and finally settled the same. on Cross Examination he

~~said that the books of the firm of John H. Morse & Co. does not show that any firm account was kept. There was no cash account kept by the firm & the books of the firm do not show that the note due to Thos. L. Miley or the money for which it was given went into the firm of J. H. Morse & Co. The books of the firm do not show that on the date of the reding of interest that any money was taken by Thos. L. Miley to pay the interest on the notes & if it had been paid by Barrows on the notes as firm notes then the books would not show it & they do not as no account was kept of the firm transactions & if the money had been taken by Barrows to pay an individual debt it would have been charged to said Barrows. Barrows died about six months after the last credit on the notes, the firm books do not show what money was borrowed or paid out by the firm.~~

Defendant here closed his testimony and the court thereon announced that it would permit the Plaintiff to testify as a witness in his own favor whereupon Defendant objected to Plaintiff being permitted to testify on the grounds first urged to his testimony, namely for the reason that Samuel H. Barrows being dead the Plaintiff

On cross examination the defendant testified as follows - The firm of Morse & Co kept no book account of the firm transactions, kept no account of money borrowed from any one nor of cash paid out. The firm had borrowed \$800 of Messrs. J. Wiley & Co which the firm note was given. This was a separate transaction from the notes in suit. Our firm books do not show that this \$800 went into the firm assets. Our books simply show accounts of merchandise sold show these accounts were settled. Mr. Messrs. Wiley ran an account at the store & this account was closed by a statement in the books that this account of his was credited on the \$800 note as interest paid. The books of the firm do not show that on the dates of the credits endorsed on the notes in suit that any money was taken to pay this interest and if it had been paid by Barrows on the notes as firm note then the books would not show it as we kept no account of cash received or paid out & kept cash received on account of merchandise sold. If Barrows took the money to pay the interest on these notes in suit out of the firm assets, and these notes were the individual notes

~~He~~ ~~Samuel~~ Mr. Barrows then the
books ~~would show~~ right to show it
the notes in suit are signed J. H.
Morse & Co in the hand writing
of Samuel Mr. Barrows and I
never knew of his signing any
individual note of his own in
the firm name ~~other than~~ ~~that one~~
unless these notes were his individual
notes and not firm notes. If these notes
were not firm notes then there
are the only ones I ever knew of
Barrows signing in the firm name
except for firm transactions.

Defendant here closed his
evidence and Plaintiff then
opened Plaintiff as a witness
in his own behalf in rebuttal of
the evidence of defendant but
defendant objected because Barrows
being dead Plaintiff was not a com-
petent witness in his own behalf
which objected the Court overruled
and permitted Plaintiff to testify
in rebuttal of defendant's testimony
to which action of the Court defendant at
the time accepted.

~~was not entitled to testify in his own favor in the cause but the court overruled said objection and permitted Plaintiff to testify as a witness in the cause in his own favor to which action of the court Defendant at the time excepted.~~

Plaintiff thereupon testified as follows, to wit:

The notes sued on were given for cash loaned. The transaction was with Samuel M. Barrows who gave the notes in the name of the firm of J. H. Morse & Co.

Thomas J. Wiley my brother told me shortly after the death of Mr. Barrows that Defendant did not wish the notes allowed by the Probate Court and that he would settle them. I never had them allowed for that reason and never at any time mentioned their existence or that of either of them to Defendant. I supposed he knew of their existence before but do not know that he did. They have not been paid. Nothing has been paid on either of them except as is credited on them. The credits on them were paid by Mr. Barrows in his life time.

they were each drawn in the hand writing of Mr. Barrows and the credits on them are in his hand. While Mr. Barrows' Estate was being administered I spoke to J. N. Douglas about the notes sued on; told Mr. Douglas I had them and asked his opinion as to what I had better do about them. He advised me to have them allowed by the Probate Court against the Estate of Barrows but I did not do so.

Plaintiff here closed his testimony and Defendant introduced J. N. Douglas who testified that shortly after Samuel M. Barrows died Plaintiff told him he held the notes sued on and ~~told him Defendant was asking~~ asked him what he had better do about them and that he advised him to have them allowed by the Probate Court against Barrows' Estate.

The foregoing was all the testimony in the cause. The ~~Court~~ Plaintiff then

asked the court to declare the law as follows (Clerk here copy instruction asked by Plaintiff) The ~~lower~~ court refused to so declare the law and Plaintiff at the time excepted. Defendant then asked the court to give three declarations of law as follows, to wit: (Clerk here copy same) The court refused to give either of said declarations of law to which action of the court the Defendant at the time excepted. The court then of its own motion found the facts and declared the law as follows to wit: (Clerk here copy such finding and declaration of law) to which action of the court Defendant at the time excepted. The court then found the issues for Plaintiff to which action of the court the Defendant at the time excepted. Within due time thereafter the Defendant filed his motion for a new trial which is as follows, to wit: (Clerk here copy same) which on being seen and understood by the court was by the court overruled to which action of the court in overruling said motion Defendant at the time excepted.

after which as the court was
about to adjourn for the term
the court by proper order of
record allowed ~~the~~ defendant
time till the first day of
August 1887 to prepare and
file his Bill of Exceptions
in said cause and now on
said first day of August 1887
defendant tendered this his
Bill of Exceptions and
asks that it be signed,
sealed, and made part
of the record, which is
done

John L. Hines
Judge



O. L. Wiley

(23)

John H. Morse

Bill of Exceptions

Filed Aug 1st 1887
O. L. Wiley
clerk

State of Missouri, County of Jefferson ss,
In the Circuit Court.

Do September Term 1887.

John H. Moore Plaintiff

} Injunction.

against
S. S. Wiley Defendant.

Now on this day comes the Defendant
by his attorneys and for answer to
plaintiff's amended petition, contents
and denies each and every allegation
therein contained, not hereinafter
admitted.

Defendant admits that prior to the year 1878
plaintiff and Samuel M. Barrows formed
a partnership under the firm name of
J. H. Moore and Company, for the purpose of
carrying on business as merchants at a
store to be kept by them at Moore's Mills in
Jefferson County Missouri and continued the
same until March 1881 when said Samuel
M. Barrows died.

Admits that in April 1887 the defendant
herein instituted suit on the notes described
in plaintiff's petition and at the May Term
1887, of the Circuit Court of Jefferson County
Missouri obtained judgment on said notes
in the aggregate for the sum of nine hundred
and fourteen and ⁴⁰/₁₀₀ dollars against

the said John H. Morse defendant therein,
Defendant further answering says that the
said John H. Morse defendant in the suit
tried at the May term aforesaid, between
these parties, wherein this defendant was
plaintiff and the said plaintiff herein was
the defendant, and the said Morse filed
in said cause an answer to both counts
of the petition in said cause as appears
by the record and pleadings therein; and the
answer to the 1st cause of action in
said petition filed by defendant therein,
plaintiff herein, was as follows to-wit:

"Now at this day comes the defendant, and for answer
to the Petition of Plaintiff admits that on, and prior
to, the 26th day of September 1878 he and Samuel M.
Barrows were partners in business under the firm name
and style of J. H. Morse & Co. but avers that they were
partners in the purchase of goods, and selling the same
for profit, at a store kept by them at Morse's Mills, in
Jefferson County Missouri, and not otherwise, and
that neither Plaintiff, or Thomas J. Wiley, at any time
had any reason to believe that they were Partners in any
other respect. Defendant denies that said J.
H. Morse & Co. on the 26th day of September 1878,
Executed, or delivered, to Thomas J. Wiley its promissory
Note dated on the 26th day of September 1878, and
denies that said firm of J. H. Morse & Co. by any

such promissory Note, of any date, promised, to pay to said Thomas J. Wiley or order, the sum of three hundred dollar, either within months after the date thereof, or at any time, or with interest at the rate of ten per cent till paid, or any interest whatever. Defendant denies that the promissory Note, filed with the petition of Plaintiff, and described and referred in the first Count thereof, which on its face purports to have been signed and made by said J. H. Morse & Co. and to have been drawn payable to Thomas J. Wiley or order, was either Executed by said J. H. Morse & Co. or by said J. H. Morse & Co delivered to said Thomas J. Wiley.

Defendant states that he is aware, from an inspection of said promissory Note, and not otherwise, that the words J. H. Morse & Co. attached thereto, and which purports to be the Signature of J. H. Morse & Co. to it were written by Samuel M. Barrows, and Defendant avers that he, himself, did not, at any time, sign said promissory Note, either with his own signature, or that of the firm of J. H. Morse & Co. and did not at any time authorize the same to be signed, with his signature, or that of the said firm. And Defendant further avers that said promissory Note was not given for, or on account of said firm of J. H. Morse & Co. or of any business of Defendant, and said Samuel M. Barrows, as Partners, and that no proceeds, or avails of said promissory Note, or any money or other thing which constituted the consideration of it, ever at any

time went into the firm of said J. H. Morse & Co, or the business which was transacted by defendant and said Samuel M. Barrows as partners. And defendant avers that he never, at any time, received any benefit from, or on account of, said promissory note, either as a partner of said Samuel M. Barrows or otherwise, but on the contrary defendant states that said promissory note was given by said Samuel M. Barrows, in the firm name of J. H. Morse & Co without the knowledge, or consent of defendant, for an individual debt, and liability of said Samuel M. Barrows; and for a consideration moving to himself alone, and with which the firm of J. H. Morse & Co had nothing to do; and that said Thomas J. Wiley well knew these facts, and with such knowledge, advanced to said Samuel M. Barrows the consideration for which said promissory note was given, and received said promissory note from him, without having any reason to believe that defendant, or the firm of J. H. Morse & Co. had authorized, or sanctioned the giving of said promissory note, or had received, or would receive, any benefit from it, or the consideration for which it was given. Defendant does not deny that Thomas J. Wiley has, by endorsement on said promissory note, assigned it to Plaintiff; but states that he did not do so till more than seven years after it, by its tenor, and in fact, became due and payable, and until in the month of March 1887. Defendant states that he is

advised that two partial payments were made on said promissory Note, to wit: One of thirty dollars on the 18th of October 1879, and one of thirty dollars on the 25th of October 1880, but he denies that he ever, at any time made any payment thereon. Defendant states that said Samuel M. Barrows, in his life time fully paid said promissory note to said Thomas J. Wiley was the holder, and owner of it.

Defendant further states that said Samuel M. Barrows died on the 6th day of March 1881, leaving Defendant the sole surviving partner of said firm of J. H. Morse & Co. Defendant also avers that during the Existence of the partnership between himself and said Samuel M. Barrows, from the beginning of it till it was dissolved by the death of said Samuel M. Barrows, they were equal partners in the business in which they were in partnership, as before stated, and as between themselves were each liable for half of any, and all, debts of said firm of J. H. Morse & Co., and that said Samuel M. Barrows, at his death left a large Estate subject to the payments of his debts consisting of lands, and personal property, situated in Jefferson County Missouri, in which he had his residence, at the time of his death, which was largely in Excess of all debts for which his Estate was liable, and Defendant states that within a short time after the death of said Samuel M. Barrows, to wit: in the month of March 1881 the Probate Court of Jefferson

County Missouri, appointed Ella P. Barrows, his widow, Administratrix of his Estate, who then duly qualified as such, and partially administered said Estate; but that before she finally settled it her letters, as such Administratrix, were revoked by her marriage; and that said Probate Court, thereupon, appointed one John H. Morse, Junior, as Administrator of said Estate, who duly qualified, as such, and, as such, completed the administration of said Estate, and made final settlement thereof, upon due and sufficient notice, which final settlement was made in said Probate Court and was approved by it at the February term in the year 1885.

Defendant further states that said Thomas J. Wiley, at the time of advancing to Samuel M. Barrows the consideration for which said promissory note was given and at the time of receiving said promissory note from him well knew who composed the firm of J. H. Morse & Co., as is herein before stated, when said Samuel M. Barrows died, knew of his death, at the time it occurred, and defendant further states that after letters of Administration were issued to said Ella P. Barrows, as such Administratrix, she within thirty days after they were issued, commenced the publication, in the Jefferson Democrat, a news paper published in Jefferson County Missouri, of a notice, which was published continuously, in said news paper, for three consecutive weeks, that said letters had been granted to her, stating the date of

the same, and requiring all persons having claims against said Estate, of Samuel M. Barrows, to exhibit them for allowance, to said administrator; within one year from the date of said letters; or that they might be precluded from any benefit of said Estate, and that if such claims be not Exhibited within two years from the time of such publication, they should be forever barred. And defendant avers that said promissory Note was never Exhibited to said Ella P. Barrows, for allowance against said Estate, while she was administrator of the same, or to John H. Morse Junior, while he was administrator thereof, and that it was never presented, for allowance, to the Probate Court of Jefferson County Missouri, or allowed by said Court against said Estate.

And defendant avers that, although, both said Thomas J. Wiley, and Plaintiff, have resided near him ever since the time of the date of said promissory Note, neither of them, at any time, informed him of the giving or Existence of the same, or of any consideration for which it was given. And defendant avers that he never knew of the Existence of said promissory Note, at any time, or had any information concerning it, or of any consideration for which it was given, till informed of its Existence by Plaintiff's attorneys, in the month of March 1887. Just before this action was commenced. And defendant avers that if he should be now compelled, by a Judgment of this Court, to pay said

promissory note a great injury, and wrong would thereby be perpetrated on him, for which no relief could be obtained by him; Either from the estate of Samuel M. Barrows, which has been finally settled, or otherwise. And having answered fully, in respect to said promissory note defendant asks to be discharged from payment of the same, or any part thereof.

And the answer of said Morse to the 2nd cause of action in said petition is in the words & figures following to wit:

* For further answer to the Petition of Plaintiff defendant admits that on, and prior to the 10th day of October 1878 he, and Samuel M. Barrows were partners in business under the firm name, and style of J. H. Morse & Co. but defendant avers that they were Partners in the purchase of goods and selling the same for profit, at a store kept by them, at Morse's Mills, in Jefferson County Missouri, and not otherwise, and that Plaintiff did not, at any time, have any reason to suppose them to be partners in any other respect. Defendant denies that said J. H. Morse & Co., on the 10th day of October 1878, or at any other time, executed, or delivered, to Plaintiff its promissory note; dated October 10th 1878, or at any other time, and denies that said firm of J. H. Morse & Co., by any such promissory note, of any date, promised for value received, or otherwise, to pay to the order

of Plaintiff; the sum of two hundred and fifty Dollars, or any other sum, either twelve months after the date thereof or at any other time, or with interest at the rate of ten per cent till paid, or any interest whatever.

Defendant denies that the promissory note filed with the Petition of Plaintiff, and referred to in the second Count thereof, which on its face purports to have been signed, and made, by said J. H. Morse & Co., and to have been drawn payable to the order of Plaintiff, was either executed by said J. H. Morse & Co., or by said J. H. Morse & Co., delivered to Plaintiff.

Defendant states that he is aware, from an inspection of said promissory note, and not otherwise, that the words J. H. Morse & Co. attached thereto, and which purports to be the signature of J. H. Morse & Co., to it, were written by Samuel M. Barrows. And defendant avers that he, himself, did not at any time, sign said promissory note, either with his own signature, or that of the firm of J. H. Morse & Co. And did not at any time, authorize the same to be signed, with his signature, or that of said firm, and defendant avers that said promissory note was not given for or on account, of said firm of J. H. Morse & Co., or of any business of defendant and said Samuel M. Barrows, as partners; and that no proceeds, or avails of said promissory note, or any money, or other thing which constituted the consideration of it ever

at any time, went into the firm of said J. H. Morse & Co., or the business which was transacted by defendant, and said Samuel M. Barrows, as partner. And defendant avers that he never, at any time, any benefit from, or on account of, said promissory note, either as a partner of said Samuel M. Barrows, or otherwise, but on the contrary defendant states that said promissory note was given by said Samuel M. Barrows, in the firm name of J. H. Morse & Co. without the knowledge, or consent, of defendant, for an individual debt, and liability, of said Samuel M. Barrows, and for a consideration moving to himself, alone, and with which the firm of J. H. Morse & Co. had nothing to do, and that Plaintiff well knew these facts, and with such knowledge, advanced to said Samuel B. Barrows the consideration for which said promissory note was given, and received said promissory note from him, without having any reason to believe that defendant, or the firm of J. H. Morse & Co. had authorized, or sanctioned, the giving of said promissory note, or had received, or would receive, any benefit from it, or the consideration for which it was given. Defendant states that he is advised that two partial payments were made on said promissory note, to wit: One of twenty five dollars, on October 18th 1879, and one of a like amount of ~~20~~ twenty five dollars, on the 25th of October 1880; but defendant denies that he ever, at any

time, made any payment thereon. Defendant states that said Samuel M. Barrows, in his life time, paid said promissory Note to Plaintiff in full. Defendant further states that said Samuel M. Barrows died on the 6th day of March 1881, leaving defendant the sole surviving partner of said firm of J. H. Morse & Co. Defendant also avers that during the existence of the Partnership between him self and said Samuel M. Barrows, from the beginning of it till it was dissolved by the death of said Samuel M. Barrows, they were equal partners in the business in which they were in Partnership, as before stated, and as between themselves, were each liable for one half of any, and all debts and liabilities, of said firm of J. H. Morse & Co. and that said Samuel M. Barrows at his death left a large Estate; subject to the payment of his debts consisting of lands, and personal property, situated in Jefferson County Missouri, in which he had his residence at the time of his death, which was largely in excess of all debts, and liabilities, of his Estate, and that his Estate was abundantly solvent, And Defendant states that within a short time after ~~the~~ the death of said Samuel M. Barrows to wit: in the Month of March A.D. 1881 the Probate Court of Jefferson County Missouri, appointed Ella P. Barrows, his widow, Administratrix of his Estate, who duly qualified as such, and partially administered

said Estate; but that before she finally settled it her letters, as such administratrix, were revoked by her marriage, and that said Probate Court, thereupon, appointed one John H. Merse Junior, as Administrator of said Estate; who duly qualified as such, and as such, completed the administration of said Estate; and made final settlement thereof, upon due, and sufficient notice, which final settlement was made in said Probate Court, and was approved by it at its February term in the year 1885.

Defendant further avers that Plaintiff, at the time of advancing to said Samuel M. Barrows the consideration the consideration for which said promissory Note was given, and at the time of receiving said promissory Note from him, well known who composed the firm of J. H. Morse & Co, as is hereinbefore stated, and when said Samuel M. Barrows died, knew of his death, at the time it occurred. And Defendant further states that, after letters of administration were issued to said Ella P. Barrows, as such administratrix, she, within thirty days from the time of the issuing of the same, commenced the publication, in the Jefferson Democrat, a newspaper published in Jefferson County Missouri, of a notice; which was published continuously, in said newspaper, for three consecutive weeks, that said letters had been granted to her; stating the date of

the same, and requiring all persons having claims against said Estate of Samuel M. Barrows, to exhibit them, for allowance, to said Administratrix within one year from the date of said letter or that they might be precluded from any benefit of said Estate, and that if such claims be not Exhibited within two years, from the time of such publication, the same should be forever barred. And Defendant avers that said promissory Note was never Exhibited to said Ella P. Barrows, for allowance against said Estate, while she was administratrix of the same, or to John H. Morse Junior while he was administrator thereof, and that the same was never presented to the probate Court of said County, for allowance, or allowed against said Estate.

And Defendant avers that, although Plaintiff has resided near him ever since the time of the date of said promissory Note, he did not, at any time, inform Defendant of the giving, or existence, of said promissory Note, or of any consideration for which it was given; and Defendant avers that he never, at any time, knew of its existence, or had any information concerning it, or concerning any any consideration for which it was given, until in the month of March 1887.

And Defendant avers that if he should now be compelled by Judgement of this Court, to pay said promissory Note a great injury, and fraud,

would thereby be perpetrated on him; for which he could not obtain any relief from the Estate of Samuel M. Barrows, which was finally settled before he knew of the Existence of said promissory Note, or otherwise. And having answered fully in respect to said promissory Note, defendant asks to be discharged from payment of the same, or any part thereof."

Defendant therefore avers that all matters and issues in this suit have been fully adjudicated and settled in said former suit tried at said May Term 1887 wherein this defendant was plaintiff and the plaintiff herein was defendant, and having fully answered pray to be discharged with costs.

Thomas & Horne
Attorney for Defendant

#34845-

In the Jefferson Co. Ct.
Doct. 7 1887.

John St. Moore
Peff

no 1

J. S. Wiley

(No 4) Deft

County

Answer of
Deft

Refiled June 8th 1888

D. B. Nease
con

Filed Dec. 8th 1887.

D. B. Nease
con

Thomas St. Moore
Deft

In the St. Louis Court of Appeals.

March Term A. D., 1888.

Tuesday April 10th A. D., 1888.

S. S. Wiley,	Respondent.,	:	
		:	Appeal from the Circuit Court of
vs.	No. 3928.	:	
		:	Jefferson County.
James H. Morse,	Appellant.	:	

O P I N I O N O F T H E C O U R T.

In the year 1878 the defendant and one Barrows were equal partners in the business of keeping a country store. On the 26th of September, 1878, Barrows executed a negotiable promissory note for \$300., in favor of Thomas J. Wiley, signing the firm name thereto, and Thomas J. Wiley endorsed the same to this plaintiff. The transaction was had entirely with the plaintiff, and Thomas J. Wiley was a mere conduit through which the note passed to the plaintiff. On the 18th of October, 1878, Barrows executed another promissory note for \$250., in favor of the plaintiff again signing the firm name thereto. Barrows died in 1881 possessed of a solvent estate of the value of some \$15000., which was duly administered upon and the administration closed prior to the bringing of this suit. The defendant Morse continued to carry on a store at the same place and the plaintiff dealt with him on credit, and, according to his testimony, never mentioned the fact of his possession of these notes until shortly before the bringing of the present action upon them in the year 1887. The plaintiff never exhibited the notes as a demand against the estate by Barrows, although advised to do so. Testifying as a witness, he gave as his reason for not doing so that the defendant had requested him not to do so. The defendant in his testimony denies this, but admits that he had such a conversation with the plaintiff's brother, but that it related to

another note given by the partnership, and not to either of the notes in suit.

The defenses stated in the answer with which we need concern ourselves were two fold: 1. An allegation that the notes were not the notes of the firm but the individual notes of Barrows; that Barrows had no authority to give these notes for the firm, and that the consideration of them did not move to the firm, of which the plaintiff had knowledge. The answer was verified by the defendant's affidavit. -- 2. That the notes had been paid.

At the trial the plaintiff offered himself as a witness generally in the case, and, on objection of the defendant, he was not permitted to testify. Thereafter the defendant took the stand and testified as a witness in his own behalf. The plaintiff then offered himself as a witness in rebuttal of the defendant's testimony, and, against the objection of the defendant, the Court admitted him as a witness. The manner in which the witness was tendered, and the objection made, are thus stated in the bill of exceptions: "Plaintiff then offered himself as a witness in his own behalf, in rebuttal of the evidence of defendant; but defendant objected, because Barrows being dead, plaintiff was not a competent witness in his own behalf; which objection the Court overruled and permitted plaintiff to testify in rebuttal of defendant's testimony; to which action of the Court defendant at the time excepted." The propriety of this ruling is the sole question which arises upon this record.

We take the view that the witness was competent for the purpose for which he was tendered and for which he was admitted by the Court as a witness; and that if, in the ^{course} ~~Court~~ of his examination, questions were put to him which sought to elicit matters for

which he was not competent, those questions should have been made the grounds of specific objections and exceptions. The mere fact that one of the adversary parties to the transaction is dead, does not of itself disqualify the other as a witness. Wallace vs. Jecko, 25 Mo. App., 313; Fulkerson vs. Thornton, 68 Mo. 468; Nugent vs. Curran, 77 Mo. 323; Williams vs. Perkins, 83 Mo. 379. But where the contract or transaction which ~~the~~ is the subject of the suit was effected solely by or through the deceased party, in behalf of himself and his survivors, the opposing party is disqualified. Wallace vs. Jacko, supra; Fulkerson vs. Thornton, supra; Nugent vs. Curran, supra; Williams vs. Perkins, supra; Butts, vs. Phelps, 79 Mo. 302; Staunton vs. Ryan, 41 Mo. 510. The obvious consequence of these two propositions is that this disqualification does not extend so far as to exclude the witness from testifying concerning those facts as to which the survivor has testified. The contrary view would, in a case like the present, turn the statute into an engine of injustice, by allowing the surviving party to detail as a witness a mass of transactions of circumstances alleged to have transpired between himself and the other party, without giving the other party the right to give his version of them. In this case Morse professedly knew nothing about the negotiations or dealings between the plaintiff and Barrows, his deceased partner, which led to the execution of these notes in the firm name by Barrows; but he was allowed to detail a number of circumstances leaving to the conclusion that the notes were not debts of the partnership, --such as the fact that Barrows kept the partnership books but that no entry which could refer to the consideration of the notes was ever made upon them, and that he had ~~not~~

not requested the plaintiff through his brother not to present these notes in the Probate Court against the estate of Barrows.

We see nothing in the testimony of the plaintiff which did not go in rebuttal of that of the defendant except the single statement that the notes had not been paid. This, if ~~thought~~ prejudicial, should have been objected to at the time.

Judge Rombauer concurring, the judgment is affirmed.

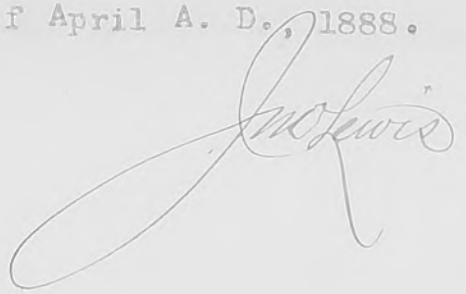
Seymour D. Thompson.

A true copy of the opinion:

Witness my hand and the seal of the St.

Louis Court of Appeals, this 11th

day of April A. D., 1888.

 - Clerk.

In the St. Louis Court of Appeals.

March Term, 1888
Tuesday April 10th 1888

S. S. Wiley Respondent } Appeal from
John H. Morse vs. } Circuit Court
Appellant } of Jefferson County.

Now again come the parties aforesaid, by their respective attorneys, and the Court being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment rendered herein by the said Circuit Court of Jefferson County _____ be in all things affirmed and stand in full force and effect, and that the said respondent _____ recover of the said appellant his _____ costs and charges herein expended, and have execution therefor. Opinion filed.

STATE OF MISSOURI, ss.

I, JOHN LEWIS, Clerk of the St. Louis Court of Appeals, certify that the above and foregoing is a full, true and complete copy of the judgment rendered in the above entitled cause, as fully as the same remains of record in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at office in the City of St. Louis, this 18th day of April A. D. eighteen hundred and eighty-eight.

John Lewis.
Clerk.

6422

No 3928.

ST. LOUIS COURT OF APPEALS.

J. J. Wiley.

John H. Merrell.

MANDATE.

JUDGMENT OF

Consist of \$1000.00.

AFFIRMED.

Filed April 24/1888

*D. J. Neasey
Clerk*

