

Jefferson County Circuit Court
Case Files - Civil
May 1887

Folder 2022

Box 38 Folder 55

Wiley, S.S.

115.

Morse, John H.

Debt, notes

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

John W. Morse
Plaintiff
Against
S. S. Wiley
Defendant

In the Circuit
Court of Jefferson
County
Missouri.
In September
term 1887.

Plaintiff states that prior to the year 1878 Plaintiff and Samuel W. Barrows formed a partnership under the firm name of J. W. Morse and company for the purpose of carrying on the business of retail merchants, by purchasing goods and merchandise and selling the same for profit, at a store to be kept by them at Morse's Mills in Jefferson County Missouri, and engaged in said business, at said place, as partners under said firm name, and continued the same until said firm was dissolved by the death of said Barrows in March 1881. Plaintiff further states that in September 1878, while he and said Barrows were carrying on said business, as partners, at their said store, under said firm name, said Barrows bought a

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

Plaintiff states that said Wiley sold said hogs to said Barrows, and received said promissory note from him, knowing that said firm was composed of Plaintiff and said Barrows, and the character of the business in which it was engaged, and 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 had been formed, and without any reason to believe that said hogs had been bought for, or on account of, said firm, or that Plaintiff knew of said transaction, or that he knew

of, or approved, the giving of said promissory note signed with the firm name of said firm, and knowing that said hogs were purchased by said Barrows for his individual use, and not for, or on account of, said firm, and that the firm name of said firm was signed by him to said promissory note, and that it was, by him, delivered, in payment for said hogs, without authority, and that it was in no sense the promissory note of said firm. Plaintiff further states that no part of the consideration for which said promissory note was given ever went into, or was received by said firm, and that Plaintiff never received any benefit from said transaction, or from said promissory note.

Plaintiff further states that said Barrows paid two years interest on said promissory note, in his life time, as Plaintiff has learned since becoming aware of the giving, and existence, of the same, which was in March 1887. Plaintiff states shortly after said promissory

note was received by said Wiley, from said Barrows, he sold or otherwise disposed of it, to Defendant, passing it to him merely by delivery, without any assignment, or endorsement, and that it was not assigned, or endorsed by said Thomas J. Wiley until in March 1887, when he made a transfer of it to Defendant, who had, before he received it, ~~with~~ full knowledge of all the facts connected with its consideration, and execution, by writing his name across the back of it.

Plaintiff further states that in September 1878, while he and said Barrows were partners, as aforesaid, said Barrows bought a lot of hogs from Defendant, for his individual use, and drew a promissory note, 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; that said ~~hog~~ promissory note was drawn for the sum

of two hundred and fifty dollars, payable to the order of Defendant, falling due twelve months after date, bearing interest at the rate of ten per cent per annum till paid, and was dated October 10th 1898.

Plaintiff states that Defendant sold said hogs to said Barrows, and received said promissory note from him, knowing that said firm was composed of Plaintiff and said Barrows, and the character of the business in which it was engaged, and 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 it had been formed, and without any reason to believe that said hogs had been bought for, or on account of said firm, or that Plaintiff knew of said transaction, or that he knew of, or approved of the giving of said promissory note signed by the firm name of said firm, and knowing that said hogs were purchased by said Barrows

for his individual use, and not for, or on account of, said firm, and that the firm name of said firm was signed by him to said promissory note, and that it was by him delivered in payment for said hogs without authority, and that it was not the promissory note of said firm. Plaintiff further states that no part of the consideration for which said promissory note was given ever went into, or was received by said firm; and that Plaintiff never received any benefit from said transaction, or from said promissory note. Plaintiff further states that said Barrows paid two years interest on said promissory note, as Plaintiff has learned since becoming aware of the giving, and existence of the same, which was in March 1887.

Plaintiff states that Defendant instituted a suit against him on said two promissory notes

in the Circuit Court of Jefferson County Missouri in April 1887; that the first count or alleged cause of action in the Petition in said action was founded on said promissory note drawn payable to the order of said Thomas J. Wiley, and contained averments of the existence of a partnership between Plaintiff and said Samuel M. Barrows at the time said promissory note bears date; that they were partners in business under the firm name of J. H. Morse and Company; that said firm on the 26th day of September 1878 executed, and delivered said promissory note to said Thomas J. Wiley, by which it promised, for value received, to pay to him, or order, three hundred dollars, twelve months after the date thereof, with interest at the rate of ten per cent per annum till paid; that said Samuel M. Barrows had departed this life; that said Thomas J. Wiley had assigned said promissory note by endorsement to the Plaintiff in said action, who is alleged to be the holder and owner of it; that Defendant paid two years interest on said promissory note, respectively on Oct. 18th 1879, and Oct. 25th 1880; averring ~~that~~ the balance of said promissory note with accrued interest to be due the Plaintiff in said action, and asking judgment for the

Amount of principal and interest of
said promissory note.

That the second count, or alleged cause
of action, contained in said petition
was based on said promissory note
drawn payable to the order of ~~said~~ the
Plaintiff in said action, and contained
averments as follows, to wit: that
Plaintiff ^{Defendant in said action} and ~~said~~ Samuel M. Barrows
were partners in business under the
firm name of J. W. Morse and company
on and prior to October 10th 1878; that
said firm on that date executed and
delivered said promissory note to the
Plaintiff in said action, by which it
promised to pay to him, or his order,
for value received, two hundred
and fifty dollars, twelve months
after the date thereof, with interest at
the rate of ten per cent per annum
till paid; that Samuel M. Barrows
had died; that Defendant paid two
years interest on said promissory
note, respectively on Oct. 18th 1879, and
Oct. 25th 1880; averring the balance
of said promissory note with
accrued interest to be due Plaintiff
in said action, and asking judgment
for the amount of the same.

Plaintiff states that said action
was returnable to, and triable

at, the May term 1887 of said court. And that Plaintiff, who was Defendant in said action, filed his answer to said Petition, in said court, at said term, verified by his affidavit, by which he plead the following defences to the first count, or alleged Cause of action in said Petition, founded on said promissory note drawn payable to the order of said Thomas J. Wiley, namely:

1. An admission that Plaintiff and Samuel M. Barrow were partners in business on, and prior to September 26th 1878, and up till in March 1881, under the firm name of J. H. Morse and Company; with an averment that they were partners in purchasing goods and merchandise, 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 said Thomas J. Wiley at no time had any reason to believe them Partners in any other respect.

2. A denial of the Execution

or delivery of said promissory note to said Thomas J. Wiley by said firm, at any time.

3. A denial of the execution or delivery of said promissory note by said firm.

4. An averment that Samuel M. Barrows signed the firm name of said firm of J. H. Morse and Company to said promissory note, and delivered it to said Thomas J. Wiley in payment of an individual debt of said Barrows, and that the same was done without the knowledge or consent of this Plaintiff. And that said Thomas J. Wiley advanced to said Barrows

the consideration for which said promissory note was given, and received said promissory note from him, knowing that the firm name of said firm of J. H. Morse and Company was signed to the same by said Barrows, and that it was delivered to him by said Barrows in payment of his own individual debt, and without any reason to believe that this Plaintiff knew of, or approved the signing of said firm name to said promissory note.

5. An averment that no portion of any proceeds, or avails of said promissory note, or of the consideration for which it was given, ever went into, or was received by said firm of J. H. Morse and Company. And that this Plaintiff at no time received any portion of, or any benefit from, said promissory note, or the consideration for which it was given.

6. A denial that this Plaintiff ever paid any interest on said promissory note.

And by which answer Plaintiff, Defendant in said action, Plead

the following defences to the Second Count, or alleged cause of action of said petition based on said promissory note drawn payable to the Plaintiff in said action, the Defendant herein, namely:

1. An admission that, ^{Plaintiff} herein and Samuel M. Barrows were Partners in business on and prior to October 10th 1878, and that they continued such till in March 1881, under the firm name and style of J. H. Morse and Company, with an averment that they were Partners in the purchase of goods ^{and merchandise} 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 the Plaintiff in said action had no reason at any time to believe them Partners in any other respect.

2. A denial of the Execution, ~~or~~ or delivery of said promissory note, by said firm of J. H. Morse and Company.

3. An averment that Samuel M. Barrows signed the firm

name of said firm of J. H. Morse and company to said promissory note, as this Plaintiff knew from an inspection of it, ~~and~~ ~~delivered~~ and delivered it to the Plaintiff in said action in payment of an individual debt and liability, of said Barrows, and that the same was done without the knowledge or consent of the Plaintiff herein. And that the Plaintiff in said action advanced to said Barrows the consideration for which said promissory note was given, and received said promissory note from him, knowing that the firm name of said firm of J. H. Morse and company was signed to the same by said Barrows, and that it was delivered by said Barrows to him in payment of an individual debt of said Barrows, and without any reason to believe that this Plaintiff knew of, or sanctioned the signing of the firm name of said firm to said promissory note.

4. An averment that no part of

Any proceeds of said promissory note, or the consideration for which it was given, ever went into, or was received by, said firm of J. W. Morse and company. And that Plaintiff at no time received any portion of any proceeds of said promissory note, or of the consideration for which it was given.

5. A denial that Plaintiff, the defendant in said action, ever paid any interest on said promissory note.

6 Plaintiff states that upon said Petition, and Answer, together with a Replication to said Answer filed in said Cause, by the Plaintiff in said case, the Defendant herein, in which he denied generally each and every allegation of new matter contained in said answer said Cause came on for trial in said Court, and was tried at the May term 1887, by the Court without a jury. Plaintiff further states that at the time he first learned of the existence of said promissory notes, in March Eighteen hundred

And Eighty Seven, they were shown^{to him} by Defendant's Attorneys. And Plaintiff States that he was well acquainted with the hand writing of Said Samuel M. Barrows, in his life time, and knew when Said promissory notes were shown to him, that they with two credits on each of them, expressed to be for interest, and which were the same payments of interest hereinbefore mentioned as having been made by Said Barrows, were in the hand writing of Said Barrows. And Plaintiff States that although he found on inspecting Said promissory notes that they had been ^{drawn} and signed by Said Barrows with the firm name of Said firm of J. H. Morse and Company he had no reason to believe either of them to have been given on account of Said firm, but on the contrary was satisfied from the fact that Said Barrows had drawn them, and as indicated by the credits in his own hand writing, had paid two years interest on each of them, without making any mention of either of Said transactions to Plaintiff, or otherwise advising him of the giving, or existence of Said promissory notes, or either

of them, as well as from his knowledge of the business of said firm, that they had both been given by said Barrows, in the firm name of said firm, for individual debts of his own. But Plaintiff states that he had no idea what the consideration of either of said promissory notes had been. Plaintiff states that on seeing said promissory notes, as aforesaid, and arriving at the conclusion just stated in respect to them, he exerted himself to the utmost of his ability to ascertain the facts in regard to the giving and consideration of each of them, by making inquiries in respect to the same of all such persons as he had any reason to think might be able to impart any information in regard to said matter; and by making examination of the books of said firm of J. W. Morse and company, which had been kept for said firm by said Barrows; and by inspecting all papers, and memorandums left by said Barrows at his death ~~of~~ to which Plaintiff could obtain access, or find,

which he had any reason to think might furnish any information in respect to the consideration, or giving of either of said promissory notes. And by sending persons to said Thomas J. Wiley and Defendant, and having inquiries made of them in regard to the consideration of said promissory notes, and the circumstances under which they were given. And Plaintiff states that he was unable to obtain any information from said Thomas J. Wiley, or Defendant, or from any other source, touch the giving, or consideration of either of said promissory notes. And that he was compelled to file his answer in said cause, at the May term 1887 of said court, without knowing, or being able to allege, what the consideration of either of said promissory notes had been, or under what circumstances either of them had been given; but was compelled to state in his answer, as he did, as the result of the inference drawn by him from the circumstances above detailed, that said promissory notes were respectively given by said Barrows, in the firm name of said firm of J. H. Morse and company, for his individual debts, without alleging, or being able to allege, what the consideration

(2)
of either of them had been. And Plaintiff States that in the aforesaid Condition of profound ignorance of all the facts concerning the consideration of both of said promissory notes, and of the circumstances under which they were respectively given, he was compelled to go to trial in said cause at at the May term 1887 of said Court, without knowing of any testimony, or witness, by whom he could prove any defence plead in his answer; as he could not have made an affidavit for a continuance which would have entitled him to a continuance of the cause, or to any delay of the trial of the same.

Plaintiff further States that on the trial of said cause Defendant, who was Plaintiff in said action, introduced said Thomas J. Wiley as a witness in his behalf, and had him examined as such.

And Plaintiff States that when Defendant made said Thomas J. Wiley a witness in his behalf, ~~in said cause~~ and

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(11)
which he had any reason to think might furnish any information in respect to the consideration, or giving of either of said promissory notes. And by sending persons to said Thomas J. Wiley and Defendant, and having inquiries made of them in regard to the consideration of said promissory notes, and the circumstances under which they were given. And Plaintiff states that he was unable to obtain any information from said Thomas J. Wiley, or Defendant, or from any other source, touch the giving, or consideration of either of said promissory notes. And that he was compelled to file his answer in said cause, at the May term 1887 of said court, without knowing, or being able to allege, what the consideration of either of said promissory notes had been, or under what circumstances either of them had been given; but was compelled to state in his answer, as he did, as the result of the inference drawn by him from the circumstances above detailed, that said promissory notes were respectively given by said Barrows, in the firm name of said firm of J. H. Morse and company, for his individual debts, without alleging, or being able to allege, what the consideration

of either of them had been. And Plaintiff States that in the aforesaid Condition of profound ignorance of all the facts concerning the consideration of both of said promissory notes, and of the circumstances under which they were respectively given, he was compelled to go to trial in said cause at at the May term 1887 of said Court, without knowing of any testimony, or witness, by whom he could prove any defence plead in his answer; as he could not have made an affidavit for a continuance which would have entitled him to a continuance of the cause, or to any delay of the trial of the same.

Plaintiff further States that on the trial of said cause Defendant, who was Plaintiff in said action, introduced said Thomas J. Wiley as a witness in his behalf, and had him examined as such. And Plaintiff States that when Defendant made said Thomas J. Wiley a witness in his behalf, ~~in said cause~~ and

him
caused ~~said Thomas J. Wiley~~ ^{him} to testify
as a witness in said cause, he was
aware that said witness knew the
following facts, to wit:

1. That said promissory note which
had been drawn payable to ^{the order of} said
Thomas J. Wiley, the witness, had been
drawn by Samuel M. Barrows, who
had signed the firm name of said
firm of J. H. Morse and company
to it, and that it had been by said
Barrows delivered to said witness
in payment for hogs which said
Barrows bought for his individual
use from said witness.

2. That said firm of J. H. Morse and
company was composed of Plaintiff
and said Samuel M. Barrows.

3. That Plaintiff and said Barrows
were engaged as partners, under the
said firm name, in buying goods
and merchandise, and selling the
same for profit, as retail merchants,
at their store, at Morse's Mills, in
Jefferson County Missouri.

4. That the purchase of said hogs by
said Barrows was a transaction not
in the line of the business of said
firm.

5. That said witness received said promissory note from said Barrows, in payment for said hogs, knowing all of said facts, and without any reason to believe that Plaintiff knew of the giving of said promissory note, or that he approved of the signing of the firm name of said firm to it.

6. That at the time of receiving said promissory note from said Barrows, in payment for said hogs, said witness knew that the firm name of said firm had been signed to the same by said Barrows without authority, and that it was not the promissory note of said firm.

But Plaintiff states that notwithstanding defendant knew that said witness knew said facts he was aware that said witness would not testify to them, but that he would testify that he had never owned, or had possession of said promissory note, and that he did not know what the consideration of it had been, or the circumstances under which it had been given, and that he would further testify that Plaintiff had told him shortly after the death of said Barrows that he would pay

Defendant's notes. And Plaintiff States that said witness testified, while on the stand as a witness for Defendant, that he had never owned said promissory note, or had possession of it, ^{that he} and did not know what the consideration of it had been, or why it had been drawn in the firm name of said firm, and that he had merely endorsed it to Defendant to place the legal title of it in him. And that Plaintiff had told him, shortly after the death of Samuel M. Barrow, that he would pay Defendant's notes; and that he on the same day informed ^{him} Defendant of what Plaintiff told ^{him} about paying his notes.

Plaintiff States that with the testimony of said witness, Defendant, the Plaintiff in said action, closed his testimony in said cause, and that Plaintiff, Defendant in said action, was then sworn as a witness in the cause, in his own behalf, and testified as follows, to wit:

1. That he and Samuel M. Barrow were partners, as retail merchants, at a store kept by them, at Morse's

Mills in Jefferson County Missouri, under the firm name of J. H. Morse and Company, at the time the promissory notes sued on bear date, and had been for years prior to that time, and continued to be such till said firm was dissolved by the death of said Barrows, on March 6th 1881; that the business of said firm consisted of buying goods and merchandise, and selling the same for profit, at the Store of the firm, at Morse's Mills in said County; and that he and said Barrows were not partners in any other respect.

2. That Samuel M. Barrows never at any time mentioned either of the promissory notes sued on to him, or any transaction out of which either of them could have arisen originated.

3. That he did not know what the consideration of either of them was.

4. That he never heard of either of them until in March 1887, when he received a letter from defendant's Attorneys informing him that they

had them for collection; that he then called at the office said Attorneys, shortly after receiving said letter, and saw said promissory notes; that on seeing them he knew, as he had been familiar with the hand writing of Samuel M. Barrows, that said promissory notes and two credits, expressed to be for interest paid on each of them, were in the hand writing of said Samuel M. Barrows.

5. That he was satisfied that no part of the consideration of either of said promissory notes, or of the proceeds of either of them, had ever been received by, or gone into the firm of J. H. Morse and company.

6. That he had examined the books of said firm, which had been kept by said Samuel M. Barrows, and found that they contained no entry, or memorandum, in respect to either of said promissory notes, or to any transaction out of which either of them could have originated. And that said Books did not show that said Barrows ever charged said firm with any interest paid on either of said promissory notes.

7. That Plaintiff never told Thomas J. Wiley that he would pay either, or both, of said promissory notes, and that no such matter was ever mentioned between them.

8. That Plaintiff continued ~~merchandise~~ merchandising after the death of Samuel M. Barrows, at the same place where said firm had carried on that business, and that Defendant continued to deal with him, in his store, until in August 1886, buying goods from him, sometimes on a credit, and paying ~~and paying~~ Plaintiff his accounts for the same, from time to time in cash, and that Defendant did not, at any time, mention said promissory notes, or either of them to Plaintiff, or offer to collect any portion of either of them from him.

Plaintiff States that when he closed his testimony Defendant testified as a witness in his own behalf, in rebuttal of the testimony which had been given by Plaintiff. And Plaintiff States that when Defendant became a witness in said cause he knew the following facts, to wit:

1. That said promissory note which had been drawn payable to the order of said Thomas J. Wiley had been drawn by Samuel M. Barrows, who had signed the firm name of said firm of J. H. Morse and Company to it, and that said Barrows had delivered it to said Thomas J. Wiley in payment for hogs, which he had bought from said Thomas J. Wiley, for his individual use.

2. That when said promissory note was given said firm of J. H. Morse and Company was composed of Plaintiff and said Samuel M. Barrows.

3. That Plaintiff and said Barrows were at the time engaged, as partners under said firm name, in buying goods and merchandise,

and selling the same for profit, as retail merchants, at their Store, at Morse's Mills in Jefferson County Missouri.

4. That the purchase of said hogs, by said Barrows, was a transaction not in the line of the business of said firm.

5. That said Thomas J. Wiley received said promissory note from said Barrows, in payment for said hogs, knowing said facts, and without any reason to believe that Plaintiff knew of the giving of said promissory note, or that he approved of the signing of the firm name of said firm to it.

6. That at the time of receiving said promissory note from said Barrows, in payment for said hogs, said Thomas J. Wiley knew that the firm name of said firm had been signed to it by said Barrows, without authority, and that it was not the promissory note of said firm.

7. That said promissory note which had been drawn payable to

his own order had been drawn by Samuel M. Barrows, who had signed the firm name of the firm of J. W. Morse and Company to the same, and that it had been delivered to him by said Barrows, in payment for hogs, which said Barrows had bought from him for his individual use.

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8. That when said promissory note was given said firm of J. W. Morse and Company was composed of Plaintiff and said Samuel M. Barrows.

9. That Plaintiff and said Barrows were at the time engaged, as partners, under said firm name, in buying goods and merchandise, and selling the same for profit, as retail merchants, at their store, at Morse's Mills in Jefferson County Missouri.

10. That the purchase of said hogs by said Barrows was a transaction not in the line of the business of said firm.

11. That he received said promissory note from said Barrows in payment for said hogs knowing said facts, and without any reason

to believe that Plaintiff knew of the giving of said promissory note, or that he approved of the signing of the firm name of said firm to the same.

12. That when he received said promissory note from said Barrows in payment for said hogs, he knew that the firm name of said firm had been signed to it by said Barrows without authority, and that it was not the promissory note of said firm. But Plaintiff states that,

Notwithstanding Defendant knew said facts, he testified in said cause that both of the promissory notes sued on in said action to wit: that which had been drawn payable to the order of said Thomas J. Wiley, and that which had been drawn payable to his own order, had been drawn by Samuel M. Barrows, one of the partners in the firm of J. H. Morse and Company, ~~in~~ who had signed the firm name of said firm to them, and delivered them to him, for cash loaned by him; that said Thomas J. Wiley never owned, or had possession of said promissory

note which had been drawn payable to his order, and had not furnished any of the consideration for which it was given. And denied that either of said promissory notes had been given in payment for hogs.

Plaintiff states that if said Thomas J. Wiley, and Defendant had not testified as witnesses in said cause the finding and decision of said court might well have been for Plaintiff, who was Defendant in said action, upon both counts, or alleged causes of action in said petition, and that the court would necessarily have found the issues for him upon both of said counts, or alleged causes of action, and would have rendered judgment for him accordingly, if said Thomas J. Wiley, and Defendant had testified to the facts above stated. But Plaintiff states that as he was ignorant of all said facts in respect to the consideration of either of said promissory notes, and of the circumstances under which they were respectively given, and was therefore unable to testify anything concerning the

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Same, and did not have, or know,
of any witness by whom he
could prove any ~~of said~~ facts
in relation to what the consideration
of either of said promissory notes
had been, or the circumstances
under which either of them
had been given, said court
in trying said cause acted on,
and was controled by the
testimony of said Thomas J.
+ Wiley, and Defendant, ~~et cetera~~
given by them as above stated,
and was by said testimony
induced to find the issues in
said cause upon both counts,
or alleged causes of action
in said Petition for the
Plaintiff in said action, the
Defendant herein, and to
render judgment for him in
said action accordingly, for
the sum of four hundred and
ninety nine & $\frac{33}{100}$ Dollars on account
of said promissory note which
had been 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 which had
been drawn payable to his own
order; aggregating the ~~sum of~~

Sum of nine hundred and fourteen & $\frac{40}{100}$ Dollars.

Plaintiff further States that he has ascertained that said promissory note which was drawn payable to the order of said Thomas J. Wiley was drawn by said Samuel M. Barrows who signed the firm name of said firm of J. H. Morse and company to it, and delivered it to said Thomas J. Wiley in payment for hogs purchased by him from said Thomas J. Wiley for his individual use, and that the same was done by him under the circumstances, and with the knowledge on the part of said Thomas J. Wiley hereinbefore set out and stated; and has also learned ~~and~~ that ~~ascertained~~ he can satisfactorily prove said facts; and has ascertained the witnesses by whom he can prove the same. And Plaintiff States that he has come to the knowledge of all said facts, which were before unknown to him, since the adjournment of the term of the court at which said cause was tried, and said judgment rendered.

Plaintiff further states that he has ascertained that said promissory note, which was drawn payable to the order of Defendant, was drawn by said Samuel M. Barrows who signed the firm name of said firm of J. H. Morse and company to the same, and delivered it to Defendant in payment for hogs which said Barrows bought from Defendant, for his individual use, and that the same was done by said Barrows under the circumstances, and with the knowledge on the part of Defendant hereinbefore stated; and Plaintiff states that he has ascertained that he can prove all said facts; and satisfactorily establish the same; and that he has ascertained the witnesses by whom he can make such proof. And Plaintiff avers that said knowledge has come to, and been received by him, for the first time since the adjournment of the term of court at which said cause was tried, and said judgment rendered.

Plaintiff further States that in procuring said judgment, in the manner, and by the means aforesaid, Defendant perpetrated a great and grievous fraud ~~against~~ on Plaintiff, and that he is now threatening to enforce the collection of said fraudulent judgment against Plaintiff, by a sale of Plaintiffs property to satisfy the same, and will do, so, to the great and irreparable injury and damage of Plaintiff unless this Court shall interpose to prevent the same, and to award justice to Plaintiff in the premises.

Plaintiff, ^{therefore} prays the Court, in consideration of the premises, that the Court will by appropriate Decree set aside, vacate, and annul, said judgment because of the fraud perpetrated by Defendant in obtaining the same as hereinabove stated, and that the Court will perpetually restrain, and enjoin Defendant from proceeding in the future to ~~to~~ enforce the collection of said Judgment, or any

portion of the same, or that
the Court will award a new
trial of said Cause, ^{which is} founded
on said promissory notes, as
the Circumstances of the case
may require. And that the
Court will grant Plaintiff
such other, and further
relief in the premises, as
may be just, and proper.

Jos. Williams
Attorney for Plaintiff

John W. Morse
vs
J. S. Wiley

Amended Petition
of Plaintiff

Filed May 23/1885
Geo. B. Rogers
Clerk

COUNTY OF JEFFERSON, Set.

The State of Missouri,

To the Sheriff of the County of Jefferson, Greeting:---

WHEREAS,

J. Wiley W. H. H.

on the *21st* day of *May* in the year of our Lord eighteen hundred and *eighty seven*, at our Circuit Court, hath recovered against

John M. Moore Defendant

the sum of *Nine hundred and fourteen and 70/100* dollars for his debt and damages with interest from date of judgment at the rate of ten per cent per annum until paid; and also for costs of suit therein laid out and expended.

These are, therefore, to command you, that of the Goods and Chables, and Real Estate of the said

John M. Moore Defendant

you cause to be made the said Debt, Damages and Costs, and that you have the same before the Judge of said Court on the *second* Monday of *May* next, to satisfy the Debt, Damages and Costs aforesaid, and that you certify how you execute this writ, and have you then and there this writ.

Witness,

A. D. Haggell, Clerk of our said Circuit Court at Hillsboro, this

21st day of *April*, eighteen hundred and *eighty seven*.

A. D. Haggell day of *April*

Clerk.

NO. 8

To the Circuit Court of

JEFFERSON COUNTY.

May TERM, 1888

S. S. Wiley

vs

John H. Morse

Warrant May 21st 1888

Int 10% Bond 13/ page 131

" " " " " "

Amount

914.40

Costs

21.45-

#936.86-

Diff.

\$ 50

\$936.36-

Cash on hand 460.60

Warrant 13/13

Filed May 23/1888

W. B. Veatch

460
114
346

1/13

Received by me April 24th 1888.

George W. McFay Sheriff

May 23rd 1888 Return the Execution
Not Satisfied By order of Plaintiffs Attorney

George

G. W. McFay
Sheriff Jefferson Co. Mo

State of Missouri } In the Circuit Court
County of Jefferson } May Term 1888

Trial by Court Verdict for plaintiff and judgment
against Defendant, May 21st 1887 for
Judgt affirmed in Ct of Appeals Apr. 18th 1888 914 40

Bill of Costs

D.B. Veazey Clerk		
14 files 70 / Copy pet 45 / crs 50 / With & copy 100	275-	
3 sps. 75 / 3 affd to with claims 10	90	
Time for ans. & tender 30 / Setting day for trial 20	50	
Time for ans. & tender 30 / Ans. filed 30	60	
Leave to verify by Affd 30 / Mo. to strike out 20	50	
Replication 30 / Appr 20 / Court 25	75-	
Verd. 30 / Judgt 50 / Do cr Judgt 10	90	
Mo for new trial 20 / Mo. overruled 30	50	
Affd for appeal 30 / Appeal granted 30	60	
Ord fix bond 20 / Leave to file bond 30	50	
Leave to file bill & 30 / Ent Judgt Ct. Appeals 50	80	
Fee bill 10 / Cost 20 / Copy 20	50	
4 Doc 20 / Execution 100	120	1100

Geo W. McFry Sheriff
Serving With 100 / 6 sps 35 / 5 Calls 25 425-

Witnesses

Chas. Evans 1 day 100 / 24 miles 120	220	
Mrs. E. P. Tuttle 1 " 100 / 24 " 120	220	
J. M. Douglas 1 " 100 / 16 " 80	180	620
Attest		\$2145-
D.B. Veazey Clerk		

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

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

Plaintiff further states that in September 1878 while he and said Barrows were carrying on said business as partners, at their said store, under said firm name said Barrows bought a lot of hogs, for his individual use, from one Thomas J Wiley, and drew a promissory note, and signed the firm name of said firm to it, and delivered it to said Wiley, in payment for said hogs; that said promissory note was drawn payable to the order of said Thomas J Wiley, for three hundred Dollars, falling due twelve months after date, bearing interest at the rate of ten per cent till paid, and was dated September 26th 1878. Plaintiff states

that said Miley sold said hogs to said Barrows, and received said promissory note from him, knowing that said firm was composed of Plaintiff and said Barrows, and the character of the business in which it was engaged, and 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 had been formed, and without any reason to believe that said hogs had been bought for, or on account of said firm, or that Plaintiff knew of said transaction, or that he knew of, or approved, the giving of said promissory note, signed with the firm name of said firm, and knowing that said hogs were purchased by said Barrows for his individual use, ^{and} not for, or on account of said firm, and that the firm name of said firm was signed by him to said promissory note, and that it was, by him delivered, in payment for said hogs, without authority, and that it was in no sense the promissory note of said firm.

Plaintiff further states that no part of the consideration for which said promissory note was given ever went into, or was received by said firm, and that Plaintiff never received any benefit from said transaction, or from said promissory note.

Plaintiff further states that said Barrows paid two years interest on said promissory note, in his life time, as Plaintiff has learned since becoming aware of the giving, and existence of the same, which was in March 1887. Plaintiff states shortly after said promissory note was received by said Wiley, from said Barrows, he sold, or otherwise disposed of it, to Defendant; passing it to him merely by delivery, without any assignment, or endorsement, and that it was not assigned, or endorsed by said Thomas J Wiley until in March 1887, when he made a transfer of it to Defendant, who had before he received it, full knowledge of all the facts connected with its consideration, and execution,

by writing his name across the back of it.

Plaintiff further states that in September 1878, while he and said Barrows were partners, as aforesaid, said Barrows bought a lot of hogs from Defendant, for his individual use, and drew a promissory note, 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; that said promissory note was drawn for the sum of two hundred and fifty Dollars payable to the order of Defendant, falling due twelve months after date, bearing interest at the rate of ten per cent per annum till paid, and was dated October 18th 1878.

Plaintiff states that Defendant sold said hogs to said Barrows, and received said promissory note from him knowing that said firm was composed of Plaintiff and said Barrows, and the character of the business in which it was engaged, and 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 it had been formed, and without any reason to believe that said hogs had been bought for, or on account of said firm, or that Plaintiff knew of said transaction, or that he knew of, or approved of the giving of said promissory note signed by the firm name of said firm, and knowing that said hogs were purchased by said Barrows for his individual use, and not for, or on account of, said firm, and that the firm name of said firm was signed by him to said promissory note, and that it was by him delivered in payment for said hogs without authority, and that it was not the

promissory note of said firm.

Plaintiff further states that no part of the consideration for which said promissory note was given, ever went into, or was received by said firm; and that Plaintiff never received any benefit from said transaction, or from said promissory note, Plaintiff further states, that said Barrows paid two years interest on said promissory note, as Plaintiff has learned since becoming aware of the giving, and existence of the same, which was in March 1887.

Plaintiff states that Defendant instituted a suit against him on said two promissory notes, in the Circuit Court of Jefferson County Missouri in April 1887; that the first Count or alleged cause of action in the petition in said action was founded on said promissory note drawn payable to the order of said Thomas J Wiley, and contained averments of the existence of a partnership between Plaintiff and said Samuel M Barrows at the time said promissory note bears date; that they were partners in business under the firm name of J. H. Morse and company; that said firm on the 26th day of September 1878 executed, and delivered said promissory note to said Thomas J Wiley, by which it promised, for value received, to pay to him, or order, three hundred dollars, twelve months after the date thereof, with interest at the rate of ten per cent per annum till paid; that said Samuel M Barrows had departed this life; that said Thomas J Wiley had assigned said promissory note by endorsement to the Plaintiff in said action, who is alleged to be the holder and owner of it; that defendant paid two years interest on said promissory note, respectively

on Oct 18th 1879, and Oct 25th 1880; averring the balance of said promissory note with accrued interest to be due the Plaintiff in said action, and asking judgment for the amount of principal and interest of said promissory note. That the second count, or alleged cause of action, contained in said petition was based on said promissory note, drawn payable to the order of the Plaintiff in said action, and contained averments as follows, to wit: that Plaintiff, ^{Defendant in said action} and Samuel M Barrows were partners in business under the firm name of J H Morse and Company on and prior to October 10th 1878; that said firm on that date executed and delivered said promissory note to the Plaintiff in said action, by which it promised to pay to him, or his order, for value received, two hundred and fifty Dollars twelve months after the date thereof, with interest at the rate of ten per cent per annum till paid; that Samuel M Barrows had died; that Defendant paid two years interest on said promissory note, respectively on Oct 18th 1879, and Oct 25th 1880; averring the balance of said promissory note with accrued interest to be due Plaintiff in said action, and asking judgment for the amount of the same.

Plaintiff states that said action was returnable to, and triable at, the May term 1887 of said Court. And that Plaintiff, who was Defendant in said action, filed his answer to said petition, in said Court, at said term, verified by his affidavit, by which he pleaded the following defences to the first count, or alleged cause of action in said petition, founded on said promissory note drawn payable to the order of said Thomas J Wiley, namely.

1. An admission that Plaintiff and Samuel M. Barrows were partners in business on, and prior to September 26th 1878, and up till in March 1881, under the firm name of J. H. Morse and Company; with an averment that they were partners in purchasing goods and merchandise, 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 said Thomas J Wiley at no time had any reason to believe them partners in any other respect.

2. A denial of the execution or delivery of said promissory note to said Thomas J Wiley by said firm at any time.

3. A denial of the execution or delivery of said promissory note by said firm.

4. An averment that Samuel M Barrows signed the firm name of said firm of J. H. Morse and Company to said promissory note, and delivered it to said Thomas J Wiley in payment of an individual debt of said Barrows, and that the same was done without the knowledge or consent of this Plaintiff. And that said Thomas J Wiley advanced to said Barrows the consideration for which said promissory note was given, and received said promissory note from him, knowing that the firm name of said firm of J H Morse and Company was signed to the same by said Barrows, and that it was delivered to him by said Barrows in payment of his own individual debt, and without any reason to believe that this Plaintiff knew of, or approved the signing of said

firm name to said promissory note.

5. An averment that no portion of any proceeds or avails of said promissory note, or of the consideration for which it was given, ever went into, or was received by said firm of J. H. Morse and Company. And that this Plaintiff at no time received any portion of, or any benefit from, said promissory note, or the consideration for which it was given.

6. A denial that this Plaintiff ever paid any interest on said promissory note, ~~and~~

And by which answer Plaintiff, Defendant in said action plead the following defences to the second Count, or alleged Cause of action of said petition based on said promissory note drawn payable to the order of Plaintiff in said action, the Defendant herein, namely:

1. An admission that Plaintiff herein and Samuel M. Barrows were partners in business on and prior to October 10th 1878, and that they continued such till in March 1881, under the firm name and style of J. H. Morse and Company, with an averment that they were partners in the purchase of goods and merchandise, 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 the Plaintiff in said action had no reason at any time to believe them partners in any other respect.

2 - A denial of the execution or delivery of said promissory

note, by said firm of J H Morse^{and} Company.
3. An averment that Samuel M Barrows signed the firm name of said firm of J. H. Morse and Company to said promissory note, as this Plaintiff knew from an inspection of it, and delivered it to the Plaintiff in said action in payment of an individual debt, and liability, of said Barrows, and that the same was done without the knowledge or consent of the Plaintiff herein. And that the Plaintiff in said action advanced to said Barrows the consideration for which said promissory note was given, and received said promissory note from him, knowing that the firm name of said firm of J H Morse and Company was signed to the same by said Barrows, and that it was delivered by said Barrows to him in payment of an individual debt of said Barrows, and without any reason to believe that this Plaintiff knew of, or sanctioned the signing of the firm name of said firm to said promissory note.

4. An averment that no part of any proceeds of said promissory note, or the consideration for which it was given, ever went into, or was received by, said firm of J. H. Morse and Company

And that Plaintiff at no time received any portion of any proceeds of said promissory note, or of the consideration for which it was given,

5. A denial that Plaintiff, the Defendant in said action, ever paid any interest on said promissory note.

Plaintiff states that upon said petition,

and answer, together with a replication to said Answer filed in said Cause, by the Plaintiff in said Cause, the Defendant herein, in which he denied generally each and every allegation of new matter contained in said answer. Said Cause came on for trial in said Court, and was tried at the May term 1887, by the Court without a jury.

Plaintiff further states that at the time he first learned of the existence of said promissory notes, in March eighteen hundred and eighty seven, they were shown to him by defendant's Attorneys.

And Plaintiff states that he was well acquainted with the handwriting of said Samuel M Barrows, in his life time, and knew when said promissory notes were shown to him, that they with two credits on each of them, expressed to be for interest, and which were the same payments of interest hereinbefore mentioned as having been made by said Barrows were in the handwriting of said Barrows. And Plaintiff states that although he found on inspecting said promissory notes that they had been drawn and signed by said Barrows with the firm name of said firm of J H Morse and Company, he had no reason to believe either of them to have been given on account of said firm, but on the contrary was satisfied from the fact that said Barrows had drawn them, and as indicated by the credits in his own handwriting had paid two years interest on each of them, without making any mention of either of said transactions to Plaintiff, or otherwise advising him of the giving, or existence of said promissory notes,

or either of them, as well as from his knowledge of the business of said firm, that they had both been given by said Barrows, in the firm name of said firm, for individual debts of his own, But Plaintiff states that he had no idea what the consideration of either of said promissory notes had been.

Plaintiff states, that on seeing said promissory notes, as aforesaid, and arriving at the conclusion just stated in respect to them, he exerted himself to the utmost of his ability to ascertain the facts in regard to the giving and consideration of each of them, by making inquiries in respect to the same, of all such persons as he had any reason to think might be able to impart any information in regard to said matters, and by making examination of the books of said firm of J H Morse and Company, which had been kept for said firm by said Barrows;

And by inspecting all papers and memorandums left by said Barrows at his death, to which Plaintiff could obtain access or find, which he had any reason to think might furnish any information in respect to the consideration, or giving of either of said promissory notes. And by sending persons to said Thomas J Wiley and Defendant, and having inquiries made of them in regard to the consideration of said promissory notes, and the circumstances under which they were given, And Plaintiff states that he was unable to obtain any information from said Thomas J Wiley, or Defendant, or from any other source, touching the giving or consideration of either of said promissory notes.

And that he was compelled to file his answer

in said cause, at the May Term 1887 of said Court, without knowing, or being able to allege, what the consideration of either of said promissory notes had been, or under what circumstances either of them had been given; but was compelled to state in his answer, as he did, as the result of the inference drawn by him from the circumstances above detailed, that said promissory notes were respectively given by said Barrows, in the firm name of said firm J H Morse and Company, for his individual debts, without alleging, or being able to allege, what the consideration of either of them had been. And Plaintiff states that in the aforesaid condition of profound ignorance of all the facts concerning the consideration of both of promissory notes, and of the circumstances under which they were respectively given, he was compelled to go to trial in said cause, at the May Term 1887 of said Court, without knowing of any testimony, or witness, by whom he could prove any defense plead in his answer, as he could not have made an affidavit for a continuance, which would have entitled him to a continuance of the cause, or to any delay of the trial of the same.

Plaintiff further states that on the trial of said cause Defendant, who was Plaintiff in said action, introduced said Thomas J Wiley as a witness in his behalf, and had him examined as such. And Plaintiff states that when Defendant made said Thomas J Wiley a witness in his behalf, and caused him to testify as a witness in said cause, he was aware

that said witness knew the following facts, to wit:

1. That said promissory note which had been drawn payable to the order of said Thomas J. Wiley, the witness, had been drawn by Samuel M. Barrows, who had signed the firm name of said firm of JH Morse and Company to it and that it had been by said Barrows delivered to said witness in payment for hogs which said Barrows bought for his individual use from said witness.

2. That said firm of JH Morse and Company was composed of Plaintiff and said Samuel M. Barrows.

3. That Plaintiff and said Barrows were engaged as partners, under the said firm name, in buying goods and merchandise, and selling the same for profit, as retail merchants, at their store, at Morse's Mills in Jefferson County Missouri.

4. That the purchase of said hogs by said Barrows was a transaction not in the line of the business of said firm.

5. That said witness received said promissory note from said Barrows, in payment for said hogs, knowing all of said facts, and without any reason to believe that Plaintiff knew of the giving of said promissory note, or that he approved of the signing of the firm name of said firm to it. —

6. That at the time of receiving said promissory note from said Barrows, in payment for said hogs, said witness knew that the firm name of said firm had been signed to the same by said Barrows without authority, and that it was not the promissory note of said firm.

But Plaintiff states, that notwithstanding Defendant knew that said witness knew said facts, he was aware that said witness would not testify to them, but that he would testify, that he had never owned, or had possession of said promissory note, and that he did not know what the consideration of it had been, or the circumstances under which it had been given; and that he would further testify that Plaintiff had told him shortly after the death of said Barrows, that he would pay Defendants notes.

And Plaintiff states that said witness testified, while on the stand as a witness for Defendant, that he had never owned said promissory note, or had possession of it, and that he did not know what the consideration of it had been, or why it had been drawn in the firm name of said firm, and that he had merely endorsed it to Defendant to place the legal title of it in him; And that Plaintiff had told him, shortly after the death of Samuel M Barrows, that he would pay Defendant's notes, and that he on the same day informed Defendant of what Plaintiff told him about paying his notes.

Plaintiff states that with the testimony of said witness, Defendant, the Plaintiff in said action, closed his testimony in said cause, and that Plaintiff, Defendant in said action, was then sworn as a witness in the cause, in his own behalf, and testified as follows, to wit:

1. That he and Samuel M Barrows were partners, as retail merchants, at a store kept by them, at Morse's Mills in Jefferson County Missouri under the firm name of J H Morse and Company at the time the promissory notes sued on bear date

and had been for years prior to that time, and continued to be such till said firm was dissolved by the death of said Barrows, on March 6th 1881;

that the business of said firm consisted of buying goods and merchandise, and selling the same for profit, at the store of the firm, at Morse's Mills in said County, and that he and said Barrows were not partners in any other respect.

2. That Samuel M Barrows never at any time mentioned either of the promissory notes sued on to him, or any transaction out of which either of them could have originated.

3. That he did not know what the consideration of either of them was.

4. That he never heard of either of them until in March 1887, when he received a letter from Defendants' Attorneys informing him that they had them for collection; that he then called at the office - said Attorneys, shortly after receiving said letter, and saw said promissory notes; that on seeing them he knew, as he had been familiar with the hand writing of Samuel M Barrows, that said promissory notes and two credits, expressed to be for interest paid on each of them, were in the hand writing of said Samuel M Barrows.

5. That he was satisfied that no part of the consideration of either of said promissory notes, or of the proceeds of either of them, had ever been received by, or gone into the firm of J H Morse and Company.

6. That he had examined the books of said firm, which had been kept by said Samuel M Barrows

and Company to it, and that said Barrows had delivered it to said Thomas J Wiley in payment for hogs, which he had bought from said Thomas J Wiley, for his individual use

2. That when said promissory note was given said firm of J. H. Morse and Company was composed of Plaintiff and Samuel M Barrows.

3. That Plaintiff and said Barrows were at the time engaged, as partners under said firm name, in buying goods and merchandise, and selling the same for profit, as retail merchants, at their store at Morse's Mills in Jefferson County Missouri.

4. That the purchase of said hogs, by said Barrows was a transaction not in the line of the business of said firm.

5. That said Thomas J Wiley received said promissory note from said Barrows, in payment for said hogs, knowing said facts, and without any reason to believe that Plaintiff knew of the giving of said promissory note, or that he approved of the signing of the firm name of said firm to it.

6. That at the time of receiving said promissory note from said Barrows, in payment for said hogs, said Thomas J Wiley knew that the firm name of said firm had been signed to it by said Barrows, without authority, and that it was not the promissory note of said firm.

7. That said promissory note which had been drawn payable to his own order, had been drawn by Samuel M Barrows, who had signed the firm name of the firm of J H Morse and Company to the same, and that it had been

and found that they contained no entry, or memorandum, in respect to either of said promissory notes, or to any transaction out of which either of them could have originated. And that said books did not show that said Barrows ever charged said firm with any interest paid on either of said promissory notes.

7. That Plaintiff never told Thomas J Wiley that he would pay either, or both, of said promissory notes, and that no such matter was ever mentioned between them.

8. That Plaintiff continued merchandising after the death of Samuel M Barrows, at the same place where said firm had carried on that business, and that Defendant continued to deal with him, in his store, until in August 1886, buying goods from him, sometimes on a credit, and paying Plaintiff his accounts for the same, from time to time in cash, and that Defendant did not, at any time, mention said promissory notes, or either of them to Plaintiff or offer to collect any portion of either of them from him.

Plaintiff states that when he closed his testimony, Defendant testified as a witness in his own behalf, in rebuttal of the testimony which had been given by Plaintiff. And Plaintiff states that when Defendant became a witness in said cause, he knew the following facts, to wit:

1. That said promissory note which had been drawn payable to the order of said Thomas J Wiley had been drawn by Samuel M Barrows, who had signed the firm name of said firm of J H Morse

Company, who had signed the firm name of said firm to them, and delivered them to him, for cash loaned by him; that said Thomas J. Wiley never owned, or had possession of said promissory note which had been drawn payable to his order, and had not furnished any of the Consideration for which it was given. And denied that either of said promissory notes had been given in payment for hogs.

Plaintiff states that if said Thomas J. Wiley, and Defendant had not testified as witnesses in said Cause the finding and decision of said Court, might well have been for Plaintiff, who was defendant in said action, upon both Counts, or alleged Causes of action in said petition, and that the Court would necessarily have found the issues for him upon both of said Counts, or alleged Causes of action, and would have rendered judgment for him accordingly, if said Thomas J. Wiley, and Defendant had testified to the facts above stated, but Plaintiff states that as he was ignorant of all said facts in respect to the consideration of either of said promissory notes, and of the circumstances under which they were respectively given, and was therefore unable to testify anything concerning the same, and did not have, or know of any witness by whom he could prove any facts in relation to what the consideration of either of said promissory notes had been, or the circumstances under which either of them had been given. Said Court in trying said Cause acted on, and was controlled by the testimony of said Thomas J. Wiley, and defendant given by them as above stated, and was by said testimony induced to find the issues in said Cause upon both Counts, or

alleged causes of action in said petition for the Plaintiff in said action, the Defendant herein, and to render judgment for him in said action accordingly, for the sum of Four hundred and ninety nine $\frac{33}{100}$ Dollars on account of said promissory note which had been 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 which had been drawn payable to his own order, aggregating the sum of Nine hundred and fourteen $\frac{40}{100}$ Dollars.

Plaintiff further states that he has ascertained that said promissory note which was drawn payable to the order of said Thomas J. Wiley was drawn by said Samuel M Barrows who signed the firm name of said firm of J. H. Morse and Company to it, and delivered it to said Thomas J Wiley in payment for hogs purchased by him from said Thomas J Wiley for his individual use, and that the same was done by him under the circumstances, and with the knowledge on the part of said Thomas J Wiley hereinbefore set out and stated; And has also learned that he can satisfactorily prove said facts, and has ascertained the witnesses by whom he can prove the same.

And Plaintiff states that he has come to the knowledge of all said facts, which were before unknown to him, since the adjournment of the term of the Court at which said Cause was tried, and said judgment rendered.

Plaintiff further states that he has ascertained that said promissory note, which was drawn payable to the order of Defendant, was drawn by said Samuel M Barrows who signed the firm name of said firm of J H Morse and Company to the same

and delivered it to Defendant in payment for hogs which said Barrows bought from Defendant, for his individual use, and that the same was done by said Barrows under the circumstances, and with the knowledge on the part of Defendant hereinbefore stated, and Plaintiff states that he has ascertained that he can prove all said facts; and satisfactorily establish the same and that he has ascertained the witnesses by whom he can make such proof.

64 And Plaintiff avers that said knowledge has come to, and been received by him, for the first time since the adjournment of the term of Court at which said Cause was tried, and said judgment rendered.

Plaintiff further states that in procuring said judgment in the manner, and by the means aforesaid, Defendant perpetrated a great and grievous fraud on Plaintiff, and that he is now threatening to enforce the collection of said fraudulent judgment against Plaintiff, by a sale of Plaintiff's property to satisfy the same, and will do so, to the great and irreparable injury and damage of Plaintiff unless this Court shall interpose to prevent the same, and to award justice to Plaintiff in the premises. And Plaintiff further states that Defendant has caused an Execution to be issued on said judgment, and has placed the same in the hands of the Sheriff of Jefferson County Missouri, who now has the same in full force in his possession, and has threatened

to, and is about to cause
said Sheriff to levy the same
upon, and to seize, and sell
the property of Plaintiff under,
and by virtue of said Execution,
and that he will immediately
order, direct, and cause said
Sheriff to do so. And will
cause and procure Plaintiffs
property to be sold to pay and
satisfy said judgment, so
obtained against this Plaintiff,
by him, by the injustice and
fraud aforesaid, unless he
is enjoined and restrained,
by a restraining order and
injunction from so doing.
Plaintiff states that he has
heretofore instituted a suit
in the Circuit Court of Jefferson
County Missouri, which was
returnable to the September
term thereof for the year
1887, to set aside said fraudulent
judgment, and for a decree
of said Court perpetually
restraining and enjoining
Defendant from here after,
or at any time, proceeding to
enforce the collection of the
same, or any portion thereof,

against this Plaintiff, by Execution
or otherwise, and for a new
trial of Said Cause founded
on Said promissory notes, and
for Such other and further
relief as the facts of the case,
which are in ~~Said~~ ^{the} Petition in
~~Said Cause~~ ^{Said Cause} fully set out and Stated as
the Same are hereinbefore
Stated, May warrant, which
action is now pending and
undetermined in Said Court.
And Plaintiff States that
Defendant is insolvent, and
that he is now about to enforce
the Sale of Plaintiffs Property
to Satisfy Said fraudulent
Judgment, as aforesaid, and
will do so immediately, and
pending the litigation in Said
Cause, and before Plaintiff
can obtain relief by decree
of Said Court in Said action,
unless Your Honor shall
interpose and restrain, Enjoin,
and prevent him from doing
so. And Plaintiff States that
if Defendant shall proceed to
enforce payment against
Plaintiff of Said fraudulent
Judgment Plaintiff will be
without any relief or redress

for the great fraud and injury
that he will sustain by the
enforcement of Said judgment
against him and the Sale of
his property thereunder. And
Plaintiff States that Such
injury to him will be irreparable.

Wherefore Plaintiff prays that
a temporary injunction,
and restraining order may
be issued against Defendant,
restraining and enjoining
him from in any wise
proceeding to enforce the
collection of Said fraudulent
judgment against Plaintiff,
during the pendency of
Plaintiff's Said action against
Defendant, and that upon
a hearing and decision of
the cause the same may be
made perpetual. And
Plaintiff further prays that
all other proper relief may
be awarded Plaintiff in
the premises.

Jos. J. Williams
Attorney for Plaintiff

John H. Morse

vs
J. J. Wiley

Petition for
Injunction

(No 1)

Filed May 23rd 1888

A. H. O. Deane
Clerk

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

Plaintiff presents to ^{me} the undersigned
Judge of the 26th Judicial Circuit of
Missouri in Chambers at Hillsboro
Jefferson Co. Mo., this 23rd day of May
1888, the accompanying petition for
an injunction which being seen and
understood and Plaintiff having
given bond in the sum of fifteen
hundred dollars to my satisfaction
the prayer of said petition is granted
& it is hereby ordered that Defendant
be and he is hereby enjoined & restrained
from ⁱⁿ any wise, proceeding to enforce
the collection of the payment described
in said petition until further order
herein.

Done in Chambers at Hillsboro
Jefferson Co. Mo. May 23rd 1888.

John L. Thomas,
Judge of the
26th Judicial Circuit

John W. Moore
as
J. S. Wiley

Order of Discharge

(no 3)

Filed May 23rd 1888
2003 Regt
Can

John H. Morse, Plaintiff,
against
S. S. Wiley, Defendant }

In the Circuit Court of
Jefferson County, Missouri.
We John H. Morse as principal
and Henry Stelbrink, and
John D. Hines ~~and~~ as

Securities acknowledge our
selves to owe and stand
indebted unto S. S. Wiley in the
sum of Fifteen Hundred
Dollars, for the payment whereof
we bind our selves, our heirs,
Executors and Administrators,
upon the conditions hereunder
written, Namely: Whereas
Said S. S. Wiley, at the May
term of the Circuit Court of
Jefferson County, Missouri for
the year 1887, obtained a
Judgment of Said Court in
his favor against Said John
H. Morse for the aggregate
Principal sum of nine
hundred and fourteen $\frac{40}{100}$
Dollars, bearing interest from
its rendition at the rate of
ten per cent per annum, together
with costs of Suit accrued
in Said Cause. And whereas
Since the rendition of Said
Judgment Said John H. Morse

has instituted in said Circuit
Court of said County a Suit
wherein he, said John H. Morse,
is Plaintiff and said S. S. Wiley
is Defendant, the object of
which is to obtain a Decree
of said Court declaring said
Judgment so obtained by
said S. S. Wiley against said
John H. Morse fraudulent
and void, and to obtain a
Decree of said Circuit Court
perpetually restraining and
enjoining said S. S. Wiley
from enforcing against
said John H. Morse the
Collection of said Judgment,
by execution thereon or otherwise,
and for all appropriate and
proper relief against said
Judgment, as a fraudulent and
void Judgment. And whereas
said action is now pending in
said Circuit Court, wherein said
John H. Morse is Plaintiff
against said S. S. Wiley, Defendant.
And whereas said John H.
Morse is about to apply by
Petition to the Judge of the
Circuit Court of Jefferson
County, Missouri, in vacation
of said Court, for an injunction
and restraining order against

Said S. S. Wiley, to enjoin and restrain
~~and Enjoin~~ him from proceeding
to enforce the collection of said
judgment rendered by said circuit
court in his favor against said
John H. Morse, by execution
thereon, or otherwise, during the
pendancy of said action now
pending in said circuit court
wherein said John H. Morse is
Plaintiff against said S. S. Wiley,
and for a Decree of said court
perpetually enjoining and restraining
him from proceeding to enforce
the collection of said judgment, by
execution or otherwise. Now if
said John H. Morse the Plaintiff
in such Petition and proceeding
for such injunction and
restraining order against said
S. S. Wiley shall abide the decision
which shall be made by said
circuit court, or other court which
may acquire jurisdiction in his
said action, and on his said
petition and application, and if
he shall pay all sums of
money, damages, and costs,
that shall be adjudged
against him if the injunction
which shall be issued upon
his said petition and application
shall be dissolved, then this
Bond shall be void, otherwise

The Same Shall remain in full
force and effect.

In witness whereof we
hereunto sign our names and
affix our seals this thirtieth
day of April A.D. 1888.

J. A. Morse Seal
Henry St. John Seal
John D. Heinen Seal
Seal

Token approved this 23rd day of
May 1888

John L. Thomas.
Judge

John A. Morse

= 25 =
S. S. Wiley

Wm

(Pro 2)

Filed May 23/1888
J. D. Wright
can

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

May Term 1888,

John H. Morse plaintiff
vs
S. S. Wiley defendant, } Injunction

Now comes the defendant in the
above entitled cause and moves the
court to dissolve the temporary injunction
heretofore granted in said cause, and for
reasons states:

- 1st That there is no equity in said petition.
- 2nd That no cause of action for injunction or
other relief is stated in said petition.
- 3rd That the petition shows upon its face
that all matters & ~~therein~~ facts therein
stated have already been adjudicated
by this court.
- 4th That the matters therein as stated
are not true.

Thomas & Horne
for Defendant.

John A. More
Jett.

to J. Inman

J. J. Wiley left.

(nos.)

Machin to describe
necessary information

Filed June 8th 1888

D. O. W. W. W.
Clerk

Thomas A. W. W.
Attorney for J. J. Wiley

SUBPOENA.--CIRCUIT COURT.

STATE OF MISSOURI, COUNTY OF

} ss.

No.

33

THE STATE OF MISSOURI, to

Jefferson }
Mrs. Geo. J. Miley }
vs. J. Miley }

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 City of

St. Louis

, within and for said County, on *Thursday*the *13th* day of*September*A. D. 18*88*, then and there

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

wherein

John W. Moore is

Plaintiff,

and

J. S. Miles 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

St. Louis

in said County, this

6

day of

*Sept*A. D. 18*88*

By

Deputy Clerk.

W. B. Deacy Clerk.

SUBPENA.

No. 33

CIRCUIT COURT

Of _____ Co., Mo.,

Term, 1888

Sept

John H. Morse

vs.

S. S. Wiley

PLAINTIFFS' }

WITNESSES.

DEFENDANTS' }

Day of Trial

Sept 13th

Thos. J. Wiley

Mrs. Thos. J. Wiley

Filed Sept 10 / 1888

W. B. Teague
Clerk

Fee, \$1.00

RETURN.

I hereby certify that I served the within Writ in the County of Jefferson
and State of Missouri, on the 13th day of September, 1888, by
reading the same in the presence and hearing of the
within named Thos J Wiley and Mrs Thos J Wiley

G. W. McFarland
Sheriff

Subpoena for Witness.

The State of Missouri, to Samuel Russell

You are hereby commanded, to be and appear, personally, before me, J. J. Sheebee, Justice of the Peace within and for the Township of Leontine County of Jefferson, on the 18th day of October, 1888, at the hour of 10 o'clock in the forenoon of that day, at my office in the Township and County aforesaid, to testify on the trial of a cause wherein John H. Moore is Plaintiff and J. J. Wiley Defendant on behalf of the Plaintiff, and herein fail not at your peril; 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 Signature, at Office in the Township aforesaid,

this 9th day of October, 1888

J. J. Sheebee
Justice of the Peace.

RETURN.

I HEREBY CERTIFY that I served the within Writ in the County of Jefferson, State of Missouri, on the

9th

day of

October

1888, by

reading the same to
the within named Samuel Russell

Fee, \$40

W. M. C. T. & Co.

SUBPÆNA FOR WITNESS.

Plaintiff.

VS.

Defendant.

BEFORE,

J. P.

WITNESSES.

Filed Oct 17/1889
D. B. Weaver
Clerk

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

September Term 1888,

J. H. Morse Plaintiff

vs.

S. S. Wiley Defendant

Now on this day comes the defendant
by attorney and moves the Court to
~~quash~~^{suppress} the deposition of Henry R. Hunt
filed in said cause, for the following
reason,

Because said deposition was not
taken in the office of the Clerk of
the United States District Court
in the town of Deadwood in Territory
of Dakota according to the notice
attached to said deposition.

Because said deposition was taken
elsewhere, of which, defendant had
no notice

Thomas Horne
Att'y for Deft.

John H. Moore

as

J. S. Wiley

Superintendent

Prothon to give each
deposition of
Henry Edmund

(106)

Filed Sept 26/1888

A. D. Deary
Clerk

		John H. Morse } 198, 219, 285, 336, 340, 341, 387, 407, 415, 421, 445, 479	
		S. S. Wiley } Record Entries	
1887			
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Mar 5	5	Cont. sit aside, Learn to amend pet. - Learn to Ans	13. 285-
May 22	6	Amended pet. filed - Bond - Entry ord of injunction	" 336
June 8	7	Ent appearance of deft. Learn to withdraw Ans.	" 340
" 8	8	Motion to dissolve injunction	" 341
Sept 17	9	Depositions filed and published	" 387
" 26	10	Motion to quash depositions	" 407
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Oct 26	12	Ent Amend pet	" 421
Jan 17	13	Motion to quash sustained	" 445
" 25	14	Ent Mo. for chg of Venue. Order granting	" 479
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90, 96, 99, 102, 109, 114, 115, 131, 132, 295-

Wiley H. Morris } Record Index

May 10	Deane to file Ans. to Bunker	13.	90
" "	Order et. cause for trial	"	96
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" 16	Mo. to strike out	"	109
" 18	Replecation filed & writ	"	114
" 18	submitted to Court's action under Act	"	115-
" 21	2 more days	"	131
" "	Mo for new trial, Mo overruled	"	132
" "	et fa for appeal filed, appeal granted	"	132
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" "	Deane to file answer	"	132
Apr 10 1888,	Manifest et. of appeal into	"	295-

Wiley
vs
Morse

Record Entries

Filed June 30/1890
D. B. Keag
via

S. S. Wiley
vs.
John H. Morse

No.

STATEMENT OF COSTS.

DATE.	ITEMS.	Plaintiff's Costs.	Defendant's Costs.	TOTAL.
May Term 1887				
May 2 nd 1887	Trial by Court. Verdict for Plaintiff and Judgt against Defendant for Bond 13. page 131			914 40
	D. B. Veazey Clerk			
	14 files 70/ copy per c. s. 1 ⁰⁰ / Writ 1 ⁰⁰ / Copy 1 ⁰		2 80	
	3 Spas 25/ 3 affd to Wit Claims 15/		90	
	Time for Ans. & Answer 30/ Ord. set day for trial 20/		50	
	Time for Ans. & Answer 30/ Ent. Ans. 30/		60	
	Leave to verify 10 30/ Mo. to strike out 20/		50	
	Replication 30/ Appr 20/ Cont 25/		75	
	2 Verd 60/ Judgt 50/ Book Jt 10/		1 20	
	Mo. New trial 20/ Mo. overruled 30/		50	
	Ent affd for appeal 30/ Appeal granted 30/		60	
	Taking affd 25/ Ord for Bond 20/ Leave to file 30/		75	
	Leave to file bill & exceptions 30/ Ent		30	
	Filing bill & exceptions 30/ Ent man- date & Judgt. of Court of appeals 50/		50	
	Fee bill 10/ Making Costs 20/ Copy 25/		60	
	4 Book 20/ Execution 100/		1 20	12 00

George H. McFry Sheriff
Serving writ 1⁰⁰/ 6 Spas 30⁰⁰/ 5 Calls 25/

4 25-

Witnesses

Charles Evans	1 day 1 ⁰⁰ / 24 miles 1 ²⁰ /	2 20	
Mrs. E. P. Tuttle	1 " 1 ⁰⁰ / 24 " 1 ²⁰ /	2 20	
J. N. Douglas	1 " 1 ⁰⁰ / 16 " 80/	1 80	6 20
			22 45

S. S. Wiley

⁻⁰³⁻
John H. Morse

Pier of Oost

Filed June 30/1890
J. D. H. H. H. H.
ser

ALIAS EXECUTION.

State of Missouri,

COUNTY OF

Jefferson

The State of Missouri,

TO THE SHERIFF OF *Jefferson* COUNTY--GREETING:

Whereas,

S. S. Wiley plaintiff

on the *21st* day of *May* A. D. 18*87*,

at our Circuit Court, recovered against

John H. Morse defendant

the sum of *Nine hundred and fourteen and* *40* Dollars,
100
for debt and interest, and also for *his* costs in that suit expended.

And whereas, on the *24th* day of *April* A. D. 18*88*, we commanded you, the said Sheriff, that of the goods, chattels and real estate of the said *John H. Morse*

you cause to be made the aforesaid debt, interest and costs, and you returned to our said Court on the *23rd* day of *May* A. D. 18*88*, said execution

unsatisfied by order of plaintiff's attorney.

These are, therefore, to command you, again, that of the goods, chattels and real estate of the said

John H. Morse defendant

you cause to be made the aforesaid debt, interest and costs *of suit*

and that you have the same before the Judge of our said Court, on the first day of the next *May* Term, to be begun and held at the Court House in *Hillsboro*

within and for said County of *Jefferson*, on the *second* Monday of *May* next, to satisfy said debt, interest and costs, aforesaid, and that you certify how you have executed this writ.

WITNESS *D. B. Veazey* Clerk of our said Court,

with seal thereof hereto affixed, at office in *Hillsboro*

in the County aforesaid, on this *31st* day of *December*

A. D. 18*90*.

D. B. Veazey Clerk.

By

John H. Rapp D. C.

[OVER]

S. S. Wiley Plaintiff

vs.

John Morse Defendant

ITEMS OF COST.

DATE	ITEMS	Plaintiff's COSTS	Defendant's COSTS	TOTAL	TO WHOM DUE
	Dr. Weagay Clerk				
	14 files ⁷⁰ / Copy Ret ⁴⁵ / Cert ²⁵ Deal ⁵⁰ mit & copy ¹⁰		2 75		
	3 Spas ⁷⁵ / 3 aff to wit Claims ¹⁵		90		
	Time for ans. extended ³⁰ / sitting day for trial ²⁰		50		
	Time for ans extended ³⁰ / Ans filed ³⁰		60		
	Learn to verify by aff ³⁰ / Motion to strike out ²⁰		50		
	Replication ³⁰ / Appr ²⁰ / Cont ²⁵		75		
	Verd ³⁰ / Judgt ⁵⁰ / Dock Judgt ¹⁰		90		
	Motion for new trial ²⁰ / mo overruled ³⁰		50		
	Affid for Appeal ³⁰ / Appeal granted ³⁰		60		
	Ord fix bond ²⁰ / Learn to file bond ³⁰		50		
	Learn to file bill ex ³⁰ / Ent Judgt Ct. Appeals ⁵⁰		80		
	Fee bill ¹⁰ / Costs ²⁰ / Copy ²⁰		50		
	4 Dock ²⁰ / Execution ¹⁰⁰		1 20		
	File ⁵ / dock ²⁰ / mit ¹⁰ / Copy ⁴⁰ / Cert & ⁵⁰ / Appr ¹⁰		2 25		
	Verd ³⁰ / Judgt ⁵⁰ / fee bill ¹⁰ / Costs ¹⁰ / Cop ¹⁰ / Dock Judgt ¹⁰ / Exec ¹⁰⁰		2 20	14 45	
	Geo. H. McGary Sheriff				
	Serving mit ¹⁰⁰ / 6 Spas. ³⁰⁰ / 5 Calls ²⁵		4 25	4 25	
	Witnesses				
	Chas Evans 1 day ¹⁰⁰ / 24 miles ¹²⁰		2 20		
	Mrs. E. P. Tuttle 1 day ¹⁰⁰ / 24 miles ¹²⁰		2 20		
	J. M. Douglas 1 day ¹⁰⁰ / 16 miles ⁸⁰		1 80	6 20	

E B Maupin Sheriff
Executing writ ¹⁰ 3 calls ¹⁵

115 115
2605

Received by me this 31st day of December 1890
E. B. Hanpin Sheriff.

SHERIFF'S RETURN.

Executed the within writ in the County of Jefferson State of Missouri, on the 31st day of December A. D. 1890, by levying upon and seizing as the property of the within named defendant John H. Moore the following described real estate situated in the County of Jefferson and State of Missouri to-wit: The Southwest quarter of Section 17 Township 39 range 4 East containing 160 acres, Southeast qr. of Section 18 Township 39 range 4 East. Con. 160 acres, Southwest qr. of Section 20 in Township 39 range 4 East. Con. 160 acres, South half of the Northwest qr. and the Northeast qr. of Northwest qr. and west half of Southeast qr. and Southwest qr. of Northeast qr. all in Section 20 Township 39 range 4 East containing 240 acres.

FEE, \$

Sheriff _____ County, Mo.

By _____ Deputy.

Alias Execution.

No. 15

Jefferson County
CIRCUIT COURT,

Returnable May Term, 1891.

J. Miley
—vs.—

John H. Moore

Judgment against Defendant

Rate of Interest, 10 per cent.

Date of Judgment May 21st 1887

Execution Docket, Vol. _____ Page _____

Fee Book No. _____ Page No. _____

Record Book No. _____ Page No. _____

Thomas V. Starnes
Plaintiff's Attorney.

A. B. Yeager
Clerk.

STATEMENT OF DEBT AND COSTS.

Debt	\$ <u>914 40</u>
Interest	\$ _____
Clerk's Fees	\$ <u>14 45</u>
Sheriff's Fees	\$ <u>5 40</u>
Jury's Fees	\$ _____
Witness' Fees	\$ <u>6 20</u>
Printer's Fees	\$ _____
J. P. Fees	\$ _____
Court Fees	\$ _____
Total,	\$ <u>940.45</u>
Rate of Interest,	<u>10</u> per cent.