

Jefferson County Circuit Court
Case Files - Civil

April 1888

Box 39 Folder 46

Helm, Frank

vs.

Rathbun, Mary E.

Rathbun, George R.

Gilbert, A. B.

Appeal

Defendant appealed from JP
W.L. Stone on \$109.75 account
for meats; bill of exceptions;
St. Louis Court of Appeals

1 Rathbun & Gilbert Dr.

To Frank Helm on acct.
in the sum of one hundred and nine
dollars and seventy five cents \$109.75-

Kelun
-or-

Rachman & Sic bet

Filed Dec 21st, 1887

W. Stone Jp

Filed Apr. 26th, 1888

D. B. Keagy

clerk

(2)

1881-

Rathbun's Gilbert
To Frank Kelcey

Aug 12 Meat 145 - Aug 26 Meat 140

" 19 " 180 " 26 " 40

" 19 " 120 27 " 155

20 " 140 27 " 100

20 " 180 27 " 200

20 " 150 27 " 50

21 " 145 27 " 220

21 " 175 27 " 55

21 " 150 28 " 140

22 " 140 28 " 160

22 " 175 28 " 50

22 " 30 29 " 150

22 " 150 29 " 200

23 " 150 29 " 150

23 " 180 30 " 140

23 " 140 30 " 175

23 " 90 30 " 170

24 " 140 30 " 100

24 " 220 31 " 150

24 " 200 31 " 190

24 " 70 31 " 130

25 " 140 Sep 1 " 155

25 " 200 " 1 " 180

25 " 50 " 1 " 50

25 " 50 " 1 " 170

26 " 145 " 2 " 150

26 " 180 " 2 " 110

26 " 115 " 2 " 160

439.50

438.40

Filed Apr 16th 1882
M. W. Kelcey
Clerk

Antioch

1887.

Sep 2. Meat 2.15			Sep 11 Meat 150		
"	3	" 140	"	11	" 190
"	3	" 190	"	11	" 150
"	3	" 150	"	12	" 150
"	4	" 150	"	12	" 200
"	4	" 190	"	12	" 130
"	4	" 140	"	13	" 140
"	5	" 180	"	13	" 200
"	5	" 25	"	13	" 120
"	5	" 145	"	14	" 200
"	5	" 030	"	14	" 130
"	5	" 140	"	15	" 140
"	6	" 140	"	15	" 175
"	6	" 165	"	15	" 140
"	6	" 180	"	16	" 140
"	7	" 140	"	16	" 175
"	7	" 180	"	16	" 115
"	7	" 145	"	16	" 150
"	8	" 140	"	17	" 140
"	8	" 200	"	17	" 200
"	8	" 155	"	17	" 140
"	9	" 150	"	18	" 150
"	9	" 340	"	18	" 190
"	9	" 150	"	18	" 125
"	10	" 140	\$37.40		
"	10	" 200	42.60		
"	10	" 140	38.40		
"	10	" 30	39.50		
\$42.60			Total \$ 157.90		
			Sept 16 th By Cash 57.85		
			Balance Due \$100.05		

NO SUMMONS. - J. P.

Rev. Stat. of Mo.
Vol. I, Sec. 2860.

The State of Missouri, to the Constable of Lacle

Township, in the County of Jefferson, State of Missouri, Greeting:

We command you to summon Mary E. Rackham, George R. Rackham and

Asa Witt

to appear before the under-

signed, one of the Justices of the Peace of Lacle Township, in Jefferson County aforesaid, on the 3d day of January, 1888, at

10 o'clock in the forenoon, at his office, in the same Township, to answer the complaint of

Frank Nelson

founded upon an account of one hundred and ninety six DOLLARS.

and wherein he demands one hundred and ninety six cents, A. D. 1887

21st day of December
W. I. Stone

Justice of the Peace

CONSTABLE'S RETURN.

[Rev. Stat., Vol. 1, Sec. 2861.]

I HEREBY CERTIFY, That I have executed the within Writ by, reading the same
in the presence and hearing of Messrs. Rathburn
Geo. Rathburn and A. B. Gilbert,
the within named parties
the 22 day of December, 1887, in
Township, Jefferson county, Missouri.
Fee, \$ — — — 90c B. H. Washburn, Constable.

No.

SUMMONS.

Frank Nelson

Plaintiff.

vs.

Ruthbert Siebert

Defendant.

BEFORE

W. L. Stone

Justice of the Peace.

Amount Plaintiff's Demand, \$	109.75
Costs already accrued, - \$	1.45
Constable's Commission, \$	1.60
Constable's Fee, - - - \$	90
Constable's Mileage, - - - \$	
Total, - - - - \$	

Filed Apr 16/88
W. L. Veayer
Clerk

State of Illinois } Before Wm L Stone
County of Jefferson } Justice of the Peace
of Valle Township.
Frank Kelm Plaintiff

vs
Geo. R. Rathbun, A. D. Gilbeck and M. E. Rathbun
Defendants.

Now on this day comes Geo. R. Rathbun one of
the above defendants, who being duly sworn,
says, that he verily believes himself aggrieved
by the judgment of the justice in the cause
aforesaid and that this application for an
appeal is not made for vexation or delay,
but because this affiant believes that the
appellant is injured by the judgment of
the justice.

Geo. R. Rathbun

Subscribed and sworn to, before
me, this 6th day of January 1888.

William L. Stone J.P.

Filed Apr 16/88
N. B. May
Car

RECOGNIZANCE FOR APPEAL.

Revised Statutes, Sections 3041-42-43-44.

STATE OF MISSOURI,

COUNTY OF

Jefferson

SS

Before

Wm L Stone

Justice of the Peace

of

Valle

Township.

WE, The undersigned,

*Geo. R Rathbun as principal**and G. W. Donaldson**as securities,*

acknowledge ourselves indebted to

Frank Kelm

in the sum of

Two hundred and twenty-five

Dollars,

to be void upon this condition :

WHEREAS,

Geo. R Rathbun

has appealed from the

Judgment of

Wm L Stone

a Justice of the Peace, in an

action between

Frank Kelm

Plaintiff, and

Geo. R Rathbun

Defendant.

NOW, if on such appeal, the Judgment of the Justice be affirmed, or if on trial anew in the

Circuit

Court, Judgment be given against said Appellant,

and *he* shall satisfy such Judgment, or *his* appeal shall be dismissed, and *he* shall

pay the Judgment of the Justice, together with costs of Appeal, then this Recognizance shall be void,

otherwise it shall remain in force.

Witness our hands and seals this

6th

day of

*January*A. D. 18*88*.*Geo. R Rathbun*

Seal

G. W. Donaldson

Seal

Seal

Seal

ATTEST:

W. L. Stone

Justice of the Peace.

RECOGNIZANCE for APPEAL,

BY
Geo. P. Rathbun

CASE OF

Frank H. Allen Pff.

vs.

Rathbun & Rathbun Defs.

3/10
250
1/10

Approved by

W. L. H. Allen

Justice of the Peace.

Filed Apr 16/88

W. L. H. Allen

State of Missouri }
County of Jefferson } ss

Before W.L. Stone,
J.P. City of De Soto
Valle Township.

Frank Kelu, Plff.

Mary E. Rathbun, George R Rathbun, Du Account
her husband, and A.B. Gilbert, }
Comprising the firm of Rathbun &
Gilbert Defts.

December 21st 1887. Plaintiff filed
for suit his account for one hundred
and nine dollars and seventy-five
cents, and deputed a summons to
issue which is done and delivered
to R. Washburn, Constable of Valle
Towship, Returnable January 3^d 1888.

January 3^d 1888. Summons returned
executed by reading in the presence
and hearing of the within named
defendants, as appears from the Con-
stable's return thereon. The right of
trial by Jury being waived the cause
is submitted to the Justice for trial.
The defendants, Mary E Rathbun and
A.B. Gilbert confess judgment for the
amount of bill, one hundred and nine
dollars and seventy-five cents, but the
Defendant George R Rathbun, denies
that he is or was a member of the

said firm, and is therefore not responsible or liable for his wife's debts, and moves the Justice to dismiss the cause as to the said George R. Rathbun. Motion was overruled and judgment awarded to plaintiff for the bill as sued, and that execution issue therefor.

January 6th 1888: George R Rathbun, the ^{tho} named defendant, appeared and filed the necessary bond and affidavit as required by statutes for appeal Bond appured and appeal allowed.

Justices Fees =

Docket & Index

Summons, ²⁵swearing 2 witnesses ¹⁰ Judgment ⁵⁰
³⁵ ⁶⁰ ¹⁵

Appeal Bond Transcript out

1.10

95

~~1.10~~

3.15

Constable's Fees =

Summoning 3 depts

Commission

90

160

2.50

Total Fees

\$ 5.65

State of Missouri }
County of Jefferson } ss.

I, W. L. Stone, a Justice of the Peace within
and for the County of Jefferson aforesaid, hereby
certify that the above and foregoing is a full
true and complete transcript of all the entries
and proceedings in the above entitled Cause
as they appear on my docket, and that the
papers hereto attached are all the original
papers appertaining to cause on file in
my office.

Witness my hand this 10th day of
April, 1888.

William L. Stone, J.P.

6/20/88 W. L. Stone

No 5162

James Nelson

as

Pauline Wilburt

Filed April 16th 1888
A. J. Heagy
Clerk

(3)

Frank Nelson

"Plaintiff

v

George A Rathburn, M. Gelber and
M. E Rathburn, Partners doing
business under the firm name
and style of Rathburn & Gelber
Defendants.

To Whom furnished as per ~~with~~
itemized account hereto
attached

8/20/13

Franklin
201
Park Lane Hilbert

Amended Account

Filed May 21/88
Geo D Veary
Clerk

1	~~Samuel Washburn~~	P	
2	Oscar Edwards		1
3	~~G. W. Saffelt~~	P	
4	~~J. L. Farley~~	P	
5	~~A. H. Spelman~~	P	
6	A. P. Booth		2
7	Thos. M. Baker		3
8	Austin Williams		4
9	~~Fritz Rolf~~	P	
10	Thomas Boly		5
11	~~Wm. Hutton~~	P	
12	Joseph Robinson		6
13	W. A. Whitehead		7
14	J. R. Berry		8
15	Robert Berman		9
16	James Medley		10
17	George Russell		11
18	George Williams		12 5

Bellevue
as
Bartholomew & Co. & Co.

Bartholomew

Filed May 21st 1888
J. D. D. D. D.
Clem

If they find believe from the evidence
that although the name of George
R Rathbun did not appear
in the firm of Rathbun
& Gilbert still if said
George R. Rathbun shared
in the profits of said firm
they will find the issues for
the plaintiff

The Court instructs the jury that if they
believe and find from the evidence
either that George R Rathbun was a
member of the firm of Rathbun
& Gilbert or that he held himself
out to the world as a member
of said firm or that by his
acts and conduct he induced
the plaintiff to believe that he
was a member of said ^{firm} and that
plaintiff on the strength thereof
gave credit to said firm, then you
will find the issues for the
plaintiff.

Nelue

"

Nathana

" " "

refused and in
favor of the gift.

Filed May 21/1885

W. B. Neasey
Clerk

The Court instructs you that if you believe
and find from the evidence in the case
that plaintiff sold to Rothman & Gilbert the
meat set out in his account and that
the said Rothman & Gilbert ~~composed~~ ^{were}
a firm composed of Mary E. Rothman
and A. B. Gilbert ^{only}, then your verdict
must be for defendant, ^{George R. Rothman} unless you
further find from the evidence
that said George R. Rothman by his
conduct, acts or declarations held
himself out as one of the firm
of Rothman & Gilbert and by such
acts, conduct or declarations
induced plaintiff to believe and
plaintiff did believe said George
R. Rothman was a member of said

firm at the time he sold said
because of which belief he gave credit to said firm,
meant to said firm, in which case
said George R. Rathbun is liable
for the same though he may not
in fact have been a partner in
said firm. But if you find said
George R. Rathbun was not in fact
a member of said firm before
you can note him with for much
sold by plaintiff to said firm you
must first find from the evidence
that ~~said George R.~~ plaintiff did
not know that he was not a member
thereof but on the contrary believed
and credited him for such amount
he was, and that this belief was
induced by said George R. Rathbun
by his acts, conduct or representations.

and unless you so find your
verdict must be for defendant
George R. Rathbun

The burden of proving his case is
a preponderance of the evidence
is on plaintiff.

If you find the issues for the plaintiff
you will return in your verdict the
amount you find from the evidence
to be due plaintiff on the bill filed
on with interest from the commence-
ment of this suit at the rate of 8 1/2
per cent annum. If you find
the issues for defendant George
R. Rathbun you will return a verdict
for him accordingly.

462

Helme

as

Pauline Helme

Instructions

Helme Depot 20/1888
D.B. Meyer

car

Helme May 21/1888

D.B. Meyer

clerk

SUBPOENA.--CIRCUIT COURT.

STATE OF MISSOURI, COUNTY OF

} ss.

No.

74

THE STATE OF MISSOURI, To

J. M. McMillan

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~~ *County* of *St. Louis*, within and for said County, on

the day of

A. D. 18

, then and there

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

wherein

Frank Nelson

Plaintiff,

and

Ruth Ann Nelson

Defendant,

on the part of said

deft

, 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

14 day of

September A. D. 1888

By

Deputy Clerk.

W. B. Reagin

Clerk.

SUBPENA.

No. 74

CIRCUIT COURT

Of _____ Co., Mo.,

Term, 1888

Sept

Frank Helm

Rathburn vs. Gilbert

PLAINTIFFS'

DEFENDANTS'

WITNESSES.

Day of Trial

Sept 19

R. M. McMullin

Filed Sept 19th 1888
D. B. Cooper
Clerk

FEE, \$.50

RETURN.

I hereby certify that I served the within Writ in the County of Jefferson
 and State of Missouri, on the 19th day of September, 1888, by
the within named, R. M. McMullin acknowledging
Devere

Geo. W. McElroy, Sheriff
 by W. H. Gauch
 Deputy

SUBPOENA.--CIRCUIT COURT.

STATE OF MISSOURI, COUNTY OF

SS.

No. 35

THE STATE OF MISSOURI, To *Wm. H. Stone*
Max Raymond vs *Mrs. Gilbert*

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 *Stilwell*

the *14th* day of *September* A. D. 1888, there and there

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

wherein *Max H. Stone* Plaintiff,

and *Ruth Ann and Gilbert* Defendants,

on the part of said *defendants*, 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 *Stilwell* in said County, this

6 day of *Sept* A. D. 1888

W. H. Stone Clerk.

By *W. H. Stone* Deputy Clerk.

SUBPENA.

No. 35

CIRCUIT COURT

Of _____ Co., Mo.,
 Sept. Term, 1888
 Frank Kelm

Rathburn vs. Gilbert

PLAINTIFFS

WITNESSES.

DEFENDANTS'

Day of Trial Sept 14

G. R. Stone
 Wm. Coxwell
 Mrs. Gilbert

Filed Sept 10th 1888
 W. B. Reager
 cler

Fee, \$1.50

RETURN.

I hereby certify that I served the within Writ in the County of Polk on
 and State of Missouri, on the 8th day of September, 1888, by
 reading the same in the presence and hearing of the within
 named G. R. Stone and Wm. Coxwell and Mrs. Gilbert

G. W. McHenry
 Sheriff

SUBPOENA.--CIRCUIT COURT.

STATE OF MISSOURI, COUNTY OF

} ss.

No. 53-

THE STATE OF MISSOURI, To

Edw. Barker

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 *Stellerton*the *14* day of*Sept* within and for said County, on *Friday*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

Frederick Nelson vs

Plaintiff,

and

Reuben Webster vs

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

Stellerton

in said County, this

11 day of*Sept*A. D. 18*88**Wm H. Hays*

Clerk.

By

Deputy Clerk.

SUBPENA.

No. 55

CIRCUIT COURT

Of _____ Co., Mo.,

Sept

Term, 1888

Frank Melin

Ruth Ann vs. Gelberk

PLAINTIFFS' } WITNESSES.

~~DEFENDANTS~~

Day of Trial

Ed. P. Baker Sept 12 1888

Filed Sept. 14/1888
D. D. Neay
clerk

Fee, \$5.00 &

RETURN.

I hereby certify that I served the within Writ in the County of Jefferson
and State of Missouri, on the 12 day of September, 1888, by
reading the same in the presence and hearing
of the within named, E. P. Baker

E. W. Neay Sheriff Jefferson Co.
By A. H. Richardson Sept 15 1888

1	1	B. M. Lanham	
	2	~~Charles Herscher~~	S
2	3	H. M. Muse	
	4	~~Henry Pienman~~	S
3	5	Jacob Bauer	
	6	~~Peter Schrist~~	S
	7	~~W. S. Henry~~	
4	8	Charles Leove	
5	9	Theo Baze	
6	10	H. M. Parris	
	11	~~H. M. Chamberlain~~	
7	12	E. J. Hamrick	
8	13	David Metzger	
9	14	Edward Cashels	
10	15	James Ogden	T
11	16	H. M. Heskay	T
12	17	Robt McPerron	T
	18	~~W. J. Harrison~~	

George Allen

as

Patron & Clerk

David

Filed Sept 19th 1888

213 No 27
to Clerk

Frank Helm

vs

George R Rathbun.

The court instructs the jury that
upon the ^{pleadings and the} testimony introduced by plaintiff,
he is not entitled to recover in this action.

Return
of

Calhoun

Refused his
signature

We the jurors find the issues for the plain-
tiff in the Case of Frank Helen against
George R. Rothbun and assess his
damages at the sum of
one hundred dollars.

E. J. Hamrick Foreman

Helene

as

Perth Amboy, N. J.

Perth Amboy

Friday Sept. 20/1888
J. D. D. Neasey
Clem

State of Massan, County of Jefferson ss
In the Circuit Court
September Term 1888,
Frank Klein plaintiff
vs
Rathban & Gilbert defendants.

Now on this day comes the defendants
and move the court to arrest the judgment
herein rendered for the reasons following to wit:

1st Because no sufficient cause action has been
filed by plaintiff.

2^d Because plaintiff has ~~filed~~ failed to file an
affidavit statement of his cause of action.

was filed with
Thomas & Horne

Atty. for Defts.

Frank Nelson

to

Pauline Gilbert

Proven in arrest

Filed Sept 26/85
H. D. D. Rogers
Clerk

State of Missouri County of Jefferson ss.
In the Circuit Court
do September Term 1888.
Frank Helm plaintiff

²⁰
Rathbun & Gilbert defendants,

Now on this day came the defendants by their
Attorney and move the court to set aside the
verdict and judgment in said cause and
grant them a new trial of the issues therein
for the following reasons viz:

- 1st Because the verdict & judgment is against the
law and the evidence
- 2^d Because the verdict & judgment is against the
weight of the evidence in the cause,
- 3^d Because the court erred in giving instructions
asked on the part of the plaintiff,
- 4th Because the court erred in refusing proper and
legal instructions asked by defendants,
- 5th Because the court erred in the declarations
of law given on its motion,
- 6th Because the court erred in refusing proper
and legal testimony offered on the part of defendants,
- 7th Because the court admitted illegal and
improper testimony offered by plaintiff,
- 8th Because the verdict is for the wrong party under
the testimony in the cause,

Thomas & Horine

Attys. for Defendants

- 9th Because the court erred in admitting any testimony on the
state of the pleadings in the cause,

Justices with

Thomas & Horine Attys. for Afts.

Frank Melin

no

Autumn Stillborn

Push on for a new
trial.

File Sept 26th 1858
J. B. Waquet
Albany

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

September Term 1888.

Frank Kelm plaintiff.

vs

Rathbun and Gilbert defendants,

George R. Rathbun being sworn says,
that the appeal is not taken for vacation or
delay from the judgment of the Circuit Court,
but because the affiant believes that the
appellant is aggrieved by the decision of the
court.

Geo. R. Rathbun

Subscribed & sworn to before me

September 25th 1888.

Thomas B. Mauser

Notary Public

my term expires June 2nd 1891.

Frank Helen

no

Rachbun & Eilber

Alfred for Alfred

Filed Sept 26/1888

J. O. O. O. O.
O. O. O. O. O.

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

September Term 1888,

Frank Kelm plaintiff

¹⁰
Rathbun & Gilbert defendants.

Bond for Appeal.

We George R Rathbun as principal and

associates

acknowledge ourselves to have and stand indebted to Frank Kelm in the sum of two hundred and fifty dollars to be void upon the following conditions to wit: whereas said George R Rathbun has appealed to the St. Louis Court of Appeals from the judgment of the Circuit Court of Jefferson County Missouri rendered at the September Term of said Circuit Court for the year 1888 in a case wherein Frank Kelm is plaintiff and ~~George R~~ Rathbun and Gilbert are defendants. Now if said appellant shall prosecute his said appeal with due diligence to a decision in the appellate court and shall perform such judgment as such appellate court may direct said Circuit Court to give, and if the said judgment of said Circuit Court or any part thereof be affirmed and if he the said appellant shall comply with and perform such judgment so far as it may be affirmed, and if he shall pay all damages and costs which may be awarded against him by any appellate court then this recognizance shall be void, otherwise the same shall remain in full force and effect. Signed and sealed by us September 27th, 1888.

Geo. R. Rathbun (seal)

Taken and approved

D. M. Park

(seal)

this 3rd day of October 1888

J. H. Donelson

(seal)

D. B. Keagy clerk

(seal)

(seal)

Frank Helm
M.D.

No

Pauline & Gilbert
apts,

Apartment of
George R Pauline

Filed October 3rd 1888
J. J. O'Neary
Clerk

In the St. Louis Court of Appeals,

March Term, A. D., 1889.

Monday, April 29th, A. D., 1889.

Frank Kelm,	Respondent.,	%	
		%	Appeal from Circuit Court
vs.	No. 4360.	%	
		%	of Jefferson County.
George R. Rathbun,	Appellant.	%	

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

In an action before a Justice, the plaintiff recovered a judgment against A.B. Gilbert, Mary R. Rathbun and George R. Rathbun for \$109.75. From this judgment the defendant George R. Rathbun appealed for himself alone. Upon trial anew in the Circuit Court judgment was rendered against Rathbun for \$100.00 from which he prosecutes the present appeal.

All the defendants appeared before the Justice of the Peace and his transcript contains the following recital: "Plaintiff filed for suit his account for \$109.75. The defendant Mary A. Rathbun and A.B. Gilbert confessed judgment for the amount of bill. Defendant George R. Rathbun denied that he is or was a member of the said firm and is therefore not responsible or liable for his wife's debts, and moves the Justice to dismiss the cause as to said George Rathbun; motion overruled and judgment awarded plaintiff for the bill sued as sued."

On trial in the Circuit Court, the defendant objected to the introduction of any evidence, because the statement filed before the Justice did not state any cause of action, and because the amended statement filed in this cause in the Circuit Court does not state any cause of action against this defendant. These objections were by the ^{Court} overruled and this ruling of the Court is the main error complained of.

Neither the statement filed before the Justice nor the amended statement filed in the Circuit Court is contained in the transcript of the record, although it appears by the recitals in the record as well as by the briefs of both parties filed in this Court, that a statement was filed before the Justice and an amended statement in the Circuit Court. The parties in their briefs disagree only as to the contents of such statements.

It is evident that under these circumstances there is nothing before us for review on that point. The statements were before the circuit Court and it adjudged them sufficient. That judgment is presumptively correct, until the contrary is shown.

It appears by the evidence that the only contention on the trial was, whether the defendant by his acts, conduct and declarations had estopped himself to deny that he was a member of a restaurant firm composed of his wife and one Gilbert. There was no contention as to the items of the bill, which was a meat bill furnished by the plaintiff, a butcher, to the restaurant on running account. There was no evidence that the defendant was a member of the firm, or had so stated to plaintiff at any time in express terms. The acts, conduct and declarations of the defendant consisted of contradicted evidence that he had a U.S. cigar and tobacco ~~license~~ license in his own name displayed in the restaurant, and of the admitted fact that he payed bills against the restaurant, and permitted the plaintiff to credit amounts due the defendant, for groceries and cattle sold by the defendant to plaintiff on plaintiff's bills against the restaurant. There was evidence that plaintiff gave credit to the firm, because he believed that the defendant was a member thereof.

The case was put to the jury on the theory of the defendant holding himself out as a partner, by an instruction drawn by the

Court itself, and stating the law on the subject, in careful and guarded terms,. While the evidence of such holding out, is slight we are not prepared to say that there was no substantial evidence of it, so as to warrant us to vacate the verdict on that ground alone. All the Judges concurring, the judgment is affirmed.

R. E. ROMBAUER.

A true copy of the OPINION.

Witness my hand and the seal of the
St. Louis Court of Appeals, this 2nd
day of May, A. D., 1889.

 Clerk.

In the St. Louis Court of Appeals.

March Term, 1889
Monday, April 29th 1889

Frank Helm, Respondent
vs
George R. Rathbun, M. B. Gilbert
and M. E. Rathbun, parties doing
business under the firm name of Rathbun
and Gilbert, Appellants
Appeal from Circuit Court 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 appellants 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 3^d day of May A. D. eighteen hundred and eighty-nine.

John Lewis
Clerk.

ST. LOUIS COURT OF APPEALS.

Frank A. Kelso, Respondent

George J. ^{vs} Rathbun & Co.,
Appellants

MANDATE.

JUDGMENT OF

Orville B. Bond of Jefferson County
AFFIRMED.

Filed May 13/1889
W. B. Nease
clerk

No. *2368*

Term 188

Clerk LEWIS, Copy Opinion \$

1.20

Mandate \$1.00.

Fee Bill, 60c.

2.80

Frank Nelson. 4 Decr

~~Transcript,~~

~~Docket Fee,~~

2.80

George H. Northumbetal
George H. Northumbetal
(2)

State of Missouri, ss.

I, JOHN LEWIS, Clerk of the St. Louis Court of Appeals, certify that the foregoing fee bill is a true copy from the Fee Book in my office, and that the said

Appellant is liable for the same.

In Witness Whereof, I herunto set my hand, and affix the seal of said Court, at office, in the City of St. Louis, this *11* day of *May* in the year of our Lord eighteen hundred and eighty-nine.

John Lewis
Clerk.

No. 4360

188

ST. LOUIS COURT OF APPEALS.

George R Rathbun
\$2.80

FEE BILL.

Thomas Horne
and J. H. Green Attys
for applt.

Filed May 13/1889

D. B. Veazey
Clerk

Please collect or hand to Shiff

308, 321, 322, 378, 395, 404, 408, 410, 418, 425

	Kelne } Ruth beam }	Record Entries	Book B
1888			
May 17	Continued		308
" 21	Plff allowed to amend pte &c		321
" "	Appr. jury - disagree & discharged -		322
Sept 14	Continued		378
" 19	Appr. jury - admonished & separate		395
" 20	Verd. Judge		404
" 26	No new trial - No in arrest -		408
" "	Motions for new trial & in arrest overruled		410
" "	Appd for appeal - Leave to file appeal bond		410
" "	Appeal granted - Leave to file bill of exceptions -		410
Oct 3rd	Bond filed & approved		418
Jan 14/89	Bill Ex. filed		425

Weline
at

North Street & Colburn

Record Sales

Filed May 14/1889
J. B. Hoag
Secy

Francis Kelm
vs.
George R. Rathbun

No.

STATEMENT OF COSTS.

DATE.	ITEMS.	Plaintiff's Costs.	Defendant's Costs.	TOTAL.
	D. O. Veazey clerk, 18 files ²⁰ /4 Docs ²⁰ /4 sps ⁵⁰ /		2 10	
	2 cont ⁵⁰ /Am d put ³⁰ /2 app ⁴⁰ /2 juries ¹⁵⁰ /2 orders ⁴⁰ /		3 60	
	2 motions ⁴⁰ /Verd ³⁰ /Judgt ⁵⁰ /Docs ⁵⁰ /2 mo. awarded ⁶⁰ /		2 30	
	Offd ²⁵ /Int affd for appeal ³⁰ /Appeal granted ³⁰ /Am d ⁵⁰ /		1 35	
	2 leaves to file ⁶⁰ /Int bond ³⁰ /Fees bill ¹⁰ /Cost ²⁵ /ex ¹⁰ /		1 25	
	Copy ²⁵ Supplemental Trans. 1500 no fig ⁰⁰ 2 ²⁵		3 00	
	Execution ¹⁰⁰ /5 affd to mt claims ²⁵		1 25	14 45
	Wm. McGary Shff, 5 sps ²⁵⁰ /9 calls ⁴⁵			2 95
	H. L. Stump Justice Sum ³⁵ /Rocn & Ind ¹⁰ /		1 45	
	Judgt ⁵⁰ /Appeal bond ³⁵ /Trans ⁶⁰ /Cert ¹⁰ /Wear 2 Mt ¹⁰ /		1 70	3 15
	R. Nashburn Clerk 3 sum ⁹⁰ /Commission ¹⁰⁰			2 50
	Witnesses			
	M. S. Coxwell 2 day ²⁰⁰ /32 miles		3 60	
	G. R. Stone 2 " ²⁰⁰ /32 "		3 60	
	G. A. Querswald 1 " ¹⁰⁰ /16 "		1 80	
	R. M. McMullin 1 " ¹⁰⁰ —		1 00	
	E. P. Baker 2 " ²⁰⁰ /16 "		2 80	12 80
	Talmen Jurors			
May Term	George Williams 1 day		1 00	
Sept "	James Ogle 2 "		2 00	
" "	Wm Huskey 2 "		2 00	
" "	Robt Mc Broome 2 "		2 00	7 00
	Jurors. Regular panel			
May Term	11 men		11 00	
Sept "	9 "		9 00	20 00
	Tro Lewis cler th appeals			62 85
				2 50
				65 35

Frank M. Allen

Geo. R. Parkerson

Bill of Lash

Free May 30th 1889

Ad. B. Young
can

Frank Kelm Plaintiff

against

Rothelm and Gilbert Defendant

In the Circuit Court of
Jefferson County Missouri
September Term 1888

Be it remembered that on
the trial of ~~this~~ above
entitled cause the Plaintiff
to sustain the issues on
his part offered the follow-
ing evidence,

Frank Kelm the Plaintiff being
sworn and offered as a witness,
The defendant Geo. R. Rothelm
by his attorneys objected
to the introduction of any
testimony because the
statement filed before the
justice did not state any
cause of action against
this defendant and because
the amended statement
filed in this cause in the
Circuit Court does not
state any cause of action
against this defendant

all of said objections were by the Court overruled, to which action of the Court the defendant at the time excepted. and said Kelm testified as follows: My name is Frank Kelm I live in Desoto Jefferson Co. Mo. I am a Butcher and have been keeping a butchers shop for many years in Desoto. I sold meat to the firm of Rathbun & Gilbert. I credited Geo R. Rathbun, I seen him about the place, I sold them one hundred ^{and nine} ~~and~~ dollars & five cents worth I ~~said~~ the bill sued on is correct.

Rathbun paid me money on the acct. of the firm of Rathbun & Gilbert at diverse times, he sold me some cattle at one time and let it go to the credit of the firm and sold me some groceries and I credited it on the same account. Rathbun came by my place of business on one morning in his buggy on his way to his farm and stopped and paid me thirty seven dollars and a half on account of the firm is the last credit on the account. I saw a cigar ^{and tobacco} license in the show case in the name of George R. Rathbun and on one occasion when I was going to St. Louis I went into the restaurant and said to Mr. Rathbun I wanted some money and he ~~just~~ paid me two or three dollars out of his pocket and said that was all he had at the present. Mr. Rathbun on one occasion when the colored boy came and got meat weighed it after it had been taken away from my shop and sent it back and told me after ward that it fell short in weight.

I would not have furnished the firm of Rathbun and Gilbert ^{meat} but for the fact that I believed George R. Rathbun was a member of said firm. George R. Rathbun came to me personally and asked me to furnish meat for the restaurant.

The bill runs from Aug. 19th to 1887 to Sept. 18th 1887 and the bal. due me is \$108.²⁵/₁₀₀ —

Examiné.

I did not call for the bill until the firm of Rathbun & Gilbert broke. I had been selling that firm meat since 1885. When I would go to settle with them Mr. Rathbun would make up the settlement & write out note and then call Mrs. Gilbert to sign the note, & she would come & sign them. I took several notes this way. Rathbun was there sometimes behind the counter seemed to be helping, he never told me he was a member of the firm & I never asked him neither did he tell me at any time he was not a member of the firm.

The Plaintiff then introduced C. P. Baker who testified as follows I boarded at The Parlor Restaurant for several months and I allways paid Mr. Rathbun for my board they had quite a number of boarders at the time I boarded

There and Mr Rathbun generally made all the settlements and acted as though he was proprietor of the house and after I had quit boarding there I hauled wood to Desoto and sold at the Restaurant and Mr Rathbun paid me for the wood.

The Plaintiff here closed his evidence and the defendant Geo R. Rathbun asked the Court to instruct the jury as follows. "The Court instructs the jury that upon the pleadings and the testimony introduced by plaintiff he is not entitled to recover in this action. The Court refused to give said instruction & to which action of

The defendant to sustain the issues on his part offered Mrs. A. B. Gilbert as a witness who testified as follows. I am a widow. The firm of Rathbun & Gilbert was composed of myself and Mr. E. Rathbun who is the wife of Geo. R. Rathbun. Geo. R. Rathbun had nothing to do with the firm, he would sometimes assist us in settlement or he paid us for his board, & did not charge us anything for his assistance.

Cross examination

Mr. Rathbun was in the restaurant a considerable part of the time, he usually made settlements ^{and sold cigars & tobacco and} we had a license state and count ~~to sell cigars and tobacco and said license was in~~ the name of Mrs. M. E. Rathbun and A. B. Gilbert.

XX
Geo R. Rathlum being sworn
testifier as follows. I am
the defendant in this suit
I am husband of Mrs M. E. Rath-
lum. Mrs Rathlum went into
the Restaurant with Mrs Gil-
bert without my consent,
she went and borrowed
money from Carrie Williams
before I knew it & she
and Mrs Gilbert bought
the fixtures in the Restaurant
against my consent, but
after she commenced business
I did not make any further
objection, they had a sign
up over the Restaurant.

"Parlor Restaurant". I was
not a member of the firm. I
never told any one that I
was a member of the firm.
Kelm never asked me for
money for their bills until
they failed and he came
to me one day and said
to me that he had been to
St Louis and seen a Lawyer
and that the Lawyer told him

that he could make me
pay his bills against the
firm of Rathbun & Gilbert
because I was the husband
of Mrs Rathbun. I told him
I thought not, I have made
settlements with Plaintiff
for the firm & when we
would get through I would
call Mrs R Gilbert to sign
the note to Plaintiff and
I have several times indorsed
the firm notes at the request
of Mr Kelin,

Cross examination

I do not remember paying Kelin the
thirty or dollars mentioned I might have
paid him a dollar or so at the time
he said when he was going to St.
Louis I sold Kelin cattle and he credited
it on the account of Rathbun & Gilbert and I
also let him have some groceries on the
same account. they sold cigars and
tobacco and had a State and county
license license in the name of Mrs.
Rathbun and Mrs Gilbert & I charged
Rathbun & Gilbert with the
same on their accounts
with me, see margin

I never objected to my wife
going into the business she never
asked my consent and after they ever
started I tried to help them to make
it a success.

G. A. Aurswald testified that he went with Mrs Rathbun and assisted her in getting the money to start the business and Helm came to him & asked him when Mrs Rathbun would be at home (she was then in California) so she & Mrs Silbert owed him a bill & he wanted to get the money -

Cross examination

Helm came to me and asked when Mrs. Rathbun would be at home after they had sold the restaurant I do not know whether it was after Mr. Rathbun told him he would not pay the bill or not.

R. H. McMullin being sworn says that he is the Publisher of the Jefferson Democrat that the Plaintiff has been a subscriber for said paper & it has been regularly sent to him since 1883 to the present time (He here produces the files of the Jefferson Democrat for year 1885) & the defendant read in evidence the following advertisement in the issue of said paper dated April 29th 1885 & May 6th 1885, May 13th 1885 & May 21st 1885, to wit:

Pauls Restaurant.

Mrs. Rathbun & Mrs. Gilbert are now proprietors of the Railroad House, near Hamels' drugstore, DeSoto. The House will now be known as the Pauls Restaurant, and be put in perfect order throughout. Ladies and gentlemen in the County when in DeSoto, wanting a nice and pleasant resting place, while waiting for a No. 1 meal will find this a convenient resort. Our City friends and boarders will be equally as well treated, and served in a manner that cannot fail to please.

Rooms with board if desired. Apr. 24 1885.

And it was conceded that the same advertisement was published in four issues of the Jefferson County Watchman a newspaper published at DeSoto Jefferson County Mo. in the months of June & July 1885.

This was all the evidence offered.

Whereupon the Plaintiff prayed the Court to instruct

the jury as follows: (here the clerk will insert the instructions asked by plff which were refused)

Which instructions the court refused to give to the jury and thereupon plaintiff by his counsel then and there excepted at the time.

The court of its own motion gave the following instructions to the jury.

(here insert instructions given by the court),
To the giving of which the defendant excepted at the time.

Under the instructions of the court the jury found a verdict for the plaintiff.

And on the 26th day of Sept. 1888, (within four days after verdict) the defendant filed his motion for a new trial as follows (Clerk here copy motion for new trial)

Which said motion the court on the 26th day of Sept. 1888 overruled, to which ruling and order of the court the defendant then and there excepted at the time.

And on the 26th day of Sept. 1888, (within four days after verdict) the defendant file his motion in arrest of judgment as follows. (Clerk copy motion in arrest),

Which said motion the court on the 26th day of Sept. 1888 overruled, to which ruling and order of the court the defendant then & there excepted at the time.

And on the 26th day of Sept 1888, the defendant Geo. R. Raithum filed his affidavit for an appeal, which was granted and leave given at the same time file his bond within ten days from Sept. 26 1888, (Clerk here copy affidavit)

And thereupon by an entry of record on said Sept. 26 1888, leave was given defendant to prepare and file his bill of exceptions on the first day of the January term 1889

of this court. (Clerk here copy order allowing time
to file bill exceptions).

We therefore pray the court to allow and sign this
bill of exceptions and that the same may be signed and
sealed and made a part of the record which is done,
this 14th day of January (interim time) A.D. 1887.

John L. Thomas (Jr)
Judge of the Jefferson Circuit Court,

Frank Nelson
M.D.

20
Geo R Raittman
M.D.

Rule of Excellence

Filed Aug 14th 1889
W.B. Weary Clerk

Manassas Station
In debt.

STATE OF MISSOURI,
County of Jefferson } ss.

THE STATE OF MISSOURI,

To the Sheriff of the County of Jefferson GREETING:

WHEREAS,

Frank Helm Plaintiff

on the 20th day of September, in the year of our Lord, Eighteen Hundred and eighty eight, at our said Circuit Court, for said County of Jefferson recovered against

George R. Rathbun Defendant

the sum of One Hundred Dollars and _____ Cents,
and also his costs, which have been taxed the sum of
Sixty Two Dollars and 85 Cents.

THESE ARE, THEREFORE, TO COMMAND YOU, That of the Goods and Chattels, Lands and Tenements of the said

George R. Rathbun Defendant

you cause to be made the debt damages
and costs aforesaid, and that you have the same before the Judge of our said Court, on the second Monday
in September next, to satisfy the said debt damages
and costs. And have you then and there this Writ, certifying how you have executed the same.

WITNESS my hand as Clerk of said Circuit Court, with the seal of said Court affixed,

at office, in Hillsboro, this 30th
day of May 1889

W B Teague
Circuit Clerk.

Deputy.

(OVER.)

Frank Kelm
 vs.
 George R. Rathbun

ITEMS OF COST.

DATE	ITEMS	PLAINTIFF'S COSTS	DEFENDANT'S COSTS	TOTAL
	D. O. Veazey Clerk			
	8 files ⁹⁰ / 4 Docs ²⁰ / 4 sps ¹⁰⁰ / 2 cont ⁵⁰		2 60	
	Amend. pet ³⁰ / 2 appr ⁴⁰ / 2 juris ¹⁵⁰		2 20	
	2 orders ⁴⁰ / 2 motion ⁴⁰ / Verd ³⁰ / Judgt ⁵⁰		1 60	
	Docs Jt ¹⁰ / 2 mo. overruled ⁶⁰ / affd ²⁵		95-	
	Int affd for appeal ³⁰ / appeal granted ³⁰		60	
	2 leave to file ⁶⁰ / Bond ⁵⁰ / Int bond ³⁰		1 40	
	Fee bill ¹⁰ / Making cont ²⁵ / c & s ⁵⁰		85-	
	copy 2 ⁵⁰ Supplemental trans 1330 m of ²⁷⁰ 0 ²⁵		3 00	
	Execution ¹⁰⁰ / 5 affd to mt claims ²⁵		1 25	14 43
	Geo W. Mc Fry. Shff			
	5 sps ²⁵⁰ / 9 calls ⁴⁵			2 95-
	Witnesses			
	M. S. Coxwell 2 days ²⁰⁰ / 32 mile ¹⁶⁰		3 60	
	G. H. Stone 2 " ²⁰⁰ / 32 " ¹⁶⁰		3 60	
	G. A. Querswaldt " 16 " ¹⁸⁰		1 80	
	R. M. McMullin 1 " —		1 00	
	E. P. Baker 2 " ²⁰⁰ / 16 mile ⁸⁰		2 80	12 80
	Tutors. Tulemen			
May 5.	George Williams 1 day ¹⁰⁰		1 00	
Sept "	James Ogle 2 " ²⁰⁰		2 00	
" "	William Huskey 2 " ²⁰⁰		2 00	
" "	Robert Mc Broom 2 " ²⁰⁰		2 00	7 00

Tuross - Regular panel

May Term 11 men

11 00

Sept " 9 "

9 00 20 00

William L. Stone Justice

Summons³⁵ / doc¹⁰ & index¹⁰ / Judgt⁵⁰

1 95-

Appeal bond³⁵ / Trans⁶⁰ / Cert¹⁵

1 10

Swearing two mt¹⁰

10 3 15-

R. Nashburn Constable

3 Summons⁹⁰ / Commission⁶⁰

2 50

John Lewis Clk Ct of Appeals

2 80

~~65-65~~
~~65-65~~

STATE OF MISSOURI,

COUNTY OF

Jefferson

ss.

I,

D. B. Veazey

Clerk of the

Circuit Court in and for said County, certify that the foregoing Itemized Bill of Costs is a true copy from the Fee Book in my office, and that the said

George R. Rathburn is

liable for the payment of the same.

WITNESS my hand as Clerk, and the seal of said Court, at my office, in

this

30th

day of

May

1889

D. B. Veazey

Circuit Clerk.

By

Deputy.

SHERIFF'S RETURN.

Executed the within Writ in the County of *Jefferson*, State of Missouri, on the *21st* day of *June*, A. D. 18*89* by *Collecting Collecting*
the full amt of the within
Execution amounting to One Hundred
and ~~Eighty~~ 85 Dollars and
~~Thirty Six~~ 46 Dollars Int on Judgment
Thirty Six *two Dollars*

FEE, \$

E B Maupin
Sheriff *Jefferson* Co., Mo.

By

Deputy.

GENERAL EXECUTION.

No. *1*

CIRCUIT COURT,

Returnable *Sept* Term, 18*89*

Frank Nelson

VS

George R. Parkhurst

Judgment against *Deft*

Rate of Interest *6%* per cent.

Date of Judgment *Sept 20/1888*

Execution Docket, Vol. *3*, Page *76*

Fee Book No. *Page No.*

Record Book No. *13*, Page No. *404*

F. R. Deering

Plaintiff's Attorney.

ATTEST:

D B Toager

Circuit Clerk.

Filed Sept 4/1889

D B Toager

Statement of Debt and Costs.

Debt \$ *100.00*

Interest \$

Clerk's Fees \$ *14.45*

Sheriff's Fees \$ *2.95*

Juror's Fees \$ *27.00*

Witness' Fees \$ *12.80*

Class. Charles

Printer's Fees \$ *2.80*

J. P. Fees \$ *3.15*

Constable

Court Fees \$ *2.50*

Total, - - - \$ *165.65*

Rate of Interest *6%* per cent.

Commission *3.00*

Int. on Judgment \$9.16 2/3

This Execution
is returned fully
Satisfied
E B Maupin
Sheriff of Jefferson
Co. Mo

\$3870



No. 1 NUMBERS

Received of

July 6 1889
J. W. Rathbun

70 Dollars,

Twenty Eight
being in full of Andrew and
Markham of Allen & Thompson

Printed by Chas. E. Barroll, Cape Girardeau, Mo.



W. E. Barroll
Printer of the Press

$$\begin{array}{r} 16865- \\ 13870 \\ \hline 12995- \end{array}$$

6274

No. _____ Box _____

Circuit Court,

Jefferson County.

Frank & John

vs
George R. Pugh
et al

Cause of Action On Account

Filed April 16th 1884

H. B. Noyes
CLERK.

F. R. Nearing

PLAINTIFFS ATTORNEY.

Green, Smith & Noyes
DEFENDANTS ATTORNEY.

LIST OF PAPERS IN THIS SUIT.