

Jefferson County Circuit Court
Case Files - Civil
May 1852

Box 7 Folder 38

Morse, John H.

vs.

Maddox, Thomas H.

Violation of Contract

Damages \$4,000; defendant failed to provide
water privileges and lumber for plaintiff's
saddle tree manufactory attached to defendant's
saw mill on Big River; bills of exception;
Supreme Court

John St Morse } In the Circuit Court
by } of Jefferson County in
Thomas St. Maddox } the State of Missouri.

To Thomas St. Maddox.

You are hereby notified that
the depositions of witnesses to be read in
evidence on the part of the above named
plaintiff, on the trial of the above entitled
cause in the Jefferson County ^{circuit} Court, ^{pending by} will taken
at the office of Abner Green Esq. in the
town of Hillsboro in said Jefferson County
on the second day of April 1852 between
the hours of 9 o'clock A.M. and 6 o'clock
P.M. and that the taking of said depositions
will be continued from day to day at the
same place and between the same hours
till completed.

March 18th 1852

John St. Morse

I Executed ~~of~~ the within Notice on Thomas
Jb Maddox by leaving a copy of the original
Notice at his usual place of abode on the 20th day
of March A D 1852 with ^{that} person over the
age of 16 sixteen years old on the 20th day of
March 1852 James McCalloch Sheriff

Maddox
v } notice
Maddox

Sheriff fees \$0.50

Filed April 8th 1852
Jno L. & Lecher
Clerk

John H. Morse

agt.

Thomas N. Maddox

Plaintiff

defendant

In the circuit court

Jefferson County

Plaintiff states that prior to the 10th day of March 1849 defendant owned a grist mill and an unfinished saw mill on Big river in this county - had said Big river dammed up & the water therefrom was operating & driving his grist mill. He also owned the tract of land on which the said mill was erected. Plaintiff is a practical mechanic and was desirous of securing water power to erect & put in operation a large saddle tree manufactory (and to locate his establishment where he could make a contract for the constant supply of the necessary lumber. Defendant was very anxious that a saddle tree manufactory should be put up at his mill (and he & plaintiff made a contract & fixed the terms thereof which was this. Plaintiff was to erect a saddle tree manufactory at said defendant's mill (and was to pay said defendant the sum of eighty dollars annually. In consideration of this, defendant leased to plaintiff for the term of five years the farm then under fence, the mansion house (and including all the tenements thereon except the buildings east of the branch below the mansion house with the stipulation that plaintiff was not to use any lumber except for firewood and rail lumber (and he also granted to plaintiff for said term of five years water privilege by (and through the saw mill flume or forebay or out of the saw mill pond in some way for driving or turning a wheel to drive a saddle tree manufactory. In conversations between the parties it was understood that said defendant was to furnish five head of water as designating the amount of the water privilege which was granted. Defendant also agreed that he

would furnish to plaintiff 50,000 feet of lumber annually for the manufacture of saddle trees at the price of seventy five cents per hundred feet, ^{during the continuance of his contract} and in consideration of these things to be done and performed on part of defendant, he said defendant was to have, ^{at his own property} at the end of the five years all the buildings and improvements that said plaintiff might erect or cause to be erected at said mill on defendant's land. Plaintiff and defendant having firmly agreed on the terms of the contract as above set forth called on one Henry A. Evans to reduce the same to writing. He did so ^{but} by mistake left out the stipulation ^{of defendant} in regard to furnishing plaintiff 50,000 feet of lumber annually for manufacturing saddle trees. This omission was mentioned & spoken of at the time between plaintiff & defendant & plaintiff proposed to have a new contract drawn to cover this stipulation but defendant said it was not necessary that the lumber should be furnished any how. With this understanding & agreement both parties signed the agreement which is herewith filed marked (A) which will be seen contains all the terms of the contract before set forth except in regard to furnishing lumber. Plaintiff states that relying upon the inviolability of his contract and the honesty of defendant, he said plaintiff in good faith proceeded to erect and did erect the necessary buildings and construct the necessary machinery for manufacturing saddle trees. He erected a building for the wood work of his business 44 feet long and 20 feet wide, one story high - framed and well constructed at a cost of \$600.00 also a peaked log building two stories high twenty feet square for covering trees and drying hides, well constructed at a cost of \$200.00. He also constructed the necessary machinery & purchased the necessary tools at a cost exceeding \$500.00. In less than four

Months after making the aforesaid contract plaintiff had fully performed all the terms & stipulations of his part of the contract & was ready for business. Defendant did commence to perform his part of the contract (by furnishing some lumber) and by furnishing water privilege for driving the wheel of his saddle tree manufactory. In a short time defendant began to show signs of violating his contract. He suffered his dam to go to rack & to leak to such a degree that it did not furnish sufficient water to drive his own mill and refused & neglected to repair the same. He also neglected & refused to furnish lumber for the manufactory of saddle trees. He neglected & refused sufficient water power to enable the wheel that drove the manufactory to do a ^{& finally shut down the head gate & cut off the water entirely} profitable business. He organized a regular system of annoyance that rendered his business precarious vexatious and unprofitable. And for the purpose of driving the plaintiff away & breaking up his business, he fomented opposition ^{to him} as far as possible. He commenced a system of lawsuits - He laid an injunction on the mill so as effectually to prevent plaintiff from getting any lumber. Under the pretence that the wheel of plaintiff's manufactory backed the water upon the wheels of his mill, he instituted a suit for damages in this court - Under these circumstances Defendant having refused to furnish the necessary water power to operate his manufactory profitably - ^{finally having cut off the water entirely} - having laid an injunction on the saw mill so that he could get no more lumber - ~~having refused to furnish the lumber agreed on & contracted~~ having sued him for running his wheel & having organized a system of opposition against him, he had ^{some time about the last of the summer or first of the fall 1850} to break up his business. Plaintiff discharged about 16 or 18 hands which he had in his employ - he had to abandon his buildings and improvements which cost him \$800,00 - he had to sell his machinery at a sacrifice of about \$300,00

He lost all his time and outlay in preparing for the manufacturing of saddles & trunks - all the gains & profits that he reasonably expected should have realized but for the conduct & acts of said defendant - he lost much valuable time in seeking out other another avocation - he was put to great expense & trouble in defending himself against the lawsuits brought by defendant against him. Wherefore plaintiff says that he is deeply injured by the conduct and acts of defendant in the sum of four thousand dollars. He asks the court to hear the case and give such judgement for such an amount as he may shew himself entitled to

James Johnson Attor
for Plaintiff

State of Missouri
County of Jefferson } John H. Morse being
sworn states that the foregoing petition and the
matters therein as stated he believes to be true.

Sworn to & Subscribed
before me May 28th 1852
Thos. Fletcher Clerk

John H. Morse

#13

John H. Muraw

apt.

Thomas H. Matlock

Wait for resolution of a
Contract.

Filed May 28th 1852.
Geo. E. Stecher Clerk

Carroll & Co.
Jan 1853

John A. Morse

against

Thomas H. Maddy

vs. Key Person

1832

The defendant in this cause
denies to the petition of the plain-
tiff in this that he does not prove
his averments taken in connection
with ~~the~~ the contract in writing
upon ^{which} he relies, show any valid cause
of action in this.

1st He states in the petition that he
and defendant contracted to erect a saddle
tree manufactory at Defendants mill
where by the terms of the agreement
on file plaintiff had the privilege
of erecting a factory and was under
no obligations to ~~the~~ defendant to do
so.

2^d The allegation that there was
a verbal contract as to the head or
height of the water in the dam of plaintiff
where the contract ^{itself} is silent upon that
subject.

3^d That he alleges a verbal agreement
as to the quantity and price of lumber
to be furnished yearly which if made
is ^{not} binding upon either party and he
further alleges that said step verbal agree-
ment was not reduced to writing by mistake
which seems to have been discovered before

The contract was signed.

McKipell atty for
Maddox

J H Morse
against

Thos H Massey

Sumner

Filed May 29th 1852
H. C. Fletcher
2010

Sumner was sustained as to
all that part of petition
included in brackets.

Moran 3
Maddox 3

As it remembered that on Tuesday the second day of May Term 1852 of the Jefferson Circuit Court, it was ascertained that the original petition and answer in this Cause was lost or mislaid, and on Saturday the sixth day of Court the papers not having been found, the Court directed the parties to prepare new ones to supply their place, and the plaintiff filed the following (here insert such petition including the parts thickened out by the Court.) On the same day the Defendant filed his demurrer thereto which was sustained, as to all such parts as are included in brackets, and overruled it as to the residue thereof (here insert it leaving out such parts thickened out). On Monday of the second week the 7th day of the Term, the Defendants Counsel produced in the Court the copy of the original petition left with Defendant by Sheriff at the time of serving and just then discovered by Defendant, amongst the books the writ, and suggested to the Court that he would wish the Cause continued at plaintiffs Costs, it appearing that there was a variance between the original petition and the new one filed in lieu thereof, And thereupon the Court seeing no probability of a trial directed the witnesses to be discharged, and on Tuesday the Defendants Counsel before filing his answer moved the Court to continue the Cause at Cost of plaintiff for the Cause above mentioned, at the same time proposing to go to trial instantly on the copy of the original petition produced by him as above, but the Court ordered a continuance without any direction as to Costs. and the Defen-

dants Counsel Excepted. and tenders this his
bill of Exceptions. which is signed sealed &
made a part of the record

John Stone

(Seal)

Moore

24

Madison

Bill of Exceptions

Filed May 31st 1882

Wm C. Fletcher
CLK

John H. Moore

against

Thos H. Mudda

} Answer of Defendant
to plaintiff's substituted
petition.

~~Plaintiff~~ Defendant says that the plaintiff is not entitled to recover any damages of him for any of the alleged violations of ^{the} contract set forth in the petition for in fact and in truth he has violated no part of the contract set forth in the petition but on the contrary has in good faith performed all that was or could be required of him under said contract. And he says further that the plaintiff has not observed or kept the stipulations on his part as set forth in said contract but has constantly failed in so doing. He has uniformly instead of paying the stipulated rent when it fell due or at some short time thereafter refused to pay the same and has put the defendant under the necessity of bringing suit to recover the same, and the consequent trouble loss of time and expense in prosecuting said such suits.

He has contrary to the stipulations in said contract taken the water from the forebay of the mill and after turning his wheel for the saddle tree manufactory so discharged it below the wheel of the grist mill as to impede its motions and thus he has done an injury to Defendant's grist mill.

For the purpose of depriving the defendant
he got possession of his saw mill and pretend-
ed that he would put it a condition to cut
a large quantity of lumber say twenty five
hundred feet per day which defendant has
no reasonable doubt plaintiff could have
done if he would but instead of making
the mill better he soulfully put it in con-
dition that it would scarcely saw at all
and would not pay for attending it; and
he also refused to restore the possession
of it to the defendant and thus put him
under the necessity of buying out for
in order to be restored to his just rights.

He also induced the defendant to go to
great expense in procuring iron and tim-
ber for the above mentioned alterations
in said saw mill and pretended improve-
ments in said saw mill which owing to
the bad faith of plaintiff was an entire
loss to him. He has been damaged by
reason of the foregoing acts and omissions
of the said plaintiff in the sum of five
hundred dollars at the least.

~~Plaintiff~~ Defendant denies that
plaintiff ever was under any obligation
to him to erect a saddle tree manufactory
at the mill. He has had defendant's consent

to do so if he chose but he most positively denies ~~that~~ ever putting him under any obligation to him to do so.

Defendant states that the building, which the plaintiff expected to erect for his business was no inducement to him in giving the lease or permitting him to take water from his prekey or dam. He had a great surplus of water and if the plaintiff could make the surplus useful to him without working an injury to defendant he was entirely willing that he should do so. The building mentioned in petition he does not expect will ever be of any use or benefit to him but on the contrary rather in his way than of use. The water from plaintiff's wheel did impede the wheel of the grist-mill and thus worked him an injury. The farm and houses leased to plaintiff are reasonably worth the eighty dollars per year which the plaintiff promised to pay as rent as by the agreement.

The building mentioned in the petition as erected by plaintiff 44 feet long 20 feet wide one story high was over the saw mill and the expense of the erection was not \$600 or any thing like it but the cost was about one hundred and twenty dollars.

The building of hewed logs 20 feet square spoken of in the petition was erected

of round un-knew logs and after the erection
a little was hewed off ~~so as~~ inside and out so
as to give it the appearance to an unpeeled
egg of a hewed log building; the cost of this
was about \$40.00 In reference to the tools
and machinery which one alleged to be of the
cost exceeding \$500. He cannot state so posi-
tively but he is informed and believes that
the worth and cost could not have exceeded
\$200 or 250, as for the tools he has them
and the machinery if he has not already
taken it away he is welcome to do so

In reference to the allegation in the pe-
tition that he suffered the dam to go to sink
and leak to such a degree that it did not per-
mit sufficient water even for the grist mill
and that defendant neglected and refused to
repair the same Defendant says that he
was under no obligation to repair the dam
for the ~~defendant~~^{plaintiff} even if it was out of repair
~~which~~ and he never prevented the plaintiff
from putting any repairs upon it he had
~~the~~ mind to. It is true that it was for his
own interest to keep the dam in proper
repair so far the water would permit and
he did keep it ⁱⁿ repair for a general rule
But he is unable to see what reason plaintiff
has to complain of his neglect if he did neglect it

Defendant denies most positively either neglecting or refusing to let plaintiff have as much water power as he agreed to and if he failed to do a profitable business for the want of water power it was his plaintiff's misfortune. As to the allegation that he shut down the head gate and cut off the water entirely it is a great error and mistake in plaintiff: no such thing was done for the purpose in the petition intimated if it was ever done at all.

He denies most positively organizing any regular system of annoyance as charged and he also denies fomenting opposition to him. But plaintiff introduced a system of business and treatment to good citizens of in the vicinity of his carrying on business that created ill feelings towards him generally among the people and there is no doubt that this ill feeling was annoying to him and his saddle trees proving to be worthless and an imposition upon the public his work could not find a market except at advanced and perhaps ruinous prices. This of course would break up his business. Defendant denies any and all organized opposition to him but he took the liberty to express his sentiments both as to his general demeanor and the quality of his saddle trees without reserve and he could not express himself in very complimentary

terms of either his contract - or his saddle trees
For any thing he may have said or done he
is answerable to them he holds himself res-
ponsible but not in this action which is
upon a written agreement which contains
no stipulations on his part either to
praise Plaintiff or his work -

He denies commencing any system of
law suits and he instituted none further
than was necessary to compel the plaintiff
to perform his duties & obligations and to
protect himself from fraud and imposition.

He did lay an injunction upon the
saw mill which was his own property and
which the plaintiff had wrongfully and
taken possession of and at the termina-
tion of the said suit he was restored to
the possession of the mill and the plaintiff
was put out of it. But as this is a matter
already adjudicated he objects to litigating
the matter over again.

He demands judgment against the plaintiff
for the sum of five hundred dollars for the
expense incurred in getting timber iron and
boarding of hands at work on the said saw
mill which the plaintiff wilfully made worse
instead of better as above stated.

M. Tripett atty

Thomas Thomas for defendant makes oath and
says that the foregoing answer and the matters

Therein as stated we believe to be true
Drown & I Subscribed Thomas Thomas
before me May
June 1st 1852
Tho C Fletcher
Clerk

John A. Horse
against -
Thos A. Mearns

Answer to sub-
mitted question

Filed June 10th 1852
Thos A. Mearns
Clerk

John H. Moore

esq.

The H. Marshall

3

The Plaintiff moves the court
to strike out of the answer of Defendant all that pertains
in reference to the loss of the mail & the damages claimed
thereon for the reason that it is not relevant or responsive
to the petition.

James O. Spinkton atty

John St Morse
agt.

Thos W Maddox

Motion to strike out
certain portions of
the answer -

Filed June 1st 1852
Thos C Fletcher
Clerk

This motion was sustained
June 3^d 1852, and all
that part of answer
included in ~~petite~~ track
-ets was stricken out

John H. Murrell

esq.

Thos. H. Maddox

The pleavittth shows the court
to strike out the answer of defendant for the reason
that it is not sworn to either by the defendant
his agent or attorney.

John Johnson atty for pleavittth

John H. Moran
agt.

Thos. W. Maddox

Motion to strike out
answer -

COUNTY OF JEFFERSON.

The State of Missouri,

To

Israel Lee, John Fugge, Thomas Shumard,

Thos D. Rodin, Geo D. Scantlin

Greeting:

You are hereby commanded, that setting aside all manner of excuse and delay, you appear before our District Court for the County aforesaid, on the 23^d day of November next at Stillmore, then and there to testify, and the truth to say in a certain matter of controversy, now pending in our said Court, wherein Geo D. Rodin is Plaintiff and Thos D. Scantlin is Defendant on the part of Doct and herein you are in no wise to fail.

Witness, **Thomas C. Fletcher**, Clerk of our said

Court, with the Seal thereof hereto affixed,

at office this 18th day of Oct or

Oct. 20. 1852,

Thos C Fletcher Clerk.

I executed this Writ on Israel Lee
 & John B Scantlin by reading it in
 their presence & hearing on the 20 of
 Nov 1852 — I executed this Subpoena
 on Thomas J. Doolin by reading same
 in his presence and hearing at the County
 of Jefferson Nov 24th 1852 J. M. Alexander
 Subscribed & sworn to before
 me Nov 28th 1852 Wm C Fletcher Secy

of Circuit Court
 Nov 28th 1852.

James M. Lee

John B. Scantlin

for Debt

Israel Lee

John B. Scantlin

Thomas Doolin

Thomas Doolin

John B. Scantlin

Nov 28th

Wm C Fletcher

COUNTY OF JEFFERSON.

The State of Missouri,

To

Anders on Dowles,
Defence at law.

Greeting:

You are hereby commanded, that setting aside all manner of
excuse and delay, you appear before our Circuit Court for the
County aforesaid, on the 2^d November next
at St. Louis, then and there to testify, and the truth to say in a certain
matter of controversy, now pending in our said Court, wherein
Jesse M. Cox is Plaintiff and
The M. & D. Co. is Defendant on the part
of D. & C. and herein you are in no wise to fail.

Witness, Thomas C. Fletcher, Clerk of our said

Court, with the Seal thereof hereto affixed,
at office this 1st day of Nov -
A. D. 1852

Thos. C. Fletcher Clerk.

I Executed this Will in Lafayette
Huskey by reading in his presence
& hearing in the 24th of Nov 1852
James McCallister Sheriff

To Circuit Court

Nov Term 1852.

James McCallister

vs

The said Court

for Debt.

Indorsed Bonds

Eliza Ann

Lafayette Huskey.

2nd day

Wm. McCallister

Sheriff for No 80

Moose } Petition for damages
or }
Muddy } for violation of contract

Be it remembered that after
the verdict and judgment in this case
the defendant filed the following
motion for a new trial

here insert a copy

and the court overruled said motion to
which opinion of the court the defendant
excepted and also prayed the court
to set out the evidence in the case and
so far as it relates to the subject of the
motion and also the exceptions taken
by the defendant to the admission
of the testimony and also to the giving
and refusing instructions

The plaintiff offered to read in evi-
dence in support of his petition the
written agreement between plaintiff and
defendant as follows

here copy

and the defendant objected to its being
read but the court overruled the objection
and permitted it to be read to which the
de opinion & decision the defendant excepted

The plaintiff offered evidence to the
jury to prove that the dam did not
furnish the same head of water subsequent
to the date of the contract that it did
at the time of the ~~date~~ contract was made
and that that the dam got out of repair

from the high water in the spring of 1850 to the offering this evidence the defendant objected and the court overruling the objection the defendant excepted.

The plaintiff then proved to the jury that at the date of the contract there was a head of water of 4 feet 8 inches and that the river was flush at the time that subsequently the high water washed off some of the top of the dam particularly in the following winter and the spring of 1850. That in the summer of 1850 the height of the water was measured and it was no more than 2 feet 4 inches that it was generally however from three to four feet.

On cross examination it was proved that that if the water had been low at the date of the contract instead of flush there would not have been more than from three to three and a half feet.

To the admission of all this testimony the defendant excepted. His however not all the evidence in the cause. ~~In~~ ^{On} behalf of the plaintiff the following instructions were asked and given - ^{best copy} Of the giving of which the defendant excepted.

On behalf the defendant the following instructions were asked and the court

gave copy

And the court refused to give the first

to the refusal of the court to give the first
the defendant excepted.

The defendant prays that the foregoing bill of exceptions be signed sealed and made a part of the record which is
done.

Wm. H. Stone 

* It was further in evidence that after the Contract, the plaintiff proceeded to erect suitable buildings, and machinery for his factory, at a cost of four or five hundred dollars.

325
60
150
4.85
20
505

Mona

es

Wendy

Bill of exchange

Filed Nov 24th 1852

Thos. C. H. Fisher

clerk

Morse
vs
Maddox } Civil action for damages

Know all men by these presents
that Thomas Maddox as principal and
John M. Patterson as securities are held and
firmly bound unto the said Thomas
John & Morse in the full sum of fifty
dollars for the payment of which sum
well and truly to be made to the said
Morse his heirs or assigns we bind our
selves our heirs executors and adminis-
trators jointly by these presents given
under our hands and seals this 27th day
of November 1852

Whereas the above named Thomas
& Maddox has appealed from the
decision of the circuit Court of Jefferson
County in the above entitled case

Now if the appellant will pay all costs
and damages which may be awarded
against him occasioned by such appeal
then the above obligation to be void
otherwise to remain in full force

Executed in presence of
the C. J. & T. C. H.

Thos H. Maddox Seal
by his agent J. H. Patterson

John M. Patterson Seal

Edwards

1832

Band for appeal

Filed Nov 27th 1832

Wm A. Lehen

CLM

In Supreme Court of Missouri, Saint Louis, March Term 1853.

John H. Morse

vs.

Thomas H. Maddox.

} Appeal from the Circuit Court
of Jefferson County.

Now come again the parties in this cause by their respective attorneys, and the Court here being now fully advised of and concerning the premises do consider and adjudge that the judgment aforesaid, in form aforesaid, by said Circuit Court rendered, be reversed, annulled and for nought held and esteemed, and that said appellant be restored to all things which he has lost by reason of said judgment; and it is further considered by the Court that this cause be remanded to said Circuit Court for further proceedings according to the opinion of this Court herein delivered, and that said appellant recover against said respondent his costs and charges herein expended and have thereof execution.

The State of Missouri p.

I William S. Glauville, Clerk of the Supreme Court of the State of Missouri, at Saint Louis, certify the foregoing to be a full and true transcript of the judgment of said Supreme Court in the case of John H. Morse against Thomas H. Maddox, decided by said Court at the March term first above stated, on appeal from said Circuit Court.

Witness my hand and the Seal of said Court at Office in the City of Saint Louis, this twenty third day of May Anno Eighteen hundred and fifty three.

W. S. Glauville,
Clerk.

deposition

John H. Moore

(17).

Thomas H. Mactoy.

Indignment of
Dupe Court.

Filed May 27th 1853
This is the
210

In Supreme Court of Missouri, Saint Louis, March Term 1853.

John H. Morse

vs.

Thomas H. Maddox.

} Opinion of Supreme Court, by Ryland, Judge.

This was an action brought by John H. Morse against Thomas H. Maddox, for an alleged violation of the following agreement:

"Article of agreement made and entered into between Thomas H. Maddox and John H. Morse, both of the County of Jefferson and State of Missouri, as follows, said Maddox grants, leases and rents to said Morse for and during the full term of five years from the 10th day of March 1849, to the 10th day of March 1854, the following described premises & privileges - first, said Morse is to have the use & occupation of the farm now under fence, and mansion house including all the tenements & buildings, except such as hereinafter reserved: all the buildings east of the branch below the mansion house are excluded: also water privileges by and through the saw mill flume or forebay or out of the mill pond in some way for driving or turning a wheel to drive a saddle tree manufactory; also, all the building & improvements that said Morse may erect or cause to be erected to be the property of the said Maddox at the end of the time specified above. Said Morse is to pay the said Maddox annually the sum of \$80.00 payable every six months from this date. Said Morse to keep the farm in good order & not to use any timber except for firewood & said timber to keep up the fences. Said Morse with his wheel or water privilege not to interfere with or impede the grist mill in any way. Signed the within agreement the tenth day of March 1849"

Thos. H. Maddox "

John H. Morse. "

On the trial, the plaintiff offered evidence to prove that the dam did not furnish the same head of water subsequent to the date of the contract that it did at the time the contract was made: that it got out of repair from the high water in the spring of 1850; that at the date of the contract there was a head of water of 4 feet 8 inches and that the river was flush at the time: that subsequently the high water washed off some of the top of the dam; that in the summer of 1850, the height of the water was measured and it was no more than two feet 4 inches, but that it was generally from three to four feet; that after the contract, the plaintiff proceeded to erect suitable buildings & machinery for his factory, at a cost of five or six hundred dollars.

The following instructions were given at the instance of the plaintiff:

The jury are instructed that by the terms of the contract, Maddox was bound to furnish to Morse sufficient water power to drive a wheel to operate his saddle tree factory & the only condition was that Morse was not to use that power so as to interfere with Maddox's grist mill. If then Morse upon the faith of this obligation of Maddox proceeded to & did put up buildings and machinery to carry on the saddle tree business, & if Maddox did suffer his dam to get so low or leaky that it furnished insufficient power, so that Morse could not operate his wheel profitably & in consequence had to abandon his business, then Maddox is liable in damages for the value of the buildings erected by Morse and for losses sustained in selling out his machinery; that Morse was bound to keep his dam in the condition it was at the time of the contract & if he failed to do so, he is liable to Morse for whatever damages he may have

sustained.

The defendant asked the following instructions, the first of which was refused, and the others granted by the Court:

1st That by the terms of the contract between Maddox and Morse, Maddox was under no obligation to keep his dam at any particular height or to keep any particular head of water, and unless the jury shall find that Maddox, by his own act lowered his dam so as to prevent Morse from carrying on his business, they must find for the defendant.

2nd Unless the jury shall find from the evidence that there was insufficient water furnished from Maddox's dam to do the business required by Morse in his saddle tree factory, they will not assess any damages against him on account of his dam being out of repair.

3rd That Maddox cannot be held responsible for his dam being injured by high water, if he repaired it in a reasonable time after the injury.

4th If the jury should find that the dam was kept by Maddox or his agent in the same state of repair in which it was at the time of the contract they will assess no damage against him for want of sufficient water to carry on the saddle tree factory.

5th If the jury shall find from the evidence that Morse abandoned his business of making saddle trees for any other cause than the want of water, they will find for the defendant.

6th That if the jury shall find from the evidence that the head gate was shut down after Morse had abandoned his business, they will assess no damages against Maddox on that, nor will they assess

any damages unless they also find that it was shut by Maddox or his order and so as to obstruct the business of Morse & for the purpose of obstructing his business."

There was a verdict and judgment for the plaintiff, from which the defendant appealed.

As this case depends upon the construction of the article of agreement between the parties, it has been deemed proper to insert the agreement entire in the statement. The Court below construed this agreement, as one binding on Maddox to furnish sufficient water power for the driving of the plaintiff's wheel, in order to operate his machinery in making saddle trees — The instructions given to the jury tell them, "that Maddox was bound to furnish to Morse sufficient water power, to drive a wheel to operate his saddle tree factory; and the only condition was that Morse was not to use that power so as to interfere with Maddox's grist mill: — If then Morse upon the faith of this obligation of Maddox proceeded to and did erect buildings and machinery to carry on the saddle tree business, and if Maddox did suffer his dam to get so low and leaky, that it furnished insufficient power so that Morse could not operate his wheel profitably, and in consequence had to abandon his business, then Maddox is liable in damages, for the value of the buildings erected by Morse, and for losses sustained in selling his machinery.

That Maddox was bound to keep his dam in the condition it was at the time of the contract and if he failed to do so — he is liable to Morse for whatever damages he may have sustained — The defendant asked the Court to instruct the jury that

by the terms of the contract, Maddox was under no obligation to keep his dam at any particular height, or to keep any particular head of water; and unless the jury shall find that Maddox by his own acts, lowered the dam, so as to prevent Morse from carrying on his business, they must find for the defendant. This the Court refused to do.

In the opinion of this Court the Court below erred in its construction of the agreement between these parties. Maddox grants, leases and rents his farm for five years to Morse - "Also water privileges by and through the saw mill flume or forebay out of the mill pond in some way for driving or turning a wheel to drive a saddle tree manufactory" - "said Morse with his wheel or water privilege not to interfere with or injure the grist mill in any way."

There can be no doubt as to the agreement. It was a lease of the farm with the privilege of using the water from the pond - there is no undertaking what the supply of water shall be - no undertaking to furnish a sufficiency of water - The privilege barely of using the water from the mill pond through the flume or in some other way was granted - There was no undertaking on the part of Maddox to keep the water at a certain height in the dam.

In *Pomfret vs. Ricraft* 1 Sand. 321 it was held, "if lease be made of a house and piece of land, except the land on which a pump stands, with the use of the pump, the lessee may repair the pump, but no action of covenant lies against the lessor for not repairing it - In this case Pryderi justice differed from the other judges Reglin, Bramford and Norton and the plaintiff had judgment;

but this was afterwards reversed in the Exchequer chamber by the whole Court; and reversed for the reason given by Tynsden - who said, that where a man grants a water course and afterwards stops it - or demises a house and estovers and afterwards destroys the wood, in such cases the party grieved shall have his remedy by action or covenant; for these are wifful acts of the lessor or grantor and it is a misfeasance in him to annul the or avoid his own grant. - But in this case there is no misfeasance, but only a nonfeasance for which no action lies - As in the case where I grant a way over my land, I shall not be bound to repair it; but if I voluntarily stop it, an action lies against me for the misfeasance - but for the mere nonfeasance (viz) not repairing it when it is out of repair, no action at all lies - In this case, Tynsden further held, that the plaintiff being the lessee might himself have repaired the pump - for although neither the soil itself nor the pump he granted to him, yet by the grant of the use of the pump, the law has given to him this liberty; for when the use of a thing is granted, every thing is granted by which the grantee may have and enjoy such use. See also the case of Rhodes vs. Bullard, 7 East 116.

In the absence of agreement, the landlord for his own sake, will generally prevent the premises from running to decay; but he cannot be compelled to repair, even though the premises be destroyed by fire. So where a house was demised with use of pump, it was held, that an action of covenant could not be supported against the lessor for not repairing the pump; though the lessee himself might do what was necessary to secure

his enjoyment of it" — 2 Platte on Leases 183.

"The landlord sometimes covenants that he will repair the premises — But unless he binds himself by such express covenant, the tenant cannot compel him to repair — Therefore, if a lease, be made of a house, with the use of a pump standing on the lessor's premises the lessee has no remedy, has no remedy against the lessor for suffering the pump to be out of repair" — Cooke on Landlord and Tenant 227 —

Thus we find the general doctrine on this subject. Now under this lease, the landlord was not bound to repair the mill dam — nor bound to keep a certain height of water in the dam — He grants the use of the water or rather grants the privilege of using the water in the pond through the flume or forebay, to the plaintiff, together with his farm; but the plaintiff in using this privilege is not to interfere with defendant's grist mill — Applying the principle long settled in similar cases, to this and it is plain, that the Court below erred —

Before the defendant can be made liable to the plaintiff on this agreement, he must do some act by which the use of the water from the mill pond is destroyed — it will not be enough that he fails merely to repair the dam — his non-repairance will not render him liable — He must by his actions destroy or injure the plaintiff's privilege to the use of the water —

The Court below committed error in giving the instructions for plaintiff, as above quoted — also in refusing to give the instruction prayed for by the defendant —

The other Judges concerning the judgment below is

reversed and the cause remanded.

The State of Missouri,

I William S. Glanville, clerk of the Supreme Court of the State of Missouri, at Saint Louis, certify the foregoing to be a full and true transcript of the opinion of said Court in the case of John H. Morse against Thomas H. Maddox decided by said Court at the March Term first aforesaid, an appeal from the Circuit Court of Jefferson County.

Witness my hand and seal of said Court at Office in Saint Louis, this twenty fourth day of May Anno Eighteen hundred and fifty three,

W S Glanville
clerk.

John H. Morse

D.

Thomas H. Maddox.

Opinion of

Supreme Court.

Filed May 27th 1853

Thos C Fletcher

clerk

COUNTY OF JEFFERSON.
The State of Missouri,

To Israel Lee, John Duggs, Thomas Thomas, the doers here

Greeting:

You are hereby commanded, that setting aside all manner of
excuse and delay, you appear before our Lewis & Clark Court for the
County aforesaid, on the 30th day of Nov 1853
at Hottelboro, then and there to testify, and the truth to say in a certain
matter of controversy, now pending in our said Court, wherein
the said Israel Lee is Plaintiff and
of Alfred and herein you are in no wise to fail.

Witness, Thomas C. Fletcher, Clerk of our said

Court, with the Seal thereof hereto affixed,
at office this 28th day of Nov
A. D. 1853

John H. H. H. H.
Clerk.

I executed the within writ on Israel
Lee & on Thos. J. Doolin by ^{reading it to them} ~~summoning~~
~~them~~ ^{in their presence & hearing} before ~~the Grand Jury~~ the 29th Novr
1853, John Dugge & Thomas Thomas not
being found in the County

Henry Cook

Spald
Nov 5 1853.

Israel Moore

Thos J Doolin

for self

Israel Lee

John Dugge

Thomas Thomas

Thos J Doolin

Chas Geo \$1.50

100

30 day

COUNTY OF JEFFERSON.

The State of Missouri,

To

Jordan Davidson, Henry D. Evans, Benjamin Phipps
Henry Medley and Joseph Medley

Greeting:

You are hereby commanded, that setting aside all manner of
excuse and delay, you appear before our said Court for the
Bounty aforesaid, on the 21st day of November next
at St. Louis, then and there to testify, and the truth to say in a certain
matter of controversy, now pending in our said Court, wherein
John A. Moore is Plaintiff and
Thomas A. Madson is Defendant on the part
of Plaintiff, and herein you are in no wise to fail.

Witness, Thomas C. Fletcher, Clerk of our said

Court, with the Seal thereof hereto affixed,
at office this 27th day of October
A. D. 1853

Thomas C. Fletcher
Clerk.

I executed this writ on H. D. Evans by his acknowledged
agent of the service on the 3rd of Nov. 1853

I executed this writ on Henry Medley and
Duquid Pitzer by reading it in their presence
and hearing on the 22^d day of Nov 1853
A. J. Medley Const

Circuit Court
Nov Term 1853,
John H. Morse
vs
Thomas H. Meddow.

for Deff.
18 Jordan Davidson
Henry D. Evans
Duquid Pitzer
Henry Medley
Joseph Medley

Shffs fees \$2.50

Shffs 50
At Medley 50,
3 day

COUNTY OF JEFFERSON.
The State of Missouri,

To *his* *beantim* *Anderson* *Bowles*, *Eliza* *Arch*
deputy *Shady*, *Nealey* *Jones*
You are hereby commanded, that setting aside all manner of

Greeting:

excuse and delay, you appear before our *his* *small* Court for the
County aforesaid, on the *30th* day of *November* 1853
at *St. Louis*, then and there to testify, and the truth to say in a certain
matter of controversy, now pending in our said Court, wherein
John H. Morda is Plaintiff and
John *Madison* is Defendant on the part
of *Alfred* and herein you are in no wise to fail.

Witness, **Thomas C. Fletcher**, Clerk of our said

Court, with the Seal thereof hereto affixed,
at office this *28th* day of *Nov*
Oct. D. 1853

John H. Fletcher
Clerk.

Executed the within writ on Lafayette Hursey by reading
it in his presence & hearing the 30th Novr 1853

Jesses McCulloch Sheriff
By Augustine Wiley Deft

Spa to
Nov 7 1853

Jess Morda

no
The 14 maddox

for deft

bro 13 Scanthin

Anderson Bowles

Elisha Hunt

Lafayette Hursey

Wesley Jones

\$1,50

3rd day

Executed the within writ on John B Scanthin
& Wesley Jones by reading it in their presence
& hearing on the 29th Novr 1853.
Henry Cook

COUNTY OF JEFFERSON.

The State of Missouri,

To

Wesley Jones, Enoch Thomas, John Hines
vs. the State

Greeting:

You are hereby commanded, that setting aside all manner of
excuse and delay, you appear before our said Circuit Court for the
County aforesaid, on the 30th day of November next
at St. Louis, then and there to testify, and the truth to say in a certain
matter of controversy, now pending in our said Court, wherein
John H. Hines is Plaintiff and
Enoch Thomas Defendant on the part
of J. H. Hines and herein you are in no wise to fail.

Witness, Thomas C. Fletcher, Clerk of our said

Court, with the Seal thereof hereto affixed,
at office this 2nd day of December
A. D. 1853

Thomas C. Fletcher
Clerk.

I executed this writ on Enoch Thomas by reading it
in his presence & hearing on the 3^d of Nov 1853

I executed this writ on Wesley Jones by reading
it in his presence and hearing on the 22^d day of
Nov 1853

A. J. Medley, Clerk

Circuit Court
Nov Term 1853.

John H. Morse
vs
Thomas H. Maddox

for Debt
Wesley Jones 22.
Enoch Thomas
John Wines
Whole Schedules

Sheriff's fees \$2.00

Shelf 50¢
A. J. Medley 25

3^d day

John H. Mason
John H. Madison
In Jefferson Circuit Court
November Term 1833

The plaintiff by his attorney moved the Court to set aside the Verdict ^{and} the above entitled Cause & to reinstate the case upon the Docket to grant a new trial in the above entitled Cause ^{among others} for the following reasons to wit

1. The Court was instructed the Jury.
 2. The Court had no right to instruct the Jury that there was no evidence before them ^{for the plaintiff to recover} to return a verdict for Defendant.
 3. Because the plaintiff was entitled to Verdict in his favor.
 4. Because the Court's instruction was against Law.
 5. Because the instructions of the Court which compelled plaintiff to take a nonsuit were against Law without any authority.
 6. Because the instructions of the Court were inapplicable to the Case.
 7. Because there was evidence that Plaintiff was entitled to have the Jury to pass upon —
 8. Because by the instructions of the Court the Jury were not permitted to try the Case or to pass upon the evidence or the testimony.
- Because the Court instructed the Jury.
Plaintiff's attorney

Mum

24

Mason

Prokin to

set with ~~at~~ her

seventy

Filed Nov 30 1853

No 6 McLehew
ack



To the Clerk of the Circuit Court of the County
of Jefferson, the undersigned Plaintiff
in the case of John H. Moore against Thomas

A Monday hereby applying for an appeal
from the judgment of said Circuit Court
rendered in said case at the Term Term 1853
of said Court to the Supreme Court and
hereinick tender his bond for said appeal
Dated 17th 1854

John H. Moore

Mas Morse
v
Tho St Maddox

Appl for appeal

Filed Jan 17 1834,
Tho C Fletcher
CLK

John D

Know all men by these presents
that John H Morse as principal
and as Jourdan Davidson,

acknowledge ourselves to owe Thomas
H Maddox the sum one hundred
dollars. for the payment whereof
we bind ourselves our heirs
executors & administrators jointly
& severally firmly by these presents
sealed with our seals & dated
this 17th Jan 1854

The condition hereof is such
whereas the above bound John H Morse
plaintiff in an action against
said Tho H Maddox decided at
the Nov Term 1853 Circuit Court of
Jefferson County has taken an
appeal to the Supreme Court of
the State of Missouri, Now if said
Morse will pay all costs and
damages which may be awarded
against him, occasioned by such
appeal and shall prosecute his
appeal and perform such judgment
as shall be given by the Supreme Court
and such as the Supreme Court may
direct the Circuit Court to give, and
if the judgment or any part thereof
be affirmed, that he will ~~pay~~ comply
with & perform the same so far as it may
be affirmed, and will pay all damages
which may be awarded against the
appellant by the Supreme Court then the above
bond to be void, else of full force John H Morse Seal
Jourdan Davidson Seal

signed & acknowledged by the aforesaid John
St Morse ^{& Jordan Davidson} before the undersigned clerk of said
Circuit Court, and the foregoing bond is
approved by me,

In Testimony Whereof I hereto set my
hand and affix the seal of said
Court at Office, January 17th 1854,
Thos C Fletcher
Clerk

John St Morse
vs
Hosie Meadows

Bond for appearance

Filed January 18th 1854
Thos C Fletcher
Clerk

IN THE SUPREME COURT OF MISSOURI, AT SAINT LOUIS.

March Term, 1854.

John H. Morse
vs.
Thomas H. Maddox.

Appeal from Circuit Court
of Jefferson County.

NOW come again the *parties* herein
by *their respective* attorneys, and the Court here being now sufficiently
advised of and concerning the *premises*

do consider and adjudge, that the judgment aforesaid, in form aforesaid, by said
Circuit Court rendered, be *reversed, annulled,*

and for naught held and esteemed and that said
appellant be restored to all things which he has lost
by reason of said judgment;

And it is further considered by the Court, that *this cause be remanded to*

said Circuit Court for further proceedings according
to the Opinion of this Court herein delivered, and that
said appellant recover against said respondent his
costs and charges herein expended and have
thereof execution.

THE STATE OF MISSOURI, SS.

I, WILLIAM S. GLANVILLE, Clerk of the Supreme Court of the State of Missouri, at St.
Louis, certify the foregoing to be a perfect transcript of the *judgment*
of said Court, in the above entitled cause, decided by said Court, at the term first above stated,
an appeal from said *Circuit* Court.

WITNESS my hand, and the Seal of said Supreme Court, at
Office, in St. Louis, this *ninth* day of

May 1854
W. S. Glanville,
WILLIAM S. GLANVILLE, Clerk.

Deft

John H. Moore

vs.

Thomas H. Moody.

Judgt. of Supreme Court

R. R.

Filed May 19th 1854
Chas. H. Moore
Clerk

In Supreme Court of Missouri, Saint Louis, March Term 1854.

John H. Morse

v.

Thomas H. Maddox

} Opinion of Supreme Court. - Ryland, Judge.

This case was before this Court at March Term 1853; was then reversed and remanded. It now comes here by reason of an instruction given by the Court, which caused the plaintiff to take a nonsuit.

This instruction informed the jury that the plaintiff had given no evidence showing that Maddox had done any act to obstruct or hinder Morse from the use of the water for driving or turning a wheel to drive the saddle tree manufactory and the jury will find for the defendant.

This manner of instructing is objectionable, and it is always erroneous if there be any evidence on the point given. It has been sanctioned where there was no evidence, but even there, the Court had better hypothetically instruct.

In looking into the record in this case, we are satisfied that the instruction is not warranted by the state of the evidence before the jury, and it was error for the Court to have given such. It was in evidence that there was at all times plenty of water in Big River to drive Maddox's grist mill and Morse's saddle tree factory. That the head gate that let the water through the flume or forebay on Morse's saddle factory, was shut down in July 1850, that it excluded the water from said factory and threw it on the grist mill. Maddox had been heard to say, previously to shutting down the gate, that he intended to drive Morse away from the mill. This gate was shut down by the agent of Maddox and was known to Maddox.

The defendants' attorney contends that as the gate could be easily raised if it had been shut down by Maddox, that the shutting down ~~had been~~ did not obstruct the plaintiff in getting the water from the mill. I cannot see how this is to vary the

State of the evidence before the jury. Was there any evidence as to the matter on which the instruction was given? If so, no matter how inconclusive or unsatisfactory, the Court had no right to say that there was none.

This manner of instructing is the source of frequent complaint in this Court, and it can always be avoided by the Courts below giving the instructions hypothetically. For giving the instructions in this case, the judgment below must be reversed. The other judges concurring, the judgment is reversed and the cause remanded.

The State of Missouri.

I William S. Glanville, Clerk of the Supreme Court of the State of Missouri at Saint Louis, certify the foregoing to be a true and perfect transcript of the Opinion of said Court in the Cause herein first before stated, decided by said Court at the term first aforesaid, on appeal from the Circuit Court of Jefferson County.

Witness my hand and the Seal of said Supreme Court at Office in Saint Louis this eightth day of May Anno Eighteen hundred and fifty four.

W. S. Glanville

Clerk.

Jefferson

John A. Moore
©.

Thos. A. Braden

Chinaman Inst. Court

R. N.

Filed May 19-1854
Thos. A. Braden
Clerk

COUNTY OF JEFFERSON.

The State of Missouri,

To

Henry S. Evans, Clerk Thomas, John Miner
Respondents
You are hereby commanded, that setting aside all manner of

Greeting:

excuse and delay, you appear before our District Court for the
County aforesaid, on the 28th day of November 1854
at St. Louis, then and there to testify, and the truth to say in a certain
matter of controversy, now pending in our said Court, wherein
John H. Apple is Plaintiff and
Thomas H. Macdonald is Defendant on the part
of Plaintiffs and herein you are in no wise to fail.

Witness, Thomas C. Fletcher, Clerk of our said

Court, with the Seal thereof hereto affixed,
at office this 5th day of Nov
A. D. 1854

Thos C Fletcher
Clerk.

I Executed the within writ at the County
 of Jefferson on John Winer and Henry D
 Evans by reading the same in their presence
 and hearing this the 24 day of Nov 1854
 and also on Enoch Augustine Wiley Sheriff
 Thomas by reading in
 his presence and hearing
 Nov 28th 1854

Deirich Leach
 Nov Decm 1854.

John H. Menden
 in
 Charles H. Menden

For Debt

Henry D. Evans +
 Enoch Thomas
 John Winer +
 Wesley Jones
 August Wiley +

Sheriff's fees \$112.00

COUNTY OF JEFFERSON.

The State of Missouri,
To Lemack Thomas —

Greeting:

You are hereby commanded, that setting aside all manner of
excuse and delay, you appear before our Lewis's Court for the
County aforesaid, on the 28th day of November 1854
at Stillmore, then and there to testify, and the truth to say in a certain
matter of controversy, now pending in our said Court, wherein
John H. Moore Plaintiff and
The Wellmady Defendant on the part
of Platt and herein you are in no wise to fail.

Witness, Thomas C. Fletcher, Clerk of our said

Court, with the Seal thereof hereto affixed,
at office this 23^d day of November
A. D. 1854

He L. M. L. Clerk.

Leicester Leavitt
Nov. 20th 1854

John W. Morse
my dear

Mr. W. Wadley

for self
much. I can do

2^d day
my receipt with him

COUNTY OF JEFFERSON.

The State of Missouri,

To

Jordan Davidson

Greeting:

You are hereby commanded, that setting aside all manner of excuse and delay, you appear before our Sevicil Court for the County aforesaid, on the 28th day of November next at Stilwell, then and there to testify, and the truth to say in a certain matter of controversy, now pending in our said Court, wherein John H. Moore Plaintiff and Thomas H. Madley Defendant on the part of Plaintiff and herein you are in no wise to fail.

Witness, **Thomas C. Fletcher**, Clerk of our said

Court, with the Seal thereof hereto affixed,
at office this 22^d day of Sept
A. D. 1854

Thos C Fletcher Clerk.

By J. L. Attorney attit

The within Defendant not found in
Crawford Co

A. W. Johnson
Sheriff

To. Circuit Court.

November 1854

John H. Moore

vs

Thos. H. Meacham

for Att

Standard Directors

fees of Sheriff

Amount

0.25

Paid

If the jury find that Maddox either by himself or Agent for the purpose of interrupting Morse in the peaceable enjoyment and use of the water privilege shut down the head gate of the forebay, by which Morse was prevented from the enjoyment and use of the water, then he had a right to abandon the contract, and recover by way of damages such losses as he may have sustained by reason of being thus deprived of the use of the property, and the jury will find a verdict, —

But if the jury find that Maddox neither by himself or agent, did shut down the head gate for the purpose of depriving Morse of the water, or if they find that ~~he~~ ~~was not~~ ~~deprived~~ ~~of the use of~~ ~~and enjoyment of the water~~ or if they find that he was not interrupted in the profitable prosecution of his business by shutting down the head gate then the defendant is not liable for any breach of his contract, and the jury will find a verdict for the defendant.

By the terms of the contract in evidence Maddox was not bound to keep up the dam of the mill and if the jury find that the interruption of Morse's business, and his being deprived of the use and enjoyment of his water privilege, was in consequence of the dam getting out of repair, and the insufficiency of the water in consequence, then defendant is not liable and the jury will find a verdict for defendant.

Index

1

Madboy
Questions

(for diary)

Filed Nov 29 1854

Ho & Malcher

CK

Morse
or
Maddox

Defendant moves the court
to set aside the verdict and judgment in
this case and grant a new trial for the
following reasons

1st Because the verdict is against
law and evidence

2^d Because the verdict is against the
instructions of the court

3^d Because the court gave illegal
instructions to the jury for the plaintiff

4th Because the court refused legal
instructions asked by defendant

5th Because the damages assessed
by the jury are excessive

McLispell atty
for Maddox

Moran

15

London

Proton for
a new boat

July 29th 1854
The L. & A. S. Co.
Genl

Moose

17

Maddox

Be it remembered that on the trial of this case the plaintiff on his part offered the following evidence. The contract between Maddox and Moose as follows (here copy)

The plaintiff then proved by Henry & Evans that Moose wheel did not interfere with the grist mill - that Maddox grist mill wheel threw the water across the stream. That there was always plenty of water in Big River to run both the grist mill ^{factory} & saddle tree.

The building erected by Moose over the saw mill was 44 feet long and from 20 to 24 feet wide - ^{cost \$300 he should think} Heard Maddox say it was worth \$500.

The log building erected by him was 20 feet square 2 stories high ^{he was worth that sum} should think it cost \$100. ~~that was~~ 2 3 or 4 water in it and a pump wheel with the pipe cost \$40 estimates the cost of the whole to \$50, at best.

The head gate was shut down in July 1850 shutting this gate would stop the water from Moose's wheel.

Moose continued to work there till January 1851 - ^{some 11} ~~he worked some 16 or 18 hands~~ finishing off the work on hand, he discharged some ^{of his} ~~hands~~ hands in July 1850 about the time the head gate was shut down, Heard Maddox say he would spend all he was worth or drive Moose from the mill.

That Moore was at work at his business of making saddle trees, at the time the head gate was shut down.

Enoch Thomas said Moore had a couple of hunting events a large frame over the saw mill and a log building. He considered that the frame building cost - from \$200 to 250.

In a conversation with Maddy Maddy had stated that it was worth \$500, the log building was worth \$100.

He had had the grist-mill of Maddy build and he never thought that Moore would impeded the grist mill wheel. That he was at the grist mill about the time Moore went there and continued there for some time.

Thomas Thomas, ^{agent for Maddy} then went there and remained till after the head gate was shut ^{down}. He then returned at the solicitation of Maddy. At the time he returned to the mill it was grinding but 5 or 6 bushels a day on account of the lowness of the water and the bad order of the stones. He never saw a mill in a worse fix to grind.

Before he returned to the mill Maddy had sent for him to come and see him at his house on the Antyue went to Maddy house and staid two nights and a day Maddy asked him if the saw mill was running - Witness told him No. Maddy asked why. Witness told him the head gate was shut-down. Maddy replied, ^{By God} I will come the old soldier over him yet.

While Moore was at the mill witness saw Maddy came to witness house and told

and told him he wanted him and his boys to
come over to the mill that he Muddox had
got a barrel of whiskey ^{and} to raise a mole
to tar and feather Morse ^{and} having D Evans and
Jordan Davidson ^{and drive them from the mill} Witness refused and
he never heard of any attempt of Muddox
to carry his threat into execution.

When he took the mill the second time when Thomas
Muddox gave him witness an order to
Thomas to deliver up to him witness the mill
which is the same read in evidence as follows
(here copy the order word for word)

Wistley Jones, a witness for plaintiff stated
that he was hired by Thomas Thomas who
had the care of the grist-mill ^{as his agent} of Muddox, in
1850 and stood there till Brock Thomas took
possession ~~that~~ about the time he shut the
head gate down that shut the water from
Morse's wheel and the saw mill the water
in the dam was so low that he had ground
all night on five bushels of wheat. That he
shut the gate to try if the shutting it would
not help the running of the grist-mill. He
had talked with Thomas Thomas upon the
subject before he shut it down, ^{and they concluded to shut it down to help the grist-mill} That Muddox
had had nothing to do with his shutting it either
directly or indirectly ^{at the time he shut it down} that he had done it to
see what effect it would have upon the grist-
mill Morse had not been using his wheel

* John Miner stated that the saddle tree factory wheel required not more than half as much material as the grist mill often said for story wheel could not interfere with the grist mill

for a week or two before he shut the gate. It could have been easily raised and he does not know of Morse's being prevented from raising it.

Morse could do no good with his wheel without more water than was in the race at the time the gate was shut.

Deigned Pitree proved that the frame building was worth \$300 and the log building \$100. Morse had not lumber of time for the frame that the saddle tree factory wheel of Morse did not interfere with the grist mill. That Morse only needed to run his saddle tree factory wheel one or two days in a week to supply himself with lumber for his business to keep his hands employed.

This was all the evidence offered by the ~~defendant~~ ^{plaintiff} except two or three ^{with the jury} were introduced who proved that Morse's wheel did not interfere with the grist mill to impede it. * The defendant offered no evidence.

The court gave in behalf of the plaintiff the following instructions to the jury -

Here insert the first instruction of the three which were given by the court.

To the giving of which the defendant excepted. After the verdict and judgment in the case the defendant moved for a new trial which motion is as follows.

Here insert the motion for a new trial.

The court overruled said motion to which opinion of the court in overruling said motion the defendant excepted and prays that this his bill of exceptions which sets out the evidence and instructions excepted to be signed sent and made a part of the record in the cause which is done.

John A. Stone

[Signature]

W. H. Allen & Co. 1884
J. H. Allen & Co. 1884
J. H. Allen & Co. 1884

John H. Morse

Thomas H. Muddox

In the Superior
Court

Know all men by these presents
that I Thomas H. Muddox as principal
and John M. Patterson as security are
held and firmly bound unto John
H. Morse in the sum of fifty dollars
for the payment of which sum to the said
Morse his heirs or assigns we bind our-
selves our heirs executors and adminis-
trators firmly by these presents

Given under our hands and seals
this 29th day of May 1855-

Whereas the said Thomas H. Muddox
has prayed an appeal from the judg-
ment of the circuit court in the above
cause to the supreme Court Now if the
said Muddox shall prosecute his appeal
and pay all costs and damages which
may be awarded against him occasioned
by such appeal then the above obligation
to be void otherwise to remain in full
force and effect

Thos H. Muddox (seal)
by M. Frippell atty

John M. Patterson (seal)

J. H. Moore
gave it -

Thomas Medley

Alfred Bond

Filed May 29th 1835,
Wm. C. Aldrich
clerk

John H. Morse
against
Maddox

Be it remembered
that in the above cause on Tuesday
the second day of the ~~term~~ May term
of the Jefferson Circuit Court it was
ascertained that the original petition
and answer in this cause was ascer-
tained to have been lost or mislaid
and on Saturday the sixth day of
the term the loss of the papers was
suggested to the court and an order
made for the parties to supply the
same and the plaintiff thereupon
forthwith filed the following in
place of the original petition
here insert a copy including
the parts marked by the
Court-

And the same day the Defendant
filed his demurrer to the petition filed
in lieu of the original as follows

Here copy the demurrer
And upon arguing the demurrer the
court sustained it in part and over-
ruled it in part and struck certain
portions of said substituted petition out-
so that it reads as follows

Here copy leaving out the
portions marked out.

given by Sheriff to Defendant, at service of
the writ, and on this day found and
produced by Deft. Counsel -

On Monday the 7th day of the term
defendant produced in court a copy of
the original petition ^{here why it is full} and proposed to go
to trial upon that ^{copy of the} petition, or if the
Plaintiff should wish to try upon the case
as set forth in the substitute that it
should be considered as an amendment
and the Plaintiff should take a continuance
at his costs. The case was docketed for
trial on the 6th day of the term and
some fifteen or twenty witnesses were
in attendance.

Under these circumstances the court
on the 7th day
ordered a general continuance the costs
to abide the event of the suit -

To this decision of the court the
defendant excepted and prays that this
his bill of exceptions be signed and
seated and made part of the record which
is done.

Jonathan Stone (seal)

Mon

as

Wadden

Price of Exemption

Morse

is

Maddox

Be it remembered that on the trial of the above Cause the following evidence was introduced by plaintiff

Amey D. Evans - Stated that he was acquainted with the parties to the suit in 1849 at the mill and drew up for them the lease in evidence, that there was at all times plenty of water in Big River to drive Maddox Grist Mill & Morse's Saddle tree factory, that the head gate that let the water through the flume or furrow on to Morse's saddle tree factory was shut down in July 1850, that it excluded the water from said factory & threw it on to the Grist Mill. Had previously to the shutting down said head gate heard Maddox say that he intended to drive Morse away from the Mill. This was in the Spring of 1850. and before the trial on the Injunction. That the buildings which Morse had erected on the premises for the purpose of his business & the machinery were worth, as follows. Frame building 44 by 20 feet worth 300 or 400\$. Said Maddox say it was worth 500\$. Another building worth \$100. this was for curing saddle trees. Vats worth 10 or 15\$. Pump & pipe 40\$. Water wheel & other saws fixtures & other machinery worth 200\$ or \$300 - That these improvements were erected put up at the by Morse and that at the direction

of the instrument it was so stated since
undoubtedly even the painter that ~~was~~ ^{Maddox} was
to keep up the dam (the ^{last} evidence was objected, and objection
sustained and exception taken)
that Morse did not stop work ^{entirely} till after the
but at the time of granting an injunction against the running the saw mill
of him he had discharged most of his hands & only remained to finish up
head gate now shut down, that he left the
mill the January following (1857) The head
gate could be raised or let down at any time
and by any one

Mally Jones - stated that he was hired
at the Grist Mill by Thomas Thomas who may
then under Maddox ^{whether as lessee or agent did not appear} that he stayed out
there in April 1850 & remained a few days
after Thomas left. That he & Thomas concluded,
that by shutting down the head gate that
let the water onto Morse's saddle tree wheel
it would increase the power for grinding, as they
were scarce of water in the dam, ^{and a great deal of grain} according
shut it down, but can't say whether Thomas
it however did not increase the water on the grist mill wheel, the head gate
might have been easily raised by one man
told him to do so or not. It took all the water
from the saddle tree factory. Thomas knew it
was down. Thomas knew it was down. Thomas was doing business at the mill for Maddox

Enoch Thomas - stated that after Thomas Thomas
left, he thinks in July or August 1850 Maddox
sent for him to take the mill, saying that
Thomas was doing no good there. That Maddox
asked him if Morse was running his saddle
tree factory. When ^{the head gate was shut down} Morse said no, Maddox
laughed & said he will come the at soldier
over him yet. That before the injunction suit
in May 1850 Maddox called on him to know if
he knew any thing about it in conversation

A also that Maddox sent for Thomas in order to destroy Thomas
to take charge of the mill when in order.

Jordan Davidson further stated that after the injunction against the saw mill running the saw mill by Morse was taken out in May 1850, Morse discharged most of his hands, himself & three or four others, remained to fix up, about the time the head gate was shut down, the head of water in the dam was low in consequence of freshets breaking the dam, and in consequence the water was not sufficient to run the factory well, it therefore only ran occasionally.

Maddox said he would drive Morse off if he had to raise a mob to do it, that after he went to the mill at the request of Maddox, Morse still had hands then at work that he had discharged some of them, this was in July or August & after the head gate was shut down - The injunction that was laid on the Saw Mill did not prevent Morse from running his saddle tree factory ^{which would cut} ~~which would cut~~ ^{with paddle & saw} ~~which would cut~~ ^{if he had water} ~~which would cut~~ ^{though but very in difficult} John Mice. Justice that the building which Morse had erected & the machinery tools &c. necessary for the business was worth \$800. That shutting down the head gate that let the water on to Morses wheel would have the same effect as shutting off the air from the lungs - both would stop cease to move.

Jordan Davidson testified, that he thinks the head gate was shut down in June 1850. Heard Maddox say that Morse should be hista off the place, some of Morses hands left after the injunction but not all of them, that some were there when the head gate was shut down. the shutting of it down stopped Morse from work, a few staid and finished off the work then on hand. Morse himself left in January following.

~~Then the plaintiff closed his case. & thereupon~~ That Maddox commenced growling & quarreling as soon as Morse commenced running his saddle tree factory & threatened to run him off & stop him from work. It was also proved that the water from Morses saddle tree factory which did not interfere with Maddox's wheel of just mill

Morse
v.
Maddox

3

plaintiffs instructions

The jury are instructed that by the terms of the contract, Maddox was bound to furnish to Morse sufficient water power to drive a wheel to operate his saddle tree ~~factory~~ and the only condition was that Morse was not to use that power so as to interfere with Maddox's grist mill. If then Morse upon the faith of this obligation of Maddox, proceeded to build up buildings & machinery to carry on the saddle tree business, and if Maddox did suffer his dam to get so low or leaky that it furnished insufficient power so that Morse could not operate his wheel profitably & in consequence had to abandon his business, then Maddox is liable in damages for the ^{value of} buildings erected by Morse & for losses sustained in selling out his machinery.

That Maddox was bound to keep his dam in the condition it was at the time of the contract (and if he failed to do so he is liable to Morse for whatever damages he may have sustained).

There is no evidence given in behalf of
the plaintiff showing that Muddox has
done any act to obstruct or hinder
Morse from the use of the water for
driving or turning a wheel to drive the
saddle tree manufactory and the jury
will find a verdict for the defendant

Defendants instructions

- 2^d Unless the jury shall find from the evidence ~~that~~ there was insufficient ~~evidence~~ water furnished from Maddox dam to do the business required by Morse in his saddle tree factory they will not assess any damage against on account of his dam being out of repair.
- 3^d That Maddox cannot be held responsible for his dam being injured by high water if he repaired it in a reasonable time after the injury.
- 4th If the jury should find that the dam was kept by Maddox or his agent in the same state of repair in which it was at the time of the outbreak they will assess no damage against him for the want of sufficient water to carry saddle tree factory.
- 5th If the jury shall find from the evidence that Morse abandoned his business of making saddle trees for any other cause than the want of water they will find for the defendant.

Over

Left within strong

6th That if the jury should find from the evidence that the feed gate was shut down after Morse had abandoned his business they will assess no damage against Muddox on that nor will they assess any damage unless they also find that it was shut by Muddox or his order and so as to obstruct the business of Morse and for the purpose of obstructing his business

2 Unless the jury shall find ~~that~~ from the evidence that there was insufficient water furnished from Maddox dam to do the business required by Morse in his saddle tree factory they will not ~~find~~ ^{assess} any damage against Maddox on account his dam being out of repair, ~~if they should be of opinion that the dam was not kept in reasonable state of repair~~

3 If the jury should find from the evidence that the dam was kept ^{the same repair in which it was at the time of leasing} in reasonable repair by Maddox or his agents then they will assess no damage against him for the want of sufficient water to carry the saddle tree factory

4 If the jury shall find from the evidence that Morse abandoned his business of making saddle trees for any other cause than the want of sufficient water they will find for the defendant

5 That Maddox cannot be held responsible for his dam being injured by high water if he repaired it in a reasonable time after the injury

6th If the jury should find that the dam was kept by Maddox or his agents in the same state of repair, in which it was at the time of the Contract, they will assess no damages against him, for the want of sufficient water to carry the saddle tree factory

That if the jury should find from the evidence that the head gate was shut down after Morse had abandoned his business they will assess no damage against Muddox on that account nor will they assess any unless they also find that it ~~shut~~ was shut - by Muddox or his order and so as to obstruct the business of Morse and for that purpose

Grove

386 The day to find ~~in~~ for the
add no pounds at
Attentive for hundred and five dollars

To Vernon T. T. T.

For Mr. & Mrs. Adams
The
Chesterbury Free School
and Society, Boston

Amos Stone

Isreal Lee
Enoch Thomas
James McCulloch
Joseph Cates
Doctor Dixon
Doctor John Dugge
Johnathan Drimmer
Theodore Sickle
Garretson St Louis
Milton Mc Donnell
Squire Wilson
Thomas Thomas
Anderson Bowles

Th. W. Haddox } on part of
vs. } P. H.
Horne }