

Jefferson County Circuit Court
Case Files - Civil

November 1852, No. 14

Kennett, Ferdinand, exec.
White, James M,

vs.

Howe, Williams.

Debt, account

Debt \$900 for 600 cords of wood

Box 7 Folder 41

Per Kenneth Ex^r
of James M White dec^d Plaintiff
Against
William S Howe defendant

In the Circuit
Court.
Jefferson County

Plaintiff states that
he is the surviving Executor of the Estate of James
M White deceased, and as such defendant
owes him nine hundred dollars for 600
cords of wood sold by said White to defendant
at Cornice Island @ 1.50 per cord.

The particulars of which will appear by
an account hereto annexed and made part
of this petition, Plaintiff asks judgment for nine
hundred dollars amount due him

P Piskin for Pelf

Per Kenneth, plaintiff makes oath and says he
believes the above petition and the matters therein
as stated are true Per Kenneth Ex^r of J M White dec^d
Sworn to, and subscribed before me this seventeenth
day of May eighteen hundred and fifty two.

L. B. D H Armstrong Notary Public in &
for the County of St Louis Mo,

a true copy of the original petition and
affidavit on file in my office

In Testimony whereof I
hereto set my hand (and)
affix the seal of said Court
at Hillsboro May 22^d 1852

Thos C Fletcher

Clerk Circuit

I executed this writ and petition on William, J.
Howe by reading it in his presance and hearing
and also by delivering to him a copy of the
writ and petition on the 22 day of
June AD 1852 James McColloch Sheriff

to Circuit Court
November Term 1852

for Kenneth Co. in
of & on behalf
as & common
Mon of above

Sheriff's fees \$1

I executed this

County of Jefferson to
The State of Missouri.
To the Sheriff of the County of Jefferson, Greeting
We command you that you summon
William S. Howe if he be found in
your County that he do and appear
before the Judge of our Circuit Court
on the first day of the ~~next~~ term thereof
to be begun and held at the town of
Hillsboro within and for said County
on the fourth Monday of November
next, then and there to answer unto
Geo^d Kenneil Execution of James
McWhitt dec^d on his original petition
a copy whereof is hereto annexed
and accompanies this writ, and
have you there this writ, Witness the C^t & J. Fletcher
Clerk of our said Circuit
Court at Hillsboro
May 22nd 1852,
(Geo. C. Fletcher
Clerk)



Heid. Kenneth, Capt. of
 James M. White, dec'd } Plaintiff } In the Circuit
 Against } Court,
 William S. Howe, - Defendant } Jefferson County.

The Defendant demurs to the
 Petition of Plaintiff because it does not state
 facts sufficient to constitute a cause of ac-
 tion, in this,

- 1st The Petition does not state any time
 when the sale of wood to Defendant, (as
 therein alleged,) took place.
- 2 - The Bill of particulars referred to by said
 Petition, has not been filed.
- 3 - There is no proof of the Plaintiff's Letter
 Testamentary.
- 4 The Petition is, in other respects indefinite,
 informal, and insufficient.

} Abner Green
 } Atty for Def.

This Demurrer was sustained
 & leave given Def. to amend
 his Petition.

Geo. Bennett

Govt. do.
no.

Wm. J. McCreary

Demmer

Filed Nov 22nd 1852
Jno. C. & Co. Secy
C. C. D.

Ferdinand Kemmelt Ex^r
of the Estate of James M.
White deceased

In the Superior Court
of the County of Jefferson

vs
William S. Howe

The annexed petition of plaintiff
states, that defendant is indebted to him as
Executor of the estate of deceased in the
sum of Nine hundred dollars, for 600 cords
of wood sold to him by James M. White
deceased as per the following account,
1852.

William S. Howe

To Ferdinand Kemmelt Executor
of James M. White deceased Dr.

To 600 cords of wood sold you
on Cornish Island at 150

per cord
for which plaintiff asks
judgment.

\$900

Ferd Kemmelt Ex^r
By Pipkin Atty.

Ferdinand Kemmelt plaintiff makes oath and
says that he believes the above petition and the
matters therein as stated are true

Sworn to & subscribed
before me this sixteenth
day of May A.D. 1853.

Jos. Kemmelt Ex^r
of Jas. M. White dec.

Chas. Peckell Justice of the Peace within and
the County of Washington and State of Missouri

14

1182

Mr. Kenneth Boyer

by

Wm. J. Hance

Amended Petition

Filed May 23^d 1853

Wm. J. Hance

per

Fred. Kennell Esqr.
of Law, M. White

vs.
William S. Howe

In the Circuit Court
Jefferson County
May Term 1853.

The Defendant by his Attorney,
moves the Court to strike out the Amended
Petition of Plaintiff in the above cause, and
strike off the said Case from the Docket, and
dismiss the suit, for the following reasons:

- 1 - Because, at the last Term of this Court, to wit,
on the 27th day of November 1852, as appears
of Record of said Court, a motion to strike
out Plaintiff's original Petition, was sus=
tained by the Court, and no leave was grant=
ed him to file an Amended Petition in va=
cation.
- 2 - The Petition being stricken out by Order
of the Court, no Cause of Action remained
to be continued, and Plaintiff cannot now
come into Court simply by amendment - as De=
fendant has no legal Notice of the proceedings.
- 3 - The Cause having been disposed of at last
Term, Plaintiff has no Cause of Action be=
fore the Court to be tried, as no writ or other
process has been executed on Defendant.
- 4 - The Plaintiff's failure to obtain leave to amend,
amounts to an election on his part to stand on
the decision of the motion to strike out, and
is equivalent to a judgment on a demurrer
sustained by Defendant, as it operates a dis=
continuation,
or dismissal of the Cause. 3 Amos Green, Atty for
Def.

In Circuit Court

May Term 1853

Wm. Bennett, Esq.
of J. M. White

vs.
Thos. J. Hobbs

Plaintiff
Defendant

Filed May 23^d 1853

Thos. J. Hobbs
Clerk

Ferdinand Kenneth exor of } In Jefferson Circuit
 James M White second plff } Court
 Against } May term 1853
 William J. Howe Deft

Defendant for answer to the
 plaintiffs amended petition states that he
 does not owe plaintiffs for ~~the~~ Cord wood sold
 to him by plaintiffs testator as stated in the
 petition or any part thereof. That the
 said James M White did not sell to
 Defendant. 600 Cords of wood or any part
 thereof as stated in his petition.

Defendant further states that said
 plaintiffs ought not to have or maintain his
 action against Defendant because he says
 that plaintiffs right of action accrued more
 than five years next preceding the com-
 mencement of this suit.

Green & Small for Deft

Wm J. Howe makes oath and says he
 believes the above answer & the matters
 therein as stated are true.

Taken to & Subscribed before
 me May 24th 1853.

Thos C. Hatcher cler

by
Wm J. Howe

Herb Kemnitz Esr
1817
New York

Owner of Aelft.

Sted May 24th 1853
No. 212
Cin

He the Jury find For the Defendant.
Willis Hopson Foreman

In this cause there was a judgment
for Defendant May 24th 1854
Book no 3 page 354.

Sub Geo. W. Fletcher et al