

Jefferson County Circuit Court
Case Files

Box

7

Folder 54

May 1853, No. 46

Smith, James

vs.

Jefferson County Court

Smith, John, Adm.

Dale, Elbert

Mandamus

Order County Court to affirm sale
of 80 acres in S17T41R4E purchased
by plaintiff

James Smith plaintiff
Against

In the Jefferson Circuit Court
May Term 1853

The Jefferson County
Court in the State of Illinois
vs James Smith Adm. of estate of
Elbert Ogilbee deceased Defendants

The Petition of James Smith would most respectfully
represent to your Honor that John Smith administrator
of the estate of Elbert Ogilbee deceased filed a Petition for the sale
of real estate belonging to the estate of Elbert Ogilbee deceased
or are more at large appear from said Petition hereto
the Court shows which was for the payment of debts of deceased.

That at the Term Term of said Court 1852 the County
Court of Jefferson County made an order that all persons
interested in said estate be notified which said order ^{of publication} is hereto
Court shows which said Petition for the sale of said order is
in due conformity of law. which said order of publication
was fully complied with & was published by putting ^{it} in public places
in different parts of the County a copy of the same according to the
requirements of said order. —

That at the next succeeding Term of County Court
the said Administrator as he claims obtained an order
to sell personal estate all of which with more
at large appear from the record of said County Court,
which is hereto the Court shows. which said record proceeds by
Trusting said sale shown to the Court shows.

That after said order of sale was made the said
Administrator proceeded to give notice of said sale
of the lands hereafter described and did give
the notice required by law as will be shown to the satisfaction
of the Court.

That at the March Term

The plaintiff further states that pursuant to an order of the Court, a sale was made at December Term 1833 the said Thomas Thompson had the following real estate appraised and advertised for sale as appears by the Certificate of appraisal and a copy of the advertisement. And that pursuant to said advertisement he did on 22^d day of March 1833 at the Court House in and for the Town of Hillsboro in said County during the session thereof between the hours of nine o'clock in the forenoon & four o'clock in the afternoon of that day offer for sale to the highest bidder among other lands the following real estate viz 80 acres being in the County of Jefferson a farm and being West half of Sec. 17. in T. 41, N. R. 4 East containing 80 acres & which was by offer sold to James Smith at for the price sum of one hundred twenty dollars, he being the highest bidder and said James Smith paid the Cash for one half of the purchase money for said tract this promissory note for the other half according to the terms of sale was given to the Court.

All of which will more at large appear from the Report of said Sales made by the Court aforesaid of said of his Estate.

That he purchased said land bona fide as above shown & is ready & willing to pay all the ^{purchase} money for the same & fully to comply upon his part with his obligations.

That he is informed & believes it to be true that the report of
said sale of land was made to the County Court in due form
of Law and that said Court refused to approve of the
same.

The object of this Petition is to compel the County Court to
approve of said sale, or to show cause why the said Court
refuses to approve of the same.
And to compel the said administrator to make a deed
for the same conveying to plaintiff all the right
and title which the Decedent had of or to said
land at the time of his death to your Petitioner.

That your Petitioner here being into Court the money
for said land, the full amount for which it was sold
and ^{or} to comply in every particular with every obligation
upon his part.

He prays that the Court may by Mandamus
or by such Authority as in the Court is vested
compel said County Court to do what ought to have been
done, and that the Court may compel said Court to approve
said sale & to make an order that upon the payment of
the purchase money the administrator execute a deed
to the purchaser according to the requirements of Law.
And to do whatever else may be ~~properly~~ ^{justly} proper in the premises.

He further prays that the Court may grant all such other
further relief as may be just & proper.

James Smith by his atty, Green
& Jones

Plaintiff James Smith plaintiff being sworn after
his oath states that the fact set forth above ^{is true}
being according to his best knowledge belief

Subscribed and sworn to before me
on this 25 day of May 1853
Thos C. Fletcher. Clerk
Wm E. Honey DC

James + Smith
Plaintiffs

710 46

1172

Indefinite

County Court

May Term 1853

John of James
Smith for Mansam
in County
County of Jefferson
in County

Filed at May 26th 1853
Thos C. Fletcher
Clerk

James Smith
vs
John Smith Adm^r
of Albert Ogden

In the Circuit Court
Jefferson County

The County Court of Jefferson County in answer to the rule of the Circuit Court made upon them requiring them to show cause why they have not approved the sale of real estate made by said adm^r. to James Smith give the following as their reasons for so doing

1. The Report of said administrator states that the sale was ordered at the Dec^r. Term 1853, instead of December 1852

2. The Report states that said sale was made on the 22nd day of March 1853 when the order directed the sale to take place on the 21st day, the third Monday, & does not further state said sale was deferred till said 22nd day.

3. There was no copy of the advertisement filed with the Report though it is so stated in said report

4. The report is not verified as directed by law

5. The said sale made under a misappre-

reversion by the liors of its true situation
and ~~for greatly~~ under its appraised
real value

6. The proceedings of said
administrator were not in conformity
to law & if approved by the Court would
not have been prejudicial to the
rights of creditors & others interested in
said estate.

G. J. Johnston

C. S. Perkins

By their atty J. P. Phipps

J. P. Phipps attorney for defendant on oath states
that the above answer and other matters therein
stated he believes to be true

Sworn to & subscribed before
me Dec 3^d 1853

Thos B. Fletcher
Clerk

J. P. Phipps

Some Smith

is

John Smith & Son
of Ellers Oyster

Filed Dec 30 1853

Ho & 3/4 Market

OK

James Smith
vs.
The County Court of
Jefferson County, &
John Smith Adm.
of Albert Ogles, decd.

In the Circuit Court
of Jefferson County
Missouri,
Nov. Term 1883.

The Plaintiff by his Attorney, for
Replication to each of the Defendants,
the said County Court, Answer, as he deems
it material to ~~Reply~~ ^{and the matters & things therein contained} ~~and the matters & things therein contained~~
said Answer, ~~are~~ ^{are} untrue, uncertain, evasive,
and insufficient, and therefore he prays
as in his Petition heretofore prayed.

James D. Green
Attys for Plaintiff

James Smith

10.

The Liberty Bount
Warriors

Reproduction

James Smith

John Smith adm. of
Eliot & Co. Dec.
& Jefferson County Court

In the Co. Court

Jefferson County

December Term 1853

James Smith comes & moves the Court to state
out the answer of defendants, with a proper exhibit
cause and say, that the answer as filed
is entirely insufficient in law.
& nothing shown why James Smith is
not entitled to the land purchased
by him under the proceeds in
the County Court.

Because the alleged answer set forth in the
defendants answer are no reasons at all,
why James Smith should not be entitled
to the land sold by said administrators.

Because other persons not acquainted with the
situation of the land asking the County
Court to set aside the sale is no reason
at all why James Smith's purchase
should be set aside. — — —

Because the answer amounts to
no defence & presents no reason why
plaintiff should not recover.

Because it is not averred that the answer
that the actual proceeds due the County Court are

not sufficiently regular to exhibit Lamm Smith to her
purchase.
Because the answer is not responding to the petition her father
petition not denied
Green & firm acting for
Smith

James Smith

m

Corny-bent H
or Corny

Proctor Stocks

But Am Lee

File Dec 5th 1853
Proctor Stocks
etc

COUNTY OF JEFFERSON.

The State of Missouri,

To

Silas R Green

Greeting:

You are hereby commanded, that setting aside all manner of excuse and delay, you appear before our Sherriff Court for the County aforesaid, on the 7th day of Dec at Stillmore, there and there to testify, and the truth to say in a certain matter of controversy, now pending in our said Court, wherein James Smith is Plaintiff and Amariah Abner & Co are Defendant on the part of Pkty 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 6th day of Dec
A. D. 1853.

Wm L. Fletcher
Clerk.

I Executed the within writ by reading
the same in his presance and hearing
this December the 6th day AD 1853

James McColloch Sheriff
By Augustine Wiley Deft Sheriff

450

James Smith
vs
his Smith & Son
of Leafe

Appa for
Silas R Green

Sheriff fees 50

James Smith } In the Civ. Court
County Court } of Jefferson County
December 5. 1853

At hl. —————

The plaintiff by his attorneys come & for reply
state to the answer filed in said Cause
Replying & say that the answer & the matters therein
set forth in the answer are false and untrue,
and the same are denied by plaintiff. & that
the facts & facts set forth in answer are
wholly false & untrue & this is his
Reply entered thereto.

Green & Jones atty
for plaintiff

James Smith

m

Cony-Sent 26

At

Philadelphia

Nov Dec 7 1853
J. H. & Co. T. C. H. & Co.

COUNTY OF JEFFERSON.

The State of Missouri,

To, *Abner Hornor, Elias B. Green*

Greeting:

You are hereby commanded, that setting aside all manner of excuse and delay, you appear before our *Lincoln* Court for the County aforesaid, on the *24th* day of *May* 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 *Martha Smith* Plaintiff and *John Smith and John A. Gale* 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 *12th* day of *April*
A. D. 1854

Thos. C. Fletcher Clerk.

I executed the within writ at the county of Jefferson
on Silas R Green by reading the same in his
presence and hearing this May the 11th day 1854
Augustine Wiley Dep^t Sheriff

To Circuit Court

May term 1854

James Smith

vs } Spec

and Smith Admors of E. Cagle

for P.M.

Eliza Vernon

Silas R. Green

Sheriff's fees \$1000

3^d day

I executed this writ on Eliza Vernon by
reading it in his presence & hearing
on the 24th of May 1854
James H. Blackwell Sheriff