

Jefferson County Circuit Court
Case Files - Civil

Box

7 Folder 62

November 1853 No 11

Smith, Francis J.
vs

Donnell, Eliel

Rippy, Hamilton S.

Rippy, Lydia

Foreclosure

Debt \$107; 80 acres in S18T39R5E

This Indenture made this 4th day of June in the
Year of Christ. One thousand Eight hundred and twenty
eight by and between James Whitehead of the County of
Jefferson State of Missouri of the one part and Reuben
Smith of the County of Washington State aforesaid of
the other part Witnesseth; That the said James for and
in consideration of the Sum of two hundred dollars to
him in hand paid by the said Reuben at or before the
ensealing and delivery of these presents the receipt where
of by the said James is hereby acknowledged and Con-
fessed, hath bargained and sold and by these presents
doth bargain sell, enfeoff and Confirm to the said Reuben
his heirs and assigns, a certain tract or parcel of land
situate lying and being in the County of Jefferson aforesaid,
being the West half of the North East quarter of
Section eighteen in township thirty nine North. of Range
five East, containing Eighty acres be the same more or less
To Have and to hold the said tract or parcel of land
together with all and singular its privileges and appur-
tenances to the said Reuben his heirs and assigns forever
But upon this especial trust and condition. Nevertheless
that whereas the said James is indebted to the said Reuben
in the Sum of One hundred and Seven dollars, due and
payable in six months after this date, with interest thereon
at the rate of Ten per Centum till paid as will appear
by reference to his obligation given for the same bearing
the same date as these presents, Now if the said James
Whitehead or his heirs shall well and truly pay or cause
to be paid to the said Reuben Smith his heirs executors
or assigns the said obligatory writing and the money
and interest secured and due and payable by the
same when the same shall become due and payable
So that no default therein be made by the said James
then the above and within conveyance and Mortgage
to be void, else to be and remain in full force virtue

and effect. In testimony whereof he the said
James Whitehead hath hereunto set his hand and
affixed his Seal this 4th June in the year aforesaid
Signed Sealed acknowledged
and deliv^d. in presence of us } James Whitehead Seal
Thomas M. Horine
P Cole.

State of Missouri } p
County of Jefferson } Best remembered that on
this twenty Sixth day of June in the year Eighteen
hundred and twenty eight before me a Justice of
the peace within and for said County personally
came Philip Cole who is personally known to me to
the person whose name is subscribed to the within in-
strument of writing as a subscribing witness and
made oath that James Whitehead whose name
is subscribed to the said instrument of writing as
grantor is the real person who executed the same
that the said James Whitehead subscribed sealed
and delivered the same in his presence and ack-
nowledged the same to be his act and deed for
the purposes therein mentioned, and that he the
said Philip Cole subscribed the said deed as a
Witness in the presence and at the request of the
said Grantor

Sworn to and subscribed } P. Cole
before me this 26th day of June
1828. Chauncey Smith Justice of peace

Recorded June 26th 1828

C. Smith Recorder

State of Missouri }
County of Jefferson } I Tho. C. Fletcher Clerk of the
Circuit Court and Ex officio Recorder within and
for said County do certify that the foregoing and
annexed instrument in writing is a correct and
true copy from the Records in my office as the
same appear on Record Book C. page 63

Witness my hand and official
Seal at office Sept 30th 1853

Tho C Fletcher Recorder
Mr Estlin's depts

Copy for Beal



Dec 1. 35

This Indenture made this 4th day of June in the Year of Christ, One thousand eight hundred and twenty eight, by and between, James Whitehead of the County of Jefferson State of Missouri of the one part and Reuben Smith of the County of Washington State aforesaid of the other part. Witnesseth: That the said James for and in consideration of the sum of 200 hundred dollars to him in hand paid by the said Reuben, at and before the enrolling and delivery of these presents, the receipt whereof by the said James is hereby acknowledged and Confessed hath bargained and sold and by these presents doth bargain, sell enfeoff and confirm, to the said Reuben, his heirs and assigns, a certain tract or parcel of land Situate, lying and being in the County of Jefferson aforesaid, Being the West half of the North East quarter of Section Eighteen in township thirty nine north, of Range five East containing Eighty acres, be the same more or less To Have and To Hold the said tract or parcel of land, together with all and singular its privileges and appurtenances to the said Reuben his heirs and assigns, to the only proper use and behoof of him the said Reuben Smith his heirs and assigns forever. But upon this especial trust and condition, Nevertheless: That whereas the said James is indebted to the said Reuben in the sum of one hundred and Seven dollars due and payable in Six months after this date, with interest thereon at the rate of ten per centum till paid as will appear by reference to his obligation given for the same, bearing the same date as these presents. Now if the said James Whitehead or his heirs shall well and truly pay or cause to be paid

to the said Reuben Smith his heirs executors or assigns
the said obligatory writing and the money and
interest secured and due and payable by the
same when the same shall become due and payable
so that no default therein be made by the said James
then the above and within conveyance and mortgage
to be void else to be and remain in full force and
virtue and effect.

In Testimony whereof he the said
James Whitehead hath hereunto set his hand and
affixed his seal this 4th June in the year aforesaid
Signed Sealed acknowledged
and del^d in presence of us } James Whitehead 
Thomas M Horne
P. Cole

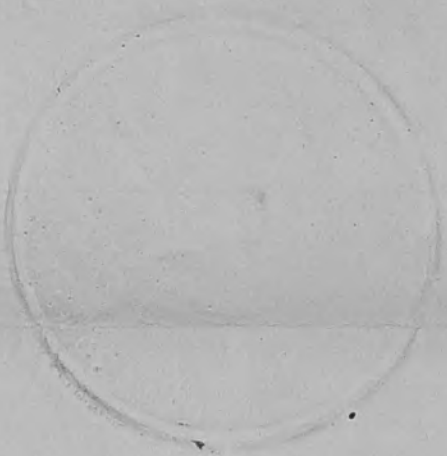
State of Missouri }
County of Jefferson } p Be it remembered that
on this twenty sixth day of June in the year Eighteen
hundred and twenty eight, before me a Justice of the
peace within and for said County personally came
Philip Cole who is personally known to me to be the
person whose name is subscribed to the within instru-
ment of writing as a subscribing witness and made
oath that James Whitehead whose name is subscribed
to the said instrument of writing as grantor is the
real person who executed the same, that the said
James Whitehead, subscribed, sealed and delivered
the same in his presence and acknowledged the
same to be his act and deed for the purposes therein
mentioned, and that he the said Philip Cole, sub-
scribed the said deed as a witness in the presence
and at the request of the said grantor
Sworn to and subscribed } P. Cole

before me this 26th day of June 1838
Chauncey Smith Justice of peace
Recorded June 26th 1838
C. Smith Recorder

State of Missouri }
County of Jefferson } p. J. Tho. C. Fletcher Clerk of
the Circuit Court and Ex officio Recorder within
and for the County aforesaid do hereby certify that
the foregoing and annexed instrument in writing
is a true and perfect Exemplification of the
record of the same as it appears in my office
in Book C. pages 63 and 64.

In Testimony whereof I here to set
my hand and affix the Seal of
Said Court at office in Hillsboro
this 14th day of October A.D. 1853
Tho C Fletcher Recorder
per E. H. Honey Sept

A¹¹



Filed Oct 14th 1833

Wm. McEachern
Mr. & Mary de

on 24 Dec

fee - \$1.25

Francis J. Smith Plaintiff
against
Eliel Donnell
& P. Rippey
Lydia Rippey Defendants

In the Circuit Court
of Jefferson County
Missouri

Plaintiff states one Ruben Smith now deceased, was in his life time the owner of the following real estate lying in Jefferson County Missouri viz the west half of the North East quarter of Section eighteen in Township thirty nine north of Range five east containing eighty acres more or less. He conveyed it to James Whithead on the 3^d day of June 1828 as per deed on Record in the Recorder's office of Jefferson County Missouri Book 6 p 52; on the 4th day of June 1828, James Whithead conveyed said tract of land to Ruben Smith in trust ^{and mortgage} to secure the payment of one hundred and seven dollars due & payable six months after the date of 4 of June 1828, to bear ten per cent interest until paid. as will more fully appear by a certified copy of the mortgage and here shown "A." the original of which and the obligation referred to not being in the plaintiffs possession said mortgage is not satisfied & remains unpaid as plaintiff is informed & believes said Smith is the son ^{only} & heir of Ruben

Smith and as such is entitled to receive all his estate by inheritance from his father and no one else has any right. All the debts of the estate are satisfied and whatever now remains plaintiff is entitled to by descent from his father. Plaintiff alleges that his father & James Whitehead departed this life soon after the aforesaid mortgage and alleges this as a reason why the matter has been neglected so long. And plaintiff was a minor at his fathers death & did not find out the existence of the mortgage aforesaid until very recently.

Plaintiff is informed that Eiel Donnell is the only one who has any interest said in the land aforesaid and the subject matter of this suit, except the widow of John Whitehead who may claim a dower interest in it. John Whitehead became the legal owner of said tract of land and Eiel Donnell now claims all the right and title to the land & plaintiff knows of no one who has an adverse interest in the land except said Donnell & Lydia Rippey now married to J. A. Rippey, late widow of John Whitehead. Plaintiff prays them to be made defendants and asks for judgment for said ~~land of~~ ^{foreclosure} ~~specified~~ of said mortgage and that the equity of Redemption of said

Real estate be foreclosed and for sale of
Said real estate to satisfy said mortgage
debt and interest & for such other & fur-
ther relief as may be necessary
Smith

I Jas. A. Beal attorney for the plain-
tiff states that he believes the foregoing
petition & the matters therein stated are
true (from the statements of said Smith
made to him)

J A Beal
attorney

Subscribed & sworn to
before me this 13th day
of October 1853.

Thos Fletcher clk
Mr E. H. Honey D.C.

1174

Smith

us

Civil Donalchal

Position to preclude
investigation

Sheet Oct 14th 1833

Thos. M. Lecher etc
per J. M. Lecher etc

Discovered left east
May 20th 1854 13000
3 pages 363

Francis I. Smith Plaintiff	}	In the Circuit Court, of Jefferson County Missouri
against		
Eliel Donnell.		
H. S. Rippsy		
Lydia Rippsy Defendants		

Plaintiff States one Reuben Smith now deceased was in his life time the owner of the following real estate in Jefferson County Missouri viz the West half of the North East quarter of Section Eighteen in township thirty nine North of Range five East containing Eighty acres, more or less, He conveyed it to James Whitehead on the 3^d day of June 1828 as per deed on Record in the Recorders office of Jefferson County Missouri Book. C. p. 52; on the 4th day of June 1828, James Whitehead conveyed said tract of land to Reuben Smith in trust and Mortgage, to secure the payment of one hundred and Seven dollars due & payable, six months after date of 4 of June 1828, to bear ten percent interest until paid, as will more fully appear by a certified copy of the Mortgage deed here shown "A" the Original of which and the obligation, referred to not being in the plaintiffs possession, said Mortgage is not Satisfied & remains unpaid as plaintiff is informed & believes, said Smith is the son & only heir of Reuben Smith, and as such is entitled to receive all his Estate by inheritance from his father and no one else has any right; all the debts of the estate are Satisfied, and whatever now remains, plaintiff ~~allerges~~, is entitled to by descent from his father

Plaintiff alleges that his father J. James Whitehead, departed this life soon after the aforesaid mortgage and alleges this as a reason why the matter has been neglected so long and plaintiff was a minor at his fathers death & did not find out the existence of the mortgage aforesaid until very recently. Plaintiff is informed that Eliel Dornell is the only one who has any interest, said in the land aforesaid and the subject matter of this suit except, the widow of John S Whitehead who may claim a dower interest in it. John S Whitehead, became the legal owner of said tract of land and Eliel Dornell now claims all the right and title to the land & plaintiff knows of no one who has an adverse interest in the land except said Dornell & Lydia Ripsey now married to H. S Ripsey late widow of John S. Whitehead. Plaintiff prays them to be made defendants and asks for Judgement for of foreclosure of said mortgage and that the equity of Redemption of said real Estate be foreclosed and for Sale of said real estate to satisfy said mortgage debt and interest & for such other & further relief as may be necessary
-any

Smith

S. J. Gas A Beul attorney for the plaintiff states that he believes the foregoing petition & the matters as therein stated are true (from the statements

of said Smith made to him)
Subscribed & sworn to } J. A. Beal
before me this 13th day } Attorney
of October 1853
Thos Fletcher clk }
for C. H. Hiney D.C.

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

In testimony whereof I here to set
my hand and affix the seal of
said Court at office this 13th
day of October AD 1853

No 11

To the Circuit Court.

Nov Term 1853.

Francis J. Smith

vs } Defendants

Eliel Donnell

Charles S. Rippey

vs } Plaintiff

Sheweth fees \$3.00

The State of Missouri

To the Sheriff of the County of Jefferson greeting
We command you that you summon Elisha Donnell
Hamilton & Rippey and Lydia Rippey if they be
found in your county that they be and appear before
the Judge of our Circuit Court within and for the
County of Jefferson on the first day of the next
Term thereof to be begun and held at Hillsboro
on the fourth Monday of November next then and
there to answer unto Francis I. Smith upon his
original petition a copy whereof is hereunto
annexed and accompanies this writ, and
have you then there this writ.

Witness Tho' C. Fletcher, Clerk of
our said Circuit Court at office
in Hillsboro' this 15th day of
October A.D. 1853.

Tho' C. Fletcher
Clerk

at the County of Jefferson

I Executed the within writ, on Eliel Donelder
by reading the same in his presence and hearing
and also by delivering to him a true copy of the arrest
petition. and also on Hamilton & Rippey and
Lydia Rippey by reading the within writ and
the arrest petition in their presence and hearing
this October the 26th day 1853

James M Colloch Sheriff
By Augustus Wiley Deft Sheriff

Smith

vs
Chas Durrell et al

Defendant moves the court
to require the plaintiff to file
in court the obligation of James
Whitehead to Benjamin Smith for
\$107 dated June 4th 1828 payable
in six months from date it being
the same mentioned in the
mortgage which is the considera-
tion of plaintiff above

M. F. Fells
att. for
Def

From Thos. H. Smith.

27

Q. H. Smith
et al

Attorney

Filed Dec 1st 1853
J. C. McArthur
Clerk

Francis I Smith
against

Eliza Donnell

H Rippey &

Lydia Rippey

The said defendants say that the prayer of the plaintiff in his petition ought not to be granted because they say that the debt of one hundred and seven dollars secured by the mortgage in the petition mentioned was fully paid off and satisfied in the life time of James Whitehead the mortgagor and Reuben Smith the mortgage failed to release said land to the said James Whitehead or to enter the mortgage satisfied as he ought to have done.

And the said plain. Defendants further say that they and those under whom they now title to the premises have held said land for more than twenty years after the condition of the mortgage was broken and they further say that the demand of the said Reuben Smith against the said James Whitehead has long since been barred by the statute even upon the supposition that it had not been paid as alleged above it has been. Defendants further state that the said Reuben Smith departed this life after the 4th day of December 1828.

Wherefore the defendants pray judgment
All Faisell etc

Chil Donnell for himself and the
other defendants, makes oath and says
that the foregoing answer and the
matters therein as stated he believes
to be true

Chil Donnell
 sworn to & subscribed
 before me Dec 1st 1853
 Tho. C. Fletcher
 CLK

Filed Dec 1st 1853
 Tho. C. Fletcher
 CLK

J. L. Smith
 & Donnell
 Answered

Francis I Smith Plaintiff
against

Eliel Donnell

AS & Lydia Rippey

1 Rochael P & Robert G Whithead

2 Thomas Whithead

3 Samuel Whithead

4 Ruth & James Roberson

5 Mary & William Roberson

~~Sarah~~

6 James, George, John, Eliza & James Staples

Louisa a daughter of Sarah Coleman

7 Elizabeth, Ruth, Robert & Samuel Coleman

8 John & Gooch

9 Nancy Butler wife of William Butler

10 Robert Gooch

11 Eliza & Austin Fergerson

12 Sarah Gooch

13 Mary Gooch widow of Wm Gooch

14 Unknown heirs of Samuel Gooch son of Rebecca
and Drury Gooch

Amended Petition by leave of Court

For amended petition, plaintiff states that one
Ruben Smith now deceased, was in his life
time the owner of the following real estate
lying in Jefferson County Missouri to wit
The West half North East quarter Section
eighteen, Township thirty nine North of
Range five east containing eighty acres
more or less. He conveyed the same to James
Whithead on 2^d day of June 1828 as will
appear by reference to Book C p 52, in

the recorder's office of Jefferson County

On the 4th day of June 1828, said James Whitehead conveyed said real estate to Reuben Smith in trust and mortgage to secure said Smith the sum of one hundred and seven dollars due and payable 5th months after the date of said 4th of June 1828, to bear ten per cent interest until paid as will more fully appear by a certified copy of the original and here shown the original of which and the obligation referred to in said mortgage not being in plaintiff's possession.

Said mortgage is not satisfied & remains unpaid as plaintiff is informed & believes, he has no personal knowledge of the facts.

Said plaintiff is the son of Reuben Smith and only heir to his estate and is entitled to receive all of his estate by inheritance from his said father. All the debts ^{against} said estate are satisfied & whatever remains is the property of plaintiff by descent of the law of this state. Plaintiff's father departed this life soon after said mortgage deed was executed also did James Whitehead.

This is the reason that the matter of the mortgage has been so long neglected. Plaintiff was very young & a minor at his father's death. It was only very recently before the institution of this suit, that plaintiff came to a knowledge of the facts afore-

said & the existence of said mortgage

James Whitehead departed this life with out children but left the following brothers, sisters and their descendants, John Whitehead a brother now dead who left surviving him, his widow Lydia who has since married H. S. Peppy & two children Rachael P. & Robert S. Whitehead;

Thomas Whitehead a brother; Samuel Whitehead a brother; Ruth a sister who married James Robertson; Mary a sister who married William Robertson; Martha a sister who is now dead, but married John Staples also dead, by whom she had, Eliza George, John, Jane and James Staples; Sarah a sister now dead who married Thomas Coleman, by whom she had Louisa married to a gentleman name unknown; Elizabeth, Ruth, Robert & Samuel Coleman; Rebecca a sister now dead who married Drury Gooch now dead, by whom she had William Gooch now dead, John S. Gooch Nancy who married W. Butler, Robert Gooch, Eliza who married Austin Ferguson, and Sarah Gooch & Samuel Gooch who is dead & left some children whose names are unknown to plaintiff as also the children of William Gooch if any. The defendant, Eliel Donnel has become interested in the real estate aforesaid & thereby is interested in the matter in controversy. The aforesaid brothers & sisters or their descendants are also interested as representatives of James Whitehead to his real estate; plaintiff asks for judgment for foreclosure of said mortgage & the equity of redemption to be sold to satisfy said indebtedness, mortgage

debt, interest & costs & for such other & further order
as may be necessary to meet the case

J A Beal atty for
James A Beal attorney being sworn that he belie-
ves the foregoing amended petition & the matters as
therein stated are true according to the statements
of said plaintiff

Sworn to and Subscribed
before me May 6th 1834

Thos C Fletcher clerk
for E. Honey's Sept. Clk

C. F. Smith

vs

Eliel Donnell and others

Amended Petition

Filed May 6 - 1834

Thos C Fletcher

clerk

COUNTY OF JEFFERSON.

The State of Missouri,

To Samuel Wheelhead, grandson Edwards, Lydia Rippey

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 25th day of May 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 Thas. J. Smith is Plaintiff and Leibel Howell is Defendant on the part of Edwards 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 May
A. D. 1854.

Wm. M. Aches Clerk.

I executed the within writ at the county of Jefferson
by reading the same in his presence and hearing
this May the 11th day A.D. 1854 and also one
Lydia Rippey by reading the same in
her presence and hearing this May the 12th day 1854

James McColloch Sheriff
By Augustine Wiley Deft Sheriff

To Lewis & Leant
May Term 1854,

Wm. F. Smith
11th day
Eliel Samuel

For self
Samuel Whitehead
Frank Edwards
Lydia Rippey

Sheriff's fees \$1.00
4th day