

Jefferson County Circuit Court

Box

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Folder

55

Case Files - Civil

November 1856, No. 10

Lee, John

vs

Hume, William

Bolt

Plaintiff purchased 120 acres in S28T40R25E from Thornton Jarvis for \$550, who then sold the notes given for payment to defendant; defendant then sold land to William Vose for \$950 before plaintiff made final payment; plaintiff requested \$400 and cancellation of notes

Williams Nov. 29<sup>th</sup> 1837

\$200.<sup>00</sup>/<sub>100</sub>

On or before the first day of July. Eight  
teen hundred and fifty five. I promise to pay to  
Merritts Jarrs or order one hundred, dollars for  
Value received  
Attest & Atoney  
John Lee

For value received I assign  
the within note to Wm S Howe &  
Andrews. Iight without recourse  
on me.

his  
Thornton Jarvis

For value recd of Mr Howe  
I assign the within Note  
to firm with out recourse  
Jan 1856.

A. Joseph

J. H. Lee

100  
\$150.00  
Pillsbury Nov. 29th 1854

Due on before the first day of March Eighty-  
two hundred and fifty five & promise to pay to Thomas  
Law Garrison or order. One hundred and fifty dollars  
with interest from date at the rate of six per cent. per  
annum for value received  
attest E. A. May  
John W. Lee

John Lee

I assign the within Note  
to William J. Howe with out  
Recourse Jan 1856

A Fight

For Value received I assign the  
within note to Mrs S. Howe and  
Andrew Fight with out recourse  
on me -

his  
Thornlon Jarvis  
mark

Recd of Mrs S Howe Fifty  
dollars on the within Note  
this 10th of Nov 1855

A Fight

\$ 200.<sup>00</sup>/<sub>100</sub>

Wellsboro. November 29th 1834

Dear Sir. before the full day of January Eight  
ten hundred and fifty six I promise to pay Thornton  
paris in order one thousand dollars for value  
received

Attest E. H. H. H.

J. H. H.

For Value Received I assign  
the within note to Wm S  
Hoove and Andrew Ficht  
without reserve.

Thorton his Jarvis  
mark

For Value Received I assign  
the within note to Wm S Hoove  
with out Reserve  
Jan 1856

A. Ficht

John Lee



John Lee plaintiff  
vs  
William S. Howe def<sup>t</sup>

In the Circuit Court of  
Jefferson County Mo  
November term 1856

Plaintiff states that about the month of November or December in the year eighteen hundred and fifty five Plaintiff purchased of one Thornton Jarvis the following described tract or parcel of land situated lying and being in said County of Jefferson to wit. ~~and for which plaintiff agreed to give said~~ The West half of S. E. q<sup>r</sup> and the S. E. q<sup>r</sup> of T. W. q<sup>r</sup> of Section 28. in Township 40 of Range 5 East containing one hundred & twenty acres and for which plaintiff agreed to give said Jarvis five hundred and fifty Dollars and gave to said Jarvis his three several promissory notes payable in March 1855 in July 1855 and on the 15<sup>th</sup> day of January 1856 That said Jarvis executed and delivered to Plaintiff an agreement writing whereby he agreed to convey to plaintiff the said tract of land whenever plaintiff should pay the purchase money. to wit the said several promissory notes that said Jarvis put Plaintiff in possession of said land and Plaintiff commenced improving the same and actually did make during the year eighteen hundred & fifty five lasting and valuable improvements of the value and cost of about five or six hundred Dollars That about three or four months after the agreement and purchase aforesaid. the said defendant with Plaintiff consent purchased of said Jarvis the promissory notes which Plaintiff had given for the said purchase money and received from said Jarvis a conveyance of said land upon an agreement and understanding that he was to stand in the place of said Jarvis as to said agreement between Plaintiff and said Jarvis as above stated and convey to plaintiff the said tract of land whenever the



said promissory notes should be paid. That about the  
month of December A.D. 1855 a short time before the  
last instalment of said purchase money became due  
The plaintiff sent his agent ~~to~~ One Elisha Vernon to  
the Defendant to make some arrangement with him  
in regard to the payment of said purchase money, that  
said Defendant then agreed verbally to wait one year  
longer for the said purchase money. That afterward  
to wit about the month of January A.D. 1856 The  
said Defendant requested plaintiff to give him the  
possession of said ~~land~~ agreement between said plaintiff and  
the said Jarvis promising plaintiff at the time  
that he would give him another bond. <sup>He defendant at</sup>  
~~the same time stating to plaintiff that his agreement with Jarvis constituted~~  
~~a reason therefore that the said agreement constituted~~  
~~no obligation for a stipulated penalty and would do plaintiff no good in that~~  
~~his obligation for a stipulated penalty~~ <sup>that plain-</sup>  
<sup>form</sup> plaintiff relying upon the good intentions and friend-  
ship of Defendant Complied with said request and  
did give up the said agreement. That Defendant  
failed and neglected to give to plaintiff another  
bond as he promised to do and afterward to wit  
on or about the second ~~day~~ <sup>day of March</sup> April  
1856 sold the said land and improvements thereon  
made by plaintiff to one William Vorse for  
the price and sum of about nine hundred & fifty  
dollars as plaintiff is informed and believes. and  
by such sale and conveyance passed the legal  
title of said land to said Vorse beyond the reach  
of this plaintiff. Whereby an action hath  
accrued to plaintiff to have and recover of and  
from the plaintiff the sum of four hundred dollars  
being the excess of the proceeds of said sale from  
Defendant to said Vorse over and above the pur-  
chase money due and owing by plaintiff to De-  
fendant as above stated. Plaintiff asks judgement  
for said sum of Four hundred dollars and

also that Defendant may produce in Court said  
promising notes to be cancelled

John W. Stoll atty for plff

John Lee makes oath and says he believes the above  
petition & the matters therein as stated are true

Sworn to and Subscribed  
before me May 28th 1856

Thos Melcher clk

By Ed Honey dep

John Lee

John Lee

3

Mr. J. Moore

Return

School May 29th 1856  
Thos. G. Fletcher Clerk



John Lee plaintiff  
vs  
William S. Howe defd

In the Circuit Court of Jefferson  
County Mo  
November term 1856

Plaintiff states that about the month of November or December in the year eighteen hundred and fifty four Plaintiff purchased of one Thornton Jarvis the following described tract or parcel of land, Situate, lying and being in said County of Jefferson to wit: The West half of S E qr and the S E qr of S W. qr of Section No 28, in Township No 40 of Range 5 East, containing One hundred & twenty acres, and for which plaintiff agreed to give said Jarvis Two hundred and fifty dollars, and gave to said Jarvis his three several promissory notes payable in March 1855, in July 1855 and on the 1<sup>st</sup> day of January 1856. That said Jarvis executed and delivered to plaintiff an agreement writing whereby he agreed to convey to plaintiff the said tract of land whenever plaintiff should pay the purchase money to wit: the said several promissory notes, that said Jarvis put plaintiff in possession of said land and plaintiff commenced improving the same and actually did make during the year eighteen hundred & fifty five, lasting and valuable improvements of the value and cost of about five or six hundred dollars, that about three or four months after the agreement, and purchase aforesaid the said defendant, with plaintiffs consent, purchased of said Jarvis the promissory notes which plaintiff had given for the said purchase money and received from said Jarvis a conveyance of said land upon an agreement and understanding that he was to stand in the place of said Jarvis as to said agreement, between plaintiff and said Jarvis as above stated, and convey to plaintiff the said tract of land whenever the said promissory notes should be paid, that about the month of December A D 1855, a short time before the last installment of said purchase money became due the plaintiff sent his agent, one Elisha Vernon to the

defendant, to make some arrangement with him in re-  
gard to the payment of said purchase money, that said  
defendant, then agreed verbally to wait one year longer for  
the said purchase money. That afterwards to wit, about the  
month of January A 1856, the said defendant, requested  
plaintiff to give him the possession of said agreement, between  
said plaintiff and the said Jarvis, promising plaintiff  
at the time that he would give him another bond he de-  
fendant, at the same time stating to plaintiff that his agree-  
ment with Jarvis contained no obligation for a stipulated  
penalty and would do plaintiff no good in that form—  
that plaintiff relying upon the good intentions and friend-  
ship of defendant, complied with said request, and did  
give up the said agreement; that defendant failed, and  
neglected to give to plaintiff another bond as he promised  
to do, and afterwards to wit—on or about, the second day  
of April 1856, sold the said land and improvements there-  
on made by plaintiff to one Wm Vore, for the price and sum  
of about nine hundred & fifty dollars as plaintiff is in-  
formed and believes, and by such sale and conveyance pap-  
er the legal title of said land to said Vore, beyond the reach  
of this plaintiff; whereby an action hath accrued to plain-  
tiff, to have and recover of and from said plaintiff, the  
sum of four hundred dollars, being the excess of the pro-  
ceeds of said sale from defendant to said Vore over and  
above the purchase money due and owing by plaintiff  
to defendant as above stated. Plaintiff asks Judg-  
ment for said sum of Four Hundred dollars and  
also that defendant may produce in Court said  
promissory notes to be cancelled.

John W. Noell atty for Plff

John Lee makes oath and says he believes the above petition  
& the matters therein as stated are true  
Sworn to and subscribed before me. May } John Lee  
28<sup>th</sup> 1856. Tho C. Fletcher clk. By Estoney sep }



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

In Testimony whereof I hereto set my hand  
and affix the seal of said Court at office  
July 29<sup>th</sup> 1856. Tho C Fletcher clerk  
By E J Honey sept



COUNTY OF JEFFERSON, SS.

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 - be and appear before the Hon.  
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 the  
County of Jefferson, on the fourth Monday of *November*  
next, then and there to answer unto *John Lee*

-----  
upon *his* original petition, a copy whereof is herunto annexed and  
accompanies this writ—and have you then there this writ.

Witness, THO. C. FLETCHER, Clerk of our said Circuit  
Court, with the seal thereof hereto affixed, at  
office, in Hillsboro, this *30th*  
day of *July* A. D. 1856

*Thos C Fletcher*

CLERK CIRCUIT COURT.

I Executed the within writ at the county of Jefferson  
on the 8 Eighth Day of August AD 1856 by Delivering  
to William S Howe a true copy of the within writ and the  
annexed petition as furnished by the Clerk

Augustine Wiley Sheriff

Grants (1856) (1856)

No 10

to the Circuit Court

November term 1856

1579

John Lee

vs  
J. Summers

William S. Howe

\$366.75

Judgt for 24th May 4th 1858

Sheriff's fees \$1.00

John Lee, plaintiff } In the Circuit  
Against } Court of Jeff-  
William S. Howe, defendant } ferson County

The Defendant by his Attorney  
moves the Court to rule the plaintiff  
to give security for costs in the  
above case for the following reasons,

1<sup>st</sup> The Plaintiff is a non resident  
of Jefferson County, and is unsettled  
without any particular known res-  
idence,

2<sup>d</sup> - The Plaintiff is insolvent, and has  
no property subject to the process  
of law, and is unable to pay costs,

} Abner Green  
Attorney for Defendant.



In Circuit Court  
Jefferson County

John Lee

vs

Wm. D. Howe

Proctor to rule,  
Plaintiff to account  
for corn.

Filed Nov 25th 1856  
Wm. C. McReher  
Clerk

John Lee

vs  
Wm S Howe

} In Circuit Court of Jefferson  
County Mo

I Elisha Vernon undertake to  
pay all costs that may be adjudged against  
the plaintiff in the above Cause

Nov 28th 1856

Elisha Vernon

John Lee

by  
Wood House

Done for Cash

Recd Nov 28, 1836  
Thos. C. McTear  
CASH



John Lee, Plaintiff } In the Circuit  
Against } Court of Jef-  
William S. Howa, - defendant } ferow County,  
Missouri.

Defendant admits that Plaintiff purchased the land described in his Petition, of Thontow Jarvis, in November 1854, and that he gave his three several promissory notes for the purchase money of the same amounting to \$550, - the last of which, became due on the first of January 1856, - Defendant however denies that said Jarvis executed <sup>and delivered</sup> to Plaintiff such a Bond as described in said Petition. He executed and delivered to Plaintiff a Bond for title to said Land, on the condition that Plaintiff should pay the full amount of money, specified in said promissory notes, on or before the first day of January 1856, - but if Plaintiff failed to pay said money on or before said day, then the contract for the sale of said Land became null and void, - Defendant denies that Plaintiff made valuable & lasting improvements on said Land, of the value of \$500, or \$600, or of any value whatever, (as the timber he destroyed was a greater injury to the Land than the improvement commenced.

Defendant admits that he and Andrew Hight made a contract with said Jarvis by which they took said notes payable from Lee to Jarvis, (though reluctantly, as they at the time, had a right to their amount in money,) and a Deed for said Land, and with the agreement that they would stand

in the place of Jarvis, in regard to his contract with Plaintiff, - and would make Plaintiff a conveyance of said Land whenever he paid said Notes, provided he paid them at the time stipulated in said Bond.

Defendant admits that Elisha Vernon came to his house in the latter part of December 1833, and that he stated in a conversation with Defendant, that he believed Doct. Lee (Plaintiff) was to be there that day, with a view of giving personal security on said Notes, in lieu of what Defendant then had Defendant <sup>told</sup> him, if that was his business, he need not come. Defendant denies emphatically that said Vernon even stated that he was acting as Agent for Plaintiff. And the allegation that Defendant agreed to wait a year longer with Plaintiff for the payment of said Notes, is unqualifiedly false. - Defendant denies that he in January 1836, requested Plaintiff to give up the Bond, and promised to give him another one; but he admits that he on several occasions before the last Note became due, requested Plaintiff to give up the Bond, promising him that he and Hight would give him their Bond for title to the land at the stipulated time. But the last time he made this request and promise, was in September 1833. He therefore denies that he ever promised to give Plaintiff any Bond for title to said land after the first of January 1836, -

Defendant states that some time in January 1836, Plaintiff gave him up



the Bond, and did not even ask him for any other Bond, - This, was after the contract for the sale of the land to Plaintiff, had, by its terms, become null and void, by Plaintiff's failure to pay any part of the purchase money. Then, it was, that Defendant told him he was foolish to take such a bond, with no penalty,

Defendant admits he sold the land to Mr. Vose in April 1836, for \$900, - he, defendant, having previously bought Wright's interest in the same. - Defendant denies therefore that Plaintiff has any right to recover of him four hundred ~~fifty~~ dollars, the amount above said notes, or any amount whatever; and denies that Plaintiff has any cause of action whatever against him, or that his Petition states any cause of action against Defendant.

Defendant denies that he has ever refused to deliver up said notes to Plaintiff to be cancelled, He states he has been ready & willing at any time to deliver up the same to Plaintiff, or any authorized Agent, and now brings said notes into court to be cancelled.

Said Title Bond is hereto annexed as part of this answer,

} Abner Green  
} Attorney for Defendant

William S. Howe, defendant, makes oath, and says the above Answer, and the matters therein<sup>as</sup> stated, he believes to be true,

Sworn to and Subscribed  
before me July 28th 1837  
Thos C. Delcher Clerk  
By C. F. Honey, sept

Wm. S. Howe

In Circuit Court  
of Jefferson County,

John Lee  
vs,

Wm. A. Rowes

Plaintiff vs Defendant,

Filed Jan'y 28<sup>th</sup> 1857  
Thos. G. Fletcher  
Clerk

COUNTY OF JEFFERSON.

The State of Missouri,

To *Oliver Hovey, Wm Wheel*

Greeting:

You are hereby commanded, that setting aside all manner of  
excuse and delay, you appear before our *Circuit* Court for the  
County of *Jefferson*, on the *29<sup>th</sup>* day of *May* next  
at *St. Charles*, then and there to testify, and the truth to say in a  
certain matter of controversy, now pending in our said Court, wherein

*John Lee* is Plaintiff and  
*Wm Hovey* is Defendant on the part

of *Defendant* and herein you are in no wise to fail.

Witness, ~~THOMAS G. MITCHELL~~  
*Thomas G. Fletcher*

Clerk of our said Court

with the said Sheriff hereto affixed, at office this

*28* day of *April* A. D. *1855*

*Oliver Hovey*

Clerk.

I Executed the within Subpoena at the  
County of Jefferson By Reading in the  
presence & hearing of Wm Steel April 30th  
1857 also on E. J. Honey By Reading

May 22 1857

Augustine Wiley Sheriff  
By J. W. Girth Deft

To Isaac W. Court,

May Term 1857

pro Lee

vs Spear

Wm S. Howe

for deft

Elias J. Honey

Wm Steel.

Shriffs fees \$1.00



COUNTY OF JEFFERSON.

The State of MISSOURI,

To Andrew Dight, for Father to R. Bates, than in ~~Law~~ via

Greeting:

You are hereby commanded, that selling aside all manner of  
excuse and delay, you appear before our Severid Court for the  
County aforesaid, on the 29th day of May next  
at Walden's, then and there to testify, and the truth to say in a  
certain matter of controversy, now pending in our said Court, wherein

John Lee is Plaintiff and

Wm Stone is Defendant on the part

of defendt and herein you are in no wise to fail.

Witness, THOMAS C. JEFFERSON,

Clk of our said Court

with the said Sheriff hereto affixed, at office this

28th day of April A. D. 1854

Clas J. Honey

Clerk.

Executed the within Subpoena at the  
15th Day of May 1857 by reading in his presence  
and hearing  
Augustine Wiley Sheriff

In Circuit Court  
May Term 1857  
Pro Lee  
vs J Lee  
Wm S Howe  
for deff  
Andrew Fright &  
Wm Foxton 29  
He Bates  
Horton Jarvis 12

Sheriff's fees \$2.00  
4 23 42 15 750

Executed the within Subpoena at the  
County of Jefferson by reading in the  
presence <sup>hearing</sup> of Wm Foxton this 30th day of April  
1857 also on Andrew Fright May the 8th and  
on Thornton Jarvis May the 12th 1857  
Augustine Wiley Sheriff  
By J. G. Gish Deft

John Lee

v

Am. S. How

In Jefferson Circuit Court

May term 1857

The Plaintiff <sup>knows to strike out</sup> ~~cons and demands~~

the answer of Defendant herein for the following reasons

- 1 So much of said Answer as sets up a bond or agreement from Jarvis to Plaintiff because the Contract so set up constitutes no defence in law to the plaintiffs action
- 2 So much of said Answer as relates to the improvements and Expenditures by the plaintiff on the land mentioned because the said portion of said Answer does not specifically deny the same or set up any matter in avoidance, of the plaintiffs equity so far as the same rests upon the facts alleged in that behalf
- 3 So much of said Answer as relates to the manner of obtaining the said notes <sup>by the Defendant</sup> because the allegations in the answer that part thereof are immaterial and redundant and also because the statements in regard to an understanding with Jarvis that they would make plaintiff a deed for the land provided he would pay the notes when due
- 4 So much of the Answer as refers to Conversations with Verum and Conversations between Plaintiff and Defendant because the same does not controvert any material allegation in the petition and does not set up any matter material to the issue
- 5 So much of the Answer as alleges that the petition states no Cause of action against Defendant because that is a ground of defence & cannot be put in issue by Answer

Geo W. Stodd atty for plff

John Lee

4

W. S. Howard

Proctor to Strickland  
out answer

Filed May 25, 1857  
Elias Howary  
Clerk



John Lee, plaintiff } In the Circuit  
vs. } Court Jefferson  
William S. Howe, defendant, County, Mo,

The Defendant comes and answers to the petition of Plaintiff, in the above entitled cause, and states the following as causes for such demurrer,

- 1<sup>st</sup> - Said Petition does not state facts sufficient to constitute a cause of action,
- 2 - It is not averred in said petition that Defendant made any agreement in writing whereby he bound himself to make title to Plaintiff, upon the payment of said Promissory Notes,
- 3 - Plaintiff therefore has no equity in the land as against this Defendant, and having no equity in the land, he could have no equity in the money arising upon the sale of the land,
- 4 - It is not averred that Defendant put Plaintiff in possession of the land, or that he disposed of it,
- 5 - It is not averred that Plaintiff paid any part of the purchase money, or of the interest,
- 6 - If he has any right to compensation for this improvement alleged, it is against Davis & not this defendant,
- 7 - No verbal agreement made with any Agent of Plaintiff, extending the time of payment would create an equitable lien on either the land or money arising therefrom,

8 - If the Bond from Jarvis to Plaintiff were obligatory on Defendant, Plaintiff should have a tender of the purchase money, in order to claim damages for breach of said obligation.

~~If then~~

} ~~Gold & Green~~  
Attys for Defts.

9. There is no allegation that Plaintiff has ~~now~~ ~~the~~ possession of the land of ~~the land~~ - or that he has been disturbed in his possession either by Defendant or any person claiming under him

Gold & Green for  
Defendant

In Circuit Court  
Jefferson County

John Lee

vs.

William J. Home

Demurrer

Filed June 1<sup>st</sup> - 1857  
Elias H. Gray dt.

overruled



4

Know all men by these presents that, I Thornton  
Jarris of the County of Jefferson in the State of Mo.  
have this day agreeded, and do hereby bind my  
self my heirs executors and administrators, to make  
to John Lee, a warrantee deed to the West half  
of the South East quarter and the South East quarter  
of the South West quarter of Section No twenty eight  
in Township No forty of Range No five East con-  
taining one Hundred and twenty acres, Situate  
in Jefferson County State of Missouri

The condition of the above bond is such, that if the  
said John Lee shall well and truly pay to the  
said Thornton Jarris or his legal representatives  
the several amounts of money specified in three  
several promissory notes of hand given by said  
Lee to said Jarris, bearing even date herewith  
one for the sum of One hundred and fifty dollars  
bearing interest at rate of six per cent per annum  
from date and payable on the first day of March  
1855, and one for Two Hundred dollars, due and  
payable on the first day of July 1855, and one  
for Two Hundred dollars payable on the first  
day of January 1856, The two last named are  
not to bear any interest, Now, if the said John  
Lee or his heirs executors or administrators shall  
well and truly pay the said notes as the respectively  
fall due and payable then the above bond to  
remain in full force and virtue otherwise  
to become null and void

In Witness Whereof I hereto set my hand  
and affix my Seal November 29th 1854

Attest

Chas D Honey

Thornton Jarris  
his  
mark

Seal

The day after date we  
the day after date

Wm. L. Davis

Boonville

Filed June 28<sup>th</sup> 1854

Thos. L. Fletcher

Wm. L. Davis  
Boonville

11



John Lee, Plaintiff } In the Circuit  
Against } Court Jefferson  
William S. Howe, defendant, County, Missouri

Amended answer, filed by leave  
of the court.

The Defendant for answer, admits that Plaintiff made a contract with Thornton Jarvis, in November 1854, for the purchase of the land described in Plaintiff's petition, for the sum of \$550, payable in three several instalments, for which he gave his several promissory notes, the <sup>last</sup> of which fell due on the first day of January 1856, and that said Jarvis put Plaintiff in possession of said Land, and executed and delivered to Plaintiff an agreement in writing binding himself to make a good title to said Land to Plaintiff, if he paid said Jarvis the said promissory notes, as they respectively fell due. But Defendant denies that said Jarvis executed and delivered to Plaintiff any agreement in writing whereby he bound himself to convey to Plaintiff said Land whenever he should pay the purchase money thereof. Said written agreement was a conditional sale of the land from Jarvis to Plaintiff, providing that, if Plaintiff paid the full amount of the purchase money thereof at the time stipulated, to wit, on the first day of January 1856, then Jarvis was to make Plaintiff a good title to the land, but if he failed to pay said promissory notes as they respectively fell due, then the contract by its terms became null and void. Defendant admits he and Andrew Hight took <sup>from Jarvis</sup> a conveyance of said land

and an assignment of said promissory notes on Plaintiff, in payment of a debt Jarvis had assumed to pay for Dr. Heilmann to Defendants and Fights, and with the understanding that if Plaintiff paid the purchase money at the time stipulated, he & Fights would make him a conveyance of said land. But he denies that he took said conveyance & notes, with the understanding & agreement that he would make a conveyance of said land to Plaintiff whenever he should pay said promissory notes. Defendant states that, having bought Fights' interest in the land, he was ready & willing at any time before the 1<sup>st</sup> day of January 1856 to make Plaintiff a conveyance of said land if he had paid the purchase money. But he says Plaintiff utterly failed at any time to pay to either Defendant or Fights, said promissory notes, or any part of them.

Defendant denies that Plaintiff during the year 1855, or at any time, made lasting and valuable improvements on said land, of the value of \$500, or \$600, or of any value whatever. He alleges that the timber Plaintiff cut & destroyed thereon, in his attempt at building, was an injury to the value of the land, instead of an improvement thereon.

Defendant denies that he <sup>made</sup> any agreement either verbally or otherwise, with Elisha Vernon or Plaintiff, to wait one year longer for the payment of said purchase money.

Defendant denies that he in the month of January 1856, requested Plaintiff to give him up said title Bond, promising to give him another one, & stating at the time that said Bond



contained no obligation for a stipulated penalty, and would therefore do Plaintiff no good. But he admits that some three months prior to this time, he proposed giving his own title Bond to Plaintiff, instead of the one he then held from Jarvis. He denies that he at any time after the first day of January 1856, after said title bond became forfeited, requested Plaintiff to give up said Bond and promised to give him another Bond for title to said land. - Defendant states that <sup>after</sup> said title Bond had become forfeited, by Plaintiff's failing to comply with its terms, by paying said purchase money by the first of January 1856, the Plaintiff voluntarily gave up said Bond to Defendant, and did not even request of him any other obligation for said land, or set up any claim thereto, and having prior to this time abandoned the possession of the land, Defendant considered said contract at an end. - Defendant admits that some time in April 1856, he sold and conveyed said land to William Rose, for \$900, which he avers he had a legal right to do. Defendant therefore denies that he is liable to Plaintiff for \$300, the amount he sold the land for over and above what Plaintiff had contracted to pay, and denies that Plaintiff is entitled to recover of Defendant four hundred dollars, or any amount whatever.

Defendant states that he has been ready

and willing at any time since said Bond was given up, to deliver said notes to plaintiff, and here produces them in court to be cancelled or delivered to plaintiff, said title Bond is hereto annexed as part of this answer,

} Green & Gale  
} Attorneys for Defendants

William S. Howe, defendant, makes oath and says the above answer, and the matters therein as stated he believes to be true.

Wm. S. Howe

Sworn and subscribed  
to before me this 25<sup>th</sup>  
day of July 1857

J. M. Hopton J.P.

In Jefferson Circuit  
Court

John Lee

vs.

Wm. S. Howe

Amended

Answer

Filed July 30<sup>th</sup> 1857

Elias D. Kearny  
Clerk

COUNTY OF JEFFERSON.

The State of Missouri,

To Eliza Vernon, Mrs. J. C. Borchgrevink, Newton Jarvis  
Greeting:

You are hereby commanded, that acting under all manner of  
course and delay, you appear before our Circuit Court for the  
County aforesaid, on the 27th day of April next  
at St. Louis, then and there to testify, and the truth to say in a  
return made of controversy, now pending in our said Court, between

John Lee is Sheriff and

William S. Howe is Defendant in the said

of Plaintiff and herein your wife in our case to wit:

Witness,  Clerk of our said Court

with the said thereof hereto appeared, at office this

11th day of March A. D. 1858

Elias J. Hovey  
Clerk.

I Executed the within writ on Wm Vose on the 15<sup>th</sup>  
and on John Brickey on the 30<sup>th</sup> day of March and on  
Thornton Jarvis on the first and on Elisha Vernon on the 13<sup>th</sup>  
th day of April 1858 by receding in their presence and  
hearing

Augustine Wiley Sheriff

De Circuit Court

April Term 1858

John Lee

vs  
J. Spru

William S. Howe

for Jeff

Elisha Vernon 12<sup>cts</sup>

Wm Vose 15<sup>cts</sup>

John Brickey 30

Thornton Jarvis 1<sup>st</sup>

Sheriff fees \$2.00



COUNTY OF JEFFERSON.

The State of Missouri,  
To Geo. J. Hoarey Sheriff James Minshel

Greeting:

You are hereby commanded, that setting aside all manner of  
excuse and delay, you appear before our Circuit Court for the  
County of Howard, on the 27th day of April next  
at Hillsdale; then and there to testify, and the truth to say in a  
certain matter of controversy, now pending in our said Court, wherein

John Lee is Plaintiff and  
Mary Stone is Defendant on the part

of said and herein you are under no pain  
and witness, THOMAS C. FLETCHER, Clerk of our said Court

with the Seal thereof hereto affixed, at office this

20th day of March A. D. 1858

Geo. J. Hoarey Clerk.

I Executed the within writ on Wm Steel on the 30<sup>th</sup> day  
of March and on Thornton Jarvis on the 1<sup>st</sup> day of April  
1858 by reading in their presence and hearing and  
also on E. J. Honey on the 15<sup>th</sup> day of March 1858 by him  
acknowledging the Service Augustus Wiley Sheriff

Do hereby bound

April Term 1858

John Lee

Wm<sup>rs</sup> J. Howe

for debt

E. J. Honey

Thornton Jarvis

Wm Steel

Sherriff's fees \$150

COUNTY OF JEFFERSON.

The State of Missouri,

To James Linn, Esq. Sheriff.

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 29th day of April 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

Do John Lee is Plaintiff and

William Weaver is Defendant on the part

of J. H. and herein you are in due to find

Witness, THOMAS C. FLETCHER, Clerk of our said Court

with the Seal thereof hereto affixed, at office this

Seal day of April A. D. 1858

Eliza D. Honey Clerk.

I executed the within writ on James  
Jones and Richard Chew by reading in their  
hearing Apr 29 1858  
Justice Wiley Sheriff  
By Wm Skel  
Sgt Sub

Robinson Bank

April 29 1858

Robinson & Co

m &

Wm S. Howe

for Sgt

James Jones  
Rich. Chew

Sgt. \$100



John Lee } The Counsel for Defendant ask the  
vs. } Court to declare the law of this case,  
Wm. S. Howe } as follows.

1<sup>st</sup> - That said Title Bond shows a Conditional sale of the land, and therefore the same became forfeited on a failure of the plaintiff to pay any part of the purchase money within the time stipulated in the contract.

2 - That if the Court sitting as a Jury, believes that no money had been paid on said contract for the sale of the land, prior to January the first 1856, and that no money was afterwards paid to Defendant on the same, then said Contract became forfeited, and the Defendant was at liberty, after waiting a reasonable time, to sell the land, and is not liable to plaintiff for any part of the proceeds of such sale.

3 - The fact of the Title Bond being in the Defendant's possession after the first of January 1856, unexplained by any testimony, is prima facie evidence that both parties considered said Contract at an end.

4 - That if the Court believes from the evidence, that Plaintiff had abandoned the possession of said Land, and had given up said Bond to Defendant, prior to the time of his selling the land to William Vose, it is presumptive evidence that Plaintiff considered the Contract forfeited, and he cannot recover any thing.

5 - No verbal statement of Defendant to Elisha Vernon, "that he would wait a year longer for the payment of the purchase money," is binding, so as to affect the land, or the money arising upon the sale of the same by Defendant.

6 - That, if said Contract became forfeited, by failure of plaintiff to pay any part of the purchase money within the time stipulated, then Defendant is not liable for any improvement made on the land by plaintiff.

7 - If the Court find from the evidence that the Contract for the sale of the land became forfeited, by failure of plaintiff to pay any part of the money within the time stipulated, and that any agreement was made extending the time of payment beyond the time stated in the Bond, such agreement is not binding to affect the land or the money arising from it, unless such agreement was reduced to writing, and based on a sufficient Consideration.

Lee's  
Co,  
Moore  
Instruments

John May 4th 1858  
Class of Henry etc



Due

Lee  
v.  
Howe 3

The defendant asks the court to declare the law as follows.

8 *Repealed* That altho time is not generally the essence of a contract for the sale of lands, yet the parties may by contract make time material. That, <sup>in</sup> the contract between Lee & Jarvis the parties have made time material and if it appears by evidence that the money was not paid at the time agreed upon, then the contract for the sale of lands was null and void.

9 *Repealed* If the plaintiff relies upon the fact that Howe as holder of the note for one of the lands extended the time of performance for a year, he <sup>plaintiff</sup> is bound to show a contract in writing based on a valuable consideration and a mere verbal promise without consideration will not do.



Protestant Reform.

See

"

Home.

July 4th 1858

Edw. Stearns

John Lee

vs  
William Howe

In the Circuit Court of  
Jefferson County Mo  
April term 1858

Be it remembered that in the trial of the above cause the plaintiff to sustain the issue on his part read in evidence the title bond from <sup>conveyed from the Custody of the Defendant</sup> Thimmas Jarvis to plaintiff in words & figures as follows. (See Copy Same) The plaintiff then introduced William Vose who testified that he purchased from Defendant William Howe the tract of land described in plaintiffs petition on the 2nd of April 1856. That negotiations had been pending between him and Defendant about the purchase some two or three months before it was completed. Witness thinks it was about the middle of March he and Defendant first talked about the trade. Witness gave Defendant nine hundred Dollars for the property, when witness purchased there was about forty acres of land cleared. with some log buildings commenced there were three log pens of hewed logs put up on a stone foundation, under one of which was a cellar sixteen or eighteen feet square walled up with a stone wall there were also other logs not put up in the house. Witness does not know who made these improvements but he considered them including the cleared land as being worth two or three hundred Dollars to the place. does not know the value of the unfinished log buildings separately. but is of opinion that he witness would have done better to build a frame house than to finish the log house that was there. Witness thinks it cheaper and better to build frame houses than log houses. Witness knows nothing about who lived on the place or who made the improvements.



Elisha Vernon for Plaintiff swears that in the fall of 1855 the plaintiff Doctor Lee being about to remove to St Francis County engaged witness verbally to act as his agent in reference to this land as also to collect bills due and pay the money on his debts that in the latter part of December 1855 a few days before the last installment owing by plaintiff to Defendant on the purchase of this land witness as the agent of plaintiff called on the Defendant at his Defendants house and asked him if he meant to exact payment on the bond and proposed to Defendant that if he must have his money that I would pay it to him and take the conveyance this I did at the request of Doctor Lee Defendant declined making this arrangement and told me that he would give Doctor Lee another year to pay it that he would extend the time of payment a year longer to this evidence Defendant objected but the Court overruled the objection and Defendant excepts. Sometime after this witness thinks in January or February the Defendant spoke to witness about this land matter at Esquim Braziles and said to witness I have concluded to shut down on Doctor Lee, he Cant have that land Witness replied to him, Why whats the matter? Whats broke Howe replied He Cant get the land I will not let him have it I will give you the reason some other time. On being further interrogated about the time of this last conversation. Witness says he is not positive as to the exact time but that it was only a few days afterwards till he heard Howe had sold the place to William Rose.

Witness further states that when plaintiff moved to St Francis County he left witness in possession and control of the place that witness as the agent of Doctor Lee put a man by the name of Daniels in possession tho the house Daniels occupied was

not on this tract but immediately adjoining it that outcrop sold Daniels the same growing in the field and agreed that Daniels should have the place the next year. Then men there by pines put up on the place hewed logs they were put on foundation of Stone a cellar dug and walled up. all this and another small Cabin finished off and occupied were built by Doctor Lee after he purchased from Thornton Jarvis thinks the improvements made by plaintiff on the place of the value of two or three hundred Dollars to the place. They cost Doctor Lee a great deal more than that. Plaintiff went to Farmington in Summer of 1855 and left me the control of the place as his agent. On being interrogated by Defendant says he has no recollection of betting or offering to bet with Richard Chew on the result of this suit.

The plaintiff then read the deed from Giles Lee to Defendant. and one Feight (here copy). It was admitted that before the commencement of the suit Feight had conveyed his interest to Defendant. Plaintiff then read the notes produced by Defendants and endorsements as follows (here copy same)

The plaintiff has closed his evidence and the Defendant to sustain the issue on his part introduced the following evidence

Richard Chew who says he does not know the value of the improvements made by Lee on this place they were worth something. Witness says he had a talk with Elsiea Beeman about this case. Witness said to Beeman he did not think that



Lee would ever receive one cent. Vernon said he thought he would. Witness said to Vernon I will make you a present of the best hat in St Louis if Lee ever receives one cent. Witness does not remember what reply if any was made by Vernon.

Elias F. Honey who states that he wrote the title bond and notes here produced from Thornton Jarvis to Lee. Defendant asked witness if it was not the express understanding between Jarvis and Lee when the bond was written that if Lee failed to comply with the conditions of the bond that the contract was to be forfeited the plaintiff objected to parcel evidence about what contract was made outside of the written contract read in evidence the court sustained the objection and refused to allow the evidence and Defendant excepted.

That Defendant took an assignment of the notes and a deed from Giles Lee for the land the way this came to be done was that Jarvis had bought this land of Lee and inasmuch as no deed had been acknowledged and recorded from Giles Lee to Jarvis when Howe got the land the deed was made direct from Giles Lee to Howe and Ficht.

William Steel says that at Ego Fortans in March 1856 and heard Elisha Vernon state on oath he was not agent for Doctor Lee that although the arrangement for his being agent had been verbally agreed upon he had not got his papers yet. The way this came up was a suit had been commenced against Doctor Lee and the summons was served on Vernon as his agent - Vernon came

there denied his agency and it resulted in  
a nonsuit. The Defendant then pro-  
duced the notes from Lee to Jarvis as Copied  
in plaintiffs evidence and offered to Cancel them.  
It was admitted by plaintiffs Counsel that  
plaintiff had not paid any part of the purchase  
money for the land.

This being all the evidence  
in the case. The Defendant then asked the Court  
to declare the law of the Case as follows (here Copy the  
instructions) but the Court overruled the instructions  
asked by Defendant except the 5th & 7th which  
were given to which decision of the Court and  
overruling the other instructions Defendant Excepts.

The Cause then being submitted  
the Court found for the plaintiff and gave judg-  
ment for \$366.75 cents as appears of Record.

The Defendant ~~then~~ before submitting the  
Cause to the Court, moved the Court to declare the Law  
as contained in propositions or instructions of which the  
following is a Copy. but the Court refused to declare the  
law as contained in is the 1<sup>st</sup> 2<sup>nd</sup> 3<sup>rd</sup> 4<sup>th</sup> 5<sup>th</sup> and assented  
to 6<sup>th</sup> & 7<sup>th</sup> to which decision the Defendant Excepts.

The Defendants then moved the Court to set aside the verdict  
and grant a new trial for the following reasons (here  
insert the Motion) But the Court overruled the ~~objection~~  
motion and refused to grant a new trial and the Defendant  
Again Excepts — So all which acts and doings decisions  
and Opinions the defendants Except, and herewith tenders  
this his bill of Exceptions which is signed, sealed and  
made a part of the record of ~~the case~~.

Johannes ~~Stallone~~ (Seal)

See } Expts  
Home }

Filed May 5th 1858  
Ohio & Albany etc



MASS

John Lee vs. William S. Howe In the Circuit Court Jefferson County

The Defendant by his Attorney, moves the Court to set aside the verdict and judgment in the above cause, for the following reasons:

- 1st - Because the finding of the Court, sitting as a jury, is against the law, and the evidence in the cause.
2 - The Court erred in admitting the testimony of Eliza Vernon, to prove a verbal agreement extending the time of payment of the purchase money of the land.
3 - The Court erred in refusing all the instructions or declarations of law, asked by the Defendant, except the 3rd and 7th.
4 - The Court erred in its construction of the written Contract for the sale of the land, and in its decision of the law of the State governing the case.
5 - The Court erred in overruling the demurrer of the Defendant.
6 - The evidence in the cause is not sufficient to warrant a finding for plaintiff.

Green & Gale Attys for Defendant



MADE IN U.S.A.  
1892

In Circuit Court  
Jefferson County

John Lee  
vs,

Wm. D. Brown

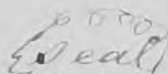
Motion for  
New Trial

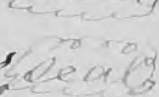
Shelley 4th 1858  
Geo. S. Hooley  
Clerk

original

John Lee } In the Circuit Court  
vs. } Jefferson County,  
William S. Howe

We, William S. Howe as Principal  
and James Williams and ~~James~~ <sup>Andrew Bowles</sup> ~~and~~ as  
securities, acknowledge ourselves in-  
debted to John Lee, the Plaintiff, in the  
sum of eight hundred dollars, to be  
void upon this condition: That, whereas  
William S. Howe has appealed from  
the Judgment of the Circuit Court  
of Jefferson County, Missouri, to the Su-  
preme Court of said State, in an action  
in said Circuit Court, wherein the  
said John Lee is Plaintiff, and the said  
William S. Howe is defendant. Now,  
if the appellant, William S. Howe, shall  
prosecute his appeal with due diligence  
to a decision in the Supreme Court, shall  
perform such Judgment as shall be given  
by the Supreme Court, or such as the  
Supreme Court may direct the Circuit  
Court to give, and if the Judgment of such  
Court, or any part thereof, be affirmed that  
he will comply with and perform the same,  
so far as it may be affirmed and will pay  
all damages and costs, which may be aw-  
arded against the appellant, by the Su-  
preme Court, then this recognizance shall  
be null and void, otherwise to remain  
in full force. Witnesses our hands and  
seals this 3<sup>rd</sup> day of May 1838.

Wm S Howe 

James L Williams 

A. Barlow 

John Lee

no =

William J. Howe

Alfred. Bond

Black May 3<sup>rd</sup> 1858  
Ohio J. H. Long etc



John Lee, Plaintiff }  
Against } In the Circuit  
William S. Howe, defendant } Court, Jefferson  
State of Missouri } County,  
Jefferson County } ss.

William S. Howe, the above named de-  
fendant, being duly sworn, on his oath  
states that his appeal from the judg-  
ment of the Circuit Court rendered in the  
above cause for plaintiff, at the April  
Term 1858 thereof, is not made for  
rescission or delay, but because this  
Affiant believes that he, the appellant  
is aggrieved by the judgment or decision  
of said Circuit Court.

Wm S. Howe

Sworn to and subscribed }  
before me May 5th 1858 }  
Elias J. Honey Clerk

Wm J Howe

John. Lee

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Appraised for. Appraised

Alber May 3<sup>th</sup> 1818

Edw & Henry Clark,