

Tofferson County Circuit Court
Case # 185 - Civil

Box

9 Fold. 3

May 1857

Wiley, Augustine, Sheriff of Tofferson County

vs,

Robert, Louis

Deb't

Deb't \$2,885.45 for purchase of
Lot 11 in Survey 1897 at partition
sale; Supreme Court

Augustine Wiley, Sheriff
of Jefferson County, Missouri, - Plaintiff } In the
Against } Circuit Court
Louis Robert, - Defendant } of Jefferson
} County, Missouri

Plaintiff states that, at the November Term 1854, of the Circuit Court of Jefferson County, Missouri, a decree was entered by said Court, on a suit of partition wherein Louis Robert & others were plaintiffs, and Beverly J. Adams & Wife were defendants, - by which, it was decreed that Louis Robert was entitled to four twentieths, - Robert, Charles Robert, Louis Robert & wife and Betilla Allen, plaintiffs, were each entitled to one eighteenth, and the defendants, Beverly J. Adams, and Wife to fifteen twentieths, of the Land described in the petition of the plaintiffs in said partition suit, - and the Court at said Term ordered that said land, (it being Lot No. eleven, in Survey No. 1897, in Jefferson County aforesaid, and particularly described in the petition of said partition suit) be sold at public sale, at the May Term 1855 therefor ten per cent of the money in cash, and the residue on a credit of twelve months drawing six per cent interest from date, till paid, the purchaser giving his note & good security. Plaintiff states that he is now, and was at the time said order of sale was made, the acting Sheriff of Jefferson County aforesaid, duly elected and qualified, - and that as such, he received from the

Clerk of the Court, a certified Copy of the order of said Court, directing him as Sheriff as aforesaid, to advertise and sell said Land at public sale, for the purposes and on the terms therein stated and that he afterwards advertised said Land for sale according to law, and on the terms mentioned in the order of Court, and did pursuant thereto, sell the same at public sale, on the first day of June 1853, at the Court house door in Hillsboro in said County, during the Session of Court, in accordance with the advertisement and the order of Court, and Louis Robert, defendant in this suit, being the highest and last bidder for said Land, at and for the price of two ^{thousand} eight hundred and eighty five dollars, and forty five Cents, became the purchaser thereof for that sum. That at said sale S. J. Johnson acted as auctioneer for plaintiff, at his request, and Oscar Dover, as Clerk, both of whom made a memorandum in writing of the price the land sold for, and of the purchaser, - and plaintiff, through mistake, (being much crowded with business) reported said sale to the same Term of Court, ^{and also at the 11th of June 1853} stating that the Terms of sale had been complied with by the purchaser, (supposing that his Deputies Dover & Johnson had received the 10 per cent in cash, & the purchaser's Note for the residue,) but ^{that, after making the second report,} he afterwards ascertained ^{for the first time} that said Louis Robert had neglected to pay the 10 per cent in cash and had gone off without giving his Note for the resi-

due of the purchase money, as the terms
of sale required. Plaintiff states that one
year having elapsed since ^{the} sale, that ^{the} whole
of said purchase money has become due
and payable, to plaintiff as such sheriff,
and that the Defendant neglects and
refuses, to comply with the terms of said
sale, and refuses to pay plaintiff said
\$2883.45, cents, and the interest thereon,
Plaintiff states that he is ready and willing
to make Defendant a Deed for said Land
(conveying such title as the law authorizes
& requires him to make as such sheriff)
whenever the Defendant pays him the said
sum of money due for said Land.

Plaintiff ~~th~~ states that the De-
fendant is ~~giving~~ ^{owed} to him as
sheriff, in the sum of two thousand
eight hundred & eighty five dollars, &
forty five cents, with interest, and for
which Plaintiff asks judgment.

Certified copies of said order of Court, the
advertisement, Report, & minutes of the sale, are
hereto annexed as parts of this petition.

} Trisbell & Green
} Attorneys for Plff.

Augustine Wiley, plaintiff, make
oath and says he believes the above pe-
tition and the matters therein as stated
are true, and that the Defendant is not
a resident of the State of Missouri.

Augustine Wiley

Signed & sworn to before me Nov 24 1876

Thos C Metcher CLK

1698

In the Circuit Court
of Jefferson County

Augustine Wiley
Sherriff of Jefferson County

vs.

Louis Robert
Petitioner

Filed Nov 24 1856
Thos. G. Melcher
Clerk

Chd

Augustine Wiley, Sheriff }
 of Jefferson County, Missouri, - Plaintiff }
 Against }
 Louis Robert, - Defendant, }
 State of Missouri }
 County of Jefferson } ss.

In the
Circuit
Court of
Jefferson
County, Missouri

This day, personally appeared before me,
 Thomas C. Fletcher, Clerk of the Circuit Court
 within and for the County of Jefferson aforesaid,
 Augustine Wiley, and says that he, the Plain-
 tiff, has a just demand against Louis
 Robert, the Defendant; and that the amount
 which this Affiant believes he, the Plaintiff,
 ought to recover, after allowing all just Credits
 and set-offs, is two thousand eight hun-
 dred and eighty five dollars and forty five
 Cents, now due, and interest; and that he
 has good reason to believe, and does believe,
 that the Defendant is not a resident of
 this State.

Augustine Wiley

Signed & Sworn to before me
 Nov 24th 1856. Thos C Fletcher CLK

In Jefferson
Circuit Court

Augustine Wiley
vs
John Robert

Plaintiff

Filed Nov 24th 1856
Wm C McTear
Clerk

Augustine Wiley, Sheriff
of Jefferson County, Missouri, Plaintiff } In the
Against } Circuit
Louis Robert, - Defendant } Court of
Bonds in attachment suit, } Jefferson
County,

We, Augustine Wiley, as principal, and
Thomas L. Fletcher, and Elias F. Honey,
as securities, owe and stand indebted to
the State of Missouri, in the sum of six
thousand dollars, upon this condition;
That the Plaintiff in the above entitled
cause, Augustine Wiley, Sheriff as aforesaid,
shall prosecute his action without delay
and with effect; refund all sums of
money that may be adjudged to be refund-
ed to the Defendant, Louis Robert, or found
to have been received by the Plaintiff, and
not justly due to him; and pay all dam-
ages and costs, that may accrue to any
defendant or garnishee, by reason of the
attachment, or any process, or proceeding
in the suit, or by reason of any judgment
or process thereon.

Witness our hands and seals, This 26,
day of November 1836.

Augustine Wiley Seal
Thos L Fletcher Seal
Elias F Honey Seal
Seal

Dr Jefferson
Circuit Court

Augustine Wiley
28.
Journ Robert

March, 1836

Filed & approved by
the Court Nov 26.
1836. Wm C McEach
Clerk

according to law, and ^{on} the terms mentioned in the order of Court and did pursuant thereto sell the same at public Sale on the first day of June 1855 at the Court House door in Hillsboro in said County during the Session of Court in accordance with the advertisement and the order of Court, and Louis Robert defendant in this suit being the highest and last bidder for said land at and for the price of two thousand eight hundred and Eighty five dollars and forty five cents, became the purchaser thereof for that sum. That at said Sale, G. I. Johnston acted as Auctioneer for Plaintiff at his request, and Oscar Dover as clerk, both of whom made a memorandum in writing of the price the land sold for, and of the purchaser, and Plaintiff through mistake (being much crowded with business) reported said Sale to the same Term of Court, and also at the November Term 1855, stating that the terms of Sale had been complied with by the purchaser (supposing that his deputies Dover & Johnston had received the 10 percent in cash & the purchasers note for the residue) but he afterwards that is after making the second report, ascertained that said Louis Robert had neglected to pay the 10 percent in cash and had gone off without giving his note for the residue of the purchase money as the terms of Sale required, Plaintiff states that one year having elapsed since the Sale, that the whole of said purchase money has become due and payable to plaintiff as such Sheriff, and that the defendant, neglects and refuses to comply with the terms of said Sale, and refuses to pay plaintiff said \$2885.45 Cents and the interest thereon, — Plaintiff states that

ready and willing to make defendant a deed
for said land. (conveying) such title as the law
authorizes & requires him to make as such Sheriff
whenever the defendant pays him the said sum
of money bid for said land. Plaintiff therefore
states that the defendant is justly indebted to
him as such Sheriff in the sum of two thousand
Eight Hundred & Eighty five dollars & forty
five cents with interest and for which Plain-
tiff asks Judgment. certified copies of said
order of Court the advertisement report &
minutes of sale are hereto annexed as parts
of this petition

Trifell & Green
attorneys for Plff

Augustine Wiley plaintiff makes oath and
says he believes the above petition and the mat-
ters therein as stated are true and that the de-
fendant is not a resident of the state of Missouri

Augustine Wiley
Signed & sworn to before me Nov 24th 1856

Thos C Fletcher clerk

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

In Testimony whereof I here to set
set my hand and affix the seal of
said Court at office December
6th A D 1856

Thos C Fletcher clerk
By E J Honey Sept

State of Missouri }
County of Jefferson }

The State of Missouri. To James
Mc Colloch, an Eligor appointed by the Circuit
Court of said County Greeting

We command
you that you attach Louis Robert, by all and
singular, his lands and tenements, goods, Chattles
rights, moneys, credits evidences of debt, and ef-
fects or so much thereof as shall be sufficient to sat-
isfy the sum of Two thousand eight hundred
and Eighty five dollars and forty five Cents, with
Interest and costs of suit, in whose possession soever
the same may be found in your County, and
that you summon the said Louis Robert, if he
be found in your County that he be and appear be-
fore our Circuit Court, of the County of Jefferson in the
first day of the next term thereof to be holden in
the Town of Hillsboro in the said County of Jefferson
on the fourth Monday of May next, then and
there to answer the petition of Augustine Wiley
Sheriff of Jefferson County a copy of which is
hereto attached, and that you summon all
such persons that you shall find in the possession
of goods moneys or effects of the defendant, not ac-
tually seized by you and all debtors, of the defend-
ant, and such other persons as shall be named
to you by the plaintiff or his attorneys as garnishees
to be and appear before our said Court, at the
time and place aforesaid, then and there to
answer such allegations and interrogatories
as may be exhibited against them and

have you then and there this word.

In Testimony whereof I Tho C Fletcher
Clerk of the Circuit Court of Jefferson
County aforesaid have hereto signed
my name and affixed the seal of
said Court at office December the
18th A D 1856

Tho C Fletcher Clerk
By E J Stone Depy

No 2

To Jefferson Cir Court
May Term 1857

Augustine Wiley Sheriff
vs } Attachment

Louis. Robert

Geo M. Coluch for \$11.00

I executed the within writ as the County of
Jefferson on the 8th day of December A.D.
1856. by levying the same upon and seizing all
the right title Interest and claim of the defend-
ant Louis Robert of or and to the following
described land Situate in said County, ^{some State of} ~~to wit~~
^{Missouri} Lot No 80 Eleven in Survey No 1897. beginning
at the South west corner of said lot on the right bank
of the Meramec River in the North boundary of United
States Survey No 1949 from which a Black Oak 10 inches
in diameter bears South 39 degrees 99 links distant thence
North 61 degrees East along the North boundary of Survey
1949 and South boundary of Survey 1897, 31-100
chains to a post in the North East corner of Survey
1949 thence North 60 degrees East 16 chains to a post
in the South boundary of Survey 1897 being the South
East corner of lot No 11. and South west corner of lot No
12. from which a white oak 10 inches diameter bears
S. 73 1/4 degrees W. 30 links and a red oak 12 in
+ diam. bears N 19 1/2 degrees E 95 links. thence N. 29
degrees West between lots 11 & 12. 61 chains to South
Boundary of lot No 13 at which is set a post N.E.
corner of lot No 11 & S.W. corner of lot No 12. from
which a sugar tree 12 in diameter bears S. 51. degrees
E 29 links and a 22 in Red oak Bears S. 15 degrees
E 100 links thence South, 61 degrees West 35 80/100
chains to the Meramec River at which a post
is set from which a Spanish oak 20 inches diam
bears S. 73 1/2 degrees E 90 links & a Hickory
10 inches diameter bears N 54 degrees East 37
links. thence up the Meramec to place of be-
ginning containing 274 80/100 acres - also
Lot No 13 of W.S. Survey 1897. Beginning

at a stake on the right Bank of the Merumack the
South west corner of lot eleven and the S.W corner of
lot. 13, from which a spanish oak 20 in diam bears S
 $73\frac{1}{2}^{\circ}$ E 90 links and a hickory 10 inches diam bears
N. 54° E 37 links. thence N 61° E 84 Chains 29 links
to the East boundary of Survey No 1897 from which a
Bur oak 16 in diam. bears S $23\frac{3}{4}^{\circ}$ W. 80 links —
thence N $29\frac{1}{2}^{\circ}$ W along the East boundary of Survey
1897. 60 chains 55 links to a sugar tree corner
from which a black oak 30 in diam. bears S
 40° E 7 links dist thence meander up the right
bank of the Merumack N 88° degrees W. four $33\frac{1}{100}$
+ chains cross the slough and meander up the west
side of Devils Island crossing the slough and
up the right bank of the merumack to the point of
beginning containing 490² too acres Also
Sub division No three of lot No five (5) of U.S
Survey 1897. being bounded in part of subdivision
of said lot No 5, beginning at the N.E corner
of lot No 2 of said sub division N 5° as above said
at a hickory 10 in diam bears S 62° W 22
links dist, and a white oak 16 in bears S. 32° E
43 links dist. thence N 60° E 15 Chains to the S.E
corner of lot No 1 of said sub division on the
River bank to a white oak 12 in diam bears
S 60° W 13 links and a Black oak 10 inches
S. 46° E 24 links dist thence down the river
with its meanders to the S.E corner of lot No
two, of said Sub division to a lycamore 18 in
diameter bears N 30° W 48 links and a maple
20 in diameter bears N $57\frac{1}{2}^{\circ}$ W 24 links dist
thence North 30° W. 50 Chains 46 links to
the place of beginning, and I do hereby

declare that I did attach all the right title
and Interest of the defendant in the same
or so much thereof as shall be sufficient to
satisfy the debt Interest and costs of suit

James M. Colloch
Clerk of Jefferson County
Appointed by the Circuit Court

STATE OF MISSOURI, }
County of St. Louis. } SS.

On this 16th day of March in the year of our Lord
one thousand eight hundred and fiftyseven, before me, the undersigned —
a Justice of the Peace for the county aforesaid, personally appeared Charles E.

Kearney and made oath that he is the publisher of a news-
paper, printed and published in the city of St. Louis, and State of Missouri, called the
St. Louis Intelligencer, and that the advertisement, of which the annexed is a copy,
was printed and published in said newspaper for four weeks successively,
commencing on February 17th - 1857 and ending on March 17th - 1857 the
first publication being in No. 7th Feb^y 17th the second publication being in
No. 8th Feb^y 24th the third publication being in No. 9th March 3rd the
fourth publication being in No. 10th March 10th the fifth publication being in
No. 11th March 17th the sixth publication being in No. 12th March 24th the
seventh publication being in No. 13th March 31st the eighth publication being in
No. 14th April 7th

Sworn to and subscribed before me, the day and year aforesaid.

Albert Davis

Justice of the Peace.

Charles E. Kearney

Witness for \$100.00
Affidavit .. 25[¢]

\$10.25

STATE OF MISSOURI, }
COUNTY OF JEFFERSON } ss.
IN THE CIRCUIT COURT IN VACATION—FEB. 9, 1857.
Augustine Wiley, }
vs. } Attachment.
Louis Robert.

NOW at this day comes said plaintiff, by his attorney, and on his motion, it appearing from the petition and affidavit on file of said plaintiff, that said defendant, Louis Robert, is a non-resident of the State of Missouri, and that said defendant is justly indebted to said plaintiff, after allowing all just credits and off-sets, in the sum of two thousand eight hundred and eighty-five dollars and for five cents, with interest thereon, on account of the purchase of lands sold by said plaintiff, as the Sheriff of said county, under an order of the Circuit Court of said county, and bid off by said defendant. It is, therefore, ordered, by the undersigned, Clerk of said Court, that said non-resident defendant, Louis Robert, be notified, by publication, of the commencement of this action, and that his property has been attached, and unless he be and appear before the Circuit Court of said county at the next term thereof, to be begun and held in the town of Hillsboro', in said county, on the

Fourth Monday of May next,
and on or before the third day of said term, answer the petition of said plaintiff, judgment will be rendered against him, and his property sold to satisfy said demand and costs. And it is further ordered, that a copy hereof be published in the *Saint Louis Intelligencer* newspaper, for four weeks successively, the last insertion to be at least four weeks prior to said next term.

A true copy from the record.

In testimony whereof, I hereto set my hand
{ L. S. } and affix the seal of said Court, at office, February
9th, 1857. THO. C. FLETCHER, Clerk.
f 14wT By E. F. Howe, Deft.

THE ST. LOUIS
INTELLIGENCER.

DAILY PAPER, ... \$8 00
THU WEEKLY, ... 4 00
WEEKLY, ... 1 00
Payable invariably in advance.

Advertisements

INSERTED AT THE USUAL RATES

PLAIN AND ORNAMENTAL

Job Printing,

Of every size and description, neatly
and expeditiously done.

St. Louis,

185

Mr. C. H. Henry Sellers Mrs.

Do A. S. MITCHELL & CO., DR.

PROPRIETORS OF THE

SAINT LOUIS INTELLIGENCER,

NO. 76, NORTH THIRD STREET.

Stop Subscriptions

Advertising, Newspaper Price 1000
Subst a la semaine 500 4 1000

Officiant

25
10 25

1854
Jan 14

Jefferson Circuit Court.

Augustine Wiley }
v
Louis Robert }

Defendant for answer to
plaintiffs petition, says, That,

He admits the judgment and order of sale set out
in the petition mentioned,

He denies that H. J. Johnson or Oscar Dorn, plaintiffs
clerks, were the agents of this defendant lawfully author-
ized to sign or make any memorandum in writing of the
purchase by the defendant, and whether they made any mem-
orandum he has not knowledge upon which to found a be-
lief, and he therefore requires proof of the same, and says that
neither he nor any one lawfully authorized by him ~~made or~~
signed any note or memorandum in writing of the said
agreement.

For farther answer, defendant says, that after said
sale so stated in the petition, it was agreed between the
plaintiff in the suit mentioned and the said Adams,
that the said Adams should retain the said land
and that the plaintiffs should compromise with him
for a sum to be afterward agreed upon or ascertain-
ed between them, and by virtue of this agreement said
Adams retained possession of said land, and the said
plaintiffs have not molested or disturbed him therein, &
said agreement the said plaintiff are willing to carry
out whenever said Adams shall require.

~~Adams~~ ^{Defendant} says that plaintiff is not entitled to the relief
he prays, and denies that in a partition sale that said
plaintiff is entitled to recover the whole purchase money of
which one fifth belongs to this defendant.

Defendant therefore prays judgment for his costs &c

Pipkin & Whittlesey
Attys p. d.

Chas C Whittlesey ~~defendants~~ attorney being sworn
say that he believes the above petition and the matters
therein as stated to be true

Sworn to & subscribed
this 15 day of May 1857
before me

Chas C. Whittlesey

Witness my hand & seal
Eduard Thander
JDO

aff'd ~~15~~ pa by C.C. Whittlesey

Augustine Wiley

v.
Louis Robert

Answer

Pipkin & Whittlesey
attys p. d.

Filed May 27 "1857

Elias J. Honeywell

Augustin Wiley, Sheriff } In the Circuit
 Jef. County, — Plaintiff } Court, Jefferson
 Against } County,
 Louis Robert, — Defendant,

Plaintiff moves the Court to strike
 of the Answer of Defendant in the above cause,
 for the following reasons,

- 1st — Said Answer contains no defence to
 plaintiff's cause of action,
- 2^d — It is immaterial whether Johnson & Dover
 were the Agents of Defendant or not,
- 3 — The agreement set up, as having been
 made by Adams and Defendant, is no
 defence to the action
- 4 — The allegation that plaintiff cannot re-
 cover, because Defendant is entitled to one
 fifth, is argumentive and more a question of
 law than of fact & is no defence,

J. A. Green
 } Atty for Def

San Circuit Court

Jefferson County

Augustine Wiley

vs.

John Robert

Motion to strike

Defendants answers

Filed May 28th 1857

Edw. J. Morley
att

A. Wiley
vs
Louis Robert }

Be it remembered that on the
day of May 1887. plaintiff filed the
following motion in this Court to wit
(~~have~~ copy the motion to strike out
defendants answer) which being
considered by the Court is sustained
in part, ^{have copy the part struck out} ~~to which~~ decision and opinion
of the Court striking out part of defendants
answer defendant objects & excepts,
and ~~have~~ under this his bill of excep-
tions and asks the Court to sign and
seal the same and make it a
part of the record in this cause.

Wm. H. Stone

Seal

Augustine Wiley

vs -

James Beal

Price of manuscript

Old June 1st 1857
William J. Honeywell

COUNTY OF JEFFERSON.

The State of Missouri,

To

Hubert J. Johnston, Deam Doves

Greeting:

You are hereby commanded, that selling words all manner of
accuse and delay, you appear before our Circuit Court for the
County aforesaid, on the 26th day of Nov. 1857
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, between

Augustine Wiley

Plaintiff and

Jacob Hottel, is

Defendant on the part

of Plaintiff

and wherein you are to raise the fact

Witness,

~~THOMAS D. HENNINGER~~
THOMAS D. HENNINGER

Clerk of our said Court

with the Seal thereof hereto affixed, at office this

24th day of October A. D. 1857

Chas. J. Henney

Clerk.

To Circuit Court

November Term 1887

Augustine Wiley

vs & Ora

Lower Roberts

for Plaintiff

G. J. Johnston

Oscar Dyer
Caretakers fee \$1.00

J. C. Pomeroy
Caretaker

I Executed the within writ at
the County of Jefferson on
the 23 day of
November 1887 by Reading
it in ~~the~~ his Presence and hearing

I Executed the within Coram
writ at the County of Jefferson by
Oscar Dyer on the 23 day of
November 1887 by Reading
in his Presence and hearing

Defendant may the Court declare
the law to be as follows,

The Court act as set out in the petition and
as shown by the proof not being ^{in writing}, nor any note
or memorandum thereof, and signed by the defendant
nor by some person by him lawfully authorized, is void,
and the plaintiff cannot recover,

Defendants

Wmly

7

Robert

Open Jaws to Instructions

Filed Nov. 28th 1857

Elias B. Houty

Clerk

~~Oscar Wiley~~
Against
Louis Robert

Be it remembered that on the trial of this Cause the plaintiff to sustain the issue on his part gave evidence as follows.

Oscar Doser being sworn stated that he is the regularly Authorized Deputy of Augustine Wiley the Sheriff of Jefferson County, and in that Capacity sold certain lands mentioned in the petition for the prices and terms therein named. That just before the sale, the Sheriff came to him and handed him the advertisement and Copy of the order of Sale, and directed him to proceed to expose the land to sale, he immediately went down stairs, and got Gabriel Johnson to act as the Auctioneer, he standing by acting as the Clerk. The printed advertisement was then read by Johnson, and the land offered ^{in lots respectively}, when the bidding commenced and the lots mentioned in the petition were struck down successively to Louis Robert at the prices therein mentioned respectively, he being the highest and last bidder, At the striking down of each tract, he stood by and immediately wrote down on a memorandum the name of the purchaser Louis Robert, the number of the lot and the price given for each (which memorandum is as follows (here insert it word for word). After the sale he handed his written memorandum to ~~Augustine Wiley~~.

Gabriel Johnson stated substantially the same as Doser in regard to the manner of conducting the sale. And that he acted as Auctioneer by request of Doser.

Also the printed advertisement of sale, order of sale made in the said Cause (here insert them) ~~They being all the evidence in the Cause~~

The Court after hearing the argument of Counsel
find that the Contract of Robert is binding on
him

Labrie Whason further proved that after Robert
had off the land, he left town without complying
with the terms of sale. And it further shows
that he had never complied with said terms

Thus being all the evidence in the Cause the Court
after hearing the arguments of Counsel ^{the Court} finds that the
Defendant is bound by his Contract of purchase
as above and is liable for the amount agreed
by him to be paid - The Statute of Frauds having
no Application to his portion of the Contract made
with the Sheriff, under the ~~foregoing~~ Case made, And
that if it did, that the Memorandum made by
Dover, was a good Memorandum of Sale to save
the Contract from the bar of the Statute, And
therefore the Court proceeded to render judgment for
the amounts agreed to be paid by Robert, with interest
on the installments as they respectively became due
according to the printed terms of Sale And the
Defendant Excepted, ~~and herewith tendering his bill~~
~~of Exceptions, and prays the Court to sign & seal~~
~~the same which is done accordingly~~

John H. Stone Clerk

Thereupon the Defendant presented and filed her motion
for new trial in the words & figure following (her &
insert it), which being seen and heard & fully understood
is by the Court overruled, and the Defendant Excepted
to all which decisions and opinions aching and
doings by the Court the Defendant Excepts and tenders
this his bill of Exceptions which is signed by the Court
as a part of the record in said Cause.

John H. Stone Clerk

July
5

Bees of various species

July 28th 1857

Edwin J. Hordley

Augustine Wiley }
vs. }
Louis Robert } In the Circuit Court
of Jefferson County,
Nov. Term, 1857.

Now at this day comes the defendant Louis Robert by his attorney and moves the Court to set aside the ~~verdict and~~ judgment in this cause and to grant a new trial for the following reasons.

1. The Court erred in admitting illegal irrelevant and incompetent testimony
2. The ~~testimony~~ does not support the finding of the Court.
3. The conclusions of law are not warranted by the facts found by the Court.
- 4 The Court erred in rendering judgment for the plaintiff and in not rendering judgment for the defendant.

~~Whitelsey & Pipkin~~
attys.

5. Because the Court refused to declare the law as prayed for by defendant.

Whitelsey & Pipkin
for aff.

My
Robert

Motion for new trial

Jules Jan 28th 1857
Dear & Hon^{ble} Mr

over ruled

Augustine Wiley

by
Lewis Robert

In the Circuit Court
Nov. Term 1887.

Philip Pipkin agent and
attorney for the above defendant
on oath states that the appeal taken
in the above cause is not taken
for retraction or delay but because
the affiant believes that the appellant
is aggrieved by the judgment or decree
of the Court

Sworn to & subscribed
before me this 30th Nov.
1887.

P. Pipkin

Elias J. Honey etc

Shirley
in
Dean Beckett

affidavit for
affidavit -

Filed Nov 30th 1857
Dean & Beckett

The State of Missouri.

The State of Missouri To the Honorable the Circuit Court held in and for the County of Jefferson in said State, Greeting: -

Whereas the said Davis Robert has made application by petition to the Supreme Court of said State sitting at St. Louis, praying that said Circuit Court shall be restrained from issuing an execution upon a judgment rendered by said Circuit Court on the 27th day of November in the year 1857, in favor of one Augustine Wiley against the said Davis Robert for the sum of Three thousand three hundred and sixteen dollars and fifty cents, together with the costs and charges in said suit expended

And whereas our said Supreme ^{Court} being willing that full and complete justice be administered between the parties according to law, has ordered that said execution and all proceedings thereon ~~be~~ in any wise ~~be~~ issuing from said Circuit Court in said cause, be stayed until the further order of this Court, these are therefore to command you that you stay all proceedings on said judgment until such time and in such manner as said Supreme Court shall direct.

In testimony whereof I hereto set my hand and the Seal of said Court at Office in St. Louis this 24th day of April AD 1858.

Wm. S. Garrison,

Clerk.

Augustine Melby
restaurant

3,

Louis Robert
apporteur,

Unit of Enforcement.

Attest April 28th 1858
Chas. S. Hooley

In the Supreme Court of Missouri, held at St. Louis.
October Term 1858.

Augustine Wiley }
vs. } Appeal Jefferson Circuit Court.
Louis Robert } Opinion of the Court delivered By
Richardson Judge.

A sheriff's sale of real estate is within the statute of frauds, and a note or memorandum thereof, must be made to bind the parties. (Evans vs. Ashley 8 Mo. 177). We think however that the memorandum made by the deputy sheriff in this case was sufficient for that purpose.

The deputy states that the Sheriff handed to him the advertisement, and copy of the order of sale in the partition suit of Robert vs. Adams and directed him to proceed with the sale - that he acted as clerk and Johnson as Auctioneer that the advertisement was first read, and then the land was put up in parcels, and as it was struck off, he immediately wrote on a memorandum, the number of the lot sold, the name of the purchaser and the amount of the bid. The memorandum was produced and at the caption was written - "Partition lands, Louis Robert vs. B. F. Adams;" then follows the number of the lot, the quantity it contains, the purchaser's name, the price per acre, and the aggregate for example "lot No 11. $2\frac{3}{4}$ $\frac{80}{100}$ acres, Louis Robert \$ 10,50 per acre \$ 2885,40."

The title of the partition suit being placed at the head of the memorandum of the sale. Connected the papers in that case with the memorandum for the purposes of this enquiry, as perfectly as if they had been specially referred to and made

a part of it and therefore it was not necessary to resort to parol evidence in order to connect other papers with it, to show the agreement of the parties and to establish a valid contract.

The sheriff was the agent appointed by law to make the sale ordered in the partition suit, and it was his duty to collect the purchase money and pay it over to the parties respectively entitled to it. If the defendant had complied with the terms of the sale, his note for the deferred payment would have been executed to the sheriff. (R. S. 1855, p. 1116, sec. 35) which he could have collected by suit in his own name. This suit is not a proceeding to enforce the specific performance of a contract, but is simply an action of assumpsit for land sold, and as the plaintiff was the trustee of an express trust created by law and the judgment in the partition suit, we see no reason why he cannot maintain the action. For the fact that the defendant failed to give his note as it was his duty to do, cannot affect the right of the Sheriff to sue him for the purchase money.

It seems that the defendant was entitled to four twentieths and Adams to fifteen twentieths of the proceeds of the sale in ^{the} partition suit. So that the two together were entitled to nineteen twentieths.

The defendant set up in his answer, that after the sale, there was an agreement between him and Adams by which it was agreed that the latter was to take the land on terms to be afterwards agreed on between them. Now they could not by an outside arrangement between themselves affect the right of the sheriff to his lawful fees, or the right to collect enough

to pay all the costs and the ~~portion~~ coming to the parties entitled to one twentieth of the proceeds, but they had a right to do what they pleased with nineteen twentieths of the costs, and it would be very unnecessary to compel the defendant to pay the whole of the purchase money, after the others had surrendered their right to it, and ~~when~~ nearly all of it would be immediately paid back to him.

It was not necessary that the answer should aver that the agreement with Adams was in writing, for the statute has not changed the common law mode of declaring and a writing could be given in evidence in support of the averment sufficient to take the case out of the statute. If then the defendant can show a valid agreement with Adams that will silence his claim against the sheriff for any part of the purchase money, the defendant ought not to be compelled to pay the portion represented by Adams. But if the contract when proved will not operate as a release by Adams for any share of the purchase money, it will not avail the defendant in this action.

We think then that the Court erred in striking out a part of the defendant's answer, and for the reasons already given the judgment ought not to have included all of the four twentieths which belonged to the defendant.

The other judges concurring the judgment will be reversed and the cause remanded.

State of Missouri 3^d Feb.

William P. Greaville, Clerk of the Supreme Court

of the State of Missouri, at St. Louis, certify that the foregoing is
a full, true & complete transcript of the opinion of said Supreme
Court, entered of record at the October Term thereof 1858, in the
above entitled cause.

Given under my hand and the Seal of
said Court, at the City of Saint Louis, this
10th day of January 1859.

Wm. S. Glanville, *clerk*.

Augustine Wiley

©.

Louis Robert.

Opinion Supreme Court.

Copy

Dated Jan'y 7th 1859
Chas. J. Honey
Clerk

IN THE SUPREME COURT OF MISSOURI, HELD AT ST. LOUIS.

October Term, 1858

Augustine Riley	vs.	Appeal from Jefferson
D.		Circuit Court.
Louis Robert	of.	

Now at this day come again the parties aforesaid, 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 the said Circuit Court rendered, be reversed, annulled, and for naught held and esteemed, and that the said Appellant be restored to all things which he has lost by reason of the said judgment. It is further considered and adjudged by the Court that the said cause be remanded to the said Circuit Court for further proceedings to be had therein in conformity with the opinion of this Court herein delivered, and that the said Appellant recover against the said respondent his costs and charges herein expended, and have therefor execution.

STATE OF MISSOURI, } SCT.

I, WILLIAM S. GLANVILLE, Clerk of the Supreme Court of the State of Missouri, at St. Louis, certify that the foregoing is a full, true and complete transcript of the judgment of said Supreme Court, entered of record at the October Term thereof, 1858, in the above entitled cause.

Given under my hand and the Seal of said Court, at the City of Saint Louis, this third day of January 1858.

W. S. Glanville,
Clerk.

Augustine Preley

3.

Louis Robert.

Judgment Supreme Court.

Revised Remanded.

Filed Jan'y 17th 1859

Chas J. Hooley

Black

COUNTY OF JEFFERSON.

THE STATE OF MISSOURI,

To *E. J. Johnston, Peter M. Brewer*

GREETING:

You are hereby commanded, that setting aside all manner of excuse and delay, you appear before our *Seventh* Court for the County aforesaid, on the

Seventh day of June next. at Hillsboro, then and there

to testify, and the truth to say in a certain matter of controversy, now pending in our said Court, wherein *Augustine Heley is*

Plaintiff and *Louis Retel is* Defendant on the

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

Witness, ELIAS F. HONEY, Clerk of our said Court
with the Seal thereof hereto affixed, at office this

12th day of *May* A. D. 185 *9*

Elias F. Honey

Clerk.

I executed the within ~~Spa~~ in the County of
Jefferson State of Missouri on Peter M Brown
& L J Johnston by reading the same within
their presence and hearing on the 7th day of
June 1859

Wm D Doved Sheriff

To be read Court
June Term 1859

Augustine Wiley

vs
Lewis Robert,

for Debt
L. J. Johnston

Peter M Brown
Sheriff fee \$1.00



Augustine Wiley }
vs }
Linn Robert }

Jefferson Circuit Court
June Term 1859.

Defendant moves the Court to set aside
the judgment and grant him a new trial ~~in this case~~
because the Court was refusing to declare
the law to be as prayed for by the Defendant.
Whittelsey & Pipkin
for Defendant

Robert
Wiley

Motion for new
trial -

Dated June 14th 1859
Chas F. Hoovey
Clerk

A. Wiley In the Circuit Court of
vs } Jefferson County Missouri
Louis Robert } June Term 1859.
June 11th 1859.

Be it remembered that this cause came on for trial, before the Circuit Court the 11th day of June 1859. and that part of defendant's answer herein heretofore stricken out, which sets up the agreement, between Beverly T. Adams and Louis Robert, to the effect that said Adams should keep the land which said Robert had bid off at the partition sale of Louis Robert against Beverly T. Adams for a price to be agreed upon between them being restored, (here set out the record) the plaintiff to sustain the issue on his part introduced the following evidence to wit a report of sale approved June 2nd 1855 (which out) an advertisement of a partition sale between Louis Robert and Beverly T. Adams, (which out) an amended report of sale of Decr. 4th 1855 (which out), and the following witnesses to wit.

Oscar Dover. Who testified that he was at the time of the partition sale referred to a deputy of the plaintiff, that he ^{set down} ~~made~~ the ^{description of the land} ~~memoranda~~, (which out), before he went down stairs or commenced the sale, in presence that he conducted the sale and Johnson acted as auctioneer, as we made the sale I put down the purchasing names and the prices bid as they appear upon the memoranda, that different pieces of land were sold

It was further in evidence that the several pieces of land
ordered to be sold for partition, had been surveyed and allotted
by the surveyor, under the direction of the sheriff, and while a plot
was present at the sale for inspection of buyers, which plot is
followed here in case of

and in different partitions ^{in which Robert was plaintiff} sent at the same
time, and put down upon the memoranda
The Adams lot of 274.80 acres was ^{at 10.50 per acre} ~~at 10.50 per acre~~ ^{made up} ~~made up~~
of to Robert ~~for~~ \$2885.40. Robert bought several
other pieces of land, which were put down on
the memoranda. a lot on Devils Island
No 10 ^{or one} of 73 acres was bought by Robert. He bought
three pieces. There were as many as ^{three or} five different
sales at the time, I cannot describe the land
nor tell where it is, from the memoranda
Part is described as an Devils Island lot it not
on Devils Island, this is all the memoranda
that I made and ⁱⁿ contains two pieces of
land, at different prices and to different
purchasers. This memoranda contains
notes of different sales. Robert bought
several lots, The Woods land was sold
The memoranda contains notes of all
purchasing upon ^{three or} ~~three or~~ ^{five} different sales
and advertisements. All the pieces sold
are not on this advertisement, he had other
advertisements upon other sales. Whom
sold from the paper. The report made
June 2nd 1855 sets the purchase money
at \$2608.40 for 274.80 per acre, but this was
wrong, it ought to be \$2885.40

E. J. Honey testified that he made the aforesaid
report for Wiley the sheriff of Dec. 4th 1855
This report shows that a note for \$2347.56
was taken by Wiley and the witness thinks
that Wiley did not know otherwise until
the money became due.

Defendant to sustain the issue on
his part introduced

C. C. Whittlesby who testified, that after the

Sale was made to Robert and upon Adams
left the Court it was ^{verbally} agreed between Adams
and Robert that Adams should keep the
place upon a piece to be agreed upon afterwards
between himself and Robert,

Peter M. Brown testified that Adams
remained on the place and made a
crop upon it and in the fall sold his
crop and moved off about Christmas
This was all the evidence in the case
offered on both sides, whereupon the referee
presented the Court to declare the law
to be as follows, (then copy of the instructions
refused) which the Court refused to do, to
which decision of the Court defendant
objected and excepted and tendered this
his bill of exceptions and prays that
the same may be signed sealed and
made a part of the record which is
accordingly done,

John H. Stone

Seal

Wiley
25
School

Bill of Expenditures

Filed June 14th 1859
Chas. J. Hecox
Clerk

IN THE SUPREME COURT OF MISSOURI, HELD AT ST. LOUIS.

-----October-----Term, 1860.

Augustine Wiley.	res.	} Appeal from Jefferson
as.		
Louis Robert.	ap.	Circuit Court.

Now at this day come again the parties aforesaid, 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 the said Circuit Court rendered, be in all things affirmed, and stand in full force and effect. And it is further considered and adjudged by the Court that the said Respondent recover against the said Appellant his costs and charges herein expended, and have therefor execution.

STATE OF MISSOURI, } SCT.

I, WILLIAM S. GLANVILLE, Clerk of the Supreme Court of the State of Missouri, at St. Louis, certify that the foregoing is a full, true and complete transcript of the judgment of said Supreme Court, entered of record at the October Term thereof, 1860, in the above entitled cause.

Given under my hand and the Seal of said Court, at the City of Saint Louis, this 26th day of December 1860.

W. S. Glanville,
Clerk.

Augustine Wiley.

vs.

Saml Robert.

ap.

Judgment of Supreme Court.
Affirmed.

Make out the record, the petition & answer, and the last bill of exceptions & judgment & omitting all the previous motions, & acting, so that the record be not encumbered with superfluous matter.

You can send it up & I will pay the fees.

Yours &c
Chas. C. Whittlesey

E. J. Noney
Clk Ct. Cr. Jefferson Co
Hillsboro
Mo

260

153

5.28

3.66

260

5.20

7.800

5.20

5.98

9.64

Refused

The plaintiff not showing any authority from J. S. Adams, the defendant in the partition suit referred to in the petition, to prosecute this suit for the said Adams share of the proceeds of sale in said partition suit, can recover only the sum due for costs ~~and~~ in said suit and his commissions upon the amount of sales.

Refused

Of ~~it~~ after the bidding at Sheriff's sale it was agreed by and between the plaintiff and defendant in said partition suit, that the said Adams should retain the said farm and should pay the plaintiff for their share of the land, at a rate to be thereafter settled and agreed upon between the plaintiff and defendant, and in pursuance of said agreement said Adams retained possession of said farm, then the plaintiff can recover in this suit only the costs and commissions of said partition suit, and cannot as Sheriff recover the amount ~~the~~ amount of the bid at the sale, he having no interest in the proceeds of sale beyond the said costs and commissions.

Refused

There is no sufficient memorandum or note in writing shown in this case, to authorize the plaintiff to recover.

Left Orobanchum

$$\begin{array}{r} 4 \overline{) 2885.45} \\ 72136 \\ \hline 409 \end{array}$$

$$\begin{array}{r} 5 \overline{) 2885.45} \\ 57709 \\ \hline 2308.36 \\ 6 \end{array}$$

$$\begin{array}{r} 1385016 \\ 4 \end{array} \quad 230$$

$$\begin{array}{r} 5540084 \\ 422 \end{array}$$

$$\begin{array}{r} 558.22 \\ 230836 \end{array}$$

$$2866.58 \text{ and decy Bely}$$

$$\begin{array}{r} 10.36 \overline{) 1385} - (3.84 \\ 144 \\ \hline 108 \\ 308 \\ 288 \\ \hline 170 \end{array} \quad \begin{array}{r} 38 \\ 4.22 \end{array}$$

$$\begin{array}{r} 20 \overline{) 2885.45} \\ 14427. \\ 4 \\ \hline 577.09 \end{array}$$

$$\begin{array}{r} 288545 \\ 57708 \\ \hline 2308376 \\ 13850.22 \\ 4 \end{array}$$

$$\begin{array}{r} 5540088 \\ 587 \end{array}$$

$$\begin{array}{r} 55999 \\ 2308.57 \\ \hline 2868.36 \end{array}$$

$$\begin{array}{r} 12 \overline{) 173.12} \\ 14.44 \text{ s/n} \end{array}$$

$$179.12$$

$$\begin{array}{r} 716.48 \\ 4 \end{array}$$

$$\begin{array}{r} 12 \overline{) 138.50} \\ 11.62 \\ \hline 586. \end{array}$$

$$2885.45$$

$$\begin{array}{r} 2885.45 \\ 173.12.70 \\ 4 \\ \hline 692.50.80 \end{array}$$

$$\begin{array}{r} 2885.45 \\ 144.45 \\ \hline 20 \overline{) 3582.40} \\ 179.1.20 \end{array}$$

$$\begin{array}{r} 358240 \\ 71648 \\ \hline 2865.92 \end{array}$$