

Jefferson County Circuit Court
Case File - Civil
Oct 1858, No. 17

Box

10

Folder

34

John Teuksberry
vs

Samuel G Swan

Debt, note

Debt \$165 for 100 cords of
wood; depositions

One day after date for value
Recd of Francis to J. C. John Street Boston
over one hundred & sixty five dollars (\$165.00)
without out interest until one hundred
dollars of more near on the 1st. The
is also over the money has for it
which my house spent 23rd 1858
the above number was is known for the payment
of this debt
A. H. Brown

Received in the within of the ~~payment~~
of ~~the~~ ~~five~~ ~~to~~ this 2nd day of August
1858
John D. D. D. D. D.

filed for and
Aug. the 3rd 1858

John Lewksbury, plaintiff, } In the Circuit
Against } Court, Jefferson
Samuel S. Swan, defendant, } County

Plaintiff states that Defendant by his promissory note, herewith filed dated the 23rd day of April 1858, promised for value received, to pay Plaintiff, the sum of one hundred and sixty five dollars, one day after the date thereof, which said note and the interest due thereon are yet due the plaintiff; and for which he asks judgment,

} Abner Green
Attorney for plaintiff.

John Lewksbury, plaintiff, makes oath, and says the above petition and the matters therein as stated he believes to be true.

John Lewksbury
Sworn to before me August 28th 1858

Elias S. Hooley Clerk

Saml Crawford
St Louis

In the Circuit Court

Jefferson County

John Leitchburg

vs,

David, G. Brown

Petitioner,

Defendants, adve

St. Green,

for heirs

Dated Aug 28th 1858

Chas D Hooley

2 copies, per

2 c 10

Wm. H. H.

each 10th copy 20

20

100

120

30

John Denksberry. Plaintiff. } In the Circuit Court
Against } Jefferson County
Samuel G. Green. Defendant.

Plaintiff. States that Defendant, by his promissory Note herewith filed dated the 23^d day of April 1858. promised for value received to pay plaintiff the sum of One Hundred and Sixty five dollars, one day after date thereof. Which said Note and the interest due thereon are yet due plaintiff, and for which he asks judgment

Abner Green
Attorney for Plaintiff

John Denksberry, Plaintiff makes oath and says the above petition and the matters therein as stated he believes to be true
Subscribed before me
Aug 28th 1858
Elias J. Honey Clerk } John Denksberry

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

Witness my hand and the Seal of said Court at office Aug 30th 1858
Elias J. Honey Clerk

COUNTY OF JEFFERSON, SS.

The State of Missouri.

To the Sheriff of the County of Jefferson--Greeting:

We command you, that you summon Samuel G Snarr

----- if he be
found in your County, that he do 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 October
next, then and there to answer unto John Verksberry

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

Elias D. Horney
Witness, THO. B. FLETCHER, Clerk of our said Circuit
Court, with the seal thereof hereto affixed, at
office, in Hillsboro, this 30th
day of August A. D. 1858

Elias D. Horney

CLERK CIRCUIT COURT.

I executed the within writ at the County of Jefferson
State of Missouri on Samuel G Swan by reading the same
within his presence and having also by Delivering him a
copy of this writ as furnished me by the Clerk of the court
on the fifteenth of September 1858 Bead Dover Sheriff

No 17
to Circuit Court

Oct. Term 1858

John Dinkelsberry

vs { Summons

Saml. G. Swan

Sheriff fee \$1.00

Dated Sept. 18th. 1858

Bead Dover

Charged

1858 John Tewksberry

Don

To Samuel G Swan

To 100 cords of wood @ 2.25

225.00

" difference on sale of 137 cords of wood at 2.00

274.00

which you promised to pay 2.25

\$34.00

" Discount on sale of 274 worth of wood

24.00

" 5 trips to St Louis & expenses to sell wood

25.00

" 1277 feet log truck & 20 m

11.49

\$319.49

State of Missouri

County of Jefferson 3 ss J. G. Swan

States on oath that the foregoing account & the items
as therein stated he believes to be true

Subscribed & sworn

to before me this

J. G. Swan

2 day of October

AD 1858

Elias J Honey clk

Geo L Tenoberry

vs

J. G. Duran

Account

Dated Oct 27th 1885
Ohio & Henry etc

John Tewksberry Plff

vs
S. G. Swan Def

In the Circuit Court of
Jefferson County Mo

The defendant states that the note in the petition mentioned was obtained by the plaintiff from the defendant by fraud, coercion and misrepresentation, wherefore defendant says that said note is null & void and he therefore asks judgment:

For further plea by way of Counter Claims, defendant says that at the time of the commencement of this suit, plaintiff was & is still indebted to defendant in the sum of \$225.00 for one hundred cords of wood cut for & sold to defendant by plaintiff ^{at his request} ~~also plaintiff is indebted to defendant~~ ~~at twenty four dollars~~ ^{the difference of} ~~for the actual sale of~~ ~~134 cords of wood for which plaintiff promised the~~ ~~defendant to pay him \$225 per cord and with~~ ~~in plaintiff authorized defendant to sell to the~~ ~~best advantage & promised to pay him the~~ ~~difference between the actual sale and the~~ ~~amt he promised to pay defendant~~

~~also defendant states that plaintiff is~~ ~~indebted to defendant \$24 for the disbursements~~ ~~he made on sale of wood which defendant~~ ~~sold & delivered to plaintiff and which~~ ~~defendant afterwards sold by directions of~~ ~~plaintiff on which sale the net proceeds were 24 less than plaintiff promised~~ ~~to pay him, also plaintiff owes defendant \$25 for five~~ ~~trips to St Louis & expenses to see to the sale~~ ~~and business of the wood aforesaid at the~~ ~~request of plaintiff~~

~~also plaintiff is indebted to defendant~~ ~~in the sum of \$11.49 for saw logs containing~~ ~~ing about 1277 feet at 9d M sold and delivered~~

~~to the plaintiff~~) In particulars of all of which
will appear by an account of the items here
with filed amounting to the sum of \$319⁴⁹₁₀₀
which defendant offers to set off and asks judg-
ment against the plaintiff

Deal P.D.

I G Swan states on oath that the foregoing
answer & the matters therein stated he
believes to be true

Subscribed & sworn to before
me in open Court Oct 25
1858

J. G. Swan

Elias Honeyck

6mo 1859
20 1894

John Cusackberry

as

of Swan

Answer

Filed Oct 27th 1858
Chas J Honey cut

John Taskshen
against
Samuel G Swan } In the circuit
Court of Jefferson County

The defendant comes
states that he cannot safely proceed
to trial in this cause for the want
of material witnesses without whose
testimony he cannot safely pro-
ceed to trial, that the witnesses
are a part in Jefferson County
and a part in St Louis County

That he directed his attorney to
subpoena his witnesses before Court
that his attorney went to the Clerk
and caused two subpoenas to be
sued in this cause one for the
witnesses in Jefferson County and the
other for his witnesses in ^{St Louis} Jefferson
County that his attorney did
not cause the witnesses to be
subpoened from the fact that the
Judge of this Court wrote a letter
to the Clerk of the circuit Court
~~a few days~~ about the time of the
issuing of said subpoenas, in wh-
ch letter it was stated that no civil
business would be transacted at this
time of the Court and for the Clerk
to inform attorneys of that fact that
his said attorney saw the letter & was in-
formed by said circuit Clerk that
there would be no civil business
at this time in consequence of this
information defendant's counsel

did not have the subpoenas served
upon his witnesses and that the defend-
ant lived in a distant part from
the County Seat and did not know
but what his witnesses were
duly subpoenaed. That he has
no witnesses in attendance
that he believes that he has a
reasonable defense and if an
adjournment be allowed he will
be able to obtain the evidence
^{of said witnesses}
at the trial that this application
for a continuance is not made
for vexation or delay but because
of ~~inability~~ for the causes stated

Sworn to and Subscribed
before me Oct. 30th 1858

Chas D Hooney Clk

J. G. Swan

Wheelerberry
Jm an

City for Card

Dec 1 Oct 30th 1838

John Newkirk, } In the Circuit
vs } Court, Jefferson
Samuel G. Swan } County,

The plaintiff moves the Court to strike out the Answer of Defendant filed in the above Cause, for the following reasons;

1. - The charge that the Note sued on was obtained by fraud, is not definitely stated, - what the fraud consisted of.
2. - All the the residue of the Answer, setting up ^a counter claim, or set-off, is for items of Account, claimed in a suit now pending in this Court of the said Defendant against this plaintiff.
3. - The Bill of particulars is for the same causes of action stated in said suit, of the Defendant against plaintiff.
4. - All of said items of Account as plead, are too indefinitely and generally stated, and do not constitute a defence to the action.

3 A. Green
Atty, for plaintiff

John Tuckering

1851

Saml. S. Alvan

Proctor to

Strike out

Answer

1
Oct. 30th 1858.

John Tuckering

Oct. 30th 1858

Oct. 30th 1858

In support of his objections the Plaintiff read the petition and
account of a prior suit in the Court of Swan against
Tewksbury (here copy it)

John Tewksbury

vs
S. G. Swann

} In the circuit Court of
Jefferson County Missouri

Be it remembered that on the 30th day
of October 1858, the plaintiff filed a motion
to strike out the defendants answer in this
Cause, which motion is in words as follows
(here copy) which motion being seen
by the Court seen was overruled as to the plea
of fraud & misrepresentation and the
item of offset of \$225 for 100 cords of
wood and was sustained to the balance
of the answer which was accordingly str
icken out to which decision of the Court
in striking out ~~the~~ part of said answer
the defendant objected & excepted & here
tenders his bill of exceptions which
are signed & made a part of the record

Wm. S. Stone

Seal

Deere & Co

Deere

Deere & Co

Deere & Co
Deere & Co

John Sawksbury } In the Circuit
 ^{vs.} } Court of Jefferson
Saml. G. Swan } County.

The Defendant moves the Court to strike out the Answer filed in Cause of the Defendant, for the following reasons;

- 1 - That part of the Answer, which alleges that the Note was obtained by fraud, coercion & misrepresentation, is too indefinite;
- 2 - All the residue of said Answer sets up unliquidated damages by way of set off.
- 3 - The plaintiff has a suit pending in this Court against defendant for all of ^{the} items of account pleaded here by way of set off.
- 4 - The facts alleged in the answer do not constitute a defence to the action.

Saml B. Shuman

is

John Tuckahoe

Proctor to
Strike out

Answer

I served the within Notice on Samuel A.
Swan the defendant at the County of Jefferson
in ^{the State of} Missouri, on the 21st day of January 1859,
by delivering to him a True Copy of the
same. ascertained Sheriff
by J. C. Sauer Deputy

In Circuit Court
Jefferson County
John Jacobus
vs.
Samuel A. Swan
Notice to take
Depositions
taken on 21st Jan
Sheriff's fees 50

County of Jefferson, sct.

THE STATE OF MISSOURI,

To any Judge or Justice of the Peace or other Judicial Officer
Territory
of the State of Nebraska, Greeting:

We, reposing special trust and confidence in your integrity and circumspection,
do authorize and require you, that you cause to come before you, such person or per-
sons as shall be named to you by John Terksbury or his

Attorney or Agent, and him or them examine upon his, her or their corporal oath,
(to be by you administered,) touching their knowledge of any thing that may relate
to a certain matter of controversy, now pending in our Circuit Court, for the County
of Jefferson, wherein John Terksbury is plaintiff,

and Samuel G. Swan is defendant,

on the part of the Plaintiff; and having so reduced the said depositions
so taken by you, as aforesaid, in writing, you are required to send the same, together
with this commission, enclosed under your seal, to our said Circuit Court, with all
convenient speed.

Elias J. Honey
Witness, ~~JOHN S. MATHEWS~~, Clerk of our said Circuit
Court, at Helltown this Eighth
day of February in the year of our Lord one
thousand eight hundred and fifty nine

Elias J. Honey

Clerk C. C.

Jefferson Circuit Court
April Term 1859

John Donohuey
vs
J. Rodman

Shant. & Service

opened file by me
May 12th 1859

Edna Johnson et al.

Also fee \$0.50

Deposition of Franklin Carlin taken be-
fore Shepherd Duke a Justice of the peace
and for Cass county Nebraska Territory
and at the law office of J M Margate
on the seventh day of March between the
hours of eight O'Clock A.M. and six
O'Clock P.M. said deposition to be used
in evidence in ~~a cause~~ now ⁱⁿ favor of the
Plaintiff in a cause now pending in the
circuit court for the county of Jefferson State
of Missouri where John Trucksbury is
Plaintiff and Samuel G Swan is Defen-
dant.

Franklin Carlin after being duly sworn
deposits & says as follows

Ques 1st What is your own age & place of residence
Ans. Franklin Carlin age 38 years place of residence
Cass Co N.D.

Ques 2d Are you acquainted with the Parties in
this suit. John Trucksbury and Samuel G Swan
Ans. Yes sir.

Ques 3d State whether or not you ~~was~~ ever ~~present~~
knew of the Parties to this suit having a
settlement of their different accounts which
each had against the other & if so state
the time ^{when} and all the particulars of said
settlement.

Ans. They had a settlement about the 20th of April
of 1858 it might have been a little earlier or
a little later said settlement took place in
St Louis opposite the City Hall & at the close
of the settlement I heard the Defendant Samuel
G Swan acknowledge that he owed Mr
Trucksbury upwards of Forty dollars I don't
recollect the exact amount but know it was
over Forty dollars

Just 4th I state if you know any thing about the
Deponent, Samuel G. Swans borrowing any
money of the Plaintiff near or about the time
of the settlement of which you have spoken
and ^{whether he gave} ~~giving~~ his note for the money so
borrowed together with the money which
was due Plaintiff on the settlement of
which you have spoken if so state
the amount so borrowed and the
note for which Deponent gave his note.

Ans

The next morning after the settlement he
gave Quaksbury his note at the City Hotel
after we left the room & while in to with the
Deponent. The Deponent told me that he
had gave Quaksbury his note for one Hundred
and sixty five Dollars Deponent also
told me that he had borrowed money of
Quaksbury and that he had given him his
note

Franklin Culin

I do certify that the above deposition was taken by
me at the ^{Law} office of J. M. Marquitt in the City
of Plattsmouth County of Cass and Territory
of Nebraska on the seventh day of March
1889 between the hours of Eight o'clock in
the fore noon and Six o'clock in the after
noon that the same was reduced to writing
by me at the time and place aforesaid and
the answers were in the language of the
Witness and that the whole of said deposition
was read over to Witness by me and was
subscribed by Franklin Culin in my
presence on the day and at the place aforesaid.

Shepherd Burke a Justice
of the peace for Cass County
Nebraska Territory

Territory of Nebraska
County of Cass J. N. Wise, County
Clerk within and for the County aforesaid do
hereby certify that Shepherd Duke, before
whom the accompanying deposition of Franklin
Curtis, was taken and subscribed, was at the
date thereof, an acting Justice of the Peace,
within and for said County, having been duly
commissioned and qualified in accordance
with the laws of this Territory. And certify that
I am well acquainted with the handwriting
of the said Duke, and that his signature
as thereto subscribed is genuine as I verily
believe.

In testimony whereof I hereunto set
my hand and affix the seal of said
County at the City of Plattsmouth, this
7th day of March A.D. 1837

J. N. Wise, County Clerk
Cass County N.T.



Stuck along as usual. separator

London Decr — 1/35