

Jefferson County Circuit Court
Case Files-Civil

June 1859 No 38

Hogan, Francis, Adm
Couch, Leonard

^{VS}
McKean, James B

Unlawful Detainer

Unowned female slave, livestock, and
other personal property valued \$1,400

Box 11 Folder 44

State of Missouri } In the Jefferson Circuit
Jefferson County } Court June Term
for 1859.

Francis Wagon, Public
Adminr, having in charge
the Estate of Leonard
Couch Deceased.

Civil Action.

vs
James B. McTeen,

Plaintiff States that on the first Monday in August 1858 he was duly elected, Public Administrator for Jefferson County Missouri by the qualified voters thereof, after which he qualified & entered into bond according to law as such Administrator for and during two years from and after the said first Monday in August 1858, or until his successors should be elected & qualified: that he did on the 12th day of March 1859 take charge of the Estate of Leonard Couch Deceased, as such Public Administrator, (he the said Couch having departed this life more than one year since & there being no letters of Administration taken out on said Estate by any private person) & gave notice as is in such cases made and provided by law.

Plaintiff further states that said Couch died sometime in the fall of 1857 in the County of Jefferson, possessed of a great amount of personal property to-wit- one Negro girl (Slave) worth about Four hundred dollars, Three horses worth about Two hundred and Thirty dollars, seven head of cows and calves

worth about Fifty five dollars, one hog worth about Five dollars, about Five hundred dollars in cash and farming utensils and household and Kitchen furniture worth about Two hundred and Ten dollars, all of which property if not speedily administered according to Law will be lost to those interested.

Plaintiff further states that Defendant ^{has} without any authority of Law, taken possession of said property together with the money above mentioned & that Defendant has as this Plaintiff is informed disposed of some of said property and has converted the proceeds to his own use and benefit as also the said Five hundred dollars.

Plaintiff further states that he is as Public Administrator having in charge said Estate entitled to the possession of all said property and money any other personal property not herein mentioned if any there ~~be~~ against Defendant to be by him administered as the law directs.

Plaintiff therefore prays the Court to require and compel by order and decree the Defendant to deliver over to Plaintiff as Public Administrator having in charge said Estate, all said property & money or the proceeds thereof amounting in all to Fourteen hundred dollars & if he has disposed of the same to give judgment against him for the value thereof to wit for Fourteen hundred dollars and further require said Defendant to discover under oath the whole amount of all other property

money or effects which he has received
from said Estate & for such other &
further relief as to the Court may proper
& right.

Thomas & Piskin
Attys for Plaintiff.

J. L. Thomas Atty for Plaintiff makes
oath that he believes the foregoing pe-
tition & the matters therein stated are
true -

Sworn to & subscribed before
before me this 29th day of March
1839

John L. Thomas.

Elias D. Honey Clerk

No 38

Dr. Jefferson Circuit
Court June Term 1859

Francis Hagan Ind. &c
vs
James B. McLean

P.
Petition

Ordn. Decr 29th 1859
Clerk J. H. H. Clerk

Wm. A. H. H.
Attorney for J. B. H.

2 copies Oct.
2 & 10 1859
J. H. H.

State of Missouri } In the Jefferson Circuit
Jefferson County } Court Term for 1857.

Francis Hagon, Public
Admr. having in charge
the Estate of Leonard
Couch deceased. } Civil Action
vs
James B. McKeon }

Plaintiff states that on the first Monday in August 1858 he was duly elected Public Administrator for Jefferson County, Missouri by the qualified voters thereof, after which he qualified & entered into bond according to law as such administrator for and during two years from and after the said first Monday in August 1858 or until his successor should be elected and qualified: that he did on the 26th day of March 1859 take charge of the Estate of Leonard Couch deceased as Public Administrator (he the said Couch having departed this life more than one year since & there being no letters of administration taken out on said Estate by any private person) & gave notice as is in such case made and provided by law.

Plaintiff further states that said Couch died sometime in the fall of 1857 ^{in Jefferson County} possessed of a great amount of personal property - to wit one Negro girl (slave) worth about four hundred dollars, three

horses worth about Two hundred and thirty dollars, seven head of cows and calves worth about Fifty five dollars, one hog worth about Five dollars, about Five hundred dollars in cash and household and kitchen furniture and farming utensils and household and kitchen furniture worth about Two hundred and Ten dollars, all of which property if not speedily administered according to law, will be lost to those interested.

Plaintiff further states that Defendant has without any authority of law taken possession of said property together with the money about mentioned & that Defendant has, as this Plaintiff is informed, disposed of some of said property and has converted the proceeds to his own use & benefit as also the said Five hundred dollars.

Plaintiff further states that he is as Public Administrator having in charge said estate entitled to the possession of all said property and money any other personal property if any there be, against Defendant, to be administered ^{by him} at the law directs.

Plaintiff therefore prays the Court to require and compel by order and decree the Defendant to deliver over to Plaintiff as Public Administrator having in charge said estate, all said property and money or the proceeds thereof amounting in all to Fourteen hundred dollars.

& if he has disposed of the same to give
judgment against him for the value
thereof to wit for Fourteen hundred
dollars and further requiring said de-
fendant to discover under oath the
whole amount of all other property
monies or effects which he has received
from said Estate & for such other
& further relief as to the Court may
seem proper & right

Thomas & Phipps
Attys for Plaintiff

J. L. Thomas, Atty for Plain^{tiff} makes
oath & says he believes the foregoing
petition & the matters therein stated
are true.
Given to be subscribed before
me this 29th day of March 1859. John L. Thomas

Elias F. Honey
Clerk.

State of Missouri }
Jefferson County }

I do hereby certify that
the foregoing is a true copy of the origin-
al petition - This 29th day of March 1859.

Witness my hand and the Seal of
said Court

Elias F. Honey Clerk

No

On Jefferson's recent tour
June 1837.

Francis Stagon with others
June 13. M. P. Boone

Johnston

Monroe & Phipps
Sept 10 for 1837

COUNTY OF JEFFERSON, SS.

The State of Missouri.

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

We command you, that you summon James B. McHear

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 ^{second Monday} ~~fourth~~ Monday of May

next, then and there to answer unto Francis Hagan Public Administrator having in charge the Estate of Leonard Couch deceased

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

Elias Honeoy

Witness, ~~THO. C. FLETCHER~~ Clerk of our said Circuit Court, with the seal thereof hereto affixed, at office, in Hillsboro this twenty ninth day of March A. D. 1859

Elias Honeoy

CLERK CIRCUIT COURT.

I executed the within writ in the County of
Jefferson State of Missouri on James B McCarin
by reading this writ & petition within his presence
and hearing and also by delivering him a true
of the writ on the 30th day of May 1859

Wm. D. Dovers Sheriff

Wm D J.

Jefferson Circuit Court
June Term 1859

James B McCarin
vs
James B McCarin

O. Dovers. Sheriff fee \$100

Filed April 30th 1859
(Clues & Henry)

(Chd)

Sumner overuled and sent
to court by 11 Sept.

Francis Hagan Public administrator
of Jefferson County.

vs.

James B McKeen.

In the Circuit Court
Jefferson County,

The defendant comes and demurs to the
petition of plaintiff and assigns for cause of demurrers.

1st That said petition does not state facts sufficient to consti-
-tute a cause of action, in this

It does not appear by said petition that the plaintiff has any
authority of law to take charge of sue for or recover the property
or estate of Leonard Lerch decd.

The allegations and prayers of the petition are stated in the
alternative

2nd That the court has no jurisdiction of the subject of the
action, in this,

The remedy of the plaintiff to obtain possession of the
property of deceased, is by a proceeding pointed out by the
statute, and not the form of this action, and the plaintiff
is bound to pursue that remedy.

3^d The plaintiff has no legal capacity to sue,

It does not appear from the petition that the plaintiff has
taken charge of the Estate of Leonard Lerch by order of
the County Court or that said estate is within any of
the classes which the law authorizes him to take charge
of,

Hatcher & Green
Attys for Deft,

Francis Hoagland Publisher
= 028 =

James B McKean

Memoranda to Petition

Filed June 8th 1859
Chas J. Hoovey Clerk

Recorded June 15th 1859

Francis Wagon, Public
Adm^r, having in charge } In the Circuit
the Estate of Leonard Couch } Court of Jefferson
deceased, Against } Plaintiff, - County Missouri
James B. McKean, Defendant, }

The Defendant, in answer to Plaintiff's petition, denies that he has, without any authority of law, taken possession of one Negro Girl, three head of horses, seven head of Cows, & calves, one hog, and five hundred dollars in money, which formerly belonged to Leonard Couch, dec^d. - He states that the greater part of said property (except the money) was in possession of said Couch at his death, and that, by a Deed of Trust executed by said Leonard Couch, on the 4th day of September 1840, to Julius Wiggins, for ^{the} use & benefit of Martha Couch, wife of said Leonard, it was provided that all the personal property said Leonard might and possessed of, should belong to said Martha at his death, if she survived him. - Defendant states that Leonard Couch died in the fall of 1857, possessed of all of said personal property, and that said Martha Couch survived him, and that she was therefore entitled to all of said personal property, which was settled upon her by the terms of said Deed, in lieu of her dower in her husband's property.

Defendant therefore states that by the legal effect of said Deed, Martha Couch became, at the death of said Leonard, the absolute legal owner of all the personal prop-

in which he did possess of, and which is the same that is described in said Petition, except the money, And that she, having the right of disposing of the same, did, for a good and valuable Consideration, by Deed of 3^d of September 1858, sell and transfer the title to all of said Property to this Defendant, who claims to be the legal owner of the same. He therefore ^{denies} that Plaintiff has any right whatever to said Property, or the possession thereof, or any part of said Property, or to recover \$1400, against this defendant, or any amount whatever.

The Defendant further states, that on 20 day of September 1858, he was lawfully married to said Martha Couch, and that he thereby acquired the absolute title to all the Personal Property which she owned at the time of his said marriage. He therefore says that, if his Claim to all of said Personal Property by virtue of said Deed be considered insufficient, then his right to the same, in virtue of said marital rights, cannot be denied.

Defendant therefore says that he is the legal owner of all the personal Property described in Plaintiff's Petition, and he denies Plaintiff's right to recover the same, or any part thereof, or its value, or any sum whatever.

The Defendant denies having received \$500, or any amount of money, belonging to the Estate of said Leonard Couch, and denies receiving household & Kitchen furniture, and farming utensils,

of the value of \$500, or of any value, which be-
longed to said Estate, and denies converting
any personal property, ^{or money} belonging to said Estate,
to his own use. - And the Defendant denies
that the Plaintiff has any authority of law
to sue for and recover possession of any money
or property belonging to the Estate of said Leon-
and Couch deceased. -

} G. Reed Fletcher
Attorneys for Defendant;

James B. McKean, defendant, makes oath
and says the above Answer, and the matters
therein as stated he believes to be true.

Sworn to and Subscribed }
Before me. Nov 3rd 1859 }
Olas & Honey Clerk }

James B. McKean

In Circuit Court
Jefferson County

James' Morgan
vs. John Morgan
as.

James B. McKeon

Attorney

Filed Aug 31st 1859
Geo B. Honey etc

COUNTY OF JEFFERSON.

THE STATE OF MISSOURI,

To, *James Leach, James Williams &c.*

J. Prichett

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

16th day of December 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 *Thos Magan and others*

Plaintiff and *James D. McLean*

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

14th day of *November* A. D. 185 *9*

Elias F. Honey

Clerk.

I executed the within for in the County
of Jefferson on James Williams & by Pritchett
by reading on the 21st day of November 1859
Oscar Dover Sheriff

Deborah Leach
Deer skin 1859

Two Kangaroo Cat skins
for

James B McKean

for 24th
James Leach

James Williams for
Pritchett
Sheriff fee 1.00

THE STATE OF MISSOURI,

COUNTY OF JEFFERSON.

To *James Leach, James Williams Jr.*

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

16th 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 *James Hoagland & Adams*

Plaintiff and

vs. J. M. Hoan

Defendant on the

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

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

17 day of *May* A. D. 18*86*

Ellias F. Honey

Clerk.

I executed the within ~~Spec~~ in the County of Jefferson
on James Couch & James Williams Jr by reading it
in their presence and hearing on the 21st day of May
1860.

Oscar Loved Sheriff

Justice Court
June. Term 1860

Dr. Hagan Put Ash

James B McKeam

for Puff

James Couch ^{Mo 16}

James Williams Jr ^{No 21}

Sheriff fee \$100

COUNTY OF JEFFERSON.

THE STATE OF MISSOURI,

Wm. Allen Nelson & Eli May

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

16th day of June 1860 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 *Francis Magnum Putnam* Plaintiff and *Geo B. Buckle* Defendant on the part of *Geo B. Buckle* and wherein you are in no wise to fail.

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

11 day of *June* A. D. 18*60*

Elias F. Honey

Clerk.

I executed the will in & for in the County
of Jefferson on Silas Belew & Eli Maby
by reading it to them on the 12 day of June
1869
Michael McGee

June Term 1860

At Hagerman Subaltern

do do in steam

for debt

John Belew

Eli Maby

Shaw

Sherrill J. Good

Hagan
against
M^r Keen

Defendant moves
the court to set aside the judgment
in this cause in reference to the
negro girl in the petition mentioned
and by the judgment ordered to be
delivered to plaintiff ^{and guardians} for the reason
that no demand had been made
for the delivery nor proved
because the negro came to the
said intestate in right of his own
wife and by means of the same
was a gift to her by
James Cook

Furpell Green & Fletcher
for defendant:

for the following reasons:

1 Because the plaintiff had no right to
sue as public administrator without
an order of the court for him to take
charge of the estate.

2^d Because so far as the negro is
concerned no demand was ~~for~~ alleged
or proved

3 Because the negro and other person-
al property belonged to M^r Keen under
the deed from Martin dated Sept 23^d 1858

Furpell Green & Fletcher
for M^r Keen

Wagon

W

McKinn

Motion for
a new line

Filed June 16th 1865

Blair & Honey
Clerks

An instrument may operate as an appointment without any recital or mention of the power, for if the act done be of such a nature that it can have no operation, unless by virtue of the power, the law will resort to the power and thereby give validity to the instrument.

A Court of Equity will always supply a defect in an appointment made by a woman in favor of an intended husband, *Cotter vs Lazen* 2 P.Wms 622. where the conveyance is for a valuable consideration, as marriage. The Lord King said that though not in strictness pursuant to the power, he should apply the want of circumstances, the same as he would the want of a surrender.

Purchasers for a valuable consideration have always been favored in equity; for there the substantial part of every contract is the consideration and for that the right is transferred. It also being a rule in equity that what ought to have been done is considered as actually done, the Court of Chancery will upon that principle supply any defect in the execution of a power where there is a valuable consideration,

where the remainderman gets the deed into his possession and will not allow the tenant for life to have a right of it, there the tenant for life may execute conveyances and though he does not pursue the terms of the power, yet equity will relieve, even in favor of a volunteer, certainly in favor of a purchaser for valuable consideration.
Bramhall v Hall 2 Eden 220.

Is not a collateral power Kent vol 4 p 316

see 21 Mo Reports. 58.

" 18 " " 220

" 12 " " 534.

Power of Public adm^r. Statute p 175.

words of limitation " 355

Where a devise is with a power to give a fee the devisee is construed to have a fee Prestons abstracts p. 78 vol 3, 11

If requisite to execute a trust that a fee exist it will be implied 2 Neath 264,
Dorsey v Dorsey 9th Maryland 31.

Wagon
McKeon

Indefinite Trust. Story's Eq. 2 Vol. page
979a (side page) & 979b. 1073 & 970.

2 Bon. Ins. 333.

L. Bl. page 50. Note 10.

To make a transfer of personal property goods, possession should follow in a reasonable time.

A deed of trust conveying to the Grantee all the personal property of the Grantor that he then had & all he might die possessed of, is too indefinite to be carried into effect, & must fail.

See 8 Mo. page 1, 12 Ibid 3, 21 Ibid
277- 22 Ibid, page

Second Story's Eq. side page 1371 a
1 Story's Eq. page 771

L. Barwick Ins. page 348

18 Mo. page 399

Kmt Vol 4 Top page 330 & 331 338

Hogson
McGee

Stantham's of D.C.

Frances Hagan Pub. Admr
John Brown & others }

vs

James B McKean }

And now at this day come the parties aforesaid
by their respective Attornies, and proceed to the trial of this Cause and
another party requiring a Jury. the Cause is submitted to the
Court, and after had hearing of the allegations of the parties
respectively, the Evidence offered by each in support thereof, and
the Arguments of Counsel, the Court find that the Defendant
had in his possession before the commencement of this Suit, a
large amount of property belonging to the ~~the~~ Plaintiff, ~~and~~ ~~which~~
~~he~~ ~~had~~ the greater part of which he has sold and disposed of
for a large sum to wit, the sum of Four Hundred and fifty
Nine $60/100$ dollars, and that he yet retains in his possession a
Negro girl belonging to the Plaintiff, of the value of one hundred
and fifty. It is therefore considered by the Court that the
Plaintiff have and recover of the Defendant the aforesaid sum
of Four Hundred and fifty Nine $60/100$ dollars, the amount ~~of~~
found to be ^{due} him as aforesaid, he also his cost herein expended
and had thereof Execution. It is further ordered that the
Plaintiff recover of the Defendant the possession of the Negro girl
aforesaid, or in default thereof the said sum of one hundred
and fifty dollars. her value as above found, and that process
issue accordingly.

James Mayan Butler
Colonel in

Legation

June 13 1862

Francis of Dugmont

2 head of horses

2 head of Cattle,

3 head of horses claimed by Mr Couets worth \$150.00

6. or 7 head of Cattle. "

1 Hog. "

One negro girl 6 years old "

Household & kitchen furniture "

^{seventeen. Twenty five Cents}
Two hundred Dollars, one month before marriage,

McKean has sold pretty much all the property McKean still holds the
girl worth \$150., Leonard Couets married Martha more than 20 years
Mr Couets when she married my father had no more, the money was
made by raising stock, there was a negro bought of Shore for \$320,
made on the farm for Couets the lot was on the farm with
my father, McKean paid me \$75 on account of a horse sold by Mr
McKean, claimed by her and myself, the \$200. note paid by me was
not claimed by the old man. None of the money made by old
McKean was claimed by the old man.