

Jefferson County Circuit Court
Case File - Civil
December 1859, No. 41

Box #

11 Folder # 82

Donnell, Eliel

vs

Smith, John
Howe, William S.

Foreclosure

Pitt# accuses Def of owing
\$444²²/₁₀₀ regarding sale
of 89⁴⁷/₁₀₀ acres in
S11-T39-R6E

Eliel Donnell Plaintiff

against
John Smith

William S Howe Defendant

In the Circuit Court
of Jefferson County
Missouri

Plaintiff states that John Smith being indebted to plaintiff in the sum of four hundred and forty four dollars & twenty two cents due on the 1st day of December 1858 conveyed to plaintiff on the 4th day of March 1858, the following real estate lying in Jefferson County Mo viz The South East quarter of the South East quarter & the South West quarter of the South East quarter and nine and forty seven hundredths of an acre in the South East corner of the North West quarter of the South East quarter (the same that E J Wins conveyed to Warren C Corley) in Section Eleven Township 39 Range North 6 East containing 89 acres and forty seven hundredths of an acre. This conveyance was made in trust and as a mortgage secure the payment of said sum of money above specified and contained the following clause annexed viz "This grant is intended as a security for the payment of four hundred and forty four dollars and twenty two cents on the first day of December Eighteen hundred and fifty eight, which payment if duly made will render this conveyance void and if default shall be made in the payment of the above mentioned sum, then the said party of the second

part and his assigns are hereby authorized to sell the premises above granted without any order or decree of any Court or at the option of the said second party, he may by giving thirty days notice to the said first, Retain the right in fee simple or sell the same and make payment of the said debt. "Said mortgage is herewith filed. Plaintiff states that said deed of Mortgage was duly acknowledged before a justice of the peace on the 4th day of March 1858 and was recorded in the recorder's office of Jefferson County on the 6th day of June 1859

Plaintiff further states that after the acknowledgment of said deed and before it was recorded, William I Howe with full knowledge of the conveyance from said Smith to said Dornell, took a conveyance from said Smith to himself for the same lands by deed & claims the land as his own.

Plaintiff states that the mortgage money & the interest thereon aforesaid is still due the plaintiff & unpaid, he therefore asks the Court for judgment for the said sum of \$2444.22 aforesaid and for interest thereon since due, and to divest said Howe of the title acquired as aforesaid and for judgment of foreclosure and that the equity of Redemption be declared & the land sold for the payment of said sum & the interest due thereon & for such further orders as may

be proper & just and according to the
merits of his Cause

J. A. Dial Atty
for self

Thomas J. Donnell agent for
Eliel Donnell makes oath & says that
the foregoing petition & the matters therein
stated he believes to be true

Sworn to and subscribed

Thos. J. Donnell.

before me Oct. 25th 1859 }
Elias D. Honey Clerk }

Edil Donnell

Co. 4 Potlouch

John Smith,

Wm. & House.

Let down more of ice

Boat for. 25th

Wed Oct 20th 1819

Geo. E. Honey
Clerk

The State of Missouri, } ss.
COUNTY OF JEFFERSON.

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

We command you, that you summon *John Smith and*
William S. Howe

if they be found in your County, that they
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 after the fourth Monday of November
next, then and there to answer unto *William S. Howe*

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

Witness, **ELIAS F. HONEY**, Clerk of our said Circuit
Court, with the seal thereof hereto affixed, at office
in Hillsboro, this *Twenty Seventh*
day of *October* A. D. 1859

Elias F. Honey

Clerk Circuit Court.

No 41

To Jefferson Circuit Court.
December Term 1859

Chas Donnell

vs T Dammone

John Smith & Co

Wm S. House

Shewts fees \$200

Dated Decr 12th 1859

Chas Donnell

I Executed the within Summons in the County
of Jefferson State of Mo on the 1st day of
November 1859 by Delivering To John Smith
a Copy of the within writ and next
Portition as furnished To me by the
Clerk also on the 16th day of November 1859
by Reading the same in the Presence and
Hearing of Wm S House

at Court Darius Sheriff.
by J. C. Pauer Deputy

The State of Missouri, } ss.
COUNTY OF JEFFERSON.

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

We command you, that you summon *John Smith and*
William S. Howe

if they be found in your County, that they
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 after the fourth Monday of November
next, then and there to answer unto *Eliel Dornell*

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

Witness, **ELIAS F. HONEY**, Clerk of our said Circuit
Court, with the seal thereof hereto affixed, at office
in Hillsboro, this *thirteenth*
day of *August* A. D. 1866

Elias F. Honey

Clerk Circuit Court.

I executed the within writ in the County of Jefferson State
of Missouri on John Smith as first served by leaving him a
certified copy of this writ and annexed petition at his place of
abode with a free white person of the family over the age of fifteen
years and on Wm S Howe by reading this writ and annexed
petition to him on the 2^d day of November A D 1860

Oscar Dover Sheriff

No 12

1647

2^d Jefferson Circuit Court

December Term 1860

Oliver Donnell

vs } Summons

John Smith

William S. Howe

Sheriff fee

\$ 2.00

Deposited Jan 19th
1863. books 4 page 50
as Costs of defendants

Eliel Donnell, Plaintiff }
 Against } In the Circuit
 John Smith } Court of
 William S. Howe, Defendant } Fenou County

The Defendants move the
 Court to quash the writ and dis-
 miss the proceedings in the above
 entitled Cause, for the following reasons,

- 1st Because the summons therein
is illegal & insufficient,
- 2nd - The summons does not conform
to the Petition therein, as it does
not require the Defendants to
answer the action of Plaintiff,
- 3rd - Said summons is therefore void
in law.

} A Green
 } Atty. for Defts,

In Circuit Court
Jefferson County
Edel Brownell

vs,

Smith & Howe

Motion
to dismiss

Made June 14th 1860
C. H. Honeywell

Geo. Turner

Eliel Donnell, Plaintiff	}	In the Circuit Court
Against		Jefferson County
John Smith, William S. Howe, - defendants		Missouri,

The Defendants by their Attorney come and answer to the Petition of the Plaintiff, and state the following grounds of objection.

- 1st - The petition of plaintiff is multifarious; it states two separate causes of action against John Smith, alone, and one against William S. Howe alone.
- 2nd - It asks two judgments against John Smith, - one, on the Note, and the other, a judgment to foreclose the mortgage, - neither of which can be rendered against William S. Howe. And third, it asks a decree against William S. Howe alone, to divest him of title to the land.
- 3rd - There is a misjoinder of action. William S. Howe is not liable on the Note sued on, and should not be joined in a suit upon the same, & thus made liable for costs, for John Smith's indebtedness.
- 4th - The causes of action thus united do not arise out of the same contract, express or implied; neither do they affect ^{jointly} all the parties to the action.

A. Green
} Atty. for Defendants

In Circuit Court
Jefferson County

Elec'Donnelle

v's

John Smith &
Wm'd. Moore

Deinwood

Filed Mar 20th 1861
Geo. Moorey
Clerk