

Jefferson County Circuit Court
Case Files - CIVIL
June 1863, No. 34

Box No.

14 Folder No. 31

Hopkins, Daniel

vs

Franeey, Anthony

Unlawful detainer

40 acres in S12 T 39 R4E; involved
previous judgment against defendant
and mortgage deed to Susannah Kinney
assigned to plaintiff

Daniel Hopkins, Plaintiff }
Against } In the Circuit
Anthony Franey, defendant } Court of Jefferson
County Missouri

The Plaintiff states that on the 17 day of December, 1860, he obtained Judgment in the Circuit Court aforesaid against the Defendant for \$215.00, and costs, - That on the 13th day of April, 1862, he took out Execution on said Judgment, which was levied by the Sheriff of Jefferson County on the following described Land, as the property of Defendant, To wit, The one undivided half of the North East quarter of the South East quarter of Section, number Twelve, in Township, No. Thirty nine, North of Range No. Four East, containing Forty acres, and situate in Jefferson County Missouri, - and on the 13th day of January 1863, said Land was sold at public sale, by said Sheriff, under said Execution, to satisfy said Judgment and costs, and Plaintiff being the highest bidder, bought said Land at and for the price and sum of Eleven dollars, and paid the same to the Sheriff at the time, and took a Receipt therefor, and acquired thereby the right to the Land aforesaid. Plaintiff states that the Defendant, is in possession of one half of the Land aforesaid, and that notwithstanding Plaintiff has thus acquired the Equitable if not the legal title to the same, and is thus in Equity entitled to the possession

of the said Land, the Defendant unlawfully withholds the possession thereof from the Plaintiff. — Plaintiff further states, that on the 28th day of June 1859, the Defendant gave his Promissory Note to Susanah Kinney, for one hundred dollars payable twelve months after date, and that, at the same time Defendant executed and delivered to said Kinney, a Mortgage Deed for the Land aforesaid, to secure the payment of said Note. — That afterwards, to wit, on the 15th day of April 1863, said Susanah Kinney assigned in writing said Promissory Note, and Mortgage Deed over to the Plaintiff, by endorsement thereon to that effect. — Plaintiff says that the sum of money mentioned in said Note yet remains due and unpaid, and that by virtue of said Mortgage ^{and Note} and the assignment thereof to the Plaintiff, that he has acquired the right to the possession of the Land aforesaid, now ^{wrongfully} withheld from the Plaintiff by the Defendant.

Plaintiff therefore asks Judgment for the possession of said Land, and twenty dollars, damages for the detention thereof. Said Mortgage Deed & Note are herewith filed as part of this petition.

I swear
Attorney for plaintiff
Daniel Hopkins, Plaintiff, makes oath and says the above petition and the matters therein as stated he believes to be true, sworn to and subscribed Daniel ^{his} Hopkins before me May 13th 1863
Elias J. Hooley Clerk

March 1863

3-

after	\$0.10
copy not	60
been sent	50
stamp	50
and copy	120
side not	28
~~same~~	12
after	28
motion	25
sent	25
booklet	10
not	15
through out	52
	15

In Circuit Court
Jefferson County

James Hopkin

vs,

William Harvey

petition

for summary

issue, answer

for relief

Filed May 13th 1863

Chas. J. Morley
Clerk

\$3 paid by P.H.

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

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

We command you, that you summon *Anthony Francey*

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 second Monday after the fourth
Monday of *May* next, then and there to answer unto
Daniel Hopkins

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

Witness, ELIAS F. HONEY, Clerk of our said Circuit
Court, with the seal thereof herunto affixed, at office
in Hillsboro, this *Thirteenth*
day of *May* A. D. 18*63*

Elias F. Honey
Clerk Circuit Court.



34
TO JEFFERSON CIRCUIT COURT

June 7th
Sept, 1863

David Hopkins
vs *Sammond*
Anthony Francey

Sheriff Fees \$1.00

Chd

Filed May 27th 1863

Elias P. Honey Clerk
Seempered by Plff secs
12th 1863 Inst. no 5-
page 36

I, executed this writ at the County of Jefferson
State of Missouri on the 16th day of May 1863 by
delivering to Anthony Francey the within named
Defendant, a true copy of this writ and
annexed, Petition as furnished me by the Clerk

Samuel B. Doven Sheriff

Daniel Hopkins }
vs } In the Circuit Court of Jefferson
Anthony Franny } County. Mo

The defendant for answer states
the judgment ~~on~~ on which execution
was allowed to have issued, was obtained
by plaintiff by fraud and in justice should
not be enforced by sale of land

Defendant has no knowledge sufficient
to form a belief ~~as~~ to the statement
in petition that Execution was issued
on said judgment on the 13th day of April
1862, he denies all knowledge whether there
was a sale of the land in controversy accord-
ing to the requirements of law & requires
proof of a legal sale

Defendant denies that plaintiff has a right
to sue for recovery of the land before the
execution of a deed by the Sheriff and
here denies to the petition on the ground
that plaintiff does not show a title in
him or which to constitute a deed
for the recovery of the land and therefore
there is not stated sufficient facts to consti-
tute a cause of action

Defendant denies all knowledge sufficient to
form a belief of payment of Eleven Dollars,
by plff & taking of a receipt from the Sheriff
as stated in the petition

Defendant denies that he unlawfully withholds
from the plaintiff the possession of the premises
in controversy

Defendant states in the way of demurrer

that several causes of action have been improperly united, that plaintiff has improperly sued for possession of the lands in one part of his petition and in another part has set up an assignment of a certain promissory note and mortgage deed from Susanah Kinney, on which state of facts plaintiff prays judgment for possession of said lands.

Defendant denies all knowledge sufficient to form a belief as to the actual assignment of said note & mortgage deed & retains proof thereof.

Anthony Spray

~~Anthony Spray states on oath that the foregoing answers to the matters therein stated he believes to be true.~~

~~Subscribed & sworn
to before me this~~
day of June

1863

Defendant further states that there was no regular circuit Court of Jefferson County in session on the 13 of January 1863 nor was there any legally adjourned term of said Court in session on the 13 of January 1863.

Defendant further states that he was the head of a family before and on the 13 day of January 1863 and was entitled by law as head of a family to \$150 of personal property and view thereof to \$150 real estate that it was the duty of the Sheriff of Jefferson County Mo

before offering the lands for sale as stated to have taken place, to have apprised said Franny of his right to make selection to hold exempt from execution any other personal, real or mixed property not exceeding in value \$150. That said Franny informed said Hopkins and the Sheriff before said sale that he was the head of a family and claimed the land to be sold as exempt from execution, that Plaintiff persisted up the sale and at his instance the Sheriff sold said land without informing said Franny of his right of selection. That said Hopkins had full notice of these facts & bought the land knowing that said Franny was the head of a family and knew that the Sheriff had failed to notify said Franny to select \$150 as required by law. Said Franny states that he owned an undivided half of said land when it was sold and that this half was not worth over \$150 that said Hopkins had previous to the sale on 13 of Jan 1863 brought a partition suit against said Franny for the division of the lands in controversy that that suit had been prosecuted in this Court to a default and a final order of sale was rendered at the Term of this suit and the land is now offered for sale. Defendant states that in consequence of this partition suit, the title became confused & it caused a cloud to hang over the title so that when it was sold in

January 1863. people were afraid to bid on
it & therefore it was ~~to~~ sacrificed. Defend
out charges that plaintiff caused this thing
& thereby obtained an unjust advantage

He prays the Court to set aside the
pretended sale in January 1863, to order
the Sheriff of this County to have the
land appraised and valued & set apart to
him as the head of a family and for
all other relief and to order the Sheriff
to retain the half of the proceeds of sale
of the partition land aforesaid and he here
selects & claims the same as the head of a
family in lieu of other personal property
except from execution

A. A. Gray States on oath

Anthony J. Hoarey

that the foregoing answers the matters therein as stated he
believes to be true
I now to before me
June 8th 1863

Anthony J. Hoarey
Clerk

Elias J. Hoarey Clerk

Hopkins

vs

Gray

Answer

Filed June 20 1863

Elias J. Hoarey

Clerk

Daniel Hopkins, Plff. } In Circuit Court
Against } Jefferson County
Anthony Franey, Defl.

The Plaintiff by his Attorney
moves the Court to strike out the Answer
of Defendant in the above cause for the fol-
lowing reasons,

- 1 - Because said Answer does not consti-
tute any defence to Plaintiff's cause of
action.
- 2 - The Answer improperly blends answers
and answers in the same pleading and
against the same allegations of the petition.
- 3 - The Judgment obtained by plaintiff against
Defendant, on which the Execution was issued
under which Defendant's land was sold,
is conclusive on Defendant & cannot be
impeached by him, this plea of fraud is not
admissible.
- 4 - The Defendant's claim of \$130, worth of prop-
erty, as the head of a family, is no defence to
this action.
- 5 - The allegations, that there was no adjourned term
of the Circuit Court of Jefferson County on the 13th
of January 1863, - and that there was a per-
tition suit pending when the land was sold,
is no defence to this action.
- 6 - The allegation of a misjoinder of action is
not tenable, and not a matter of defence.

Algreen
Atty for Plff.

In Circuit Court
Jefferson County

Daniel Hopkins

vs,

Anthony Francis

Plaintiff to
Defendant

Answer

Filed June 15th 1863
Geo. S. Howes
Clerk