

Jefferson County Circuit Court
Case file - civil

Box

14 Folder 83

December 1863

Howe, William S

vs

Swan, Samuel G

Foreclosure

Debt \$200.50; 40 acres in

Section 41 E SE

William S. Howe, Plaintiff
Against
Samuel G. Swan, defendant
In the Circuit Court
Jefferson County,

The Plaintiff states that some time in the fall of 1862, the Defendant, being the owner of the following described tract of Land, situate in Jefferson County Missouri, to wit, the South East quarter of the South West quarter of Section No. Thirty six in Township No. Forty one, of Range No. Five East, containing Forty acres, with the exception of a portion of said tract, near the North East corner thereof, containing a Spring, which portion is particularly described in the Deed from Isaac S. Baker to said Samuel G. Swan, dated the 16th day of July 1853, and recorded in the Recorder's Office of Jefferson County Missouri, made a contract with Plaintiff to exchange said tract of Land with Plaintiff for a tract of Land belonging to him, containing 160 acres, and in which trade Plaintiff was to pay off the balance of a fragment amounting to two hundred dollars and fifty cents in favor of Jephtha Browder against said Samuel G. Swan, so as to extinguish the lien of the same upon the Land of said Swan aforesaid, and to secure the payment of this sum and the difference in the price of the two tracts, of Land to Plaintiff, the Defendant agreed

to give Plaintiff a Deed of Trust upon the Land he should receive from Plaintiff, and for the purpose of having a Deed drawn in furtherance of said agreement and as a pledge to Plaintiff ~~for security~~ and for the payment of said Judgment, Defendant deposited his title Deeds to the Land aforesaid with Plaintiff, and not having opportunity of writing said Deeds of Conveyance at the time as the Sheriff was about to sell the Land aforesaid of the Defendant, the Plaintiff relying upon the promise & agreement of Defendant paid off the balance on said Judgment against said Swan, amounting to \$200.00, - After which, Defendant refused to perform his agreement aforesaid, and refused to execute a Deed of Trust of his Land aforesaid to secure Plaintiff in the money he had paid for him.

Plaintiff states that by Defendant's agreement aforesaid, and by depositing his title Deeds as security to Plaintiff, he acquired an Equitable mortgage on the Land of Defendant above described, to secure Plaintiff in the money he had thus paid for Defendant. Plaintiff therefore says he has a lien upon the Land of Defendant aforesaid, & asks that the Court will enforce the same. Plaintiff therefore prays the Court for Judgment against Defendant for the sum of two hundred dollars & fifty cents, and ten per cent interest upon the same.

and to order and decree a sale of
the aforesaid Land of Dependence, to satis-
fy the Judgment of Plaintiff, and to
grant such other and further relief
as the facts of the case may warrant
consistent with the principles of Equity.

Béal & Green
Attorney for Plaintiff

William S. Howe, Plaintiff makes
oath and says the above petition and
the matters therein as stated he be-
lieves to be true.

Wm S. Howe

Sworn to and Subscribed
before me, Oct. 6th 1863
Elias F. Honey, Clerk



In Circuit Court
Jefferson County

Wm. S. Moore

vs.
Saml. S. Moore

Petition

for summary
issuance of writ of
habeas corpus

for \$1000

Filed Oct. 6th 1863

Chas. A. Harvey
Clerk

Stamps \$0.25
Money clerk
16 copy put 45th Oct. 1863
3rd. 18 copy 20th
Stamps 89 copy at 10th
checked. 50th

\$320

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

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

We command you, that you summon *Samuel G. Davis*

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 after the fourth
Monday of November next, then and there to answer unto
William S. Horne

upon *his* original petition, a copy whereof is hereunto 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 hereunto affixed, at office
in Hillsboro, this *Sixth*
day of October A. D. 1863



Elias F. Honey
Clerk Circuit Court.

TO JEFFERSON CIRCUIT COURT

2430

December Term, 1863

William D. Hoar
vs & Defendants
Samuel G. Swann

Beal & Green atty for deft

1st in my hand

J. B. Doren Sheriff \$1,000

I, Executed this writ at the County of
Jefferson State of Missouri on the fifth
Day of November 1863 on Samuel G. Swann
by delivering to him a true copy of this
writ and annexed petition as furnished
me by the clerk
Jerome B. Doren Sheriff

Wm. Howe Plaintiff.
against
Paul E Swan Defendant.

In the Circuit Court for the
County of Jefferson, State
of Missouri

Now at this day comes the Defendant in the above
entitled Cause, and for to the plaintiff's petition
states, that he was the owner of the land tract of
land in plaintiff's petition described at the time
therein mentioned. That he made a verbal
agreement with plaintiff to exchange the said tract for a
tract belonging to the plaintiff containing one
hundred and sixty acres; that by the terms of said
agreement, ~~was to pay~~ plaintiff was to pay off cer-
tain judgments mentioned in his petition, in favor of
Lepta Broomer, and against this defendant, that
plaintiff did pay on said judgments one hundred
and eighty ^{two} dollars. That the balance, Eighteen
Dollars and fifty cents, was paid to the plaintiff
by this defendant at the time when said judgment
was paid off. Defendant therefore states that the
plaintiff has in his petition, ^{false} ~~unjustly~~ charged
him with eighteen Dollars and fifty cents, that
it is not true that plaintiff paid two hundred Dollars
and fifty cents as stated in his petition, that he
paid only one hundred and eighty two dollars. Deft.
further states in regard to the agreement between
himself and the plff. that by the terms of it, deft was
to make plaintiff a deed to the land in his petition
mentioned, that plff. was to convey by deed to deft.
the tract the tract of one hundred and sixty acres.

in his petition mentioned that this debt was to pay the plaintiff one hundred and forty Dollars, the difference between the Value of said tracts of land, and to secure the payment of this sum as well as the amt. ~~which plaintiff should pay on said~~ of said judgments, this defendant was to execute his promissory note secured by a deed of trust on the tract of land of one hundred and six ^{and} five acres afore said.

That ^{after} ~~the said judgment was discharged~~, ~~plaintiff~~ ^{he} ~~paying~~ the said one hundred and eighty two dollars, refused to comply with his agreement any further, Denied that he was to give a deed to the said 160 acres and take a deed of Trust on the same to secure the pay^{ment} of the afore mentioned sums of money as stated by this debt. Demanded two hundred dollars in as the difference of between the Value of said tracts of land, instead of one hundred and forty Dollars. Denied that he was to give a deed to the 80 ^{or} 160 acres of land, but stated that he was to give above for a deed ~~when the money should be paid to said land~~ when the money should be paid for ~~the~~ ^{the} 160 acres of land. Which debt says was not the agreement. Defendant further states that while plaintiff refused to comply with his part of the agreement, he executed a deed ~~from the debt~~ to the land which he ^{debt} was to convey to plaintiff.

Defendant denies most emphatically that he ever at any time refused to comply with his part of agreement, but on the contrary has always been ready and willing to perform his part of the agreement. That Debt. is now ready and willing to perform his part of the contract.

Defendant says he left his title deeds to the
mortgagor plaintiff, at his suggestion, for the purpose
of allowing plff to inspect them, & to furnish him
with a true description of the land so that a
deed might be correctly drawn. ^{& also for safe keeping} Deft denies that
that he left the title deeds with mortgagor plaintiff as
a pledge and security for the payment of said
judgments paid by plff. ~~that he left the~~
~~title deeds with plaintiff as a pledge~~

Deft. denies that the possession of the title
~~deeds~~ title deeds, under the circumstances,
gives plaintiff any lien on said land. Says
the deeds were not deposited as a mortgage. ~~and~~
denies that plaintiff in consequence of any
agreement, has a lien on his land, ~~and~~
says the Court ought not so to decree. Denies
that he was to execute a deed of Trust on the
land which he was to convey to the defendant,
plaintiff to secure plff in the money he
paid for deft, and says that he has never
been required to do so. Says that the Court
ought ^{not} to enforce a lien. ~~Def~~ further
says that plaintiff ought ^{not} to have judgment
~~for two hundred~~ for two hundred dollars and
fifty cents, with 10 per cent interest, that he is
not entitled to recover the \$200 ⁵⁰/₁₀₀ or any part
thereof ^{nor} or any interest thereon. That plff's
prayer for a decree of sale of said land
ought not to be granted. Deft. says that
plff. failed and refused to comply with any
part of his contract, & kept as before stated,

And consequently ought not to recover ~~any~~ judgment
for any money whatever, and that no decree
ought to be rendered for the ~~the~~ Plaintiff as
prayed in his petition, but that ~~the~~ Plaintiff
ought to be compelled by decree of this Court
to perform his contract,

Defendant further pleads that plaintiff
by not complying with his contract has damaged
Defendant two hundred and fifty dollars

Defendant asks the Court to render such a
decree as the facts in the case may
warrant,

Saml. G. Swan

Sworn to and subscribed
before me this day

of Dec 5, 1863
Saml. G. Swan the Defendant in the
above Cause makes oath & says that the facts
in the foregoing ^{answer} as therein stated ^{he} believes to be true

Sworn to and subscribed
before me this 7th day
of Decr. 1863,

Elias P. Mooney Clerk



Filed Dec 7th 1863

Elias P. Mooney

Clerk

Wm. H. Haur
vs
Saml G. Loomis, }

The Defendant demurs to the petition of the Plaintiff in the above entitled cause for the following reasons.

1. Because the Petition does not allege facts sufficient to constitute a cause of action.

2. Because the Petition alleges that Deft agreed to give a deed of trust upon a tract of land he did not then own nor does he own it now.

3. Because the Petition does not allege that Deft deposited his title papers to the tra with Plaintiff to the tract of land upon which he was to give Plaintiff a deed of trust. The petition shows that Deft was to give deed of trust to one tract of land while he deposited his title papers to another tract.

4. Because the Petition shows from the whole context that said title papers were deposited with Plaintiff in order to enable him to draw deed to the same to himself not as a lien.

Hendrickson & Thomas

Am. Stove

as

and E. Dean

Remission

Filed June 9th 1864

Eliza J. Honey

clerk

per J. C. Walker

William S Howe

vs

Samuel S Swan

}
}
}

In the circuit Court of
Jefferson County Mo

The plaintiff states the defendant owes him one hundred and eighty two Dollars and sixty cents for money advanced at the request of defendant on the 13th day of January 1863 for the benefit of defendant to pay off a certain Execution in favor of Leptha Browder against Samuel S Swan to the Sheriff of Jefferson County Mo, and which said plaintiff did pay to satisfy said execution

Plaintiff states that this sum together with the interest thereon is yet due to plaintiff and for which he is entitled to judgment

Plaintiff further states that some time in the fall of 1862, the defendant being the owner of the following real estate situate in Jefferson County Mo viz The South East qr of the South West qr of Section 36, Township 41 Range 5 East containing 40 acres with the exception of a small portion of said tract of said land, near the North East corner thereof containing a spring which portion is particularly described in the deed from Isaac S Baker to said Samuel S Swan dated the 16th day of July 1855 and recorded in the Records office of Jefferson County, Mo, that said Swan then made a contract with plaintiff to exchange said tract of land with plaintiff for a tract of land belonging to the plaintiff, as follows, viz The South East quarter of the South East quarter of Section thirteen in Town

ship 39, Range five East containing ~~94 $\frac{4}{100}$ acres~~
also the South fractional half of the South West
fractional quarter of Section 18 Township 39
Range 6 East containing ~~11 $\frac{4}{100}$ acres~~ also
one and one hundred thirteen rods in the South
East q^r of the South East q^r Section 13. Town
ship 39 Range 5 East also the North $\frac{1}{2}$ Sec
14 & 18 T 39 Range 6 East containing sixty five
acres. In which trade between plaintiff
and defendant, it was agreed that plaintiff
would pay off and extinguish the lien of
a judgment in favor of Jephtha Browder
against defendant, that defendant would
~~release~~ plaintiff nine hundred dollars for
said lands and that the defendant's
place should be estimated at six hundred
dollars, by which three hundred dollars would
be due from defendant to plaintiff on the
exchange of the lands, that upon exchange
of the lands and on proper conveyances
being made, defendant would give plaintiff
a deed of trust on the lands of plaintiff
when conveyed to defendant, to secure
the said three hundred dollars and the
sum that plaintiff would pay to satisfy
the judgment and executions of Jephtha
Browder, that defendant to carry out that
agreement, promised plaintiff ~~as soon as~~
plaintiff paid off the execution of Jephtha
Browder, defendant would execute a conveyance
to plaintiff for the said land of defendant
and plaintiff would execute a conveyance

to defendant for the said land of plaintiff
and that defendant would then execute
a deed of trust to plaintiff on plff's land
so conveyed to defendant, to secure the
difference in the estimated values of the
respective tracts of land and the balance
plff might pay off to satisfy the said
execution; that for the purpose of carrying
out said contract and exchange of lands, the
defendant deposited with plaintiff his title
papers and deeds for the said land owned
by defendant aforesaid which title papers
are still in the possession of plaintiff
that plaintiff then in January 1863, the
said lands of defendant was to be sold by
the Sheriff of this County to satisfy said
Judgment of Jephtha Browder, and that before
the sale took place, plaintiff paid off
\$182.⁶⁸/₁₀₀ the balance due on said execution
which was returned satisfied, that plaintiff
then offered to the Defendant to carry out
and perform his Contract and offered to
execute a conveyance to the defendant
for the said lands and demanded of defend-
ant the execution of a conveyance of
to plaintiff for his land and to execute
a deed of trust for the amounts paid and
the difference in values of the land but
defendant refused to carry out the contracts
and refused to convey to plaintiff his
land and execute a deed of trust

Plaintiff further states that after
the agreement and contract was entered into

between plaintiff and defendant, the defendant extend upon the lands of plaintiff aforesaid, took possession, made declarations to sundry persons that he had bought the said lands of plaintiff and gave directions to the tenant of plff on said lands to keep the same for defendant and also put advertisements in the The Republican offering to sell the said lands of plaintiff as his own.

Plaintiff is ready and here offers to carry out his said agreement with the defendant, and here tenders and offers to defendant to convey the lands of aforesaid belonging to plaintiff and is ready and offers here execute specifically all the agreements aforesaid and prays the Court for specific performance of the said agreements and to order and decree that defendant to execute a conveyance to plaintiff for the said lands of defendant and to execute a conveyance to secure to plaintiff \$180.60 paid on said judgment and for \$3.00 the difference between the prices and values of said farm and for plaintiff to execute a conveyance to defendant of his said lands and for all other proper relief.

Real & Green Atty for plff

William S Howe being sworn states that
the foregoing petition and the matters therein
as stated he believes to be true

sworn to & subscribed to
before me this 11th
day of June 1864

Wm S Howe

Elias F Honey clk
per J Ed Walker D.C.



Michael D. Morse

vs

Samuel G. Shaw

Quashed Petition

Filed June 11th 1844
C. H. Morrey Clerk

State of Missouri 1855
County of Jefferson

The State of Missouri,
To the Sheriff of the County of Jefferson,
Greeting;

Whereas William S. Hoove, did on the 6th day of October, AD 1863, file in the office of the undersigned clerk of the Circuit Court in and for the County of Jefferson, his petition, in breach of agreement, against Samuel G. Swan; and whereas afterwards to wit, on the 13th day of May AD 1865, the death of the said Samuel G. Swan, was suggested in said Court. It was thereupon ordered by the Court, that a *Scire Facias* issue to William Strickland, administrator of said Samuel G. Swan's Estate, to bring him into Court as defendant.

You are therefore commanded that you notify William Strickland, Administrator of said deceased, that he be and appear before said Court, on the first day of the next term thereof to be begun and held at the Court house in Hillsboro in said County on the second Monday in November next, to show cause if any he has why he should, or should not be made party Defendant in said cause in the stead and place of the said

Samuel G. Swan, deceased.

And have you then there this writ.

Witness, Samuel A. Reppy Clerk of
Said Circuit Court with the Seal
thereof hereto affixed in Hillsboro
this 6th day of October AD 1865,
Samuel A. Reppy Clerk



I executed the within writ at the County of
Jefferson State of Missouri on W^m Strickland
Admr of the Estate of said G. Swan the within
named defendant on the 23 day of Oct 1865
by reading the same in his presence & hearing

C. C. Fletcher Sheriff
By John Williams Sdy

At Jefferson Circuit Court
November Term A.D. 1865

William G. Moore

vs

Samuel G. Swan

Deicta, to bring in as
Defendant
William Strickland
Administrator of said
Samuel G. Swan deceased

The above Sheriff 1.50
Dec 14 1865
C. C. Fletcher Sdy