

Jefferson County Circuit Court
Case Files - Civil
November 1864, No. 5

Box 15 Folder 53

O'Fallon, Emily

V

Kennerly, James L.

Kennerly, Thomas L.

Kennerly, Francis L.

Breach of Contract

Defendant failed to deliver deed for land
in U.S. Survey No. 747 in T42R6E of
unknown acres to Plaintiff; damages
\$5,000.00; depositions

Received of Lewis, July 1864 of Miss Emily Challen
(at the Bank of the State of Missouri) twenty four hundred
and fifty six dollars, being amount specified to be paid
~~to us by~~ said Emily Challen, in agreement between us
and Col John Challen, dated the 2nd day of July
eighteen hundred and sixty three, for the purchase of
a certain tract of land mentioned in said agreement
\$2456.00

"A"

A

O'Fallon &
Kinnersly?

My dear Sir,
I have the honor to acknowledge the receipt of your letter of the 11th inst. in relation to the purchase of the land for the purpose of building a house for the use of the school. I am sorry to hear that you are unable to purchase the land at the price you offered. I am, however, glad to hear that you are still interested in the project. I am sure that you will be able to find a way to purchase the land at a reasonable price. I am, Sir, very respectfully,
Yours,
J. H. H.

To Messrs James L. Kennedy, Thomas L. Kennedy
& Francis L. Kennedy

Take notice that the sum of
Twenty four hundred & fifty six Dollars (\$2456.)
being the amount specified to be paid by me, according
to Agreement between you and Col. John O'Fallon dated
the second day of July eighteen hundred and ninety
three, has been deposited to your credit at the
Bank of the State of Missouri, where the same will
be paid to you - and you are hereby notified and
required to execute and deliver me a deed for the
property mentioned in said deed of agreement.
July 2nd 1864

Emily O'Fallon.

"B"

Joseph Esattick carried
off 2 and put the tobacco in.

State of Missouri -
In the Circuit Court
of Jefferson County

Novr. Term 1864.

Emily O'Fallon, } plaintiff

v.
James L. Kennerly,
Thomas L. Kennerly &
Francis L. Kennerly, } defendants.

The plaintiff Emily O'Fallon comes and files her petition in the nature of a bill for the specific performance of contract and states that heretofore to wit: on the second day of July 1863 the defendants by their certain obligation under seal herewith filed covenanted and agreed to and with said Emily O'Fallon her heirs and assigns, ^{that if said Emily} should on the fifth day of July 1864 pay to the said defendants at the Bank of the State of Missouri at St. Louis the sum of twenty four hundred and fifty six dollars together with all taxes levies and assessments on said land hereinafter described together with all liens that may have been legally imposed upon said land or the buildings thereon which shall have been paid by

the said Kennedys or either of them before the said fifth day of July 1864 together with such additional sum as would be equal to the interest at ten per cent per annum upon said several sums so paid from the time of such payment, that then said defendants would convey to said plaintiff Emily O'Fallon all the right title interest estate and property of said defendants in and to the tract of land hereinafter described as then vested in them by good and sufficient deed with covenant that they had not encumbered said tract or any part of the same.

Your petitioner further states and shows to the Court that she did before the fifth day of July 1864 cause a messenger to be sent to defendants to ascertain the amount of taxes and assessments and liens paid by defendants upon the premises and on the fifth day of July 1864 at the Bank of the State of Missouri tender to the defendants said sum of twenty four hundred and fifty six dollars together with such sums of money as may have been paid by defendants for taxes liens or assessments upon said premises, but

said defendants in violation of the tenor and spirit of said agreement refused to inform plaintiff of the amount of taxes liens and assessments paid by them, or whether or not they had paid any sum or sums whatever, and refused to receive said sum of twenty four hundred and fifty six dollars and failed and refused to convey to plaintiff the tract of land in said obligation mentioned which is particularly described as follows to wit: a certain tract and parcel of land situated in Jefferson County in the State of Missouri to wit: that certain part of the United States survey No. 747 situate in said County in township No. 42 Range Six East and described as follows: beginning at the south east corner of said survey, thence running north 82 degrees west 52 chains 64 links to a post corner; thence north one & a half degrees East 87 links to a post corner; thence north 82 degrees west 24 chains to a post corner; thence South one & a half degrees west 87 links to a post corner; thence north 82 degrees west three chains to a post corner; thence

north one & a half degrees East 12 chains
& 75 links to a post corner on the
western boundary line of said survey;
thence north 27 degrees East along the
western line of said survey 66 chains
25 links to the north west corner of
said survey, thence by an irregular
diagonal line from the north west
to the south east corner of said
survey the place of beginning.

Plaintiff states she has been ready &
willing at all times as required by
said agreement on her part to pay
all taxes liens & assessments, if any,
paid by defendants on the premises &
that she has tendered said sum of
money ^{to defendants} at the bank of Missouri at
St. Louis as required by said agreement,
but defendants have refused to give any
information of the amount of taxes liens
and assessments paid by them, or that
they have ^{paid} any sums whatever and have
refused to receive said money so tendered
them. And plaintiff now comes and
tenders said sum into Court and prays
that defendants may be ordered & required
to convey all the estate vested in them
at the date of said obligation to the
plaintiff by good & sufficient deed or that

in default thereof this Court will
divest the defendants of all title and
estate in the premises and vest the
same in plaintiff; and plaintiff
prays judgment for five thousand dollars
for costs expenses & damages incurred
by reason of defendants violation of
their said covenant and for such
other and further relief in the prem-
ises as may be just and equitable.

Kum & Decker

Attys for plff

John O. Fallon Jr Agent of the Plaintiff
makes oath & says that he believes
the foregoing petition & the matters
therein are true to be true -
John O. Fallon Jr.

Sworn to and subscribed

before me August the

first A D 1864

Elias F. Hoarey Clerk

Jefferson Circuit Court

Nov - Jan 1864

Emily O'Fallon

M^{rs}

James F. Kennedy,

Thomas F. Kennedy,

Francis F. Kennedy

John J. Kennedy

James F. Kennedy

for 1864

Black Aug 1st 1864

Colias J. Kennedy

delivered

13 50 cents paid by
Plaintiff to Kennedy

13 50 cents paid by
Plaintiff

affid-

2 copies per

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State of Missouri
in the Circuit Court
of Jefferson County

Novr Term 1864.

Emily O'Fallon } plaintiff

vs.

James L. Kennerly }
Thomas L Kennerly } defendants
Francis L Kennerly }

The plaintiff Emily O'Fallon comes and files her petition in the nature of a bill for the specific performance of contract and states that heretofore to wit: on the second day of July 1863 the defendants by their certain obligation under seal herewith filed covenanted and agreed to and with said Emily O'Fallon her heirs and assigns that if said Emily should on the fifth day of July 1864. pay to the said defendants at the Bank of the State of Missouri at St Louis the sum of twenty four hundred and fifty six dollars together with all taxes, levies and assessments on said land herein-after described together with all liens that may have been legally imposed

upon said land or the buildings thereon which shall have been paid by the said Kennerly's or either of them before the said fifth day of July 1864. together with such additional sum as would be equal to the interest at ten per cent per annum upon said several sums so paid from the time of such payment. that then said defendants would convey to said plaintiff Emily O'Fallon all the right title, interest, estate and property of said defendants in and to the tract of land hereinafter described. as then vested in them by good and sufficient deed with covenant that they had not encumbered said tract or any part of the same.

Your petitioner further states and shows to the Court that she did before the fifth day of July 1864. cause a messenger to be sent to defendants to ascertain the amount of taxes and assessments and liens paid by defendants upon the premises and on the fifth day of July 1864. at the Bank of the State of Missouri tender to the defendants said sum of twenty four hundred and fifty six dollars together with such

sums of money as may have been paid by defendants for taxes liens or assessments upon said premises, but said defendants in violation of the tenor and spirit of said agreement refused to inform plaintiff of the amount of taxes, liens, and assessments paid by them, or whether or not they had paid any sum or sums whatever and refused to receive said sum of twenty four hundred and fifty six dollars and failed and refused to convey to plaintiff the tract of land in said obligation mentioned which is more particularly described as follows to wit: a certain tract and parcel of land situated in Jefferson County in the State of Missouri to wit: that certain part of the United States survey no 747 situate in said County in township No 42. Range Six East and described as follows to wit: beginning at the south east corner of said survey, thence running north 82 degrees west 52 chains 64 links to a post corner; thence north one & a half degrees east 87 links to a post corner; thence north 82 degrees west 24 chains to a post corner; thence south one & a half degrees west 87 links

to a post corner: thence north 82 degrees west three chains to a post corner: thence north one & a half degrees East 12 chains & 75 links to a post corner on the western boundary line of said survey thence north 27 degrees East along the western line of said survey 66 chains 25 links to the north west corner of said survey, thence by an irregular diagonal line from the north west to the south east corner of said survey the place of beginning.

Plaintiff states she has been ready & willing at all times as required by said agreement on her part to pay all taxes liens or assessments, if any paid by defendants on the premises & that she has tendered said sum of money to defendants at the Bank of Missouri at St Louis as required by said agreement, but defendants have refused to give any information of the amount of taxes liens and assessments paid by them, or that they have paid any sums whatever and have refused to receive said money so tendered them

And plaintiff now comes and tenders said sum into court and prays that defendants may be ordered & required

to convey all the estate vested in them at the date of said obligation to the plaintiff by good & sufficient deed or that in default thereof this Court will divest the defendants of all title and Estate in the premises and vest the same in plaintiff; and plaintiff prays judgment five thousand dollars for costs expenses, & damages incurred by reason of defendants violation of their said covenant and for such other and further relief in the premises as may be just and Equitable.

Krum & Decker.

Attys for plff.

John O'Fallon Jr. Agent of the plaintiff makes oath & says that he believes the foregoing petition & the matters therein as stated to be true

John C. O'Fallon Jr.

Sworn to and Subscribed
before me August the
first A.D. 1864

Elias F Honey clerk.

Filed Aug 1st 1864

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

Witness my hand and the
seal of said Court this
Second day of August
A.D. 1864.

Elias J. Honey
Clerk



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

To the Sheriff of the County of ^{Saint Louis} ~~Jefferson~~ --- Greeting:

We command you, that you summon James L Kennerly
Thomas L Kennerly and Francis L.
Kennerly.

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
Emily O'Fallon

upon her, 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 Second
day of August A. D. 1864

Elias F. Honey
Clerk Circuit Court.



115 No. 5

TO JEFFERSON CIRCUIT COURT

November 3rd, 1864

Emily O'Fallon

vs } Summons

James L. Kennerly

Thomas L. Kennerly

Francis L. Kennerly

14 miles

my law & costs James

Filed Aug 15th 1864

Chas. J. Honey etc

Executed this ^{writ} in County of St. Louis on the 9th day of August 1864, by delivering a copy of the writ & petition, as furnished by the Clerk to James L. Kennerly, and ^{brother} executed this writ in county of St. Louis on the 9th day of August 1864, by delivering a copy of the writ, as furnished by the Clerk to Thomas L. Kennerly and Francis L. Kennerly.

Fees \$3 00

Mileage \$2 10

\$5.10 paid

15 postage paid

John C. Vogel Sheriff
James L. Veyand Clerk

Emory C. McLean Plaintiff

IN THE

James A. Kennedy
James A. Kennedy
James A. Kennedy

As Quasi Counsel
for James A. Kennedy
vs. James A. Kennedy

Take Notice, That on the

29th

day of

August 18 64

between the hours of eight o'clock in the forenoon and six o'clock in the afternoon of that day, at the Law Office of McLean No 32 1/2 Pine Street

in the

City of St. Louis
State of Missouri

County of St. Louis

depositions will be taken, to be read on the trial of the above entitled case on behalf of the defendants; and that the taking of said depositions, if not completed on that day, will be continued from day to day, at the same place, and between the same hours, until completed.

To the above named

Claimant

By McLean
and for self

State of Virginia
County of Albemarle

J. B. May of lawful age

being by me, the undersigned Justice of the Peace,
in & for said Co. lawfully sworn his oath
that he did on the 23rd day of August 1864
serve the within notice by sealed covering &
true copy of the within as the nearest place
of abode of Emily C. Feller with & while
absent and the age of fifteen years in the
Township of Little Rock in said Co. law.

J. B. May

Albany County

done to and before
before me this 23rd day
of August 1864.

Wm. M. Satter
Justice of the Peace



Emily Tallan

Married

vs.

Lucius Keant for

IN THE

James A. Kennedy
Married & Kennedy &
James A. Kennedy

Stephen Keant
Stephen Keant & the same

Take Notice, that on the 29th day of November 1864, between

the hours of eight o'clock in the forenoon and six o'clock in the afternoon of that day, at the office of J. G. McCallan, No. 321 Broadway in the City of New York, County of New York, State of New York, depositions will be taken, to be read on the trial of the above entitled case, on behalf of the Defendants; and that the taking of said depositions, if not completed on that day, will be continued from day to day, at the same place, and between the same hours, until completed.

To the above named

Married

J. G. McCallan

Attorney to the above named.

Defendants

1. B. May 15th after postage being duly shown
 in his cash book that the above invoice has not been
 received ^{as a bill of exchange} from the
 American Bank of New York & Co. Boston
 the within named person left on the 23rd day of
 May 1864 in possession of the above

From Stockholm taken on the 16th Dec^r 1763
J. B. Moberg { 1763 }
State in the 22^d day of Nov 1764

Let
So, the Diller
duration of the time
H

1. 13. Mary of Cornwall age being under
and his oath says that he received the
same within notice by delivering
a true Copy thereof to Col^l Stafford
over the great封印 of England in
presence of the said Col^l Stafford
the said James Stewart and the
22^d day of November 1804,
in Jefferson County Virginia.

J. B. Smith

Wherein to said substantiated before
me H. H. Fowler a Justice of the
Peace in Jefferson County
State of Virginia this 22^d day
of Nov. 1804.



Attest
H. H. Fowler
Justice of the Peace

He agreed that the taking of the position
on the notice shall commence
on the 1st December 1864
of 29th Nov. 1864

Wm. Hallam
Sergeant



STATE OF MISSOURI, } ss.

County of Saint Louis.

To

Robert A Barnes

YOU are hereby commanded, that, all excuses and delays being set aside, you personally be and appear before the undersigned, a Justice of the Peace within and for the County and City of St. Louis, in the

County of St. Louis, on the 11th day of December 1864, at the hour of two o'clock P. M., at his office in the City of St. Louis, at No 321 Third Street

Frank Callan is plaintiff and

Frank A Kennedy, Francis J Kennedy & James F Kennedy are defendant on the part of the Defendants; and of this you are not to fail at your peril.

Given under my hand, this

fifth day of December 1864.

John Adams Secretary of Court

SUBPŒNA.

VS. { Subpœna for

fees 50

Justice

*Executed this writ in the County of Du & 1864 according to the return of the within named witness
John J. McCardell
J. D. Muck Deputy Constable*

STATE OF MISSOURI,

COUNTY OF ST. LOUIS.

SS.

TO *Anthony Robinson*

YOU are hereby commanded, that all excuses and delays being set aside, you personally be and appear before the undersigned, a ~~Justice of the Peace~~ *Justice of the Peace* within and for the ~~County~~ *County* of St. Louis, in the

County of St. Louis, on the *19* day of *Oct* 186*4*, at the hour of *3* o'clock, *P*M., at the office in said Township, to testify on the trial of a case wherein

James C. Stalder plaintiff, and *Thos. J. Stearns & others* defendant, in the *Exd. & Sup. Court*; and of this you are not to fail at your peril.

Given under my hand this *19* day of *Decr* 186*4*

J. A. Smith JUSTICE
Notary Public

SUBPOENA.

VERSUS

Justice.....

Examined this writ in St James' Church
On 19th 1864 by reading the same to the
within named witness John J McQuade
then 50 paid 5 off.

Attest
J J McQuade

The State of Missouri
County of St. Louis Jas
To Michael Keber

You are hereby Commaneded
that Letting aside all manner of excuse
and delay you appear before the undersigned
A Notary Public in & for said County & State
at his office No 32 1/2 Pine Street up stairs
in the City of St. Louis at 2 O'clock P.
M. of this 7th day of February 1865 there
& there to testify and the truth to say in a
certain Cause now pending in the Circuit
Court of Jefferson County State of Missouri
Wherein Emily O'Hallen is Plaintiff and
Thomas J. Keener & others are Defendants
^{on the part of the Defendants}
Therein fail not

In Witness Whereof I have
set my hand & affix my
Seal of Office this 7th Feb 1865
Jas Adams Fitchey
Notary Public
St. Louis Mo

in Col O Ballou's
Office Washington
Spencer

To be done & before
20 O'clock



James M. Smith ordered on the
basis of the 7th 1861
by reading the same to
the court named the court
order

John A. M. Smith
Comptroller

By J. M. Smith
Comptroller

Depositions of witnesses produced, sworn and examined at the Law Office of J. G. McEllan No 32 1/2 Pine Street in the City of St Louis in the County of St Louis in the State of Missouri before me the undersigned ~~J. G. McEllan~~ Fitcher a Notary Public within and for the County and State aforesaid in a certain cause now pending in the Circuit Court for Jefferson County, Jefferson County and State of Missouri between Emily O'Fallon Plaintiff and James Q Kennedy Francis Q Kennedy and Thomas J Kennedy defendants, on the part of the defendants

Robert A. Barnes of lawful age, being duly sworn and examined, on the part of the defendants, deposes and says as follows, viz:

I am President of the Bank of the State of Missouri; I reside in the City of St Louis, Mo. I was president of this bank on the 5th day of July 1864. I presume I was at the Bank on this day, as with few exceptions, I am at the Bank every day. I know that Cash John O'Fallan, ~~or~~ Clerk came to the office of said Bank ^{two or two} ~~after~~ ^{previous} to the day that the Kennedys came there. He - the Clerk - inquired for Mr Robeson the Cashier of said Bank. I informed him that he was ^{in the} Banking room. He went to ^{look for} Mr Robeson and I have no doubt met him.

In a day or two after this three of the Mr. Kennelys called at the Bank and inquired if any money had been deposited there for them, Mr. Robeson replied that there had. They asked the amount which was stated by Mr. Robeson, though I do, not recollect the amount stated. One of the Mr. Kennelys replied that it was not enough. Mr. Robeson made some observation which I do not now recollect when one of the Kennelys replied that there were taxes due in addition to the amount mentioned by Mr. Robeson as having been deposited there. My recollection is, that Mr. Robeson told them that all he had to do, was to hand them the money on their giving him certain paper or papers or something of the kind. After a short conversation between them and Mr. Robeson they said that they would go to Col. A. Hallan's office. They left. In a short time after John A. Hallan Jr., came into the office of the Bank and inquired if the Kennelys had been there, and was told they had been, and I think was told the substance of the conversation that had taken place between Mr. Robeson and them and was also informed

that they had gone to Col O'Fallon
office and if he could go up
there immediately he would probably
find them.

I do not know of my own knowledge
that any money was deposited on the
5th day of July A.D. 1864 in the
Bank of the State of Missouri in the
custody of said Bank or of any
person in said Bank by Emily
O'Fallon, the plaintiff or by anyone
for her, nor do I know of my own
knowledge, that any money had been
deposited by Emily O'Fallon or any
one for her, previous to that day
at said Bank or with anyone in said
Bank. I do not recall in the
conversation that Rabezon had with
the Kenners, about the taxes afore-
mentioned, that the amount of taxes
was either ^{asked for} ~~asked for~~ or stated. On
reflection, my ~~reflecting~~ recollection is
that Mr Rabezon asked the amount of
taxes, but the Kenners did not state
the amount. My impression is that
Mr Rabezon then asked them whether it
was one year's taxes ~~or more~~ and they
replied it was more. I did not see
Mr Rabezon tender the Kenners money
at this interview. This was the only interview
between them at which I was present on
that day. This interview took place in
the Cashier's room. My impression is

that Mr Kalesan told them that all
he had to do, was to hand them the
money, on their surrendering him
certain paper or papers. I do not now
recall, that Mr Kalesan handed
the Kennely's any paper to sign.
I do not recall seeing the Kennely's
there after this interview, on this day.
In our office Mr Kalesan and I sit
back to back, but part of the time
during this interview I was on my
feet and a tender of the money
might have been made without me
seeing it. So far as my knowledge
goes, there was no formal tender of
the money made at this interview
as I have above stated, only that Mr
Kalesan stated that he had the money.

Cross Examination by E. W. Decker, attorney for Plaintiff
I do recall that Mr Kalesan stated
to the Kennely's at this interview that there
was money there that he would pay
them on their delivering to him said
paper, and that the Kennely's replied
that it was not enough. They said
when they left that they would go up
to Carl & Fallon's office.

Robert A. Barnes

Not being able to complete the taking of
said depositions, by consent of the counsel

5

of both Plaintiff and defendants I
adjourn the further taking of the same
till the twentieth day of December, A.D. 1864
then take continued at the same place
and between the same hours mentioned
in the annexed notice

J. Adams Fitcher
Notary Public

Pursuant to the adjournment as above
stated on the twentieth day of December
A.D., 1864 between the hours of eight
o'clock in the forenoon and six o'clock
in the afternoon at the Law office of
J. G. McEllan No 32½ Pine Street in
the City of St Louis in the County of
St Louis and in the State of Missouri
I continued the taking of said depositions
as follows, viz:

Anthony L Robinson, whose deposition
has already been taken in the above
entitled cause, is, by consent of the
counsel of both parties, ^{recalled} recalled,
and on his oath, deposes and swears,
I do not recall, on my former tender
~~with~~ to Thomas J. Kenney, that I caused
it with any conditions, ~~I~~ proposed
to give them the money if they would
sign a receipt therefor. I did not explain
to them the contents of the receipt. It was
drawn up by John Keever the Clerk of John
O'Fallon. I have said receipt still

6,
I think I remarked to them, here is
a receipt for the amount. The receipt
or paper, whatever I speak, is herewith
filed and marked as exhibit "A"
Cross Examination by E. W. Decker, atty for Plaintiff
The Kennely's did not object ^{to the} receipt, but
said the money was not sufficient.
I do not know that they read the receipt.
The only objection they had for not receiving
the money was, that it was not
enough. The receipt was not the subject
of discussion.

Re-Examination

I do not remember saying to them
that I would pay them the money
if they would sign the receipt
or paper, whatever it was. I was
instructed by the party handing me
the money, to pay it to the Kennely's
on their signing the receipt or paper
accompanying the money.
Ques. Would you have paid the money under
the instructions you received without
the Kennely's signing that receipt or
paper?

Ans. Yes, to as irrelevant
as I would not

A. S. Robinson

Not being able to complete the taking of said
depositions, by consent of the counsel of both
plaintiff and defendants, I adjourn the

further taking of the same, till the eighth day of February A.D., 1865, then later continued at the same place and between the same hours mentioned in the annexed notice

J. Adams Fitchey
Notary Public

Pursuant to the adjournment as above stated, on the eight day of February A.D. 1865, between ^{the hours of} eight o'clock in the forenoon and six o'clock in the afternoon, at the Law office of J. J. McCellan, No 32 1/2 Third Street in the City of St. Louis in the County of St. Louis and in the State of Missouri. I continued the taking of said depositions as follows viz;

Michael Keber of lawful age, being duly sworn and examined on the part of the defendant deposed and said

I am acquainted with Emily O'Fallon the Plaintiff in this case. I deposited a check for Plaintiff at the Bank of the State of Missouri, to be given to the Kennedys when they called for it. I do not know the amount of it. It was Col John O'Fallon's check I deposited it with Mr Robinson the Cashier of the Bank of the State of Missouri. The arrangement was made between Mr Robinson & myself that he should pay the Kennedys the

(8)

amount called for by the check which he
agreed to do. The exhibits now here shown
the paper marked "Exhibit A" filed with
the deposition of J. P. Robinson, and
he stated that it was in his handwriting
and that the amount of money therein
stated, twenty four hundred and fifty
six dollars was the amount of said
check, and the amount that Robinson
was to pay over to the Kennersly's.
I do not recollect the exact day or month
when I handed Robinson this check, but it
was two or three days before the money was
to be paid, according to the contract
between Emily O'Hallan and the Kennersly's.
I have no distinct recollection as to when
the money was to be paid to the
Kennersly's but it was ~~between~~ ^{from} the second
~~and~~ ^{to the} fifth of July A.D. 1864. I had no
definite instructions about ~~from~~ from
plaintiff about getting a receipt for the
money from any body, but as I
thought I ought to have a receipt I
told Mr. Robinson to take a receipt from
^{the defendants} ~~an~~ ^{the} contract if they had it, and if
not then to let them sign the receipt
which I handed him, filed herewith and
marked "Exhibit A." I never deposited any
more ~~money~~ ^{checks} with Mr. Robinson on behalf of Emily
O'Hallan to be paid the Kennersly's.
I do not know of my own knowledge
that any other money or checks were paid

9

Mr Robinson on account of Emily O'Halloran
take paid to the Kennedy's under said
contract. On the day the money was
due the Kennedy's I went down to the
Bank of Missouri at about one quarter
past two o'clock in the afternoon and took
the check and drew the money for
it - stayed at the bank of Missouri until
after three o'clock, to pay over said money
to said Kennedy's in case they should call
for it. Neither of the defendants made
their appearance ^{to my knowledge} at the Bank after I got there.
I received my instructions, how to act in
this matter partly from real John O'Halloran
and partly from John O'Halloran Jr. This
was the only visit I paid to the Bank
of Missouri during this day. I drew
the money on the check at the Merchants
Bank. I went from the Bank of the
State of Missouri to the Merchants
Bank to draw the money. After
I drew the money I returned to the
Bank of Missouri. I was gone about
five or ten minutes, not longer than
ten minutes. With the exception of this
five or ten minutes absence, I was at the
Bank of Missouri from one quarter past
two o'clock until after the Bank closed. I am
not certain that I know all the defendants
I think I know two of them by sight -
but I think I should know all three of
them if I should meet them together.
The Bank was closed after I left there on

that day, I am certain that I stayed several minutes after the doors were closed. Cross Examination by Judge Krum for Plaintiff. Ques. Was not John O'Fallon Jr. with you at the Bank of the State of Missouri on the 5th of July, 1864?

Ans. Yes, sir, he took me down in his buggy and stayed there until after the Bank was closed.

Ques. Was not John O'Fallon Jr. also at Col O'Fallon's Office in this city of St Louis, on the same day during several hours ~~before~~ before you and he went to the Bank as you have stated?

Ans. He was there waiting for me when I came back from dinner, about two o'clock. I do not recollect whether he was there in the forenoon.

Ques. You were at that time Clerk, were you not, and in charge of his office in this city (St Louis)?

Ans. Yes. On that day I left the office at about eleven o'clock in the forenoon and returned at about two o'clock in the afternoon.

Ques. Did you on that day see either of the defendants at Col John O'Fallon's Office?

Ans. Neither of them.

Ques. Between what hours during the month of July 1864, was the Bank of the State of Missouri kept open for business?

Ques From nine to three
 Ans After the Bank of the State of Missouri
 was closed on that day and after
 you had drawn the money from the
 Merchants Bank, of which you have
 spoken, where did John O'Halloran go?
 Ans We went together to Dr. Pope's house
 in the City of St. Louis

Ques On the day that you were at the State
 Bank as you have stated, did you
 see either of the defendants there?

Ans No, Sir,

The paper here introduced ^{by defendant} and marked
 Exhibit "B" is admitted to have been signed
 by Emily O'Halloran, the Plaintiff

Re-examination by J. J. O'Halloran for defendant

The day on which I went to the bank, was
 a rainy day, but while going to the
 bank and while at the bank it did not rain.
 At this time Col. John O'Halloran's Office
 was at No. 237 Washington Avenue and
 is there still. This is between 11th and 12th
 Streets, and the distance from it to the Bank
 of the State of Missouri is about half a
 mile. My recollection is, that on that
 day that I went to the Bank, I was in
 the office from between 8 and 9 o'clock till
 11 o'clock. I was not there from 11 o'clock
 till 2 o'clock.

Michael Heber

State of Missouri } ss
 County of St. Louis }

J. J. Adams Fitchey a Notary

Public, within and for the County and State aforesaid
do hereby certify that Robert A Barnes,
Anthony S. Robinson and Michael Keber the
deponents, were by me severally sworn, to testify the whole
truth of their knowledge touching the matter in controversy,
in the cause aforesaid; and that their depositions were
reduced to writing by me in their presence and respectively
subscribed by them in my presence.

And I further certify that I commenced taking
said depositions at the time specified in the annexed
notul, and continued the same by adjournments
from and to the days, as mentioned by me in the
foregoing deposition, by consent of the counsel
of both parties.

And I further certify that the deposition of Robert A.
Barnes was taken and subscribed by him in my presence
on the twenty ^{day} ninth of November A.D. 1864, and that of
Anthony S. Robinson was taken and subscribed by him
in my presence on the twentieth day of December A.D. 1864, and
that of Michael Keber was taken and subscribed by him in
my presence on the eight day of February A.D. 1865, all of
which was taken and done at the Law Office of J. G. Webb,
Cellar No 32 1/2 First Street in the City of St. Louis, in the County of
St. Louis and State of Missouri, on the days respectively as
before mentioned and between the hours of eight o'clock in
the forenoon and six o'clock in the afternoon of said days
respectively.

Notary fees \$7.50
Three subpoenas 1.50
Clerkable fees 1.50
\$10.50
which was paid by
deponents

J. Adams Fitcher
Notary Public
St. Louis County
Missouri

opened & filed. Me ar
23rd 1865
E. J. Hooney, Clerk

Deposition of a witness produced sworn
and examined at the office of Krug & Decker
attorneys at Law, in the City of St Louis
in the County of St Louis and State of Missouri
before me the undersigned J I Adams
Fritchey a Notary Public within and
for the County and State aforesaid, duly
commissioned and qualified and residing
in the City of St Louis, in a certain cause
now pending in the Jefferson County Circuit
Court, State of Missouri between Emily
O'Fallon plaintiff and Thomas J
Kennerly Francis L Kennerly and
James L Kennerly defendants on
the part of the Plaintiffs

Benjamin Farver of lawful age being duly
sworn and examined on the said the
plaintiff deposes and says
I wanted to buy a piece of land in Quincy
747 and I believe this is the land in dispute
between Plaintiff and defendants, I had
this land surveyed for the purpose of buying
it, about fourteen months since. ~~I am not~~
In reference to this real estate, I satisfied myself
of its value, and made up in my mind
what I would give for it and the sum
that I was willing to give was the value
I proposed to give ^{sum} equivalent to five
thousand dollars per, I think about two hundred
and twenty acres including Sulphur
Spring. I had ~~not~~ agreed with Emily O'Fallon

to make her a conveyance to ^{certain} pieces of land in St Louis ~~parish~~ I considered equivalent to five thousand dollars, if she could make me a good title to this piece in dispute.

Question What was the value of the St Louis lands that you intended to convey, and how was that value obtained?

Ans The value was five thousand dollars, and that value was obtained by a decision of the commissioner ~~to~~ in partition, and was set aside, some at that valuation (so much of the question and answer as relates to appraisement or ascertaining of the valuation of the land, affected to as incompetent and as involving hearsay testimony and giving secondary evidence)

I failed to make this purchase as I could not get a title to the land from Emily O'Hallan, an account of some bond not being complied with, which prevented a title being made. This was a bond from the dependant, that formed the defect, to the completion of the title.

The balance of the land I believed could at that time ^{have} been sold for five thousand dollars. (I understood that James O'Hallan had agreed to give five thousand dollars for the balance of the land) this in brackets affected to as incompetent. The arrangements to purchase this land had so far progressed ~~had given~~ that I had given a list of the lots that I wished to give as part pay for the land, and I, and

James O'Hallan had surveyed the land
we intended to purchase and all East of a
certain line I was taking and all west of it
he would take each for the price specified
Cross Examination by J. G. O'Hallan attorney for
dependants

I believe the land described in Plaintiffs
petition, to be the same land that I
intended to purchase and is the same
land that I had surveyed. I think
it was about February 1864 that I made
the proposition to purchase this land
or tract for it, I did not make my propo-
sition to Miss Emily O'Hallan direct
I had no interviews or negotiations with her
personally at all with reference to the purchase
of the land. Of my own knowledge as far
as I know, she had no knowledge of the
transaction at all. I dealt altogether with
other parties. I think I made but one offer
and that was fourteen months ago. The survey
that I spoke of, was completed in March
1864, I think. I gave the list of plats that I
spoke of to Mr. John O'Hallan Jr. about
March 1864 as near as I can recollect
I may have given it to him before
All these transactions and negotiations that
I spoke of took place in or before March
1864 as near as I can recollect. I think there
were about three hundred and twenty acres
as near as I can recollect. that we had
surveyed in the tract. My offer was about
five thousand dollars for about two thirds of
the whole tract, and James O'Hallan was to give

five thousand for the remaining one thousand ^{as I understand}
~~The~~ land on his part ~~is better~~ land than
 that on the part I was to take. All I know
 of James O'Halloran's offer for his portion, of
 five thousand dollars, is what he told me
 I made a distinct proposition, and I think
 I made it in writing. I gave it to John O'Halloran
 Jr. I did not receive any acceptance of this
 proposition from either Emily O'Halloran personally
 or received ~~now~~ written acceptance of my
 proposition from either Emily O'Halloran.
 I put in my St Louis lots at what I considered
 their cash value. These lots are situated in
 Farrar's Addition in St Louis, some on Wallinich
 road Street, some on Salisbury Street, and on
 Bellefontaine Road. A very small proportion
 of these lots lay on broken ground, I think some
 of these lots lay also on 11th Street. I suppose there
~~were~~ ~~was~~ ~~about~~ ~~two~~ ~~hundred~~ ~~and~~
 two hundred and fifty front feet in all
 and varying in depth from one hundred to
 one hundred and thirty five feet. Salisbury
 Street is entirely improved. There was one lot
 on Salisbury Street of either thirty or fifty feet front
^{which I have since sold}
 and I think there were several other lots on Salisbury
 Street. Bellefontaine Road is not improved. I
 think there was but one lot on Bellefontaine
 Road, of either twenty or twenty five feet front.
 The lots in the offer, on Salisbury Street are about
 three blocks from Broadway. The lot on the
 Bellefontaine road lies between Walnut road
 and Salisbury, on the west side and there is a
 house on it. The streets on which the balance

of these lots lie are not improved. The house on the lot, on Bellegardine Road, belongs to the tenant and not to me. My negotiations for this land were completed about March 1864, but from this time to about August 1864 I frequently spoke to John O'Hallan Jr. telling him to hurry the matter up and ~~try~~ try and give me a deed. The plaintiff Miss Emily O'Hallan was in Jefferson County at the time these negotiations ^{were going on} and survey was made and continued there until August 1864. I believe ~~she~~ ^{she} went east some time last summer but at what time I do not recall. I expected to get title through Emily O'Hallan. I did not know in whose name the title was when I first began these negotiations. I made no examination of the title at the place of record. As far as the record of the title was I was ignorant how it stood while these negotiations were progressing. All the information I ever had, or now have, is ^{after title} from information derived from ~~what I have from~~ others, and not from any examination of the records myself. I mean by information derived from others, what others told me, and papers shown me by them. All I know of the reasons why Emily O'Hallan could not make the deed, were the reasons given me by John O'Hallan Jr. as spoken of in my examination in chief.

Re examination

I read a bond signed by defendants
 Question Would you have complied with the agreement made with you by John O'Hallan Jr. could a

perfect title have been made you by Emily
Hollan?

Ans. Okey to because irrelevant incompetent
and because no agreement with John P. Hollan
by the witness has been testified to by him)

Ans. Yes

Ques. Had a perfect title been made to you
latter land in question would you have
given the lots before mentioned for the same?

Ans. I would.

Question What did you get for the lot you sold on
Galishney Street?

Ans. I got ten dollars a foot more for it than I
would have got for it in exchange for the land
in question. I got forty five dollars a foot for
it.

Re cross examination.

I do not know the hand writing of the
Hennrichs the defendants, or any of them
I did not see them sign the bond that was
shown to me I do not know that the bond
that was shown to me was in the hand writing
of the defendants or any of them. All I know
about this is, that a bond purporting to have
been signed by them was shown me.

I do not know of my own knowledge, nor
except from information derived from John
P. Hollan Jr., what would have made a perfect
title latter land I was negotiating for
~~I think I saw the deeds making up the chain~~
~~of title and if there had been other defects~~
~~I think I would have known them~~

Question If there were any defects in the title, would

you, except from information derived from John O'Fallon Jr, have known them?

Ans I think, I would have known them.

Ques How would have known them?

Ans I think I saw the deeds making up the chain of title.

Ques Is that all the same except from information derived from John O'Fallon Jr that you would have known any defects in the title?

Ans Yes sir

If there had been outstanding liens, on this land I would not have known them except from those sources.

Ques In putting in the Salisbury Street Lots or lots, did not the fact that you were in that offer getting rid of other much less valuable lots, enter into the calculation that you made, and did you not therefore estimate it or them in that offer at less in price than you would have sold them for by ~~themselves~~ itself or themselves?

Ans I put the lots in at the price they cost me. If I had been selling the lots separately I would have asked larger prices for all of them than I put them in in that trade.

Re-Examination

Ques Had the dependants in this case executed to Emily O'Fallon a deed for the above stated land, according to the deed I read signed by the dependants, and then from Emily O'Fallon executed ^{to you} a deed to the land in question would you have purchased the land according to the agreement?

Ans Yes

Ques Would you have bought the land without
an examination of the title?

Ans No Sir

Ques Was not your compliance with your
agreement contingent upon the result of
such an investigation?

Ans Yes Sir, I would not have bought the
land without an investigation of the title
on record

Wm. H. H. H.

State of Missouri }
County of St Louis } ss

I, J. D. Adams Fitcher a Notary
Public within and for the County and
State aforesaid, do hereby certify that
Benjamin Farrar the deponent was by
me sworn to testify the whole truth
of his knowledge touching the matter in
controversy in the cause aforesaid;
and that his deposition was reduced
to writing by me in his presence
and subscribed by him in my
presence on the second day of May
A.D. 1865, between the hours of eight
o'clock in the forenoon and six o'clock
in the afternoon at the office of Krum
& Decker attorneys at Law, in the City
of St Louis in the County of St Louis
and State of Missouri
and I do further certify that the

foregoing deposition was taken by
the mutual consent and agreement of
the attorney of both the Plaintiff and
defendants

On Testimony whereof I have hereunto
set my hand and affixed my Notarial
Seal at St. Louis the
day and year last above written

Edwards Fritchey

Notary Public

St. Louis County
Missouri

Notary Fee, \$5.50
paid by Plaintiff

E. O. Wilton

Geo. S. Hornum & Co.

Received of
and

Oct. 13 1865

Samuel M. M. R.

State of Missouri
County of St. Louis

To Anthony S. Robinson

Greeting You are hereby commanded
that setting aside all manner of
excuse or delay you appear personally
before me the undersigned a Notary
Public within and for the County
and State aforesaid at the County
Office of Krum & Decker number
43 1/2 Olive Street between Third
and Fourth Streets in the City
of St. Louis on the ~~Ninth~~ ^{twelfth} day of
May A.D. 1865 at the hour of ~~one~~
o'clock P.M. of that day then and
there to testify and the truth to say
in a certain cause now pending
in the Circuit Court of Jefferson County
State of Missouri wherein Emily
O. Fullon is Plaintiff and Thomas
J. Kennerly et al are defendants
in behalf of the defendant and
herein you are in no wise to
fail

In Witness whereof I
have hereunto set my hand
and affixed my Notarial seal
at office this Eighth day of
May A.D. 1865

Francis J. Donovan
Notary Public
St. Louis Co. Mo



The 25th

J. C. McIntosh

Look at the picture

The picture is of the same place
May 8th 1868 - by nearly the same
to the north name Robinson

Emily C. Fulton
25
Thomas J. Kennedy
at
Tulahoma
Anthony J. Robinson
Cochise State Bank
of Phoenix

Depositions of Witnesses produced
sworn and examined at the Law Office
of Krum & Decker No 45 1/2 Olive Street
in the City of St. Louis, County of
St. Louis and State of Missouri, ^{Pursuant to an agreement between the parties}
before me the undersigned Francis
J. Donovan a Notary Public within
and for the County of St. Louis State
aforesaid, in a certain cause
now pending in the Circuit Court
of Jefferson County State of Missouri
between Emily O. Fallon Plaintiff
and Thomas J. Kennerly et al
defendants on the part of the Defendants

Anthony S. Robinson of lawful age
being sworn and examined on
the part of the Defendants deposes
and saith

On the second or third day
of July 1864 Michael Keeber brought me
a check of Col. John O. Fallon on the
Merchants Bank for \$2456 - I asked
him whether he or I would collect
the money - I told him that I con-
sidered the check as good as the
money - On the fifth day of July
1864 The Kennerlys came in and
I tendered them \$2456 in United States
Legal Tender notes - I made the tender
by placing the money on a table
and told them that there was \$2456
left with me to hand to them
on a certain contract between

Emily O. Fallon and the Kenners
the amount being due that day.
This tender was made in the
Cashiers room at the Bank of the
State of Missouri - I addressed myself
to Thomas S. Kennery - the other
two brothers and Mr. Barnes the
President of the Bank were looking
on when the tender was made -
no others were present that I recollect
of - The money was in open
packages - two of them had a
thousand dollars in each and
another had four hundred and
fifty-six - The money was
United States Legal Tender notes - the
money was of no other character.

I offered the money to Thomas
S. Kennery. I do not recollect at
that time of saying anything about
a receipt - I had a blank receipt
which if they had taken the money
I would have asked to be signed.

It is possible that I did state at
the time that I had a blank receipt
which I would have required to be
signed - the receipt spoken of
was filed with a former deposition
taken by defendant.

Ques

Mr. Robinson on a former examina-
tion you stated that you proposed
to give them the money if they
could sign a receipt therefor - Now
please state when that proposition

was made?

Ans If made at all - I presume it was made at the time of the tender.

Ques Don't you know that the proposition was made by you?

I presume it was - in those cases receipts are usually given.

Ques What became of the money (the \$2456)?

Ans It had been in my hands up to the third day of May 1865.

Ques What became of the check?

Ans On the fifth day of July 1864 Mr. Keiser came in, in Bank hours between two and three o'clock and got the check from me and went down to the Merchants Bank and got the money and handed it to me.

Ques Did you part with the money that day?

Ans I did that day after bank hours - after three o'clock.

Ques To whom did you give it?

Ans I handed it to John O. Fallon Jr.

Ques How long did Mr. Keiser stay at the bank after he gave you the money?

Ans After leaving the money he went out and came back with John O. Fallon Jr.

Ques Was it on their return that you paid the money to John O. Fallon Jr.?

Ans Yes. - I think I paid it to John O. Fallon Jr.

Ques How came you to be in possession of it to the third of May 1865?

Ans On the sixth day of July 1864

the money was brought back to me by John O'Fallon Jr. who had taken it as he said to make a tender to the Kennerys.

Ques Now Mr. Robinson I understand you that this \$2456 was not deposited with you in actual money in United States Legal Tender notes until between two and three o'clock on the fifth of July 1864 is my understanding correct?

Ans It might be so considered.

Ques Did you count and examine the money brought to you by Keeber?

Ans I did.

Ques What was the amount and character of the money?

Ans It was \$2456 of United States Legal tender notes of various denominations -

Ques Did that identical money brought to you by Keeber remain in your hands till the close of Bank hours?

Ans It did.

Ques What time in the day was it on the fifth of July 1864 that you made the tender to Kennerys?

Ans It was after one o'clock and before the money was drawn by Mr. Keeber on the check.

Ques I understand then that the \$2456 tendered by you to the Kennerys was money advanced by you on Col O'Fallon's check - is this

correct?

Ans
Ques

Yes

Did the Kenners, defendants or any of them make their appearance at your bank and in your presence on the fifth of July 1864 and after the tender by you of the \$2456 - if so when after that time - and how often?

Ans

I do not remember - it is possible they may have but I have no recollection of it

Ques

Do you now state positively and no one of them?

Ans

I cannot be positive

Ques

In your first examination you speak of a second interview with the defendants or one of them - when did that take place?

Ans

I cannot remember - they were at my house next day

I think on reflection that I had a second interview at the bank on the fifth of July 1864 with Thomas J. Kenners.

Ques

When did that second interview take place?

Ans

I think it was after three o'clock of that day - that is my recollection

Ques

Was John O Fallon Jr. at the bank that day at any other time than when he came with Mr. Keeber?

Ans

I do not recollect positively - I think he was.

Ques

When did John O Fallon Jr.

deposit the fifty dollars spoken of by you in your first examination?

Ans About three o'clock of the fifth of July and after I informed him what transpired between the Kennersly's and myself.

Ques Was this before at or after three o'clock?

Ans It was at or near three o'clock about fifteen or twenty minutes before the closing of the bank.

Ques How long after that was it you had this second interview spoken of?

Ans It was after the closing of the bank — it was then I informed them that John O Fallon Jr. had just left the bank.

Ques Were the bank doors closed when the Kennersly's got there at this second interview?

Ans I think they were.

Not being able to complete the taking of said Depositions by reason of want of time I adjourn the further taking of the same till to morrow then to be continued at the same place and between the same hours (between 8 a.m. and six P.M.)

Pursuant to the adjournment as above stated on the tenth day of May in the year 1865 between the hours of

7
eight in the forenoon and six in the afternoon at the same place & continued the taking of said depositions as follows

Ques Do I understand you to say that at the second appearance of the defendants or any of them at your bank on the 5th of July 1864 next after the tender that at that time your bank doors were closed?

Ans It might have been fifteen minutes before the closing of the bank

Ques At that time had O Fallon Jr. and Keber left the bank?

Ans They had and I informed the Kenners of that fact.

Ques Well then - was that the last appearance of O Fallon Jr. and Keber at the bank that day?

Ans It was O Fallon Jr.
Ques Did Keber at this departure now spoken of, take with him the \$2456 which you say had been deposited with you by Keber, on his return from getting the check cashed, at the Merchants Bank and which \$2456 you state you delivered to O Fallon Jr.?

Objected to by Counsel for Plaintiff as leading

Ans It was at or about this time that I delivered the money to

John O. Fallon Jr.
Ques Was it at or before his said departure from the bank that the delivery was made?

Ans ~~He said~~ Objected to as leading
On the delivery of it he went out of the bank, into his buggy as I suppose

Ques Was that O. Fallon Jr. last appearance at the bank that day?
Objected to as leading

Ans It was
Ques Was there any other deposit on that day of money made with you or your bank or any officer or person in your bank after the said delivery as stated by you of \$2456 to O. Fallon Jr. on behalf of the Plaintiff or by her to be tendered to defendant?

Ans Objected to as leading
Nothing after
Ques Was there any deposit before that delivery of any sum of money by or on behalf of Plaintiff on that day other than the \$2456 and to be delivered to defendant or so state the amount - when and for what purpose?

Ans Objected to as leading
There was a deposit made with myself on the 5th of July between the hours of two and three o'clock by J. O. Fallon Jr.

7 of fifty dollars in United States
Legal Tender notes on
behalf of Emily O Fallon to
pay taxes due ^{on} some certain
property - This was ~~for taxes~~
to be tendered the Kennedys for
taxes which they claimed was
due them but which they would
not state the amount.

Ques Was this deposit of \$50 made
before the departure of O Fallon
jr. spoken of by you above?

Ans It was

Ques Objected to as leading
Do you recollect the time of
the deposit?

Ans Between two and three o'clock
on the 5th

Ques Was it before or after the departure
of O Fallon jr. spoken of by you
above?

Ans It was before

Ques What became of this deposit of
fifty dollars?

Ans It remained in my hand
some three weeks when I again
delivered it J. O Fallon jr.

Ques Which How many of the
defendants or which of them
made their appearance at the
bank the second time of said
5th of July 1864 and after the de-
parture of O Fallon jr. as testified
by you above?

Ans One of them I believe Thomas J. Kennedy - It might have been two.
Ques Had you at this second interview this deposit of fifty dollars in your hands?

Ans My recollection is I had.
Ques Did you then make a tender of the fifty dollars to him?

Ans That is my recollection.

Ques Are you positive that you made the tender to Thomas J. Kennedy of the fifty dollars at that second interview?

Ans I am not positive. I cannot now recollect.

Ques Do you not on further reflection know or remember that you did not tender that fifty dollars?

Ans My recollection is not distinct enough to say positive - I did not charge my memory with all these transactions.

Ques On your former examination in answer to the question "Did you tender that fifty dollars in accordance with the said instructions" you answered "I don't think I did - I don't think the defendants came in after the fifty dollars were deposited" is your recollection any clearer now as to the tender of that fifty dollars than it was when that question was answered on the former examination.

and do you or do you not ^{re}-affirm that answer?

Objected to as leading - cross-examination of the party's own witness and unfair in reciting a part of the deposition without reading to the witness the full of his former testimony

Ans My recollection is not very clear. I have no positive recollection of making the ^{value of the} fifty dollars

Ques Was any one present in the bank at the second interview besides you and Mr. Thomas J. Kennedy if so please state who - ?

Ans There might have been - but I cannot recollect

Ques Were any of the officers of the bank present?

Ans I think not at this second interview - it was in the cashier's room.

Ques Who was president of the bank at that time?

Ans Robert A. Barnes.

Ques Was he present at the second interview?

Ans I don't think he was

Ques Has he a room at that bank?

Ans Yes Mr. Barnes makes the cashier's room, his room.

Ques Were any of the employees of the bank, its clerks or tellers in the bank at that second inter-

view with T. J. Kennerly?

Ans The employees of the bank were in the bank ~~was~~ on adjoining room at their respective duties.

Ques Who on said 5th day of July 1864 attended to the closing of the bank doors?

Ans Thomas Heffernan the porter of the bank

Ques Was he at that time in the employ of ~~that~~ bank?

Ans He was and is still

Ques At that second interview with Thomas J. Kennerly did you make any mention to him of that deposit of \$50?

Ans I did not

Ques Did you at that second interview make any tender of any money whatever to said Kennerly on behalf of the Plaintiff?

Ans I don't think I did

Ques Mr. Robinson: will you now please state whether any conversation took place between you and the defendants or any of them at the time you made the tender of the \$2456 if so please state what that was?

Ans At the time of making ~~of making~~ the tender of \$2456 of United States legal tender notes to Thomas J. Kennerly he asked me how much money there was there?

I replied \$2456 the amount due on a certain contract (on the 5th of July 1864) - between Emily O'Fallon and the defendants and ^{he} stated that that was not enough, that there was some ~~taxes~~ due him besides the \$2456 and I then asked him what was the amount of those taxes which he did not state he then left the bank in search of Mr. O'Fallon - ^{said}

Ques

In reply to the question put by you to Kennerly concerning the amount of taxes, have you stated all the reply made to you by Mr. Kennerly?

Ans

as far as I recollect - I told him as he was about leaving the bank to go and see Mr. O'Fallon - about the taxes - which he did - he started out -

Ques

Do you recollect in Mr. Kennerly's reply to your question concerning taxes - his saying to you anything about his having tax receipts with him -?

Ans

Objected to as leading I don't recollect of his speaking of having ~~tax~~ receipts with him but he stated there was several years taxes due him

Ques

Where did this first conversation take place?

Ans

In the Cashier's room

Ques Do I understand that this also was part of the conversation between Kennedy and you at the first interview?

Ans It was

Ques Was anything else said at that interview?

Ans Not that I recollect of

Ques Have you stated all that was said at that interview about taxes?

Ans I think I have - he claimed to have paid several years taxes

Ques Had you up to the time of that first interview been furnished by Plaintiff or any one for her with any money to be paid to defendants - except the check which you speak of of Col O Fallon for \$2456?

Ans Up to the time of making the tender I had not been furnished with the funds by any party -

Ques Do you know Emily O Fallon Plaintiff to this suit?

Ans I do not -

Ques Do you know of your own knowledge and apart from the statements of others anything respecting the purpose of that tender of \$2456?

Ans I know nothing of my own knowledge respecting the controversy nor do I know now; nor anything of the object of making the tender except what the parties told me

at the time of the deposit.

Ques

When the fifty dollars was deposited with you by O Fallon Jr was any thing said respecting that fifty dollars - if so what was said by him respecting it?

Ans

At the time O Fallon Jr. deposited the fifty dollars with myself I stated in substance the conversation that had occurred between Kennedy and myself in relation to taxes. I informed Mr. O Fallon Jr. that the Kenners claimed taxes, without stating the amount, as due them in connection with this contract of \$2456 - and he Mr. O Fallon then deposited in my hands the sum of fifty dollars to pay for those taxes when the amount could be ascertained this was on the 5th of July 1864 between the hours of two and three o'clock of that day of \$50

Ques

On making that deposit, did Mr. O Fallon say anything and if so what - did he say?

Ans

On handing me the \$50 he stated that he thought that sum would cover the taxes claimed that if the Kenners would come in, to pay the taxes to them.

Ques

Were your instructions to pay any more or less than the \$50 or what were your instructions

as to the amount to be paid
for taxes?

Ans His instructions were limited
to the fifty dollars

Ques Do you know why the fifty
dollars was left with you after
the delivery of the \$2456?

Ans I cannot say - It was left
with me to pay taxes, which the
Kennerys claimed, the amount
of which they did not state

Ques Was anything said by Mr. O
Fallon Jr. about the fifty dollars
when the \$2456 was taken away
if so what was said?

Ans Nothing was said about the
\$50 when the \$2456 was delivered

Ques How long before the \$2456 was
taken away - was it - that - the \$50
was deposited?

Ans I delivered the \$2456 about the
closing of the bank - I suppose it
was not over a half hour's time.

Ques How long after the \$2456 had
been redelivered by you to O. Fallon Jr.
was it that Mr. Thomas Kennedy
made his second appearance
at the bank?

Objected to - because it is assuming
that the Kennerys came there after
the \$50 was deposited and after
the \$2456 was handed to O. Fallon Jr.

Ans It was a short time

Ques

I want to know whether the deposit of the \$50. was made before or after the delivery to O Fallon Jr. of the \$2456?

Ans

Ques

It was made before
Will you state whether the second appearance and interview of Thomas J. Kennedy with you took place before or after the delivery by you of the \$2456 by ~~you~~ to O Fallon Jr.?

Ans

Ques

Objected to - because the question is improper in form

Ans

It took place before
Was that second interview before or after the deposit of the fifty dollars?
The fifty dollars. My recollection is the interview took place after the deposit of the fifty dollars and before the departure of O Fallon Jr. with the \$2456 and my recollection is now that the fifty dollars was delivered with the \$2456

Ques

Were the bank doors closed when Mr. O Fallon took his departure with the money?

Ans

That is my recollection

Not being able to complete the taking of said depositions by reason of want of time I adjourn the further taking of the same till to-morrow then to be continued at the same place and between the same hours

Pursuant to the adjournment as above stated on the Eleventh day of May in the year 1865 between the hours of eight in the forenoon and six in the afternoon at the same place I continued the taking of said depositions as follows

Ques Mr. Robinson do you recollect and if so will you give the language of Mr. Kennedy about the taxes due upon that land at the first interview on the 5th of July 1864?

Objected to because the same question has been repeatedly asked in this and former depositions and as often answered as asked

Ans I can only recollect his stating that Mr. O'Hallon was owing him for taxes due him.

Ques In your first deposition on your cross examination by Mr. Decker attorney for Plaintiff the following interrogatories were put to and answered by you as follows "Did you ask the Defendants what the amount of those taxes were?"

Ans "I did" Ques Did they tell you?

Ans He stated that it was more than a year's taxes without stating the amount — In your present deposition you have repeatedly stated that Mr. Kennedy's language at this interview concerning taxes was that several years taxes

were due Now sir which of these statements made by you of the language of the Kennersly's concerning taxes on that occasion is the true one?

Objected to. The Plaintiff's counsel here insists that the witness have the whole of his former deposition read to him before he can be cross questioned as to any part of it, which Defendant's counsel objects, and said deposition is not read Plaintiff then objects to the question as a cross examination by Defendant of his own witness concerning testimony given in December last as unfair towards the witness and unheard of in the Practice of the law.

Ans

I do not remember Mr. Kennersly stated that ~~one~~ there was one year's taxes due but I do remember distinctly that he stated there were taxes due him without stating the amount - he might have stated one year but I cannot recollect it - I now qualify my statement ^{where} there was several years taxes due.

Ques

Do I understand you to say that at this first interview Mr. Kennersly did not tell you or did not use the language that several

years taxes were due?

* Objected to for the same reasons as above

Ans I have no recollection of his stating that several year taxes were due

Ques Was anything said by Mr. Kennedy on that occasion as to the number of years of taxes due?

Objected to as being several times asked and answered

Ans I do not remember his stating any number of years of taxes due him - but he stated that there were taxes due, this is my present recollection

Ques You have stated in this present deposition that at the close of this first interview you told Mr. Kennedy to go and see Mr. O. Fallon Jr. about the taxes which he did - he started out - now do you know that Mr. Kennedy did as you stated see Mr. O. Fallon Jr. about the taxes?

Objected to - as imputing to the witness what he did not say.

Ans Immediately after the conversation about taxes on the first interview I advised him in this manner You had better go and see ~~Mr.~~ Col. Mr. O. Fallon about the taxes, meaning Col John O. Fallon Mr. Thomas J. Kennedy answered he would, and immediately

started out of the bank - at the same time indicating where his office was, on Washington Avenue.

Ques Do you know anything of the movements of Mr. Thomas J. Kennerly or of any of the defendants between the first and second interviews on that day?

Ans I do not.

Cross Examination

Ques Do you remember that when John O'Fallon Jr. deposited the fifty dollars for taxes with you after you had told him that the Kennerlys claimed that there were taxes due them that John O'Fallon also said to you at that time and place that he made endeavors before that time, to ascertain from the Kennerlys what amount of taxes they had paid, if any, and that they were endeavoring to evade stating the amount of taxes in order to invalidate the tender or that he, ^{O'Fallon} at that time told you anything to that effect?

Objected to by counsel for Defendants on incompetent and as involving hearsay testimony of the confessions of the Defendants and as involving incompetent evidence as to Defendants claim and as generally illegal and

incompetent -

Ans I remember John O'Fallon Jr. making that statement.

Ques You have been asked if the doors of the bank were closed do you mean they were locked or merely shut-to?

Ans They were shut-to, not locked or barred.

Ques Is it not your recollection that when the \$2456 withdrawn by John O'Fallon on the evening of the 5th of July, ^{they} were not so withdrawn until the close of bank hours?

Ans That is my recollection - and I think I have already stated that fact.

Ques How long was Keeber absent from the time he got the ~~money~~ ^{check} from you until he returned ^{with} the money called for by the check?

Ans Not more than fifteen minutes ^{to collect the check}.
Ques During this time of Keeber's absence, did either of the Kenners come in to the bank and demand that money?

Ans No there were not in bank at that time.

Ques At the time you tendered the \$2456 to the defendants - did they or either of them make any objection to the tender or to the receipt of which you have spoken except that the amount which you tendered was not sufficient as it ~~was~~ did not embrace the taxes

which were due them

Ans

The only objection which was made by Thomas J. Kennedy who was spokesman on the occasion (I think it was Thomas J.) was that the amount then tendered them \$2456 was not sufficient to cover what he claimed was owing to him

Ques

Was the receipt the subject of discussion between you?

Ans

I do not remember any discussion about the receipt. I told to him Thomas J. Kennedy that my instructions were to take a receipt when the money would be paid by me. I then having the form of the receipt in my hand but don't remember that Mr. Kennedy read the receipt - there was no controversy about it. I may have read it to him but don't remember distinctly

Ques

Do you ~~remember~~ How many times have the Defendants taken your deposition in your this case?

Ans

This is my third deposition in this case.

Ques

Was your recollection of the details of this transaction better at the time your first deposition was taken than it is now?

Ans

Yes they were - because they were ~~near~~^{near} the time they happened

Re-examination by Defendants Counsel
Ques At the time of the deposit by
O Fallon p. with you of the fifty-
dollars did he, ^{O Fallon} say anything about
the amount of taxes due?

Ans He remarked in the course of con-
versation that he endeavored to see
the Kennerslys in order to settle the
amount of taxes that they claimed

Ques ~~He said nothing~~ Did O Fallon p. state
to you on that deposit the amount
of taxes due?

Ans He did not-

Ques Did he state to you the number of years
for which taxes were due?

Ans He did not-

Ques Did he state to you the reason why
he deposited that sum of fifty dollars

Ans To pay the taxes claimed by
the Kennerslys

Ques Did he ~~not~~ state to you on that
deposit that that sum would cover
the amount of taxes due and claimed
by the Kennerslys?

Ans Objected to as leading and not
growing out of the cross examination
I don't recollect his stating so
distinctly

Ques Do you recollect ^{anything about} his stating
anything about the sufficiency or
insufficiency of that amount to
pay the taxes?

Objected to as not growing out
of the cross examination

Ans I do not recollect his stating that that sum would be sufficient or insufficient to pay the taxes.

Ques What were his remarks to you at the time he made the deposit about the taxes and the money?

Objected to as going into matters about which the Defendant on the examination in chief had fully asked the witness and not going out of any ^{matter} ~~question~~ on the cross examination.

Ans At the time Mr John O Fallon deposited the fifty dollars with me he stated that it was to pay taxes claimed by the Kenners. * also stated that he had made fruitless efforts to obtain from the Kenners the amount of taxes claimed and from what he knew or saw that the Kenners seemed disposed to shuffle or evade the settlement of the ~~respective~~ transaction. *

The answer of the witness included within and including the words "also" and "transaction" objected to by Defendants counsel as irrelevant, not responsive to the answer, and incompetent testimony, the question being as to the remarks of O Fallon at the time of the deposit in reference to the taxes and the money.

Ques At what time that day were the doors of the bank locked

Ans At four clock they were barred - ~~but~~ the officers remain in the bank after about an hour or half hour after the close of bank hours - the usual closing of bank hours being three o'clock

Ques Do you ever in your bank transact any business of any description after the close of bank hours if so what kind of business?

Ans We do so sometimes - transact some kind of business after the usual close of bank hours - as receiving deposits - either general or special deposit - or some special business.

Ques How long has that been the practice of your bank within your knowledge?

Ans Some thirty years

Ques Do you of your own knowledge know that Mr. Keeber drew the money that he handed you on Col O'Fallon's check?

Ans I was not at the Merchants Bank when the money was paid on that check therefore I do not know it of my own knowledge

Ques Is the receipt spoken of by you the same as that filed with your record deposition?

Ans It is the identical receipt handed

to me by Mr. Keiser and filed in
my second deposition.

Ques

Did you hand or show read
or offer to read or explain the
contents of that receipt to the Kenners
or any of them or did the Kenners
or any of them read that receipt
at the time of the tender of the \$2 & 50?

Objected to for the reason that
the witness has already said
that he did not recollect that
Kenners read or he read it
to them but has emphatically
said that ^{it} was not the subject
of controversy between them.

Ans

I have no recollection of reading
it to them - I don't think the
Kenners read or knew the contents
of the receipt.

Ques

You state that the three Kenners
were present at the first interview
and that Thomas J. Kenners
was spokesman, do you recollect
having any conversation with
any other of the Defendants at that
interview?

Ans

I do not.

Re-Cross Examination by Plaintiff

Ques

Has not there a clock in the afternoon
been the hour of the closing of the
Bank ~~of~~ hours of the Bank
of the State of Missouri for the
last fifteen years?

Ans Yes - It has been - previous to that
It was two o'clock

Ques Has it been customary at the
bank to pay out ^{after three o'clock} money?

Ans ~~to pay out~~ It has been done
frequently - as a general ^{rule} ~~custom~~
It is not the ~~custom~~

Sworn and subscribed?

May 11th A.D. 1865

A. Robinson



I Francis J. Donovan a Notary
Public within and for the County of
St. Louis State of Missouri do hereby
certify that Anthony S. Robinson the
deponent whose place of residence
is in the City of St. Louis State of Missouri
was by me sworn to testify the
whole truth of his knowledge, touching
the matter in controversy in the cause
aforesaid; and that his deposition taken
pursuant to an agreement between the
parties ^{and by consent of parties} was reduced to writing and
subscribed by him in my presence
on the Eleventh day of May 1865 between
the hours of eight o'clock in the forenoon
and one o'clock in the afternoon
at the Law Office of Krum & Decker, No
45 1/2 Olive Street in the City and County
of St. Louis and State of Missouri

In witness whereof I have
hereunto set my hand and affixed
my Notarial seal at Office in the
City and County of St. Louis this 11th day of May 1865
Francis J. Donovan
Notary Public

May 1866
Jefferson County
Circuit Court

Depositions for
Defendants in case

Emily D. Hallen

vs

Thomas J. Kennedy
et al

Received of Ernest

and

Filed May 17 1865

Samuel H. P. Kelly

To

Subscribing Depositions	14.00
Copying and papers	35-
Receives stamp	5-

Postage	18
"	814.58

Paid by Defendants

Deposition of a witness produced sworn and examined at the Law office of J. G. McCellan No. 32 1/2 Pine Street, in the city of St Louis in the County of St Louis and in the State of Missouri before me the undersigned J. D. Adams Fitchey a Notary Public within and for the County and State aforesaid, in a certain cause now pending in the Circuit Court of Jefferson County State of Missouri ^{between} ~~between~~ Emily O'Fallon ~~vs~~ Plaintiff and James L. Kennedy, Thomas L. Kennedy and Francis L. Kennedy ~~are~~ defendants on the part of the defendants

Anthony S. Robinson of lawful age being by me first duly sworn and examined on the part of the defendants deposes and saith: I am Cashier of the Bank of the State of Missouri in St Louis I was acting in this capacity ~~at that~~ on the fifth day of July A.D. 1864

Question Was there any money deposited in your Bank on said fifth day of July A.D. 1864 by, for, or on behalf of Emily O'Fallon if so, how much, by whom deposited and for what purpose deposited?

Answer There was deposited in my hands on the 2nd of July 1864 by Mr Michael Keener the clerk of John O'Fallon the sum of two

thousand four hundred and fifty six dollars, and on the 5th day of July 1864, the further sum of fifty dollars. All this money was in United States Legal Tender notes. This money was deposited for the purpose of being paid over to said defendants. On said 5th day of July, I made a tender of two thousand four hundred and fifty six dollars in United States Legal Tender notes to Thomas J. Kennedy, one of the defendants. To whom he replied that the sum was not enough, I then asked him what constituted the difference. He said there were some taxes due him without stating the amount. The above fifty dollars having been deposited to pay taxes. The above sums of money were deposited with me on behalf of Miss Emily O'Halloran.

(By consent of counsel the above testimony is ~~taken~~^{taken} as responsive to the question)
Question At what time on the 5th day of July 1864 was this tender made by you of two thousand four hundred and fifty six dollars?

Ans. It was during Bank hours, between 9 o'clock A. M. and 3 o'clock P. M.

Question Who deposited the fifty dollars you

Ans speak of, on the 5th day of July 1864
 Ans Mr John O. Fallon Jr.

Question For and on account of whom did he make the deposit?

Ans For Miss Emily O. Fallon

Question On or about what hour did he make that deposit?

Ans It was within bank hours, after the defendants had left.

Question How long before the Bank closed was the deposit made?

Ans It was about half past two o'clock

Question Was that fifty dollars or any portion of it tendered by you to defendants or any of them before the Bank closed on said 5th day of July A.D. 1864?

Ans They were not there to make the tender after the fifty dollars, ~~they were not~~ were deposited.

Question Was not one of the defendants there after the fifty dollars were deposited, and if so, who?

Ans I do not remember.

Question Did you not have a conversation with Mr Thomas Kennedy just before the Bank closed?

Ans I can not charge my memory with that.

Question Do you not recollect of saying to him Mr Thomas Kennedy, after the tender

of twenty four hundred and fifty six dollars was made, and before the Bank closed on said 5th day of July 1864, that Mr John O Fallon had just left the Bank

(Objected to by Plaintiffs, counsel as leading and irrelevant)

Ans. ~~He said~~ I think I did.

Question Do you not then recollect that Mr Thomas Kennedy, one of the defendants was at the Bank after Mr John O Fallon had made said deposit of fifty dollars, and before the bank closed?

(Objected to as argumentative, as assuming facts that witness has not stated and as leading)

Ans. I do not remember.

Question Where was it that you stated to Mr Thomas Kennedy, that Mr John O Fallon had just left?

Ans. I think it was at the Bank.

Question At the time that you told Mr Thomas Kennedy that Mr O Fallon had just left, ~~you~~ did you tender him said fifty dollars or any part of it?

Ans. I do not remember, ~~but my impression~~ that I did. He did not tell me what the

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amount
~~whole~~ of the taxes were.

Question. At this second interview, with Mr. Thomas Kennedy, did you ask him what the amount of the taxes were?

Ans. I did not, ~~not~~ at the second interview I did at the first.

Question. Was anything said about the taxes at the second interview?

Ans. I do not remember.

Question. Did you at the second interview with Mr. Thomas Kennedy, inform him of the further deposit of fifty dollars by John O. Fallon Jr. on behalf of the Plaintiff and for what it had been deposited?

Ans. I do not believe that ~~he~~ returned after the deposit of the fifty dollars.

Question. Was the second interview with Mr. Thomas Kennedy, had to the best of your recollection, before or after said deposit of fifty dollars?

Answer. I believe it was ^{before} ~~after~~, to my recollection.

Question. Did you make any mention to Kennedy then of that deposit?

Ans. I do not remember.

Question. ~~Did~~ ^{I state that you told} you, ~~told~~ Mr. Thomas Kennedy at the second interview, ~~as also stated by you~~ that Mr. John O. Fallon Jr. had just left now, sir, how long before you made

this statement to Mr Thomas Kennedy
had it been, since Mr O'Fallon
had left the Bank?

Ans About a half an hour.

Question ~~Did~~ Had Mr John O'Fallon's presence
at the Bank a half an hour previous
as you state, anything to do with
that deposit of fifty dollars?

Answer I suppose only in being interested in
the settlement of the matter, being family
affairs.

Question Did he make that deposit of fifty
dollars, at the time you speak of
a half an hour previous, to the said
interview ^{with} Thomas Kennedy?

Ans. He did then make that deposit, to the
best of my recollection.

Question Had you any conversation with
the defendants or any of them in
relation to said deposits or either
of them after bank hours on said 5th
of July 1864 or on any subsequent
day at the bank or elsewhere?

Ans I think I had on the subsequent day.

Question With which of the defendants?

Ans With Thomas J. Kennedy

Clerk to by Plaintiff's counsel

Question Did you state at this last interview on the morning of the 6th any thing relative to said deposits if so, what statements did you make?

Ans. I told Mr Kennedy, that ~~that~~ Mr O'Fallon here present, had gone to his house to make him a tender of the money.

Question Did you make any statement to Mr Kennedy at that interview as to the amount of the money on deposit in your bank, on account of Plaintiff and to have been tendered to defendants on Plaintiff's behalf the day previous, if so what was that statement?

Ans. To

Ans. I do not remember stating any amount.

Question Did you speak at that interview of the deposits that had been made, at all?

(Ans. To)

Ans. I do not remember speaking anything about it.

Question What became of those deposits?

Ans. I have the principal deposit of twenty four hundred and fifty six dollars still in my hands. Some two weeks subsequent to the 5th of July 1864 Mr O'Fallon withdrew the deposit of fifty dollars.

Question Was the main deposit of twenty four

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hundred and fifty six dollars ever
withdrawn, from the time of its deposit
on the second of July 1864, by
Plaintiff or anyone on her behalf
if so, when, and by whom?

Ans I do not remember it ever having been
withdrawn

Question Did you not tell, Mr Thomas
Kennedy or some one of the defendants
on the evening of the 5th or on the morning
of the 6th of July 1864, that the main
deposit of twenty four hundred and
fifty six dollars had been withdrawn
by the Plaintiff or some one on her
behalf?

Objected To

Ans I told them that Mr O'Fallan had
gone down to have a settlement with
them but that it was the identical
money. I do not now recollect

Question Did you not make that statement
to Mr Thomas Kennedy on the evening
of the 5th of July 1864, at the second interview
just before the close of bank hours

Ans Oley to as leading

Ans I think I did.

Question Do you know whether Mr O'Fallan
jr. did withdraw that main deposit

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of twenty four hundred and fifty six dollars, or whether any one on behalf of Plaintiff withdrew said deposit at any time on the fifth of July A.D. 1864, and if, so ~~whether~~ whether before or after Bank hours?

Ans I have no recollection of its ever been withdrawn.

Question Was that deposit a special deposit?

Ans It might be so termed, for a special purpose.

Ques It is whose credit was it deposited?

Ans. It was deposited to no one's credit.

Ques To whose credit does it now stand?

Ans. It is still in my hands.

Ques Did John O'Fallan jr, or anyone else on behalf of Plaintiff, or the Plaintiff herself, on said 5th day of July A.D. 1864 get from you or your bank, the sum of twenty four hundred and fifty six dollars? if so tell at what time during said day.

Ans. John O'Fallan jr did by his Clerk, Michael Keever, deposit on the second day of July 1864 with the Cashier of our bank ~~deposit~~ twenty four hundred and fifty six dollars, in United State Legal tender notes.

I do not remember any of the parties named in the question getting that sum of money on that day, from our bank.

Question Did you not state to Thomas Kemmerly on the morning of the 6th of July 1864, that John O'Fallan jr, had withdrawn that deposit and had gone or was going to make a tender of it to defendants?

Ans. No.

Ans. I told Mr. Kennedy on the morning of the 6th I think it was, that John O'Fallon had gone down the evening previous to make them a tender of the money. I do not remember whether it was the identical money deposited or other money.

Question How did you know he had gone or was going?

Ans. His buggy was at the Bank after Bank hours, on the evening of the 5th and he told me he was going down.

Ques. Had he procured of your bank on that day previous to his being in his buggy at the door of your bank, of your or your bank or of any officer of your bank therein of your knowledge any sum of money, if so, how much and on whose account, and when?

Ans. It is possible that this sum of money previously deposited, had then been withdrawn, but my memory is not certain on this point.

Question In whose possession was that identical sum of money that was deposited?

Ans. In my own possession.

Ques. Has it been in your possession ever since it was first deposited with you?

Ans. I think so. To my recollection it has not been out of my possession during this time.

Ques. Did you on that day, let John O'Fallon or any one on ~~his~~ ^{Plamiff's} behalf have that amount of money?

Ans. I do not recollect.

Ques Did Mr O'Fallon at the time that he informed you, that he was going down to make a tender on the evening of the 5th of July 1864 state to you that he had the money with him?

(Oby to as leading and irrelevant)
 Ans. I do not remember his making any statement about it.

Ques Did you not consider that the twenty four hundred and fifty six dollars deposited with you was the money of Col John O'Fallon and do you not now hold that money subject to the order of Col John O'Fallon?

(Oby to as calling for the opinion of the witness)

Ans I do not know whose money it is, Col O'Fallon sent it there, I suppose that money is in my hands is subject to the order of Col John O'Fallon.

Ques Would you pay it to the order of the Plaintiff in this cause?

Oby to for same reason as above
 Ans. I would deliver it to the party who deposited it.

Ques Do you know whether any money was paid at the counter of your bank on the 5th day of July 1864 on the check of Col John O'Fallon, to John O'Fallon Jr, or Emily O'Fallon or any one acting for her, if so, state the amount, to whom the money was paid and at what time of day the money was paid?

Ans I do not know of any being paid

Ques Did you yourself on that day deliver loan or advance to John O'Fallon Jr, Emily O'Fallon

or ~~any~~ one acting on her behalf. On said
5th day of July 1864 ~~of~~ any sum of money
if so, ~~how~~ and what amount?
Ans. I did neither on that day or subsequent to it
loan, deliver, or advance to any of them any
sum of money.

Ques. Are you positive that it was Thomas Kennedy that
you saw at your house on the morning of
the 6th of July 1864?

Ans. I am positive.

Ques. Did you not at the conversation with Thomas
Kennedy at your house, on the morning of
the sixth, state to him, that Mr. John O'Fallon, Jr.
had withdrawn the deposit twenty four
hundred and fifty six dollars, and had gone
^{the evening before} or ~~at~~ about to go, to pay the money to the
dependants?

(Obj. Was irrelevant & as having already
once been answered.)

Ans. I remember telling the dependants that John O'Fallon, Jr.
had gone down the evening previous to pay the
money, but I do not remember telling him that
O'Fallon had withdrawn the funds, I may have
told him but do not now recollect.

Ques. Was the deposit of twenty four hundred and
fifty six dollars made with you as an
individual, or with the bank?

Ans. It was made with the bank.

Ques. If it had been withdrawn on the 5th of July
1864 would you, as cashier of the bank have
known it?

Ans. Very likely.

Ques Was it placed to the credit of Col John O'Fallan
or to whose credit was it placed?

Ans It was placed to no one's credit. It was simply
placed in the hands of the Cashier of the Bank
to make a tender of the money.

Cross Examination by Mr. Decker

Ques Was not the money left there to be paid to the
dependants, on an amount of a contract for
purchase of their interest in some land in
Jefferson County?

Ans It was so stated to me by Mr. Keeber the clerk
of Col John O'Fallan, when he deposited the money.
He said the contract was, that the money should
be paid on the 5th of July at the Bank of the State
of Missouri, and therefore he had brought it there.

Ques Did you know what the taxes were on that land
that the dependants had paid?

Ans I do not.

Ques Do you know that the Plaintiff or any one
acting for her, knew what the amount of those
taxes were?

Ans I do not.

Ques Did you ask the dependants what the amount
of those taxes were?

Ans I did.

Ques Did they tell you?

Ans He stated that it was more than a year's
taxes, without stating the amount.

Ques Did not the dependants or one of them tell you
that they or he would go up to Col O'Fallan's
office and see ^{about the settlement of} ~~what the amount of~~ those taxes
~~were~~

Ans They did, — one of the dependants

Ques

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At what time did they tell you that they would go up and make arrangements with ^{1 Col O'Fallon} about the settlement of those taxes?

Ans On the evening of the 5th of July, and I think it was at the second interview.

Ques Was not the deposit of fifty dollars, of which you have testified, left at the Bank to cover the amount of taxes which might be due the defendants from Plaintiff on their contract?

Ans It was stated to me that it was supposed that that amount would cover the taxes then due ^{under the contract} without stating the precise amount.

Ques Did not the person making the deposit of fifty dollars, tell you at the time that the Plaintiff or those acting for her, did not know what the amount of those taxes were?

Ans I believe they did.

Ques Don't you remember that Mr O'Fallon Jr. came to the Bank several times that day on behalf of Plaintiff to ascertain what the amount of taxes due defendants were?

Ans I think he did, ~~on~~ on one occasion.

~~Ques How often did he come?~~

Re, Examination

Ques When did you ask the defendants what the amount of taxes due, were?

Ans At the second interview, I may have been at the first.

Ques Was anything said about the taxes at the time of the tender of the twenty four hundred and fifty six dollars?

Q One of the dependants stated that the sum tendered was not enough

Q What else did he state?

A That he claimed taxes without stating the amount.

Q Was it at that time that you asked him what amount of taxes were due?

A I think it was.

Q Did he not then reply to you that there was more than a year's taxes due?

A Yes, sir.

Q Did you not then ~~and~~ after that reply was made to you and before the deposit of the fifty dollars by John O'Fallon Jr. for Plaintiff's inform, said O'Fallon, of this statement of dependants concerning taxes?

A I think I did.

Q Was not the deposit of the fifty dollars made by Mr O'Fallon Jr. directed by him to be tendered to dependants on account of said taxes?

A That is my recollection.

Q Did you tender that fifty dollars in accordance with said instructions?

A I don't think I did. I don't think the dependants came in after the fifty dollars were deposited.

Q Do you say positively that the dependants or any of them told you, that they were going up to Col O'Fallon's office, to see him about the taxes?

A They left that impression on my mind.

Q Was not all that was said about Col O'Fallon a question on the part of one of the defendants, when Col O'Fallon's office ~~was~~ was?

(Obj was leading)

A As I suggested their going to Col O'Fallon's office and settle the matter of taxes between them.

Q Was that fifty dollars for taxes deposited after you told Mr Thomas Kennedy on the second interview that Mr O'Fallon Jr. had paid?

A My recollection is that it was after.

Q Was not that second interview just at the close of banking hours?

A It was some time after two o'clock. The President of the Bank had left. I think he generally leaves about one o'clock.

A Robinson

State of Missouri }
County of St Louis } ss

I, J. J. Adams Fitcher, a Notary Public within and for the County and State aforesaid, do hereby certify, that Anthony S. Robinson the deponent whose residence is in the City of St Louis in the State of Missouri, was by me sworn to testify the whole truth of his knowledge touching the matter in controversy in the cause aforesaid and that his deposition was reduced to writing by me, and subscribed by him in my presence on the twenty-ninth day of August A.D. 1864, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon of that day at the

Law office of J. G. McClellan No 32 1/2 Pine Street
in the City of St Louis in the County of
St Louis and in the State of Missouri
Notary Fees \$7.50
Paid by Plaintiffs

J. Adams Fritchey
Notary Public
St Louis County
Missouri

Ernest D. Hallen

no.

James D. Kennedy

Roller

Grand and Fleet

March 23rd 1865

Dear J. Kennedy
Bellevue

Emily O'Hallon, Plaintiff	}	In the Circuit Court of Jefferson County, Missouri.
Against		
James L. Kennerly		
Thomas J. Kennerly		
Francis L. Kennerly, Defendants.		

The Defendants for Answer to Plaintiff's petition, admit that they on the 3 day of July 1863 made a written agreement under seal by which they obligated themselves to convey to Plaintiff the Land described in Plaintiff's petition, provided Plaintiff should pay to Defendants, on the fifth day of July 1864, at the Bank of the State of Missouri at St. Louis, the sum of Twenty four hundred and fifty six dollars, together with the amount of Taxes Defendants should have paid on said Land at any time after they acquired title thereto up to the 5th day of July 1864, and any additional amount the Defendants may have paid for levies, assessments, and liens made on said Land or the Buildings thereon at any time up to said 5th day of July 1864, with ten per cent interest on the moneys so paid by the Defendants for such Taxes, levies, liens, & assessments, from the time of such payment to the 5th day of July 1864, and that Plaintiff would not, in the mean time, cut, or cause to be cut, and taken from said Land, any Cord wood or other timber growing thereon. But the Defendants deny that the Plaintiff complied with said written Contract and the Conditions thereof on her part. They state that the conditions of said written Contract were, that if Plaintiff failed to pay at the Bank of the State of

Missouri, on the fifth day of July 1864, to the De-
fendants the sum of Twenty four hundred and fifty
six dollars, together with such additional sums of
money as Defendants should have paid on said Land
up to that time, for Taxes, levies, assessments, and liens
made and imposed on said Lands or the buildings
thereon, with ten per cent interest per annum on
such sums of money so paid by Defendants, from
the times of such payments to the 5th day of July 1864,
and that Plaintiff would not, in the mean time, cut,
or cause to be cut, and taken from said Land, any
cord wood or other timber growing thereon, that
then, in ~~the~~ ^{any} of said ~~events~~ ^{events}, such written Contract
should, to all intents and purposes, be absolutely
null and void, and of no effect or avail whatsoever,
either in Law or Equity, as same as if such Contract
had never been made, any Law or Principle in
Equity to the contrary notwithstanding. And Defen-
ants state that by the express terms, stipulations
and conditions of said written Contract, the time
of payment of said money, was made material
and was the very essence of said Contract, and was
so understood and intended by the Parties thereto,
and that, if Plaintiff failed to pay the money at
the time and place stipulated, the Contract should
be forfeited, and no action should be had thereon
either in Law or Equity. And Defendants
state that ~~on the day~~ ^{on the day} before the 5th day of July 1864,
~~at very time~~ ^{at very time} ~~they~~ ^{William O'Hallow as a} messenger of Plaintiff called on them to know
the amount of Taxes, assessments and liens Defendants
and defendants said they would bring the Tax receipts to the Bank next day, which
had paid on said Lands. And the Defendants deny
they did,
that either the Plaintiff or her Agents, on the 5th day
of July 1864, at the Bank of the State of Missouri, of-

^{on tendered}
ferred to pay, to the Defendants the sum of Twenty four
(for if any money was ^{tendered} shown, Defendants did not see it)
hundred and fifty six dollars, and such additional
sums of money as Defendants had paid on said lands
for taxes, assessments, & liens, with ten per cent interest
on such sums so paid by Defendants from the time
of such payment. And Defendants deny that the
Plaintiff or her Agent, on said 5th day of July 1864
at The Bank of the State of Missouri, made a suf-
ficient legal tender of the amount of money due
Defendants on said written Contract for the sale
of said Land. Defendants deny that they refused
to inform Plaintiff of the amount of taxes, they had
paid on said Land; but state that they did, on the
5th day of July 1864, at said Bank, tell the Cashier of said
State Bank that ^{they} had the receipts, showing the amount
of Taxes they had paid on said Land, but said Cashier,
(who was then acting as Agent for plaintiff,) replied that
no money had been deposited with him by plain-
tiff to pay said Taxes, - which Defendants aver amount-
ed at that time, with the interest at ten per cent, to
fifty three dollars & thirty two cents.

The Defendants therefore state that by reason
of the failure of Plaintiff to comply with, and per-
form the stipulations and conditions of said writ-
~~ten Contract for the sale of said Land, the same be-~~
ten Contract for the sale of said Land, the same be-
came null and void, and no action ^{can} be maintained
thereon, either in law or Equity. And Defendants
deny therefore that they are legally bound to
make Plaintiff a Deed for said Land, and
deny that Plaintiff has any right, in law
or Equity to a specific performance of said Con-
tract, or to a decree of the Court divesting the
Defendants of title to said Land, and vesting the

title of the same in Plaintiff, and deny that Plaintiff is entitled to any relief whatever, in law or equity, in the Premises. And Defendants deny that Plaintiff has been damaged five thousand dollars, or any sum whatever, for costs, expenses and damages incurred by reason of any violation of said Covenant on the part of the Defendants; for they deny that they violated said written Contract in any of its terms and stipulations, and aver that they were ready and willing at any time up to the 5th day of July 1864, to make Plaintiff a deed for said Land, if she had paid the money at the time, stipulated, and also the amount Defendants had paid for the taxes, with interest. And Defendants further aver that Plaintiff violated said written Contract, by causing a large amount of timber to be cut down and taken from said Land. — Defendants therefore say that Plaintiff has utterly failed to comply with, and perform said written Contract, according to its terms, tenor and meaning, that the same is forfeited and void, and that Plaintiff is entitled to no relief thereon.

And having answered all deemed material Defendants ask to be discharged with their reasonable costs,

Abner Green
Attorney for Defendants

Thomas J. Kennerley, one of the above Defendants, makes oath and says the above Answer, and the matters therein as stated he believes to be true.

Subscribed to & subscribed before me } Thomas J. Kennerley
This 29th day of August 1865
Wm. McMillen Clerk of Court

In Circuit Court
Jefferson County

vs.
Ezekiel O'Halloran

James T. Hennealy
Thos. J. Hennealy &
Thomas J. Hennealy

Answer of

Defts,

Filed Aug. 28th 1865

J. M. Kelly
clerk

COUNTY OF JEFFERSON.

THE STATE OF MISSOURI,

To *Anthony D. Robinson*

GREETING :

You are Hereby Commanded, That setting aside all manner of excuse and delay, you appear before our Circuit Court for the County afore-said, on the *14th day of November* 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

Orinly D. Ballou is
Plaintiff and *Thomas Kennedy James & Kennedy*
and *Francis D. Kennedy are*
Defendants on the part of *Defendants* and herein you are in no wise to fail.

WITNESS, *Wm. J. J. J.* ~~CLERK~~ *CLERK*, Clerk of our said Court,
with the Seal thereof hereunto ~~affixed~~ at office, this
30th day of *October* A. D. 1865

Saml A. Robby
Clerk.

SUBPOENA

TO JEFFERSON CIRCUIT COURT.

November Term, 1865.

Emily O'Fallon
vs

James L. Kennerly et al

Witness for Defendants

Anthony & Robinson

*Served this subpoena in the county of Missouri on the
1st day of November 1865 by reading the same to Anthony
& Robinson and tendering to him his fees and expenses, or
the amount of fifteen dollars, which he refused to receive
50 paid
John C. Vogel Shiff
James L. Kennerly et al*

COUNTY OF JEFFERSON.

THE STATE OF MISSOURI,

To

William C. Patton

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 *14th* day of *Nov* 1865 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

Plaintiff and

Emily C. Patton is

James L. Remondy

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

WITNESS, *J. A. Leiby* ~~ELIAS P. HONEST~~, Clerk of our said Court,

with the Seal thereof hereto affixed, at office, this *14th* day of *November* A.D. 1865-

Samuel A. Leiby Clerk.

SUBPOENA

TO JEFFERSON CIRCUIT COURT.

November Term, 1865-

*Emily O'Fallon
vs
James L. Kennedy*

Sheriff 37

*I have called this show by reading the same in the hearing
of Mr O'Fallon on the 18th day of November 1865*

*Wm O'Fallon
Attorney*

Emily O. Fallers
Plaintiff.

vs. Defendant } In Jefferson Co.
Against } Court Nov. 7 1865.

Thos J. Kennerly
Others.

Defendants move
the court to require plaintiff
to give security for costs, in
the above cause for
the following reasons to wit:
1. Because plaintiff is insol-
vent & unable to pay costs.

2. Because plaintiff has no property
out of which costs can be paid.

For these reasons ~~the court~~ asks
that plaintiff be required to give
security for costs.

Given & sworn atty. for defendants
James H. [illegible]

Emily D. Keller
ag and

James & ally,

Mother's Agency
Planters & Co
deals for Coats

Sept Nov 14 1865
Samuel D. Miller
all

COUNTY OF JEFFERSON.

THE STATE OF MISSOURI,

To *Thomas Burgess 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 *20th* day of *November* 1865 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

Plaintiff and

Emily Ballou is

James S Kennedy et al
Defendant on the part of *Plaintiff* and herein you are in no wise to fail.

WITNESS, ~~EHAS F. HONEY~~ *J. A. Leffler*, Clerk of our said Court,

with the Seal thereof hereto affixed, at office, this
18th day of *November* A. D. 1865~

Samuel A. Leffler
Clerk.

SUBPOENA

TO JEFFERSON CIRCUIT COURT.

November Term, 1865-

Emily O'Fallon
vs.
Thos J Penner & date

Shaffer 67

*I executed this by reading the same in the hearing
of Thomas Burgess Jr on the 20 day of Nov 1865*

W. J. Johnson
COUNTY OF ~~JEFFERSON~~.

THE STATE OF MISSOURI,

To *Michael Heber and George J. Robertson*

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 *13th* *Inst* 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 *Emily Dalton* is

Plaintiff and *James J. Kennedy et al* are

Defendant on the part of _____ and herein you are in no wise to fail.

WITNESS, *SA W. J. Johnson* Clerk of our said Court,

with the Seal hereof hereunto affixed, at office, this *10th* day of *May* A. D. 186*6*

Samuel A. Wiley
Clerk.

SUBPOENA

TO JEFFERSON CIRCUIT COURT.

May Term, 186

Emily C. Fallon
vs
Kenerly

Sheriff Lee

850

*I executed the within at
the County of Jefferson Missouri
on 17th day of May 1866 in
presence of George L. Robertson my
deputy in hearing and that
on and before me he has not
deceivng shown in my County
so that process can be served
on him.*
W. C. Fletcher
Sheriff
by John Amargo Deft

COUNTY OF JEFFERSON.

THE STATE OF MISSOURI,

To

Benjamin S Stephens & Mrs 185
Stephens

GREETING:

You are **Hereby Comanded**, That setting aside all manner of excuse and delay, you appear before our Circuit Court for the County afore-said, on the *18th May 20 1866*, 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 *the Emily O'Halloran is*

Plaintiff and

James S. Kennedy et al are

Defendant on the part of

Defendants and herein you are in no wise to fail.

WITNESS, *Samuel S. Phelps* Clerk of our said Court,

with the Seal thereof here affixed, at office, this

15th day of *May* A. D. 186*6*

Samuel S. Phelps Clerk.

SUBPOENA

TO JEFFERSON CIRCUIT COURT.

May Term, 1866
Emily O Fallon
vs
James S Kennedy et al

Shrff Fees \$2.00

*I executed the within
subpoena on the within
named with their
presence and hearing this 18th day
of May 1866*

*I do Heretofore
and hereafter*

Emily Wallan }
 Remerly }

Thomas Burgess for writ 1 day 17^{mils} Nov term 1865 ~~\$3.72~~
 \$3.72

John Wallan for writ 3 days 17 miles Nov term 1865 \$5.72
 " " 3 " 17 " May term 1866, \$5.72, \$11.44
 Alon Wallan writ 4 days 17 miles Nov term 1865 \$6.72
 6.72

A S Robertson writ 8 days 43 $\frac{1}{2}$ miles ^{and County} Nov term 1865 \$14.86
 " " 2 " 44 " " May 1866 \$9.54
 24.50

Richard Whalan writ 1 day 17 miles Nov 1865 \$3.72
 " " 1 " 17 " May term 1866 \$3.72 \$7.44
 \$54.82

Conrad Opatow
20

Donnelly