

Jefferson County Circuit Court
Case Files - Civil
November 1864

Box 15 Folder 58

O'Fallon, John, Jr.

vs.

Kennedy, James L.

Kennedy, Francis L.

Kennedy, Thomas J.

Specific performance of contract

260 acres in S21, 22 T4/2 R5E; involved
deed of trust securing \$2,300 owed to
plaintiff by Jerome B. Dover; depositions;
bill of exceptions

Know all men by these presents that it
is hereby covenanted and agreed by and
between James L Kennerley Francis L Kenner^{ley}
and Thomas J Kennerley on the one part
and John Fallon of St Louis of the other
part as follows The said Kennerleys coven-
ant and agree to and with the said
Fallon as follows That the said Kennerleys
~~covenant~~ and upon the payment to them
by said Fallon his heirs or assigns of the
Sum of Five hundred and seven dollars
on the 12th day of June 1861, and the sum
of Four hundred and eight dollars and
Twenty four cents on or before the 2nd day
of February 1862 they will make to
said Fallon his heirs or assigns A
good and sufficient deed conveying to
him the following described Land in
the County of Jefferson Mo to wit, The
N E 1/4 quarter of Section No, 22 Township
42 Range 5 E containing 100 acres also the
S E quarter of Section 21 Township 42 Range
5 East containing one Hundred and Sixty
acres, Without Warranty and will deliver
up to him A certain note held by
them for the Sum of \$385.³³/₁₀₀ dated Feb
2nd 1858 due four years after date made by
Jerome B Dorer & H. M. Parker endorsed by
Jno Fallon Jr & Charles Fallon but it

is hereby expressly agreed and understood
that a failure to make either of said
payments at the date agreed shall operate
as a forfeiture of all rights under this
agreement,

Witness our hands and seals this
6th day of May 1861.
Thos. C. Fletcher
James L. Kennerly Seal
James L. Kennerly Seal
Thomas J. Kennerly Seal

Copy

Good of Kennerly

To

Of all

John O'Fallon Jr.
 plaintiff

vs:

James L. Kennerly
Francis L. Kennerly +
Thomas J. Kennerly
 defendants.

In the Circuit Court
of Jefferson County

Novr. Term 1864

County of Jefferson Jr.

The plaintiff states that on the second day of February 1858 one Jerome B. Dover being indebted to the plaintiff in the sum of twenty ~~three~~ hundred dollars (\$2300.00) evidenced by six promissory notes dated the second day of February 1858 each for the sum of \$383.33¹/₃ payable in instalments of one two three four five and six years and bearing interest at the rate of six and a half per cent per annum from date and also for other good and valuable considerations, executed and delivered a certain deed of trust or mortgage conveying the premises lands and tenements hereinafter described in fee to James Burgess in trust to secure the payment of said notes with power of sale in the trustee upon the non payment of said notes, which deed is dated the 2^d day of February 1858, recorded in the Clerk's office

of the Circuit Court of Jefferson County
in book O page 344 and herewith
shown to the Court.

The plaintiff further states that
afterwards to wit: on the
day of the plaintiff en-
dorsed and delivered two of said notes
the one payable in three years and the
one payable in four years to the defen-
dants with the express agreement and
understanding that said defendants
should look to the real estate and to
said Dover for the payment of said
notes and that plaintiff should be
discharged from all liability thereon.

Plaintiff further states that after-
wards and upon the maturity of the
first of said notes transferred to the
defendants, the defendants requested
and induced said Burgess trustee
to advertise and sell the real estate
described in said deed of trust or
mortgage for the non payment of said
note and the plaintiff and defendants
then agreed that the defendants should
bid in said property under said trustee
sale and hold the same subject to
redemption by the plaintiff by his
paying the sum of one thousand and

fifteen dollars & twenty four cents and by such representation and agreement they induced and prevailed upon the plaintiff to allow defendants to bid in said property hereinafter described for a sum much less than the value of the property and covering only the amount of the first of said notes in the hands of defendants, and they also agreed upon the payment of said sum to them to return to the plaintiff the note payable four years after date theretofore transferred to defendants by plaintiff.

Plaintiff further states that they the said defendants also executed and delivered their bond in writing to John O'Fallon which was for the use of the plaintiff whereby defendants covenanted that upon the payment to them by said O'Fallon his heirs or assigns of the sum of five hundred and seven dollars on the 12th day of June 1861 and the sum of four hundred & eight dollars & twenty four cents on the 2^d day of February 1862 they would make to said O'Fallon his heirs or assigns a good and sufficient deed to the lands and tenements acquired by them under said trust deed and agreement

hereinafter particularly described and that they would deliver up to said O'Fallon the note held by them for said sum of \$ 383. ^{33 1/2}/₁₀₀ due four years after date which is the same note theretofore delivered to defendants by this plaintiff, and which was the only note in defendants hands remaining unpaid.

Plaintiff further states that the defendants in violation of said agreement and of said bond and with a view to prevent plaintiff from performing his agreement, did compel and require this plaintiff to pay and satisfy said note so held by them and which they had agreed to deliver up to said John O'Fallon for the benefit of this plaintiff. And plaintiff says that by reason of said fraud and false practices the defendants have collected both of said notes and retain the land pledged for the payment of said six notes.

Plaintiff further says that said bond to said John O'Fallon has been assigned to the plaintiff and he comes and tenders the amount of balance due to defendants on said notes and

prays that defendants by the judgment and decree of this Court may be compelled to convey all their right title and estate in the premises described as follows to wit: the north east fractional quarter of section No. twenty two, township forty two, Range five East containing one hundred acres also the south east quarter of section twenty one township forty two Range five east containing one hundred & sixty acres, all situate in said Jefferson County, to this plaintiff or that said title may by the judgment of this Court be vested in the plaintiff and for such other & further relief in the premises as may be meet & equitable.

Krum & Decker
for Plff.

Jefferson County Jo.

John O Fallon Jr on his oath says that the above petition & the matters therein as stated he believes to be true.

Sworn to and Subscribed before me. John O Fallon Jr
Aug 1st 1864
Elias F. Hovey clerk

John O'Hallor Jr. plaintiff

^{vs}
James L. Kennerly

Frances L. Kennerly +

Thomas J. Kennerly, Defendants

In the Circuit Court of
Jefferson County

Nov. Term 1864

County of Jefferson

The plaintiff states
that on the second day of February 18⁵⁸
one Jerome B. Dover being in
debted to the plaintiff in the sum of
twenty three hundred dollars (\$2300)
evidenced by six promissory notes da-
ted the second day of February 18⁵⁸
each for the sum of \$383.33 $\frac{1}{3}$, pay-
able in instalments of one two three
four five and six years and bearing
interest at the rate of six and a half
per cent. per annum from date, and
also for other good and valuable con-
siderations executed and delivered
a certain deed of trust or mortgage
conveying the premises lands and
tenements hereinafter described in
fee to James Burges in trust to
secure the payment of said notes

which deed is dated the 2^o day of February 1858, recorded in the clerk's office of the Circuit Court of Jefferson County in Book O' page 344 and herewith shown to the Court,

The plaintiff further states that afterwards to wit: on the

day of _____ the plaintiff endorsed and delivered two of said notes, the one payable in three years and the one payable in four years to the defendants with the express agreement and understanding that said defendants should look to the real estate and to said Dover for the payment of said notes and that plaintiffs should be discharged from all liability thereon.

Plaintiffs further states that afterwards and upon the maturity of the first of said notes transferred to the defendants, the defendants requested and induced said Burgess trustee to advert and sell the real estate described in said deed of trust or more for the more payment of said _____ and the plaintiffs and defend.

then agreed, that the defendant should bid in said property said trustee sale and hold in subject to redemption by the plaintiff by his paying the sum of One thousand and fifteen dollars & twenty four cents and by such representation and agreement, they induced and prevailed upon the plaintiff to allow, defendants to bid in said property hereinafter described for a sum much less than the value of the property, and covering only the amount of the first of said notes in the hands of defendants, and they also agreed upon the payment of said sum to them to return to the plaintiff the note payable four years after date heretofore transferred to defendants by plaintiff

Plaintiff further states that they the said defendants also executed and delivered their bond to John O'Halloran, which was for the use of the plaintiff, whereby defendants covenanted that upon the payment to them by said O'Halloran his heirs or

assigns of the sum of five hundred and seven dollars on the 12th day of June 1861, and the sum of four hundred & eight dollars & twenty ~~dollars~~ cents on the 2nd day of February 1862 they would make to said O'Fallon or his heirs or assigns a good and sufficient deed to the lands and improvements acquired by them under said trust deed and agreement, hereinafter particularly described, and that they would deliver up to said O'Fallon the note held by them for said sum of \$383 $\frac{33}{100}$ due four years after date, which is the same note therefore delivered to defendants by the plaintiff, and which was the only note in defendants hands remaining unpaid.

Plaintiff further states that the defendants in violation of said agreement and of said bond, and with a view to prevent plaintiff from performing her agreement, did compel and require the plaintiff to pay & satisfy said note so held by and which they had agreed deliver up to said John &

for the benefit of this plaintiff
plaintiff says that by means
of fraud and false practices,
defendants have collected both
notes, and retained the land
for the payment of said six notes.
Plaintiff further says that said
bond to said John O'Fallon, has
been assigned to the plaintiff and
he comes and tenders the amount of
balance due to defendants on said
note, and prays that defendants by
the judgment and decree of this
court, may be compelled to convey
all their right title and estate in the
premises described as follows, to wit:
the North East fractional quarter of
Section No twenty two, Township
forty two, range five east, contain-
ing one hundred acres, Also the
South East quarter of Section twenty
one, Township forty two Range five
east containing one hundred &
sixty acres. All situate in said
Jefferson County, to this plaintiff
or, that said title may by the judg-
ment of this court be vested in
the plaintiff and for such other

* further relief in the premises as
may be meet & equitable

Krumm & Decker
for Plff

Jefferson County

John Q. Hallor Jr
on his oath says that the above
petition & the matters therein as
stated he believes to be true

John Q. Hallor Jr.
Sworn to and subscribed
before me Aug 1st 1864

Elias J. Horney 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. Horney
Clerk



The State of Missouri, } ss.

COUNTY OF JEFFERSON.

Saint Louis

To the Sheriff of the County of Jefferson

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

if they be found in your County, that
be and appear before the Hon. Judge of our Circuit Court, on
of the next term thereof, to be begun and held at the town of St.
and for the County of Jefferson, on the second Monday
Monday of November next, then and to

John O. Fallon Jr

on his original petition, a copy whereof is he
nies this writ, and have you then there this

Witness, ELIAS F. HONEY,

Court, with the seal thereof

in Hillsboro, this Dec

day of August

Elias



200 4

TO JEFFERSON CIRCUIT COURT

Monroe, Dec 3rd, 1864

John C. Tallon Jr
as } Deemors
Jas. L. Kemmerly
Thos. J. Kemmerly

in County of St. Louis on the
and 1864, by delivering a copy of
tion as furnished by the Clerk to
merly, and further executed the
of St. Louis on the 9th day of
delivering a copy of the w.
the Clerk to Thomas L.
Francis L. Kemmerly

John C. Vogel Sheriff.
Jacob L. Weyand Dep.

IN THE

Sup Court

v8.

*St & Henry
James & Kennedy
& Mos Kennedy*

*vs
Lewis & Clark
for Jefferson Co Mo*

Take Notice, that on the

6th

day of *March* 1865, between

the hours of eight o'clock in the forenoon and six o'clock in the afternoon of that day, at the *Greenville*

session in defendant's mo

~~in the~~

~~of~~ _____, County of *Leake*, State of *Missouri*, 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

Plaintiff

John M. Williams

Attorney to the above named.

I received the within Notice and John D. Feltman Esq
on the 23rd day of February A.D. 1855. by leaving
a true copy of said Notice at his usual
place of abode, in said County with a
white servant of his to deliver the same
of fifteen days. —

Richardson and Warner
to depose the 23rd
day of February A.D. 1855.

Thommas Dwyer Jr

To the Hon. Justices
of the Peace
within & on Wm. Co. N. H.

Thommas Dwyer Jr

Depositions of witnesses, produced, sworn and examined, on the sixth day of March A.D. Eighteen hundred and sixty five between the hours of eight O'clock in the forenoon and six o'clock in the afternoon of that day, at the Executive Mansion in Jefferson City Mo in the County of Cole state of Missouri, before me R. L. Cordell

a notary Public within and for the County of Cole in the state of Missouri in a certain cause now pending in the Circuit Court of the County of Jefferson in the State of Missouri, between John O'Hallon Jr. Plaintiff and James L. Kennerly, Francis L. Kennerly & Thomas J. Kennerly defendants, on the part of the defendants,

Thomas C. Fletcher, of lawful age, being produced sworn and examined on the part of the defendants, deposes and saith, in the spring of Eighteen hundred and sixty one, I was employed by James Burgess Jr to advertise certain property for sale under a deed of Trust made by Jerome B. Dorer and wife to said Burgess to secure the payment of several promissory notes, two or more of which notes were held by the

Meigs Kennerly, the defendants in this action, I advertised the property and was present at the sale which took place at the Court House door in Hillsboro, I think, in the month of May 1861. John O'Fallon Jr was present, the property sold was the North East fractional quarter of section Twenty Two (22) in Township No Forty Two (42) of Range five (5) East containing one hundred acres, also the South East quarter of section No Twenty one (21) Township No Forty two (42) Range five (5) East containing one hundred and sixty acres, the property was sold and the Meigs Kennerly the defendants, became the purchasers, After the sale John O'Fallon Jr. and the defendants had a talk and O'Fallon stated that the land was worth more than it sold for, the defendants stated that they only wanted their money and much preferred it to taking the land, O'Fallon said he did not have the money, the defendants told him they would take the money if he would give it to them, for the note then due, within about a month from that date and would then pay them the second note when it became due, this O'Fallon agreed to do, Kennerly the defendants stating to him that they wanted their money and if he paid it punctually at the

time agreed on he should have the land.

Immediately after the sale I drew up a deed from the trustees Burgess to the defendants for the land sold. After the arrangement was made by which John O'Hallon Jr. agreed to pay defendants their claim as aforesaid. It was suggested by John O'Hallon Jr. that he would like to have some memorandum in writing about the matter to provide against accidents, death of the parties and as I clearly understood him to have something to show by which he would be able to get the money. At the suggestion of the parties I either wrote, or examined after some other person wrote, a memorandum to that effect. The defendants stated at the time to John O'Hallon Jr. that they did not want to do anything which would give them any more trouble about the matter but if the money was paid they would gladly give him the land, but if it was not paid at the time agreed they did not want to be under any obligation to let him have it, but wanted to be able to make their money out of it otherwise, at the direction & request of John O'Hallon Jr. in the name of John O'Hallon of St. Louis

the arrangement made by which he could have a months time to find a person who would take the land at a sum which would reimburse defendants for the amount bid by them and pay the balance due on the second note. I talked with O'Hallon Jr. afterwards about the arrangement he had made with Kemmerlys and he did not express then or at any other time to me any other understanding but that his right to redeem the land or buy it was dependent solely on his paying the money at the time agreed upon, about the month of June when he was to pay the money the war had commenced and every person in that section was desirous of getting hold of money none were to be found to buy land.

Thos B Fletcher
Subscribed and sworn to before me
on the day, at the place and within the
hours first aforesaid,



R. L. Cordell
Notary Public Cole County Mo

I R. L. Cordell a Notary Public within
and for the county of Cole in the state of Missouri
do hereby certify, that in pursuance of the
annexed notice came before me, at the

Executive mansion in Jefferson City in the County
of Cole and State of Missouri, Thomas C Fletcher
who was by me sworn to testify the whole
truth of his knowledge touching the
matter in controversy aforesaid: that he
was examined and his examination
reduced to writing, and subscribed by him
in my presence, on the day, between the hours
and at the place in that behalf first aforesaid
and his said deposition is now herewith
returned, And I further certify, that said
Thomas C Fletcher is a resident of Cole County,
Missouri. In testimony whereof I have hereunto
set my hand and official seal at Jefferson
City, Missouri this sixth day of March A.D. 1863.

R. L. Cordell
Notary Public



Geo O Faltow Jr
in 3 days for defend
Geo L Kemmerly et al

Recd per Mail Mar
12th 1863 - opened & filed
E. J. McCreary Clerk

John O'Hester Esq In the Circuit

Court of Jefferson County

vs.
James D Kennedy
James D Kennedy
James D Kennedy

County of Jefferson
State of Tennessee

TO THE above named Plaintiff

Take Notice, That depositions of witnesses in the above entitled cause, to be read in evidence on the part of the Defendant will be taken at the Law Office of J. H.

McKee's Attorney No 32 1/2 Pine Street in

the City of Knoxville

Knox and State of Tennessee on the 26th in the County of

day of November 1864, between the hours of eight o'clock in the forenoon, and six o'clock in the afternoon, of that day; and that the taking of the same will be continued from day to day at the same place and between the same hours, until completed.

Wm McKee
Attendant

"A"

Thomas James L Kennedy, Thomas J Kennedy
 & Francis L Kennedy are the owners of a certain
 tract of land situated in Jefferson County in the
 State of Missouri to wit that certain part of United
 States Survey numbered Eight Hundred & ninety three
 in Township number Forty two of Range number Six
 East described as follows to wit beginning at the
 South West corner of said survey, thence running South
 sixty two degrees East thirty-eight chains to a corner
 from which a white oak 14 inches in diameter bears
 North 50° East 35 links distant, a black oak 15
 inches diameter bears North 75° West 60 1/2 link
 distant, thence running North ten degrees West
 eighteen chains to a corner from which a white
 Oak 16 ^{inches} diameter bears North 58° East 28 1/2 links
 distant, and a black Oak 30 inches diameter bears S. 47° E. 4
 links, distant thence North 63 1/2° East 14 chains to a corner from
 which a black Oak 24 inches diameter, bears N. 46° W. 14 links dist
 thence N. 43 1/4° E. 33 chains, to a corner from which a Sycamore 18
 inches diameter bears S. 14° W. 4 links dist, thence S. 81° E. 13
 chains 25 links to a corner tree, a black Oak 30 inches diameter,
 thence South 81 1/2° East 14 chains and 25 links to a post-
 corner on the center boundary line of said survey, thence
 North 27° East along said Eastern line of said survey
 16 chains and 80 links to a post-corner, thence North
 63° West, along the Northern boundary line of said survey
 Seventy six chains to North West corner of said survey, thence
 South 27° West along the Western boundary line of said sur-
 vey, 80 chains to the place of beginning, containing three hun-
 dred and eighty five and $\frac{108}{100}$ acres.

and whereas Mrs Sophia O'Fallon desires to have
the right to purchase said tract of land at a fixed
sum to be paid on the first day of July eighteen
hundred & sixty three and whereas the said
James L. Francis & Thomas J. Kinnerly
are willing so to dispose of said tract of land
to said Sophia O'Fallon provided the said
amount of money herein after mentioned be punctually
paid to them on that day

Now therefore we James J. Kinnerly Francis L.
^{in consideration of our debts to them & their heirs}
Kinnerly and Thomas J. Kinnerly hereby
stipulate & agree to & with the said
Sophia O'Fallon ^{here} and assigns that if the
said Sophia O'Fallon ^{here} or assigns
shall on or before the first day of July eight-
teen hundred and sixty three pay to the said
James J. Kinnerly, Francis L. Kinnerly & Thomas
J. Kinnerly their heirs executors administrators or
assigns the sum of Twenty seven hundred and
fifty seven dollars & forty one cents together with
all taxes on said land as may have been paid by
the said Kinnerlys or either of them before said first
day of July 1863. That upon such payment
they will convey to said Sophia O'Fallon
all such right title interest estate & property
in & to the said tract of land which they
now hold by good & sufficient deed with covenant
that they have not encumbered said property in any

part thereof. But it is expressly understood and
agreed that unless the said sum of Twenty seven
hundred & fifty seven dollars & forty one cents together
with the said taxes on said land that said Kennelys
may have paid shall be paid to the said James L
Kennely Francis L Kennely & Thomas J Kennely
on or before said first day of July eighteen hundred
& sixty three. This agreement is absolutely null and
void and is in all respects as if never made and
no equitable or legal right in any way arises thereunder

In Witness whereof we have hereunto
set our hands and seals this fourteenth
day of June eighteen hundred & sixty two

James L. Kennely
Thomas J. Kennely
Francis L. Kennely

Miss James L. Kennely Thomas J. Kennely
& Francis L. Kennely will place with a view
of the land within described to Col.
John O'Fallon upon his complying with the
terms hereof.

Witness

J. M. Coffin

Sophia O'Fallon

Agreement

James & Henry
Thomas & Henry
James & Henry

to

Stephen O'Halloran

Exhibit "A"

Given and sold to
1st March

Deposition of a witness produced
sworn and examined at the Law
office of J. F. McCellan attorney
No 32 1/2 Pine Street in the City of St Louis
in the County of St Louis and State
of Missouri before me the undersigned ^{J. D. Adams Hiteley} a
Notary Public within and for the
County and State aforesaid in a
certain cause now pending in the
Circuit Court of Jefferson County
in the County of Jefferson and State of
Missouri between John O. Hallan, Jr.
Plaintiff and James L. Kennerly Francis L.
Kennerly and Thomas J. Kennerly defendants
on the part of the defendants

John O. Hallan Jr. of lawful age
being duly sworn and examined on
the part of the defendants deposes
and saith

There were two sales made
of the property mentioned in my petition
in this cause They were made under
the same deed of trust, being the
deed of trust mentioned in my
petition. The first sale was made
on the 15th day of March 1861
I was present at this first sale. I
was the last and highest bidder at this
sale. I bid the property off at something
over twelve hundred dollars. There were
some ten or a dozen persons present
at this sale including all parties

3

interested The dependants were present
There were other bids besides ~~myself~~ ^{mine}
Mr Dower bid, and also Mr Kennedy
I never received a deed from the Trustee
under this sale no deed was ever
tendered me by the Trustee. I never
tendered the amount of my bid to the
Trustee and demand a deed
There was no defect in the title to the
property nor want of a compliance
to the provisions of the Deed of Trust
by the Trustee that prevented me from
complying with the purchase except
that the Kennedys always insisted on
gold and would accept nothing else
This is all the reason that prevented the
Mr Kennedys and me from settling
anything ~~I was present at the second~~
~~sale~~ Another reason for not settling under
the first sale the Mr Kennedys & I
made ~~a~~ a second agreement wherein
if they should sell the land a second time
~~and~~ they should bid it off and give
me a bond for a deed to the land
I never tendered to the Kennedys the amount
of the notes held by them in money but
insisting on them taking the money
in other money than gold and proposing
to pay it at any time and place that
they might mention with ten per cent
interest which they refused ~~offer~~ The
bond spoken of by me in my petition was

executed after the second sale and on
~~the same day~~. The money spoken of in
 the bond was never paid by me ~~to~~ or
 by Col. O'Fallon or by anyone for him
 or tendered to the defendants or any of them
 but I proposed to pay the money to
 defendants on behalf of Col O'Fallon
 at various times in Missouri State
 Legal tender notes which they at all
 times refused, stating that they would
 accept nothing but gold

Ques Did you or Col O'Fallon or any one
 for him tender to the defendants or
 any of them under said bond the
 sum of five hundred and seven
 dollars on the twelfth day of June
 1861, in gold or Missouri State
 Legal Tender notes?

Ans I did ~~not tender him~~ offer ~~him~~ the
 to pay him the amount, five hundred
 and seven dollars, in Missouri State
 Legal Tender notes at various times
 whether on that day or not, I know
 not

Ques Did you or Col O'Fallon, or any one for
 him tender ^{or pay} to the defendants or any of
 them ~~on~~ or before the second day of
 February A.D. 1862 the sum of four

Q hundred and eight dollars and twenty
five cents, specifically provided for
said bond to be paid on or before
that date and if so, was said amount
tendered or paid in gold or United
States Legal Tender notes?

A Yes, and every cent of it and
interest also, in Legal tender notes

Q The reason why Mr. Kennedy took this in
Legal Tender, was, he was getting this amount
without value received?

Q When was this payment made and
by whom?

A By me, but as to what date I can
not exactly tell.

Q Was it made as a distinct ^{payment} ~~under~~ that
bond and as a payment thereunder? If
~~not~~ how came the payment to be made?

A I paid Mr. Kennedy the money
regarding it as releasing Charles Fallon
as held by Mr. Kennedy for that amount
and at the same time paying that amount
on the bond, for the conveyance of the
property being the only consideration for
the money, Charles Fallon never
having received any value received
for that amount, save that he was an
endorser on the note

Q What ~~note~~ note have you reference to?

A The ~~second~~ note specified in the bond which
note I now hold

Q. Was not this payment of four hundred and eight dollars and twenty five cents which you stated you made to the Kennelys made after the second of February 1862 and made in a separate and different transaction between you and the Kennelys outside of the bond?

A. It was made as I stated before, to release my brother Charles, and at the same time to release myself of all indebtedness under that note which note represents the second sum ~~before~~ mentioned in the bond, which Mr Kennely delivered to me upon said payment.

Q. Was not that four hundred and eight dollars and twenty five cents paid by you to the Kennelys paid as a settlement of an indebtedness to the Kennelys arising out of an agreement originally arising out of an agreement ~~and~~ between said defendants and Mrs Sophia C. Fallon and was it not part of an amount due the Kennelys under that agreement?

A. The Kennelys claimed some twenty seven hundred dollars under an ~~old~~ agreement made in June 1862 by Mrs Sophia C. Fallon ~~and~~ in which my brother Charles was involved and ~~which was settled~~ ~~of the Kennely claims with~~ by me at the time the four hundred and eight ~~twenty five~~ dollars and twenty five

cents ~~were paid~~ representing the up to or sum mentioned in the bond from Col O'Fallon to the Kenners.

Ques How much money was paid by you to the Kenners at that settlement?

Ans I do not remember what the amount was,

Ques Was the twenty seven hundred dollars claimed by the Kenners then paid?

Ans I do not remember what amount was paid, but all they claimed was paid,

Ques Was that four hundred and eight dollars and twenty five cents, which you state you paid at that time in addition to or part of the twenty seven hundred dollars claimed under that agreement?

Ans It was paid after the amount claimed under that agreement.

Ques At that settlement and payment by you did you demand of the Kenners the delivery up of the ~~pro~~ described in the bond of the Kenners to Col. O'Fallon and mentioned in your petition?

Ans I do not think I demanded it, but they delivered it soon thereafter.

Ques Do you recollect when this settlement took place?

Ans At the expiration of the ~~bond~~ agreement of Sophia O'Fallon in July 1863. Now I wish to state why I considered this four hundred and eight dollars as representing that sum in the bond of Col O'Fallon for the season that Thomas

Kennerly one of the defendants, for himself
and on behalf of his two brothers made
an express agreement with me stating
soon after ~~the~~ executing the bond to
Col J. J. Allen, and on several
occasions after the same in said bond
became due, that I need give myself no
concern about the payment, that he did
not propose to take any advantage of me
that he did not want the land and
would deed the land to Col J. J. Allen
at any time the principal and interest
was paid.

Not being able to complete the taking of said
depositions, for the reason that the hour of
six o'clock P.M., having arrived, I adjourned
the further taking of the same till Tuesday
the sixth day of December A.D. 1864, by consent
of the counsel of both parties, then later continued
at the same place and between the same hours
mentioned in the accepted notice.

J. Adams Fitchey
Notary Public
St. Louis County
Missouri

Pursuant to adjournment as above stated
on the sixth day of December 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. McCellan attorney at \$32 1/2 per sheet
in the City of St. Louis in the County of St. Louis
and State of Missouri, I continued the taking of
said depositions as follows: viz

John O'Hallan jr. in continuation of
his deposition deposes and saith;
Question You have stated that the settlement
with the Kenners under the Lapham
O'Hallan agreement referred to by you
was made at the time it became
due to wit; on the first day of July
AD 1863, Was this four hundred and
eight dollars and twenty five cents
which you state that you paid to the
Kenners, paid to them at the time
of said settlement?

Ans. I think it was sir.

The agreement herewith filed and
marked A. being here shown the witness
he recognized it as the agreement
made ^{between} Lapham O'Hallan, and the
Kenners, ^{the agreement} above referred to

John O'Hallan jr.

State of Missouri } ss
County of St Louis }

D. J. D. Adams, Fitching
a Notary Public within and for the County
and State aforesaid, do hereby certify
that John O'Hallan, jr. 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 in his
presence and subscribed by him in
my presence on the sixth day of December
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 attorney, No 32 1/2 Pine
Street in the City of St. Louis in the
County of St. Louis and State of Missouri

And I further certify that said deposition
was commenced on the day specified in
the annexed notice, and not being able
to complete the taking of the same on said
day by the mutual consent and agreement
of the counsel of both parties, I adjourned
the further taking of the same to the sixth day
of December A.D. 1864, on which said day
I continued the taking of the same and
completed it

Notary fees \$5.50
paid by defendants

J. Adams Fitchey
Notary Public

St. Louis County
Missouri

Mr O Waller

as {

Geo L Newmanly et al

depts for depts

March 23rd 1865

Geo L Newmanly
et al



John O'Hallow, Jr. - plaintiff } In the Circuit
 vs. } Court of Jefferson
 James S. Kennerley, } County, Missouri,
 Francis S. Kennerley }
 Thomas J. Kennerley, - defendants,

The Defendants for Answer to the petition of Plaintiff, admit that Jerome B. Dover, on the 2nd day of February 1858, being indebted to Plaintiff in the sum of \$2300.⁰⁰, executed & delivered to Plaintiff six promissory Notes to Plaintiff, payable in one, two, three, four, five & six years from that date, - and that he at the same time executed & delivered a Deed of Gift to James Burgess conveying the Lands described in Plaintiff's petition to said Burgess in Gift, to secure the payment of said Notes. And Defendants also admit that John O'Hallow Jr. afterwards, sold ~~two~~ ~~of~~ ~~the~~ ~~Notes~~ two of said Notes to these Defendants, to wit the Notes payable in three and four years after date, ^{which Notes were endorsed first to Charles O'Hallow by him to Defendants} And Defendants admit that after the first of said Notes became due, they requested said James Burgess to advertise and sell said Land, according to the terms of said Deed, But Defendants deny that they made any agreement with Plaintiff to allow these Defendants to bid off the said Land, & for Plaintiff to refrain from bidding at such Notes sale, - or that Defendants would bid off the Land, & hold it, ~~subject to redemption by Plaintiff~~. They deny that any such agreement was made by them with Plaintiff before the sale was made. - Defendants state that the facts are, that said Lands were twice sold, - that at the first sale, made on the 15th day of March 1861, the

Plaintiff bid off said Lands at the sum of \$1203,
he being the highest bidder therefor. That after the
Lands were struck off to Plaintiff, he stated
that he did not have the money there with him,
(although it was a cash sale) and finally pre-
vailed on the Trustee, ~~at the first sale~~ ~~to wait~~ to wait
a few days, promising that he would pay the
money next week, & take the Land. But to do
this, the said John O'Fallon utterly failed, - and
as it was doubtful whether anything could be
made out of him by suit, he having no property
liable to the process of Law, the Defendants had
no other means of getting said notes paid, but
by having the Lands sold a second time, & at
their request therefore the said James Burgess
advertised and sold said Lands a second time,
This sale was made on the 6th day of May 1861,
and the Defendants bid off the Lands at the
sum of \$530, - , they being the highest bidders,
& paying for it a reasonable price, as Lands were
then very low, owing to the unsettled condition of the
country, - and if there was any sacrifice of said
property in said sale, Plaintiff is responsible for it,
by failing to complete his purchase, by paying the
amount of his bid, ^{at the first sale,} Defendants deny that,
at this second sale, or at the first sale, they made
any agreement with Plaintiff to induce him to
refrain from bidding, - They admit that some
time after the second sale, and after Defendant,
had got their deed for said Lands they executed
& delivered their Bond ^{to John O'Fallon of St. Louis, to the use of} ~~to Plaintiff~~ by which they
agreed to convey said Lands, to ~~Plaintiff~~ ^{him}, provi-
ded he paid Defendants, on or before the 12th day

of June 1861, the sum of five hundred & seven dollars, & the
sum of four hundred & eight dollars & 25 cents, on or before
which ^{was the amount of said two ~~notes~~ ^{per cent interest}} the 1st day of February 1862 - but if Plaintiff failed to pay
said sums of money when they became due, then it was
expressly agreed & provided in said Bond, that the Con-
tract for the sale of said Land, should be absolute, null
and void, and that no action either in Law or Equity
should arise on the same, - and it was understood and
agreed by the Defendants and John O'Fallon Jr, that
time was the essence of said Contract, and that any
failure on the part of John O'Fallon Jr, to pay the
money at the time it became due, should operate
a forfeiture of the Bond, and that O'Fallon should
be barred of any right of action thereon. At the request
of John O'Fallon Jr, the Bond was drawn in favor of John
O'Fallon of St. Louis, so as to enable John O'Fallon Jr, to get
the money to pay for the land. And Defendants were to
give up to him the Note for \$383.50 payable four years
after date. This they afterwards ^{did} believing they would
never get it paid by & over, and not with any view
of executing the Contract with Plaintiff, who had
forfeited all his rights under the same. And De-
fendants deny that John O'Fallon Jr, paid them
anything whatever to give up said Note, & deny
that Defendants ^{compelled} him to pay anything on said Note.
Defendants deny that they fraudulently collected said
and ^{deny that they} ~~practiced and gave~~ a false preference in any manner
two Notes, - and Defendants aver that said John
O'Fallon Jr, never paid them any sum whatever
on said Bond for the conveyance of said Land to
him, - and therefore they deny that Plaintiff
has any right either in Law or Equity to enforce
a specific performance of said Contract, - That
Plaintiff has forfeited all right and claims

whatsoever to said Land, or to enforce said Contract, by his failure to pay the money for the land at the time stipulated, according to the tenor and meaning of said Contract.

Defendants therefore deny that Plaintiff has any right or claim whatever, in Law or Equity, to have the Defendants divested of their title to said Land, and to have the title of the same vested in Plaintiff, by the Judgment, or decree of the Court - and they say that Plaintiff has no merits in his case, and no equitable right to have Defendants title to said Land, interfered with, or to obtain any judgment or decree against Defendants whatever.

Abner Green
Attorney for Defendants

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

Sworn to and subscribed
before me this 12th day
of May AD 1865

Thomas J. Kennerly

Samuel H. P. Clerk

John O'Halloran Jr.

vs,

James L. Kennedy
Francis L. Kennedy
& Thomas J. Kennedy

Answer of
Defendants

Filed May 13 1865
Docket No 171
Ct. Cl.

John O'Fallon Jr. - Plaintiff	} In the Circuit Court of Jefferson County Missouri;
Against	
James L. Kennerly, {	
Francis L. Kennerly {	
Thomas J. Kennerly, - Defendants	

The Defendants demur to the Petition of Plaintiff, for the following grounds of objection;

- 1- Because said Petition does not state facts sufficient to constitute a Cause of action.
- 2- The Petition shows that Plaintiff never performed the Contract set up therein, of buying the Land of Defendants, nor offered to perform the same, by paying \$915.34, the amount he was to pay for the land, or any part of it.
- 3- It is not alleged that Plaintiff performed his Contract, or offered to perform it, and that Defendants refused to perform the Contract on their part.
- 4- The Contract is stated therein evasively and with duplicity. In one place, it is alleged that Plaintiff was to pay \$1015.34 for the Land, and in another, \$915.34.
- 5- It does not show what Plaintiff was to pay Defendants for the Note of \$383.33, on Dover, payable four years after date, in order to induce them to return said Note to Plaintiff.
- 6- It alleges Defendants were to look to Dover and the Real estate, for the payment of the two Notes Plaintiff endorsed to them, and yet Plaintiff complains because Defendants did

look to the Land, and cause it to be sold for
the payment of said Notes.

7 - Plaintiff does not make profit of the Bond
alleged to have been made by Defendants to John
O'Fallon to plaintiff's use.

Albion Green
Attorney for Defendants

In Circuit Court
Jefferson County

John O'Halloran Jr,
vs,

James L. Hammett
vs
Arthur

Defendants

Filed Nov 14 1865
Emil A. Murphy, Clerk

John O. Hallen
Plaintiff.

Against
Thos. J. Kennedy
+ others —

In Jefferson Co
Sept 4th Nov. 7, 1865

The defendants cannot move to set
aside the plaintiff's order for
costs in the above case for the following
reasons to wit:

1. Because Plaintiff is insolvent
unable to pay costs.

2. Because Plaintiff has no
property subject to execution out
of which to pay costs —

~~3. Because~~

For these reasons ~~the defendants~~
ask that a rule be made on
him requiring him to give security for
costs —

Given & sworn atty
for defendants.

John C. Talbot

agent

Shuman Henry & Co

Proctor & Co

Heath & Co

and friends

Filed Nov 14 1865

Saml. A. Apple

John T. Fallon } In law. Cont-
 J. J. Kennedy }
 et al. } Jefferson County
 Nov. 7. 1865.

The defendants come & demand
 to deny plaintiffs petition and say, that
 the matters they contain in said petition
 are insufficient in law. & plaintiff not
 entitled to recover & for special reasons
 or causes of demurrer assign the follow-
 ing causes.

1. Because said petition presents
 no Equity.
2. Because it is not averred
 anywhere that plaintiff ever
 tendered defendants their money
 and that defendants refused to make a deed
 or comply with this contract.
3. Because it is nowhere averred
 that plaintiff paid or tendered in payment
 the amount he contracted to pay.
4. Because it is an effort to take advantage
 of plaintiffs own neglect & failure to
 comply with his own contract.
5. There is no Equity in plaintiffs petition.
6. The petition does not state facts sufficient
 to constitute a cause of action.

Wm. J. G. M. Allen

John Waller

Kennedy

Kennedy

Demmer

—

August 14 1865
Saml. A. R. P. M. B. H.

John O'Hallan Plaintiff
 Against
 James L. Kennerly, Francis
 L. Kennerly and Thomas
 J. Kennerly, Defendants

In the Jefferson
 Circuit Court,

Plaintiff pr an amended petition
 states that on the 2nd day of February 1858
 one Jerome B. Dover being indebted to the
 plaintiff in the sum of twenty three hundred
 dollars, evidenced by six promissory ^{notes} dated
 the 2nd day of February 1858, each for the sum
 of three hundred and eighty three $\frac{33\frac{1}{2}}{100}$ dollars,
 payable in installments of one, two, three
 four, five and six years and bearing interest
 at the rate of six and a half per cent per
 annum from date and also for other
 good and valuable considerations received
 and delivered to Plaintiff a certain deed
 of trust conveying the premises, lands and
 tenements hereinafter described in fee
 simple to James Burzen Jr. in trust to
 secure the payment of said notes, with power
 of sale in the trustee upon the non payment
 of said notes, which deed is dated the 2nd day
 of February 1858, recorded in the Recorder's
 office of Jefferson County Missouri in
 book O. p. 344 and herewith filed.

Plaintiff further states that after notes

to wit on the day of
the Plaintiff endorsed and delivered two of said
notes, the one payable in three years and the
one payable in four years after date, ^{to the defendants} with
the express agreement and understanding that
said Defendants should look to the real estate
and to said Dover for the payment of said
notes and that Plaintiff should be released
and discharged from all liability thereon.
Plaintiff further states that the two of said
notes falling due in one and two years respec-
tively were punctually paid by the said
Dover. Plaintiff further states that
afterwards to wit on the day of March
1861, the note held by said Defendants due
on 2nd February 1861, having fallen due
and remaining unpaid, the Defendants
caused said Trustee to advertise and
sell said real estate, which sale plaintiff
became the purchaser thereof for the
sum of Twelve hundred & three dollars.
but on account of the profluence of war
and the scarcity of money he was unable
to make payment; that Plaintiff still held
the two said notes falling due in five and
six years after date; that when Defendants
ascertained that Plaintiff could not carry out
his bid, they proposed to him to readvertise.

said real estate again for sale and that if the
land did not bring enough to ^{pay} the two notes
held by them and the two held by Plaintiff, they
would buy said land in and give the Plaintiff
further time - that is to say until the
second note they held became due, to redeem
said land - provided Plaintiff should not bid
for the same: that Plaintiff assented to this proposi-
tion: that accordingly said land was again
advertised by said Trustee and sold on the
6th day of May 1861, at which sale, Plaintiff
relying upon the promises of Defendant, refrained
from bidding for said land and the same
was strucken off and sold to Defendant for
\$530, not more than one third of the value
of said land at that time and received
a deed for said land: that he was at that
time able to raise and could have raised
the amount of the first note then due Defendant
and should have raised the same if it had
not been for the promises and forbearance of Defendant;
Plaintiff further states that this sum of \$530 after
paying the expenses of sale, satisfied the note
and interest then due leaving a balance to
be credited on second note: that the first
note was delivered up to the Trustee, it having
been paid in full, leaving only one note in
the hands of Defendant unpaid: that after
said second sale and on the same day Court

on the 6th day of May 1861 the Defendants in fulfillment of their agreement made with Plaintiff before said, consented to John O'Fallon of St Louis for the use of this Plaintiff their obligation ^{here with filed} under their hands and seals by which they bound themselves to convey to the said John O'Fallon the said land, upon the payment to them of \$507 on June 12th 1861 and \$408.24 on second February 1862 and to deliver up to said Plaintiff the note they held, falling due in February 1862; that these two sums, amounting together to \$1015.24 constituted the notes interest & costs, held by Defendants as aforesaid, that no new consideration entered into said obligation; that it was given by Defendants and accepted by Plaintiff as an obligation & leading the time of payment of the two notes held by Defendants and that said obligation was touched by all the parties as a mere security for money previously due by deed of trust and as a mortgage.

Plaintiff states that he has never assigned the notes he held on Dover falling due 5 & 6 years after date that he still holds them - that they are yet unpaid.

Plaintiff further states that about the time the second payment under obligation became due, he paid Defendants \$408.24 in fulfill-

ment of said bond and that upon the payment being made and accepted, Dependents in accordance with the stipulations in said obligation to that effect, delivered to Plaintiff the note they still held on Dover falling due in February 1862, in fulfillment of their obligation.

Plaintiff states that said obligation has been assigned to Plaintiff; that he has often tendered to Dependents the sum of \$507, with the interest due thereon and now here again in open Court tenders the same.

Plaintiff further states that the said Dover is insolvent & has been ever since the sale of this land in 1861, and that the note he holds against ^{him} ~~him~~ cannot be made out of him and can never be collected unless said land is held for their payment.

Plaintiff further states that Dependents have had the possession of said land since May 1861, and ^{are} still in the possession of the same; that ^{they} have received the rents of the said land for six years and that the rents of said land are reasonably worth one hundred and twenty five dollars per annum.

Plaintiff therefore prays the Court to compel Dependents to account for the rents of said land and by proper decree to permit

Plaintiff to redeem ~~the~~ from Defendants
the NE 1/4 Sec. 22, and the SE 1/4 Sec. 21 T42,
R. 5. E. containing 260 acres, by paying
Defendants the amount due them under said
obligation and equitable mortgage, if any
thing, after deducting the rents if some
received by them as aforesaid, and by judg-
ment of this Court to compel Defendants
to convey said land to Plaintiff or by proper
deed to vest the title thereto in Plaintiff
and for all such other and further relief
in the premises as may be just and
equitable.

John L. Thomas
Atty for Plaintiff.

John D. Hallan

by

J. L. Kennedy et al

Shenandoah Pottery.

Filed May 4th 1867

J. F. Osney
Recorder

John O'Fallon, - Plaintiff	} In the Circuit Court of Jefferson County, Missouri May Term 1867,
Against	
James L. Kennerly }	
Francis L. Kennerly & }	
Thomas J. Kennerly, - Defendants }	

The Defendants move the Court to strike out the amended Petition of Plaintiff, filed on the 4th day of May 1867, for the following reasons;

- 1st - Because said amended petition was not filed in time, and Defendants could not therefore be prepared for trial at this Term
- 2nd - Because said amended Petition entirely and substantially changes the claim and nature of the Cause of action stated in the original Petition.
- 3rd - The original petition is a suit for the specific performance of a Contract to convey land, and now by said amended petition, Plaintiff entirely abandons the original Cause of action, and sets up a claim to redeem a mortgage; a cause of action essentially different from the first in every particular.
- 4th - The Answer to the original Petition having been filed, it is not allowable for the Plaintiff to amend, by setting up a claim altogether inconsistent with the first. — Abner Green
Attorney for Defendants,

In Circuit Court
Jefferson County

John O'Hallon
 vs,

Thos. J. Kennedy
 and others

Motion

to strike out

annexed P^{etition}

Filed May 17th 1867

Geo J. Harvey clk

overmdd

John O'Fallon, - Plaintiff }
 Against }
 James L. Kennerly }
 Francis L. Kennerly }
 & Thomas J. Kennerly. - Defendants }

In the Circuit
 Court Jefferson
 County

The Defendants for Answer to the amended Petition of Plaintiff, filed May the 4th 1867 admit that Jerome B. Dover on the 3rd day of February 1858 executed and delivered his six promissory Notes to Plaintiff, for \$283.33 $\frac{1}{2}$ each, payable in one, two, three, four, five, and six years after date, - and that he at the same time executed and delivered to James Ringess, as trustee a Deed of Trust, conveying to him the Land described in Plaintiff's Petition, to secure the payment of said Notes. And Defendants also admit that John O'Fallon afterwards assigned two of said Notes, to wit, the Notes payable in three and ^{four} years after date, to the Defendants. And Defendants admit that after the first of said Notes became due, to wit on the day of March 1861, Defendants caused said Trustee to advertise and sell said Land, at which sale, John O'Fallon became the purchaser for \$1203.⁰⁰ - and that he failed to pay the amount of his bid, and that consequently Defendants afterwards, caused said Trustee to advertise again the Land aforesaid for sale, - But, Defendants deny that they, after ascertaining that Plaintiff had failed to make payment of the amount of his bid, so that said sale became a nullity, proposed to Plaintiff to re-advertise the land for sale

and that if the land did not bring enough to pay
the two Notes held by Defendants, and also the two
Notes held by Plaintiff, that they would buy the Land
aforesaid, and give Plaintiff further time, - that is,
until the second Note held by Defendants became
due, to redeem said Land, provided Plaintiff would
not bid on the Land, - They deny positively that
such agreement was made, or any agreement
on the subject, or that Defendants ever acceded to
any such proposition as that mentioned in Plaintiff's
petition. or that said property or land was ever
sold in accordance with any such agreement or
proposition. These Defendants deny that Plaintiff
by reason of relying upon any promise made by
these Defendants or either of them refrained from bidding
for said land at the sale on May 6th 1861. These
Defendants deny that the price at which said land
sold at said last mentioned sale was not more
than one third of the value of said land. but
allege that it was the fair value of the land
at that time. These Defendants deny that the
said Plaintiff at the said last mentioned sale
was able to raise or could have raised the
amount of the first note then due Defendants
or that he could have raised the same
if it had not been for the alleged promises
of these Defendants. These Defendants deny
that in fulfillment of any agreement made
by them with Plaintiff before sale they executed
to one John O'Fallon for the use of Plaintiff, their
obligation by which they bound themselves to convey
to the said John O'Fallon the said land upon the

payment to them of certain sums as set forth in the plaintiffs petition - but these defendants allege that no agreement or understanding was had previous to said sale between them and the said plaintiff or the said John C. Gallon in reference to said obligation executed to John C. Gallon but allege that the same was simply an act of kindness toward said plaintiff and independent of any previous understanding -

These defendants deny that the said alleged obligation mentioned in plaintiffs petition was given by these defendants or accepted by the plaintiff as an obligation extending the time of payment of the two notes held by the defendants or that said obligation was intended by all or any of the parties thereto as a new security for money previously due by deed of trust and as a mortgage - but aver that said obligation was not intended as a mortgage and that it in no manner partakes of the nature of a mortgage either legally or equitably -

These Defendants deny that about the time the second payment under said alleged obligation became due the plaintiff paid them \$408²⁴/₁₀₀ in fulfillment of said bond or that plaintiff ever made any payment of any sum at any time in reference thereto or that they ever accepted any such sum in accordance with or in reference to any stipulation in said obligation or that in fulfillment of or in reference to such obligation they delivered or paid to plaintiff the note on Jones falling due in February 1862

These defendants have no knowledge or information sufficient to form a belief as to whether said obligation has been assigned to plaintiff and so require proof of the same.

Defendants deny that plaintiff has after or ever lent or loaned to them the sum of \$500 or the said sum with the interest thereon.

Defendants have not knowledge or information sufficient to form a belief as to whether the said donor is insolvent or that the notes which plaintiff alleges he holds against him cannot be made out of him or that they cannot be collected unless said land be held for their payment and so require proof of the same.

These defendants deny that the rents of the said premises are and have been during their occupancy of the same worth one hundred and twenty five dollars per annum.

These defendants deny that the plaintiff is entitled to have the Court compel these defendants to account for the rents of said land or that plaintiff is entitled to any decree of this Court permitting the plaintiff to ~~draw~~ redeem from them the said property described in his petition upon the payment to these defendants of certain amounts.

These defendants deny that plaintiff is entitled to a decree or judgment of this Court to compel them to convey said land to plaintiff or to vest the title thereto in the plaintiff.

These defendants further deny that the plaintiff is entitled to any relief of any

kind or nature sauer as against these
defendants. but assert that they have a
complete and indefeasible title to said property
exempt from any claims or liens either legal or
equitable in favor of said plaintiff or any
other person whomsoever. And so these
defendants ask to be dismissed with costs
of suit in this behalf expended -

Abner Gunn.

Att. for Defs -

John C. Fuller

vs.

J. S. Hamerly et al.

Chancery to General Patton

Nov. Term. 1867 -

App. in Court - No. 4,

Filed May 14th 1867

J. S. Hamerly et al.

Wm. Green -
W. C. Day -
Att. for Deft.

John O'Halloran

James L. Hennrich et al

} Petition on Bond for
title to Land.

Now at this Comes the Plaintiff & moves
the Court to set aside the judgment in this
Cause and grant him a new trial for
the following reasons.

1. Because the judgment is against the
evidence and the weight of evidence
2. Because the finding of the Court is against
the law in the case.
3. Because the bond sued on does not show
that time was material.
4. Because said bond had in part been com-
plied with.
5. Because said bond ought to be construed
and held as a mortgage.

Rep Kikin & Thomas
Atty for Plff.

7

John D'Alton

by

John L. Hennessy et al

Motion for new

trial -

Filed May 16th 1867

C. F. Hennessy Clerk

Overruled

John Fallow Jr 2
 vs 2
 J. L. Kennedy et al 2

In the Circuit
 Court of Jefferson
 County May Term
 1867.

Be it remembered that this trial coming on to be heard before the Court sitting as a jury, and the plaintiffs to sustain the issues on his part introduced the following testimony to wit. —

James Burges.

I know the plaintiff and the defendants, to this suit, I was trustee in a deed of trust executed by Jerome B. Dover to John O'Fallon Jr. I was called upon by the Remmels defendants, to sell the land mentioned in the deed of trust, this was in February 1861. as well as I remember I was asked to see Dover & try to collect the money on the deed of trust, He could not pay & I advertised and sold the land, in March 1861. either 9th or 15 March, this was first sale. John O'Fallon Jr bought the land, (He is the plaintiff,) at the price \$1200, I think - The defendants were present at this sale - O'Fallon did not pay up the money for the land.

(2)

the - that is, Ofallon, the Kernerlyps, & myself
had a talk about the matter. The debts
wanted this money in gold and silver -
I don't remember ~~whether~~ the sale took place
on Friday or Saturday, the one or the other,
the Kernerlyps gave until the Thursday
following to pay the money at Sulphur
Springs ~~where~~ ^{near} they were to meet Ofallon,
and get it, Ofallon did not meet us
at that place. I did not see him there.
I saw two of the notes the Kernerlyps held.
(Two notes produced & Kernerlyps says) he recognizes
them as the two notes the Kernerlyps had at the
time of the sale. One due in 1861 & the other
in 1862, both dated Feb'y 2nd 1858 & each for
\$383 $\frac{33}{100}$ - The Kernerlyps then got me to make
out and tender to Ofallon a deed to get
the money, which I did & Ofallon
did not still pay the money. & then
they requested me to advertise and sell
the land again which I did, on the
6th of May 1861 - at this sale there
were very few present, both the Kernerlyps
and Ofallon were present at this sale.
Lawn was not. The Kernerlyps ~~paid the~~
~~money~~ they bid off the land for I think
\$530 - which was credited on the two notes,
one note was paid off & a credit endorsed
on the other of \$38 $\frac{61}{100}$ - I think I can

along with the Kromleys to the sale, & perhaps Fuller also. I am not certain, I am sure I went back with them, the land was sold between one & two or about that time, & we started back home about between 3 & 4 - a distance of 16 or 17 miles & we got in 3 miles of home by dark. I created a deal to the Kromleys that day ~~that~~ ^{the} Kromleys and Fuller had a connection ^{Fuller} & agreed to pay a certain sum of money some 800 or 1000 or 1200 dollars I don't recollect exactly, which & a Bond was drawn up in an old frame house across the street then by Alfred Steyer or Gov. Fletcher.

The Kromleys said before the sale, they wanted me to bid I told them I did not want it as I was trustee & they said I need not fear as they had the gold in their pockets. I told them I could not bid & then they asked me who would be a good bidder - this was on Oct of May at the last sale that was made. ^{He asked me to bid but I would not & then they asked me if Joe Heeler would do for a bidder & I told him I thought he would} Joseph Steyer & the Kromleys bid on the land, no one else that I recollect of. Fuller did not bid. All of the foregoing testimony of James Benge objected to as irrelevant & secondary, but the objection is overruled by the court and defendants excepted at the time. I know the property that was sold, about 40 acres in a farm.

Kumukus have had the proposition. The
rents of the property for year would
be about 125 or 150 dollars -
I heard the Kumukus say they had got the
land, but they did not rent it, all they wanted
was this money & the interest -
~~they were paying~~

Crop Examination.

Ofallon had paper money
when the land was sold but the Kumukus
said they wanted not have that, they wanted
the gold & silver. It was announced when
the land was first put up a Mutatie Curry
was demanded - & when Ofallon bid it off
he said he had paper money & I saw a roll
of bills in his hand. The Kumukus always
told me to take nothing but Mutatie
currency. Down was present & bid
at first sale some \$1200 - Ofallon
bid more and got the land.

when I told Ofallon the and he said
he could not pay it then, but talked like
he would -

I gave general notice at second sale as I did
the first time. Down was living at
Sulphur Springs & I set up notice on

his jaw and called his attention to it & he said he would not attend as it was not legal. I saw nothing that was said or done by the Kennelys at second sale ^{that looked like an attempt to prevent persons from bidding} they always said they wanted their money but not the land. & they offered me the gold if I would buy & said they would take it off my hands if I did not want it.

After the Kennelys bought the land and got my deed, they executed and delivered the bond before they left Wellsboro that day - land sales were dull at the time I did not want it at any price at that time - They K^d when they spoke about the gold they said they had loaned the gold & wanted it back. The premium on gold there was about one per cent.

John Fallon

Bond shown intrup - says
it is the bond of the Knerrups, the defendants,
(~~offer a bond not signed to~~) her copy the
same) in words and figures as follows writ.

the intrup then said

The amounts stated in this bond relate
back to a deed of trust given by Charles
Fallon to the Knerrups.

The bond was given in pursuance of an
agreement, made with ^{William Kennedy on behalf of the other} ~~the~~ Knerrups by
me before the last sale in May ^{or} ~~June~~ ¹⁸⁶¹ which was as follows, ^{that I sold} ~~that I sold~~ ^{not sold} ~~that I sold~~
they should become the purchasers
of the land and then they should execute
to me a bond to make me a deed to
the land in controversy. And it was
made to my Uncle Cal. John Fallon
but it was for my benefit. I was
to pay two notes ~~drawn~~ which Jerome
B. Dover had executed to ~~the Knerrups~~
me & payable to me & endorsed by me to
the defendants also endorsed by Charles
Fallon. H. M. Parker was to the note
(Kerr plaintiff offers the notes refused to by
the intrup & the same refused to by James
Rings which her copy) in words & figures as
follows to the introduction of which defendants objected & the
court overruled the objection & defendants excepted at the time
I first assigned those notes to Charles Fallon

7
and he again assigned them to me
I & the Kinnelup. They were
secured by deed of trust on the
land in controversy given by Doner.
There were four other notes given
by Doner of same date & for same
amount in my favor, and they were
^{made} ~~all~~ payable in 1, 2, 3, 4, 5 & 6 years
from date for \$283 ^{33 1/2} and dated
2nd July 1858. The two notes referred
to by me as above were the 3 & 4th notes
the first & 2nd notes were paid by
Doner to me ^{before this agreement with the Kinnelup}. The two last notes
I held at the time the Bond referred
to was made. When I first had
conversation about the matter was at
my place as well as I recollect.
I had several conversations with them
I recollect a conversation at the Black
smith ^{shop} and at that time or a short
time after, this was soon after the first
sale. It was this ^{effect} they would execute to
me a bond, ^{to convey me the land.} they said all they wanted
was their money. It was the money due
them on the Doner land & which was
owing on these two notes which I
had assigned to them. I remarked to them
that I had two notes of Doner secured by
the deed of trust & it would be hard
for me to loose them.

and they said they only wanted their money, & did not want the land.

(Two notes shown return which from

Copy dated Feb 2nd 1858. payable in 5 & 6 years from date. to the introduction of which notes defendants object & the court overruled the objection & defendants excepted and return says they are the two notes I lent & which we talked about.

They said they would bid in the land it would not sell for much, and they would buy it low so as to save

the commission and expenses on both ^{the agreement between us was that they should by the land & that I should not bid.} I told them I would go down

& sell them, attend the sale, but would not bid, & after the sale we would fix the matter up, which ^{I refrained from bidding.} we did. Thomas is pursuance of the agreement between us.

I then wrote the bond -

The five hundred & seven dollars ^{in the bond} ~~note~~ represent the lower note payable 3 years after date under which the land was sold (the interest on the note, the expenses, attorney fees & trustees fees).

The sum of \$400 ²⁴ was in the bond represent the lower note of four years after date.

This ~~second~~ amount representing the note of 4 years after date has been paid & the Kewleys in a Bond given to Sophia Fallon for some 2700 dollars.

(9)

I paid the note falling due 4 years after date - which was represented
The note mentioned in the Bond, of \$383 ³³/₁₀₀
the second payment of \$408.24 in the bond
of 4 years after date, and dated July 2^d 1858

was delivered to me by the Kennelys
after the sum of \$408 ²⁴/₁₀₀ mentioned
in the Bond was paid ^{by myself}

I paid the sum of \$408.24 & received the note & full receipt of the bond
The Kennelys had none of the notes
issued or -

of donee where this was delivered over
to me. This sum of \$408 ²⁴/₁₀₀ was
paid about the first day of July 1863

by me in Mr. Dupless's office in St. Louis

The Bond was given to my Uncle in
St. Louis. Because my Uncle made

me advances and did a good deal
of business for me - The Kennelys

knew this at the time. The bond

was for my benefit which the Kennelys

knew.

My Uncle John A. Fallon said he would
assign me the bond at any time, as it was for
my benefit. He and before did so

Then plaintiff offers in evidence an assign-

ment by the hand of John A. Fallon in order
(alleged to be) (true copy the Bond)

which says the hand of John A. Fallon to be
the sum, to the Bond - assignment

I assigned the two notes to the Kennelys about
one & a half years after date, & the interest up
to that time had been paid on the notes

all of the foregoing testimony of John Fuller
(except the portion relating to proof of the bond and on the making of said bond)
1 Objected to because the same is incompetent
and irrelevant. Objection overruled and
affendants excepted at the time -

Corp Examination

- The Bond was made to my satisfaction & embodied ^{the general items of the} ~~the general items of the~~ ~~the agreement~~ ^{made between us previous to the second sale.}
- (2) ~~The~~ The most of the business was done ^{& the agreement for the land was made with him} with Thomas Kromley. He did the business for all of them. ~~He did not want to take the land~~
~~I bid off the land at first sale for~~
 some \$1200 & odd dollars, & had money, paper money to pay, ^{part of the amount} but the Kromleys would take nothing but gold or silver -
- I did not bid at the second sale, I came down the first time to make the land bring enough to pay the notes I held. I did not pay up when I bid in the land as it was not convenient at the time to pay - I offered at various times to pay the \$500 but the Kromleys would take nothing but gold or silver. I have never paid the money. I offered before the Bond became due to pay the ^{first amount} ~~land~~, but they would take nothing but gold and silver. They said they did not want the land, but the money in gold & would not take greenbacks, which I offered to them. I made no tender but told them I was ready to pay.
- This second sum in the Bond of 408 dollars was paid in July or about that time - and at the time I satisfied a bond of the Kromleys to Sophia Fuller in which said sum was included.

This sum of ~~\$408~~ ^{$24\frac{24}{100}$} was incorporated in a Bond of some \$2400 made to Sophia A. Allen. And I got the note of ~~328~~ ^{$33\frac{3}{4}$} ~~and~~ dollars which is mentioned in the Bond ^{of the Krommels}. ^{from the Krommels for me} I never paid Jones any thing on any first bid & I don't know ^{that I owe him} any thing -

I said in my deposition in another suit that the amount of ~~\$408~~ ^{$24\frac{24}{100}$} was incorporated in the Bond to Sophia A. Allen. I don't know whether I said in the deposition, this was done to relieve Charles A. Allen. The ~~\$408~~ ^{$24\frac{24}{100}$} was paid to the Krommels, when the \$2400 dollars was paid - I think I regarded the sale at the second time as properly conducted I did not do any thing to prevent competition nor prevent notice -

Re Examination

Bond of the Krommels to Sophia A. Allen dated 14 June 1862 for ~~2757~~ ²⁷⁵⁷ ^{$4\frac{24}{100}$} ~~the~~ dollars, when noted & keep the sum of ~~\$408~~ ^{$24\frac{24}{100}$} was included in this ~~Bond~~ amount. (Here copy the Bond) -

and this sum & what Charles A. Allen owed them made up the amount of the Bond to Sophia A. Allen of ~~\$2757~~ ^{$2757$} ^{$4\frac{24}{100}$}

To the introduction of this Bond defendants objected ^{as irrelevant and incompetent} but the Court overruled the objection and defendant excepted

Isaac B. Dower

After the sale on the 6th of May 1861. of my place under deed of trust, I had a conversation with the Kennells & we were talking about the rent of the place for 1861. & said it was hard that they should want the rent of me for 1861 as they got the place so cheap.

They said if you had come down before the sale I would ^{have} given you the same chance I did of Allen & I asked what it was. They said they had given him a ^{or agreement} bond to redeem the land & that they did not want the land they wanted the money. They said they had given Allen an agreement to redeem the land - I don't recollect whether they said they made the agreement before or after the sale - ^{or of agreement} I have a suit against the Kennells & Allen to set aside the sale & redeem this same land in this Court. I bid on the land at first sale \$1212. that sum was enough to pay the notes that the Kennells held. I had the money at the time at the sale.

I said the Kennells first & then on advice of Counsel I said Allen & the whole of them

I did not attend the sale the second time I thought it was illegal & I looked to the Kennetys because they gave off all the time to pay his bid & the sale was legally conducted.

To the testimony of L B Dower defendants objected ^{to} for the same reasons given above objection overruled and defendants except

Anton Springer

I know the Dower place on the Grand Glaze ~~Branch~~. The Kennetys have tenants on it. It is worth \$120, or \$125 dollars a year rent. It was worth in 1860 in gold about \$1800 - for 260 aers, 100 aers good till, 160 aers a tax till, I offered that sum for it to Dower.

Crop Examination

I don't think the land in that neighborhood in 1861 was any lower than in 1860.

Charles Undercollader

I know the Dower place and now live on it since spring of 1863

I rented the place of the Krumpholtz.
 The first year I paid \$1.00. Since that,
 \$1.25 per year. I don't pay the taxes - don't
 know who does -

Re Examination

They filed a note before me
 from Tripell for \$1.00 endorsed with 25¢
 and I gave judgment on it and the note
 was paid - This was for rent of the place
 for 1862. They got judgment also for 1861
 for the rent. What the amount is I do not know

Plaintiff here offers the 2 notes due five
 and six years after date given by Dover
 & Perkins for \$388 ^{33 1/3} dated July 2nd 1858.
 and signed by John A. Fallon, testimony in
 words & figures as follows (here copy
 the same). To which defendants
 object to the introduction of these notes defendants
 object, ^{as irrelevant & incompetent} and exception taken

William C. Fallon

Note dated July 2nd 1858. and above
 signed to date 4 years after date. has been
 paid, ^{it was included} in a bond to Sophia A. Fallon for
 benefit of Charles A. Fallon paid in Shipleys
 office in St. Louis. in 1862 I think -
 The witness refers to a bond used in evidence

given to Sophia Fuller and says it
 is the same bond in which the note
 above referred to was included and paid.
 The amount of money mentioned mentioned
 in the Bond to Sophia Fuller was
 paid in Shupps office one or two days
 before the Bond became due & the
 said note was included in said bond.
 To which defendants objected - objection overruled
 and defendants except.

Here plaintiff closed his case

1
Defendants Evidence

~~Defendants offer to read the testimony of Thos. C. Fletcher taken in this case. (Here copy the same as follows)~~

Thomas Kinnally

Says I am one of defendants.

I never promised before the the second sale to make any agreement that ^{John offalgon} ~~he~~ should not bid ^{or that} and he should have the land, ^{or that I would execute to him a bond for the same}
4 There was no such understanding.

between us. before the second sale the first conversation was in the office of the Clerk of the Court at Skelliston in presence of Gov. Fletcher - held in an old frame house - This was after the first ^{second} sale -

5 ^{There} The plaintiff never at any time tendered ^{any} money on this bond nor did ^{he} offer to make any payments on the same

Cross Examination

I executed the Bond given by myself & Brothers used in evidence.

The way we made up the \$507 mentioned in the Bond we gave. was in this way. Fletcher calculated with Bengis the amount of two notes I lent on Dover & the interest and the Costs &c. These were the notes that Charles Fuller had endorsed to me

I don't recollect whether John Fuller came with me to Sellers that day or not - I do say that I never made any arrangement with Fuller before the sale. The first I recollect that he said was, that he came into the office and asked how much the land sold for & we told him and he said the land sold too cheap & I replied if he would pay us our money he might have the land. I don't recollect whether ~~the land~~ he was present at the sale or not or in Sellers that day before the sale. I saw him for the first time in the office. The reason I did not get Mr. Fuller to bid at the second sale ~~in stead of before~~ was because he had bid off the land once before & would not pay for it. Fuller did not tell me he was buying the land on speculation, or not, don't know what he wanted it for.

Lewis Kinnery

I am one of the defendants
There was no agreement between myself
and Mr. Fuller before the sale of

the land for me to sell him the land
or let him have it. If he did not bid
it was not because there was any
agreement between us & that effect
he never tendered us any money or offered
to pay as any on the bond shed on in this case -

Crop Examination.

Francis Kennedy

There was no agreement or
understanding between me & Gallen & myself
before the sale that Mr Gallen should
not bid on the land or that he should
have the land after we bid it off -
He never paid me or tendered me any
money on the Bond.

Crop Examination

I don't recollect that I
saw Gallen here at first second sale
or vote - I think he was absent at the
time - then defendants closed

This was all the evidence in the case
the Court then found for the defendant (here
insert the finding of the Court)

Plaintiff then filed the following motion
for new trial (New Copy, the motion
for new) which was awarded by the court
to which decision of the court plaintiff
objected and excepted at the time and has
tenders his bill of exceptions in the cause
and prays the court to sign and seal the same
which is accordingly done.

J. H. Vail, Judge

Seal

Filed May 17 1867

E. J. Hooney clerk

John O'Fallon } In the Jefferson Circuit Court
 = 10 = } May Term 1867
 B. J. Kennedy et al. } Taken to 2nd District
 Court by writ of error.

Fee Bill.

Elias T Honey Clerk, 2 cop pet.	2 00		
2 cts \$1 writ \$1 3 copies 60 ^c stamps 60 ^c	3 20		
files 35 ^c 8 sps \$2; 15 outts 75 ^c	3 10		
2 motions 40 ^c Indexes 35 ^c 3 rules 60 ^c	1 35		
amendans, 35 ^c bill ex 20 ^c subm ^t . 35 ^c	90		
Judgt 50 aff ^d 10 ^c dock 10 ^c postage 35 ^c	1 15		
Transcript 14760 @ 15 ^c per hundred	22 14	33, 74	

S. B. Denny cl ^k , 3 sps 25 ^c each 75 ^c ans 35 ^c	1 00		
2 rules 40. Remurrers 60 ^c 3 cont 75 ^c	1 75		
amend ^d pet. 35 ^c Index 35 ^c files 20 ^c	90	3, 75	

C. C. Fletcher Hff serv 7 sps		3 50	
John Williams " 15 sps \$7.50 calls \$1	8 50	8, 50	
John C Vogel " Louis serv 3 Defts \$3.00 indgt 2.00	5 10	5 10	
W. B. Stephens \$3.40 Thomas Burgess \$3.72 \$7.12			
Wm Weckler \$2.28 Wm O'Fallon \$16.76 \$19.04			
Thos B Mass \$6.44 Anton Yoger \$2.92 \$9.36			
Cha ^d Cadmaller \$4.68 Jacob Nager \$6.00 \$10.68			
J. B. Dover \$2.12 Jno O'Fallon \$1.00 \$3.12			
		49 32	
		102 91	

Cash paid by Plaintiff

" " " " aug 17 486) \$10.

8 60
 194 31

John Bullen

-184-

The Honorable

John Bull