

Jefferson County Circuit Court
Case Files - Civil
November 1864

Folder 1 of 2

Box 15 Folder 60

Dover, Jerome B.

vs.

Kennerly, Thomas J.
Kennerly, James L.
Kennerly, Francis L.
O'Fallon, John, Jr.

Title

Involved deed of trust on 260 acres
in S 21, T 24 N 25 E securing 6 notes
of \$383.33 each; sold by trustee James
Burgess to defendants; depositions;
Supreme Court

Jerome B Dover Plaintiff

vs

Thomas J Kennerly
James L Kennerly
Francis L Kennerly
~~John Kennerly~~

Defendants

In the Circuit
Court of Jefferson County
Missouri

The plaintiff states that on the 2d day of February 1858 he was the owner of the following described Real Estate Situate and being in Jefferson County Missouri viz

The North East fractional quarter of Section twenty two, Township forty two Range five East containing one hundred acres of land, also the South East quarter of Section twenty one, Township forty two, Range five East containing one hundred and sixty acres of land, that on the 2d day of February 1858, plaintiff conveyed said lands to James Burgess trustee, in trust to secure the payment of six promissory notes made by plaintiff and one H M Parker in favor of John O Fallon Jr, each note payable for the sum of \$383.33 $\frac{1}{3}$, in one, two, three, four, five and six years, all bearing interest at the Rate of six $\frac{1}{2}$ per cent per annum from Feb 2d 1858, that plaintiff paid off to John O Fallon the notes payable & falling due in February 1859, & 1860, and that, John O Fallon took up in the store of said Dover and Parker goods and cash amounting to about the sum of \$6000 that it was agreed between plaintiff & O Fallon that this sum should be a payment upon the notes falling due in ^{Feb} 1861 and 1862. But notwithstanding this agreement John O Fallon has

igned to Thomas J Kennerly, James L Kennerly and Francis L Kennerly the two notes falling due in Feb 1861 and February 1862, that said Kennerlys did not advance to John O Fallon any new consideration for the assignment of said notes but that they were given to said Kennerlys towards payment of a prior indebtedness from O Fallon to said Kennerlys.

Plaintiff further states that said Kennerlys knew at the time that they received said notes from John O Fallon that O Fallon was taking up goods at the store of Dover and Parker and that there existed a set off in favor of Dover against O Fallon & that that the indebtedness was not paid.

Plaintiff further states that as soon as the note fell due in February 1861, the defendants Thomas J, James L, & Francis L Kennerly caused James Burgess the trustee to advertise & sell the above described land under the powers of the deed of trust aforesaid at the Court house door in Hillsboro, Jefferson County Mo, that ^{prior} on the 15th day of March 1861, all of the said defendants combined and conspired and together ^{and with John O Fallon} to attend the sale and purchase the ^{said} land under a secret arrangement between them by which it was agreed for the land to be sold and for one of the parties to bid it off with an understanding that John O Fallon might pay the Kennerlys at a future day the certain sum of money and thus have the land for his own benefit, that in accordance with this secret agn

agreement, John O'Fallen and Thomas J. Kennerly, ^{the defendants} attended the sale at the Court house in Hillsboro on the 15th of March 1861, and also J. B. Dover attended the sale with the view of preventing a sacrifice of the property,

that at the bidding off of the said property it ran up until plaintiff bid \$1202 for the property, John O'Fallen bid \$1203 when it was stricken off by said Burgess to said O'Fallen for \$1203, that at the time of selling of said property said Kennerly's announced that their claims ~~on~~ on the note due and the one to become due amounted to about \$800 on \$850, that after the sale by said trustee to John O'Fallen, said Kennerly's and John O'Fallen entered into an agreement that O'Fallen might not pay the money bid on the property but might pay it in future, that said trustee ought to have put the property up for sale again on the said 15th day of March 1861, that there were persons present with money to bid on said land to a sum

sufficient to pay the said Kennerly's all of their notes. that in consequence of the ~~the~~ land not being sold again on more payment of the bid of O'Fallen, those persons who came there to buy the land failed to get it and plaintiff, incensed, was not satisfied, that afterwards said Kennerly's for the purpose of depriving plaintiff out of his said lands, caused said Burgess the said trustee to advertise said lands for sale at the Court house door in Hillsboro Md on the 6th day of May 1861, and in furtherance of

the design to cheat and defraud plaintiff out-
of the title to said lands. Said Kennerlys
made an agreement with John O'Fallon that
John O'Fallon should not bid against
them for the lands in the sale and gave
to said O'Fallon a bond ^{obligating themselves} to bid off
the said lands and to convey the lands
back to O'Fallon, for O'Fallon paying
to the said Kennerlys a certain sum
of money, the amount not known to the
plaintiff, ~~that~~ the date of sale did
not come to the knowledge of plaintiff, that
on the 6 day of May 1861, said Burgess
again sold the said lands, ~~at the~~ Court
house in Hillsboro and in accordance with
the agreement between said Kennerlys and
O'Fallon, said O'Fallon refrained from
bidding at sale and other persons present
were afraid to bid in consequence of there
having been a previous sale so as to create
a doubt as to the title. In consequence of
the combinations between the defendants ^{and said O'Fallon} no
person bid on the lands except the Kennerlys,
who bid the ^{above} sum of \$530. that a deed
was executed by said Burgess as trustee to said
defendants James L. Thomas & Francis L.
Kennerly for the said lands, bearing date
of the 6th day of May 1861, that the said Ken-
nerlys with the design of oppressing and injur-
ing plaintiff made a pretended settlement
with James Burgess for the proceeds of sale
in which, they charged plaintiff and deducted
out of \$530 the amount of that sale, the sum
of five dollars for the advertising of the sale

of March the 15th 1861 and of the second sale, also the sum
of five dollars ^{for} the deed of conveyance to O'Sullivan for the lands
sold on 15 March 1861 and for the second sale and
fifty cents for acknowledgment of the deed to John O'Sullivan
of the lands sold March 15th 1861, also one dollar & fifty cents
paid the auctioneer of both sales, also six dollars for
services attending the first sale & other things

Plaintiff charges that before and after the
sales of said land in March and May 1861, the
defendants combined and confederated together to cheat
and defraud the plaintiff out of his said lands
by their several acts and transactions aforesaid
that said lands were worth a large sum and
were sacrificed and sold below their value
through said combinations of defendants, that
said notes transferred to said Kennerlys
were paid off before the transfer, that said
Kennerlys did not pay a new consideration
for said notes but they were transferred in
part payment of an existing and prior
indebtedness from O'Sullivan to said Kennerlys

Plaintiff is ready and willing and here tenders
and offers to pay to said Kennerlys the amount
due on said notes, if anything should be found
due. He ~~charges~~ charges that said Kennerlys
have entered on said lands and enjoyed the rents
and profits and timber since ~~the~~ ^{the} sale.

Amounting to a large sum and also ^{plaintiff has sustained} ~~for~~ ^{damages} ~~for~~ ^{by reason of the above wrongful acts of defendants} ~~damages~~ ^{ages} ~~that plaintiff has sustained~~

The plaintiff prays the Court to take an
account of the rents and profits received by
said defendants and ^{and damages sustained by plaintiff} to ascertain if there is
anything due the said Kennerlys, and to
set aside the deed from James Burgess, trustee
to Thomas J. James L & Francis L Kennerly of

Jerome B Dover Plaintiff

vs

Thomas J Kennerly

James L Kennerly

Frances L Kennerly Defendants

In the Circuit Court of
Jefferson County Mo

The Plaintiff States, that on the 2nd day of February 1858, he was the owner of the following described Real Estate Situate and lying in Jefferson County Missouri viz: The North East fractional quarter of Section twenty two Township forty two range five east, containing one hundred acres of land; Also the South East quarter of Section twenty one, Township forty two, Range five East, containing one hundred and sixty acres of land that on the 2nd day of February 1858 plaintiff conveyed said lands to James Burgess ^{Trustee} in Trust to secure the payment of six promissory notes made by plaintiff and one to Mr Parker in favor of John Q. Feller Jr. each note payable for the sum of \$383.33 1/2 in one two three four five and six years, all bearing interest at the rate of Six 1/2 per cent per annum

from Feb. 2nd 1858, that Plaintiff paid off to John O'Fallon the notes payable & full m^y due in February 1859 & 1860. and that John O'Fallon took up in the store of said Dover and Parker goods and cash amounting to about the sum of \$. That it was agreed between plaintiff & O'Fallon that this sum should be a payment upon the notes falling due in Feb. 1861 and 1862. But notwithstanding this agreement John O'Fallon assigned to Thomas J. Kennerly James L. Kennerly and Francis L. Kennerly the two notes falling due in Feb. 1861 and February 1862. that said Kennerleys did ^{not} advance to John O'Fallon any new consideration for the assignment of said notes but that they were given to said Kennerleys towards payment of a prior indebtedness from O'Fallon to said Kennerleys.

Plaintiff further states that said Kennerleys knew at the time that they received said notes, from John O'Fallon, that O'Fallon was taking up goods at the store of Dover and Parker. and that there existed a set off in favor of Dover against O'Fallon. & that thus the indebtedness was not paid.

Plaintiff further states that as soon as the note fell due in February 1861. the defendants

Thomas J. James L. V. Francis L. Kennerly caused James Burgess the trustee to advertise & sell the above described lands under the powers of the deed of trust aforesaid at the Court house door in Hillsboro, Jefferson County Mo. that prior to the 15th day of March 1861 all of the said defendants combined and confederated together, and with John O'Fallon to attend the sale and purchase the said lands under a secret arrangement between them, by which it was agreed, for the land to be sold, and for one of the parties to bid it off with an understanding that John O'Fallon might pay the Kennerlys at a future day the certain sum of money and then have the land for his own benefit.

That in accordance with this secret agreement, John O'Fallon and Thomas J. Kennerly the defendants attended the sale at the Court house in Hillsboro on the 15 of March 1861, and also J. B. Dover attended the sale with the view of preventing a sacrifice of the property that at the bidding off of the said property it run up until plaintiff bid \$1202. for the property, John O'Fallon bid \$1203. when it was stricken off by said Burgess to said O'Fallon for \$1203. that at the time of selling of said property said Kennerlys announced that their claim on the Note due and the one to be-

= come due amounted to about \$800 or \$850. That after the sale by said trustee to John O'Fallon, said Kennerleys and John O'Fallon, entered into an agreement, that O'Fallon might not pay the money bid on the property but might pay it in future, that said Trustee ought to have put the property up for sale again on the said 15 day of March 1861, that there were persons present with money to bid on said land to a sum sufficient to pay the said Kennerleys all of their notes that in consequence of the land not being sold again on non payment of the bid of O'Fallon, those persons who came there to buy the land failed to get it and plaintiff's indebtedness was not satisfied. That afterwards said Kennerleys for the purpose of defrauding plaintiff out of his said lands, caused said Burgess the said trustee to advertise said lands for sale at the Court House door in Hillsboro Mo. on the 6th day of May 1861: and in furtherance of the design to cheat and defraud plaintiff out of the title to said lands, said Kennerleys made an agreement with John O'Fallon that John O'Fallon should not bid against them for the lands on the sale and gave to said O'Fallon a bond obligating themselves to bid — —

off the said lands and to convey the lands back to O'Fallon. On O'Fallon's paying to the said Kennerleys a certain sum of money the amount not known to the plaintiff, that the notice of sale, did not come to the knowledge of plaintiff, that on the 6 day of May 1861, said Burgess again sold the said lands, at the Court House in Hillsboro and in accordance with the agreement between said Kennerleys and O'Fallon, said O'Fallon refrained from bidding at sale and other persons present were afraid to bid in consequence of there having been a previous sale, so as to create a doubt as to the title. In consequence of the combinations between the defendants and said O'Fallon, no person bid on the lands except the Kennerleys who bid the sum of \$530. that a deed was executed by said Burgess as trustee to said defendants, James L. Thomas & Francis L. Kennerly for the said lands, bearing date of the 6th day of May 1861.

that the said Kennerleys with the design of oppressing and injuring plaintiff, made a pretended settlement with James Burgess for the proceeds of sale in which, they charged plaintiff and deducted out of \$530 the amount of that sale, the sum of five dollars for the advertising of the sale of March the

15th 1861, and of the second sale, also the sum of five dollars for the deed of conveyance to O'Fallon for the lands sold on 15 March 1861 and for the second sale and fifty cents for acknowledgment of the deed to John O'Fallon of the lands sold March 15th 1861, also one dollar & fifty cents paid the auctioneer of both sales, also six dollars for services attending the first sale & other things.

Plaintiff charges that before and after the sales of said land in March and May 1861 the defendants combined and confederated together to cheat and defraud the plaintiff out of his said lands by their several acts and transactions aforesaid, that said lands were worth a large sum and were sacrificed and sold below their value through said combinations of defendants, that said Notes transferred to said Kennerlys were paid off before the transfers, that said Kennerlys did not pay a new consideration for said notes, but they were transferred in part payment of an existing and prior indebtedness from O'Fallon to said Kennerlys.

Plaintiff is ready and willing and here tenders and offers to pay to said Kennerlys the amount due on said notes, if any thing should be found due. He further charges

that said Kennerleys have entered on said lands and enjoyed the Rents and profits and timber since the sale, amounting to a large sum and also plaintiff has sustained \$1,500 damages by reason of the above wrongful acts of defendants.

The plaintiff prays the Court to take an account of the rents and profits received by said defendants and damages sustained by plaintiff and to ascertain if there is any thing due the said Kennerleys, and to set aside the deed from James Burgess, trustee to Thomas J. James L. & Francis L. Kennerley of date of the 6th day of May 1861, and to vest the title in plaintiff and to restore the possession of the premises to plaintiff, for a writ of possession, and if any thing is found due from plaintiff to said Kennerleys, the plaintiff here offers to pay the same and prays the Court for all other and further proper relief

J. A. Beal Atty
for Plaintiff

J. B. Dover states on oath that the foregoing petition and the matters therein as stated he believes to be true
Subscribed & sworn to }

before me this 12th. } Jerome B. Dover.
day of September 1864. }
Elias T. Hooney clerk

A true copy of the orig-
inal petition and affidavit on file in
my office

Witness my hand and
the seal of said court.
Elias T. Hooney clerk

Jerome B Dover Plaintiff

vs

Thomas J Kennerly

James L Kennerly

Francis L Kennerly Defendants

In the Circuit Court of
Jefferson County Missouri

The Plaintiff States that on the 2nd day of February 1858, he was the owner of the following described Real Estate, situate and being in Jefferson County Missouri viz The North East fractional quarter of Section twenty two Township forty two Range five East, containing one hundred acres of land; Also the South East quarter of Section twenty one, Township forty two Range five East containing one hundred and sixty acres of land, that on the 2nd day of February 1858 plaintiff conveyed said lands to James Burges trustee in trust to secure the payment of six promissory notes made by Plaintiff and one H. M. Parker in favor of John O Tuller Jr. each note payable for the sum of \$383.33 1/2 in. One two, three, four, five and six years, all bearing interest at the rate of six per cent per annum from Feb. 2nd 1858

that Plaintiff paid off to John O Hallor
the notes payable & falling due in Febru-
ary 1859 & 1860, and that John O Hallor
took up in the Store of said Dover and
Parker, goods and cash, amounting to
about the sum of \$ that it was
agreed between plaintiff, & O Hallor, that
this sum should be a payment upon
the notes falling due Feb. 1861 and 1862.
But notwithstanding this agreement
John O Hallor, assigned to Thomas S.
Kennerly, James S Kennerly, and
Francis S Kennerly, the two notes fall-
ing due in Feb 1861. and February 1862.
that said Kennerleys did not advance
to John O Hallor any new consideration
for the assignment of said notes but that
they were given to said Kennerleys, - to-
wards payment of a prior indebtedness
from O Hallor to said Kennerleys.

Plaintiff further states that said Ken-
nerleys knew, at the time that they
received said notes from John O Hallor,
that O Hallor was taking up goods at
the Store of Dover and Parker and that
there existed a set off in favor of
Dover against O Hallor & that this
the indebtedness was not paid,

Plaintiff further states that said Kennerleys knew at the time that they received said notes from John O Fallon, that O Fallon was taking up goods at the store of Dover and Parker, and that there existed a set off in favor of Dover against O Fallon & that thus the indebtedness was not paid,

Plaintiff further states that as soon as the note fell due in February 1861 the Defendants Thomas J. James L & Francis S Kennerly, caused James Burgess the trustee to advertise & sell the above described land under the powers of the deed of trust aforesaid at the Court house door in Hillsboro, Jefferson County Mo that prior to the 15th day of March 1861 all of the said defendants combined and confederated together and with John O Fallon to attend the sale and purchase the said lands under a secret arrangement between them by which it was agreed for the land to be sold, and for one of the parties to bid it off with an understanding that John O Fallon might pay the Kennerleys at a future day a certain sum of money and then have the land for his own

benefit, that in accordance with this secret agreement, John O Fallon and Thomas J. Kennerly, and the defendants, attended the sale at the Court House in Hillsboro on the 15th of March 1861 and also J. B. Dover attended the sale, with the view of preventing a sacrifice of the property, that at the bidding off of the said property it ran up until plaintiff bid \$1202 for the property, John O Fallon bid \$1203, where it was stricken off by said Burgess to said O Fallon for \$1203, that at the time of selling of said property said Kennerleys, announced that their claims on the note due and the one to become due amounted to about \$800 or \$850, that after the sale by said trustee to John O Fallon, said Kennerley's and John O Fallon entered into an agreement, that O Fallon might not pay the money bid on the property, but might pay it in future, that said Trustee ought to have put the property up for sale again on the said 15th day of March 1861, that there were persons present with money to bid on said land to a sum sufficient to pay the said Kennerleys all of their notes.

that in consequence of the land not being sold again on nonpayment of the bid of O Fallon those persons who came there to buy the land failed to get it and Plaintiffs indebtedness was not satisfied, that afterwards the Kennersleys for the purpose of defrauding Plaintiff out of said land caused said Burgess the said trustee to advertise said lands for sale at the Court house door in Hillsboro Mo, on the 6th day of May 1861, and in furtherance of the design to cheat and defraud Plaintiff out of the title to said lands, said Kennersleys made an agreement with John O Fallon, that John O Fallon should not bid against them for the land on the sale, and gave to said O Fallon a Bond obligating themselves to bid off the said lands and to convey the lands back to O Fallon, on O Fallon's paying to the said Kennersleys a certain sum of money, the amount not known to the plaintiff, that the notice of sale did not come to the knowledge of plaintiff, that on the 6 day of May 1861 said Burgess again sold the said lands at the Court house in

Holliston, and in accordance with the agreement between said Kennereys and O'Fallon said O'Fallon refrained from bidding at sale, and other persons present were afraid to bid in consequence of there having been a previous sale, so as to create a doubt as to the title. In consequence of the combinations between the defendants and said O'Fallon no person bid on the lands except the Kennereys, who bid the sum of \$530, that a deed was executed by said Burges as trustee to said defendants James L. Thomas Jr. & Francis L. Kennery for the said lands, bearing date of the 6th day of May 1861, that the said Kennereys, with the design of oppressing and injuring plaintiff made a pretended settlement with James Burges for the proceeds of sale in which they charged plaintiff and deducted out of \$530, the amount of that sale, the sum of five dollars for the advertising of the sale of March the 15th 1861 and of the second sale, also the sum of five dollars for the deed of conveyance to O'Fallon for the land sold on the 15 March 1861 and for the second sale

and fifty cents for acknowledgment of the deed to John O'Fallon of the land sold March 15th 1861, also. One dollar & fifty cents paid the Auctioneer of both sales, also. Six dollars for Services attending the first sale & other things. Plaintiff Charges, that before and after the sales of said land in March and May 1861, the defendants combined and confederated together to cheat and defraud the plaintiff out of his said land by their several acts and transactions aforesaid, that said lands were worth a large sum and were sacrificed and sold below their value, through said combinations of defendants, that said notes transferred to said Kernerleys were paid off before the transfer, that said Kernerleys did not pay a new Consideration for said notes, but they were transferred in part payment of an existing and prior indebtedness from O'Fallon to said Kernerleys.

Plaintiff is ready and willing and here tenders and offers to pay to said Kernerleys the amount due. See further Charges that said

Kennedys have entered on said lands and enjoyed the rents and profits and timber since the sale, amounting to a large sum, and also plaintiff has sustained \$1500. damages by reason of the above wrongful acts of defendants. The Plaintiff prays the Court to take an account of the rents and profits received by said defendants and damages sustained by plaintiff, and to ascertain if there is anything due the said Kennedys, and to set aside the deed from James Burges trustee to Thomas J. James & Francis L. Kennedy of date of the 6th day of May 1861, and to vest the title in plaintiff and to restore the possession of the premises to the plaintiff, for a writ of possession, and if anything is found due from plaintiff to said Kennedys the Plaintiff here offers to pay the same, and prays the Court for all other and further proper relief

J. A. Beal Atty
for Plaintiff

J. B. Dover states on oath that the foregoing petition and the matters therein as stated he believes to be true

Subscribed & sworn to

before me this 12th day of
September 1864

Elias F. Honey Clerk

Jerome B. Dover

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

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

We command you, that you summon *Horras J Kemmerley*
James L Kemmerley and *Francis L Kemmerley*

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
Jerome B. Dover

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

Witness, ELIAS F. HONEY, Clerk of our said Circuit
Court, with the seal thereof hereunto affixed, at office
in Hillsboro, this *Thirteenth*
day of *September* A. D. 1864

Elias F. Honey
Clerk Circuit Court.



TO JEFFERSON CIRCUIT COURT

Warrant of Arrest, 1864

for cause of Power
as { Breach
of J. H. H. H.
James & H. H. H.

Filed Oct 5th 1864
Clerk of H. H. H.

Executed this writ in the County of St. Louis
on the 24th day of September 1864 by de-
livering a copy of the writ ~~and~~ petition as
furnished by the Clerk to Francis
L. H. H., and by delivering a copy
of the writ as furnished by the Clerk
to Thomas and James L. H. H.

John C. H. H. Sheriff
Jacob L. H. H. Dep.

Fees \$3 00.
12 miles
Mileage \$ 60
Total \$ 3. 60

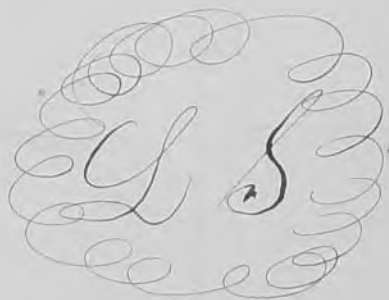
The State of Missouri, } ss.
COUNTY OF JEFFERSON.

To the Sheriff of the County of ^{St Louis} Jefferson Greeting:

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

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
Jerome B. Dover

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



Witness, ELIAS F. HONEY, Clerk of our said Circuit
Court, with the seal thereof hereunto affixed, at office
in Hillsboro, this *thirteenth*
day of *September* A. D. 1864

Elias F. Honey

Clerk Circuit Court.

TO JEFFERSON CIRCUIT COURT

November Term, 1864

James B. Over

vs

*Thos. J. Kennedy
James A. Kennedy
Jas. A. Kennedy*

*Copy petition sent for
defendant sent correct*

James B. Doer

v.s.

James D. Kennedy
James D. Kennedy
James D. Kennedy
Take Notice, that on the

day of March 1865, between

IN THE
Circuit Court
for Jefferson Co., Mo

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, 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

Plaintiffs

J. G. McEllan

Attorney to the above named.

Served the within notice & delivering
a true copy of the same to Jerome
B. Dorner in Jefferson County
Missouri this 22nd day of Feb. 1865

W. P. Bly

Subscribed & sworn to
before me this 22nd Feb. 1865

Charles H. Bissett
Justice of the Peace Central Tp
Jefferson Co. Mo.

Dorner

Deposition of a witness produced sworn
& examined on the sixth day of March
AD Eighteen hundred and sixty five
between the hours of eight o'clock in the fore-
noon and six o'clock in the afternoon of that
day, at the Executive Mansion in Jefferson
City Mo County of Cole State of Missouri, before
me R. L. Cordell a notary Public in
and for the County of Cole in the State
of Missouri, in a certain cause now
pending in the Circuit Court of Jefferson
County State of Missouri between Jerome
B. Doner Plaintiff and James L. Kennerly
Francis L. Kennerly and Thomas J. Kennerly
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} that,
I am acquainted with the parties
to this action, I was employed by James
Burgess for the trustee to advertise the prop-
erty described in the plaintiffs petition and
attended the sale on the 6th May 1861, of
the former sale or attempted sale mentioned
in the plaintiffs petition I have no knowledge,

for the sale which took place on 6th May 1861.
I put up the advertisements one of which
was^{put} on the wall of the Ticket office inside

the station house at Sulphur Spring depot, the plaintiff Dover was doing business at the time within one hundred or one hundred and fifty feet of the station house, I knew of no agreement between defendants and John O'Hallon or any other person by which he or any other person was to forbear to bid at the sale of the land on 6th May 1861, no bond for that or any other purpose was entered into by defendants and John O'Hallon Jr. prior to the sale, after the sale was over ~~and~~ and after the deed was made to the defendants, John O'Hallon Jr. obtained from Kennerly's a promise in writing that if O'Hallon would pay them the full amount of what he owed them on or before a certain day therein named they would let him have the land, If O'Hallon refrained from bidding at the sale it was because he had not the money to pay for the land if struck off to him, I did not see nor hear of any person at the sale on the 6th May 1861, question the title under that sale. I do not now remember who did bid at that sale besides Kennerly's, I neither saw nor heard anything at that or any other time, which had any appearance of confederating on the part of O'Hallon and Kennerly's, But to the contrary I had the impression from all I saw and heard that John O'Hallon Jr. was acting for himself

and with a view to Dover's interests, and
further deponent saith not.

Thos C Fletcher.

Sworn to and subscribed before me, on the day
and at the place and within the hours first
aforesaid,



R. L. Cordell Notary Public

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
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 re-
duced 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 fur-
ther certify, that said Thomas C. Fletcher is a res-
ident 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. 1865

R. L. Cordell



James B. Dorer
213 Dept. for debt
Geo. L. Kennedy shals

Recd for debt of James
and Geo. L. Dorer. 11/18/25
Edw. J. Dorer shals



Jerome Walker

IN THE

v8.

James & Henry
Dothens

Circuit Court for
Jefferson Co. Mo.

Take Notice, that on the

23^d

day of March 1868, between

the hours of eight o'clock in the forenoon and six o'clock in the afternoon of that day, at the office
of the Clerk of the Circuit Court John J. Jefferson in the town
of Hillsboro, County of Jefferson, State of Indiana, 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 J. Jefferson

Attorney to the above named.

I hereby acknowledge the service of
this justice this 20th day of March 1865

Jerome B. Brown

Served on Jerome B Brown on the 20th of March
1865 by his accepting this service of it

Wm. B. Bliss Dep't Secy
of Gen'l Township
Jefferson County Mo

Depositions of witnesses produced sworn and examined on the 23^d day of march in the year of our Lord 1865 between the hours of eight o'clock in the forenoon and six o'clock in the afternoon of that day at the Court House in the County of Jefferson and State of Missouri before me Isaac Sullens County Court Justice of said County in a certain cause now pending in the Circuit Court of the County of Jefferson in the State of Missouri between Jerome B Dover Plaintiff and Tho L Kennerly Jas L Kennerly & Francis L Kennerly are defendants on the part of the Defendants

" James Burgeff of lawful age being produced sworn & examined on the part of the defendants, deposes and saith. I James Burgeff was acted as Trustee in a certain deed of Trust given by Jerome B Dover & wife to John A Wallon Jr. dated 2nd day of Feby 1858. And by the virtue of the power to me given by said deed of Trust & advertised and

sold the property ~~mentioned~~ described
in said deed on the fifteenth day
of March 1861. I duly advertised
the land for sale by causing to be
6 notices in public places in
Jefferson Co. Mo. thirty days before
the day of sale. I sold the ^{first tract of} land
mentioned in said deed of Trust
at the Court House door in Jeff Co
Mo. at one o'clock of Mar 15th 1861,

" The land was bid in by John
O'Dallan Jr. at and for the sum
of Twelve hundred and three dollars

The reason I did not sell any
more of the land in said deed
described I thought it sufficient
to pay off the debt. I came to
Dover Plaintiff in this suit and
ever at other gentlemen were present
when said sale took place.

Other persons bid on the land and
I think that Oscar Dover bid
Twelve hundred dollars. The
money, ^{the land was sold for,} was not paid on the day of
sale. There was no one present
contended that O'Dallan should
not pay the whole amount to
~~me~~ me. There was a dispute

as to whether the Trustee should
pay ^{notes embraced by the deed} over all the ~~notes~~ ~~due the~~
~~of Trust~~ ~~Kennerly's estate~~ or whether I
should first pay the note then
due, and loan the rest out at
interest until the other notes of
the Kennerly's should come due
but all insisted that O'Fallon
should pay the amount of his bid

" O'Fallon failed & demanded the
money of O'Fallon and he said
he could not pay it. but asked
for time to pay it. I went and
talked to Kennerly's that O'Fallon
wanted until Thursday following
they were to meet at Sulphur
Springs & Deal was to come and
do the writing and the time arrived
and O'Fallon did not come
forwards and pay it & I made
out a blank deed and acknowl-
edged it before Squire Mockbee,
I tendered O'Fallon the deed
and he said he could not pay it

O'Fallon said it was impossible
for him to get the money to pay it
and said probably I would have
to sell the land again, I heard
O'Fallon tell Deal to come to

Sulphur Springs and do the writing
Beal appeared to be acting for
Dover, he asked me if I would
endorse Dover for five or six
hundred dollars, I think Beal
was acting as attorney for Dover.

Dover told me if O'Dillon
paid the whole amount there would
be something coming to ~~me~~ him
I don't think that Dover said
anything to me about giving
O'Dillon any time to pay, and
I don't think Dover was present
at any time while we were making
the arrangements. So some after
I made ~~him~~ O'Dillon a tender of
the deed and he did not pay his
bid & again advertised and sold
the whole of the land in said deed
of Trust mentioned on the 6th
day of May 1861, to James Kennedy
& Mo^r Kennerley for the sum of
five hundred and thirty dollars.
At the second sale
" I ~~got~~ caused notice to be given
~~according to the~~ of the sale by putting
up six hand bills in different
parts of Jeff Co Mo thirty days before
the day set for sale.

There was one other bidder besides the Kennerleys present at the last sale. Mr. O'Fallon was present at the sale. Clover was not. ~~I suppose~~ ~~he was~~ Clover was ~~Keefe~~ living at Sulphur Springs at the time of the second sale, and I had a notice of the sale put up either on his ^{sign} door or the depot house at ~~in said town~~ in Sulphur Springs. I ~~also told~~ ~~clover~~ of the asked clover if he was going to attend the second sale of the land on the 6th of May and he said he thought not. There was a very

few people present at the second sale and only one bidder beside the Kennerleys.

The amount was paid, bid, by the Kennerleys and credited on the note, after deducting the expenses, ^(which note is here exhibited marked "B") A copy of the Deed of

Trust above referred to under which said sales were made marked exhibit "A" is hereto attached as a part of this deposition the original not being in my power to produce.)

I ~~do~~ do not know whether O'Fallon held the other three notes at ~~that~~ ^{the} time of sale. I only saw two notes only in Kennerleys possession at the time of sale which had been assigned

from John O'Fallon Dr. to Chas O'Fallon
and from Chas O'Fallon assigned to
the Kennersleys. The notes are the
same specified in said deed of
Conveyance. I. Endorsed a note for
\$2000 over to I. A. Deab for on the
day of the first sale above spoken
for five hundred dollars to
enable him to get money from
Deab to pay off the first note
or bid in the land or something
I thought as he was a neighbor I
would help him. I. A. Deab
did ~~not~~ get ~~the money~~ of the
money about five hundred dollars
on the day of the ~~day of the~~ first sale
and before the sale was made, I
pass him with the money. The note
from Deab to I. A. Deab was after the
sale destroyed and the money went
back to I. A. Deab, ^(in a conversation with Kennersleys) I ^{said} considered the land
good and valuable property but I would
not have borrowed the money and
paid five hundred dollars for it. ~~I did~~
at that time

(Crop Examined X X L.)

Leroy Dover was present at the first sale. I don't recollect whether Leroy bid on the land. Oscar Dover bid twelve hundred dollars on the land. ~~One~~ at the first sale the Tract of one hundred acres was Stricken off to John A. Wallow & Co. at the sum of twelve hundred and three dollars. And Oscar Dover's bid was on this one hundred acre Tract alone. On the day of the first sale when I told the Kemmerleys that John A. Wallow wanted till the next Thursday to pay the twelve hundred and three dollars the Kemmerleys talked like they wanted the money down. Finally they talked with John A. Wallow ^{or agreed} to wait till the next Wednesday or Thursday and meet at Sulphur Springs. Or one suggested that I should sell the land over again. The twelve hundred dollars bid by Dover would have paid the two notes of the Kemmerleys which I carry them here. I don't recollect whether Oscar Leroy & B. Dover remained till after the arrangement was made between A. Wallow and the Kemmerleys about the payment of the money. On the last sale I deducted the costs of both sales and

applied the balance to notes of Kennerley,
(a bill of which costs is herewith filed
marked Exhibit (B)). At the last sale
I don't know whether I sold both tracts
in said deed described together or separate.
Both tracts at the second sale was sold
for nine hundred ^{thirty} dollars.

Q. What are these two tracts of land worth
~~at the present time~~

X I consider the tract containing one
hundred acres worth twenty dollars
per acre. (The above question and answer
objected by the defendants as being irrele-
vant, illegal and incompetent)

Q. What is the other tract of 160 acres worth now.
I consider it worth nine hundred
dollars (The above question and answer
objected to by the defendants as being
irrelevant illegal and incompetent)

X The same evening of the last sale the
Kennerleys made a agreement with
A. Wallon to let him have the land for
three hundred dollars and they
executed an agreement with him
for that purpose, on the 6th day of
May eighteen hundred and sixty one.
I was present and saw the articles signed by the
parties, The contract and agreement

was written out and signed by the parties before they left Town on the evening of the ~~last~~ day of the last sale (his last statement objected to by the defendants as being irrelevant illegal and incompetent)

~~Kennedy~~ a on the day of the last sale Kennedy asked me if I would not bid on the land, and I told them I could not consistently being the trustee. They insisted that I should bid on it for they had the gold in their own pocket. They asked me if Joe Keper could not bid on the land. I saw them go and talk to Joe Keper just before the sale.

After I put the land up Joe Keper did come and bid. I have got the original deed made out for John A. Wallon of the first sale with the advertisement of sale attached in my possession yet.

Col. Thos. C. Fletcher made out the deed for the land to A. Wallon of the first sale for both tracts of land before the first sale took place, after the first sale there being only one tract sold I caused the second tract of land in the deed mentioned to be obliterated it being the hundred and sixty acre tract. A copy of the deed with the advertisement

of sale hereto attached is herewith
filed is marked Exhibit "20")

When I endorsed this note with
dever to Deal it was with the
understanding that Dover was
to bid sufficient at the sale to pay
off all the notes of Kemmerly and
and then Dover was to execute
a deed of trust ~~to secure~~ on this
same land to secure me.

(The last statement is objected by defendants
as being irrelevant illegal and incompetent)

~~Mr. Kemmerly~~ on the day
of both sales it was announced
to the bidders that the sale was for
cash and for gold and silver

(Examination in Chief resumed)

D. B. Dover The hundred and
sixty acre tract was not considered
worth ~~much~~ ~~anything~~ because there was
only a tax title on it. And D. B. Dover
told me himself that he only had
a tax title for said 160 acre tract
~~but he believed~~, but that he (Dover) believed
that the tax title would be good.

(The latter part of that answer to wit:
the words but he Dover believed that the
tax title would be good is objected

to by defendants as not being an
answer to their question. ~~The answer~~
~~is not that~~ But the Judge considers
that this part of the answer was brought
out by the defendants question.),

Q. Mr. Burgep you have answered how
much you thought the land was worth
at the present time. ~~why now~~ what
is the reason you cannot say how much
the land was worth at the time of the
last sale.

A. Because there was war and so
much excitement in the Country
it was hard to tell what land was
worth I could not fix well
for any value on it at that
time.

Larnes Burgep - Jr.

Subscribed and sworn to before me on the
day at the place and within the hours
first aforesaid

Isaac Sullens
County Court Justice

Isaac Sullens Justice, for writing depositions

27 46 @ 15[¢] per hundred, 4

\$4.12

Certificate 35[¢] affidavit - 15 Paid by Plaintiff

50

462

George P. Rowen
and J. Hopk. for a special
Mo & Kennen only

Madam

Feb. 1. January

Recd by hand of Judge
Jas. Sullivan and
filed Decr 24th 1865
Elias F. Hoover
Helena

Jerome B. Dover, Plaintiff } In the Circuit
 Against } Court of Jefferson
 Thomas J. Kennerly } County, Missouri,
 James L. Kennerly }
 Francis L. Kennerly - Defendants.

The Defendants for Answer to the petition of Plaintiff, admit that Plaintiff was on 2^d day of February 1858, the owner of the Land, described in his petition, and that on said day, he conveyed said Land to James Burgess in Trust to secure the payment of six several promissory Notes made by him & W. M. Parker in favor of John O'Fallon Jr, for \$383.33¹/₃ each, payable in one, two, three, four, five & six years from date, - but they have no knowledge or information sufficient to form a belief, of whether Plaintiff paid to John O'Fallon the Notes becoming due in 1859, & 1860, or not, nor whether John O'Fallon received any store goods from Plaintiff, which he agreed to credit on the Notes becoming due in ^{February} 1861, & 1862, or not, And these Defendants positively deny that they knew of said O'Fallon's having taken up any store goods in said Dover & Parker's store in payments of the said Notes becoming due in February 1861 & 1862, - or that any payments had been made on them, or that any set off existed against them, at the time said Notes were assigned to Defendants. They state that if O'Fallon did owe anything in Dover & Parker's Store, for goods bought, before said assignment of said Notes to Defendants, such fact is no cause

of action against these Defendants, as Plaintiff never at any time, before either of the sales of the aforesaid Lands by said Trustee, claimed that he had paid either of said Notes assigned to Defendants, or any part of either; and Defendants further say that John O' Fallon held two other of said Notes against said Dover at the time he assigned the two Notes to the Defendants, as stated by Plaintiff, so, that there is not even any equity in favor of Plaintiff in regard to his assertion that he had an offset against the Notes assigned to Defendants.

Defendants admit that after the Note, which became due in February 1861, remained some time unpaid, they caused James Burgess, the Trustee to sell the Lands described in said petition, for the payment of the same, & that said sale took place about the 15th of March 1861, and John O' Fallon was a good price for the Land at that time, its full value, and he bid off the Lands for \$1200⁰⁰ - and that he failed to pay the money in cash, but promised the Trustee that he would pay it in a few days, and Plaintiff assented to this arrangement as much as Defendants only agreed to wait with the Trustee so far as the two Notes were concerned, - in fact, it did not occur to the parties at the time, to have the Land sold over, upon O' Fallon failing to pay. Afterwards, O' Fallon failing to pay, Defendants had the Lands sold again, But Defendants utterly deny that they combined and conspired together or with John O' Fallon for one of them to bid off the Land, with the understanding that John O' Fallon might take it and pay them for it in a future day. They deny that they made any secret agreement, or arrangement with O' Fallon about bidding off the Land, and they further say that, as Plaintiff was present when said Lands were sold, and

bid \$1300. for the Lands, (as he says himself) then it is plain, that ^{he} had no excuse to let the Lands sell at all, as he could easily have paid both of said Notes held against him by Defendants, and thus have prevented the sale by complying with his Contract, by paying the Note then due,

Defendants deny that they for the purpose of defrauding Plaintiff out of said Lands, caused said James Bingers, as Trustee, to advertise & sell the Lands again on the 6th day of May 1861, - and the assertion that they made an agreement with John O'Fallon, to not bid for the land at such second sale, is utterly untrue, & they deny that they gave to John O'Fallon their Bond, before said sale, binding themselves to bid off the Land and then to convey said Lands to John O'Fallon, upon his paying a certain amount of money. They deny that they made any agreement with John O'Fallon, or any body else, not to bid on said Land at such second sale. They deny that they formed, or practiced any design whatever to cheat and defraud Plaintiff out of said Lands. ⁴ They aver that Plaintiff did have Notice of said second sale, - and they further say that there ^{were} other bidders at the same besides the Defendants, - They admit that they bid off said Lands, at such second sale, on the 6th day of May 1861, at the sum of \$530, which was the highest price bid for the same, - and that they on the same day received from James Bingers, the Trustee in said deed of Trust, a Deed, conveying to Defendants all the right, title, & interest which said Jerome B. Dover, had in & to said Lands, at the time he

executed said Deed of Trust, which Deed is here to the Court shown. — Defendants deny that they practiced any fraud in the purchase of said Land, in any manner whatever, or in procuring said Deed, & they therefore say that they have a good, valid, legal title to said Land, which ought not in Equity to be disturbed. That Plaintiff has no rights in Equity to interfere with Defendants title thereto. If Plaintiff has any remedy in the whole matter, it is a legal or Equitable right to Compel either James Briggs, the Trustee, or John C'Fallon Jr, to pay Plaintiff the difference between the amount the Defendants bid off said Land at, and the amount bid for the Land at the first sale by John C'Fallon Jr, ^{Defendants} As to the allegations of Plaintiff, of whether they had a right to deduct from the sales of the Land, the costs & expenses of the first sale, or not, — this, if true, is no cause for setting aside Defendants deed to the Land, — at most, Plaintiff can only ask to have all excessive charges refunded to him.

Defendants say that they bought the two notes (which became due in February 1861, & 1862) of John C'Fallon Jr, in good faith, and paid for the same, and it is immaterial whether they paid the cash, or took them in payment of a debt said C'Fallon owed them.

Defendants deny that Plaintiff has sustained damages to the amount of \$1500, or in any amount whatever by reason of any wrongful acts of Defendants committed on said Land, — either for timber, or rents & profits taken therefrom by them, or for any wrongful acts whatever committed by them on said Land. — And Defendants deny that

Plaintiff has any legal or Equitable ^{right} to have the title of Defendants to said Lands set aside, or to recover possession thereof, or to interfere in any manner whatever with Defendants rights, & title to said Lands, or to vest the title thereof in Plaintiff, or to grant Plaintiff any relief, or judgment against these Defendants, for damages, costs, & profits, or upon any claim set up in his petition.

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

Abner Green

Attorney for Defendants,

Thomas J. Kennerly one of the above 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 19th day of May AD 1865.

Samuel Reppy Clk

Thomas J Kennerly

23

Perone 13, 8 over

10,

of James J. Kennedy,
James J. Kennedy,
James J. Kennedy

Assurance of
Defendants,

4

Dec 13 1865
James J. Kennedy
J. J. Kennedy

Jerome B. Dyer plaintiff
vs
The Jefferson Circuit
Court Nov. 5 1865

The defense answers & demurs to plaintiff's
fuging petition saying that the matters &
things contained set forth in fuging petition
do not sufficient in law to entitle plaintiff
to recover - in this suit.

2. From plaintiff's own showing he
is not entitled to the relief sought.
3. Plaintiff has shown ~~neglect~~ ~~negligence~~ in complying with his
obligations that cannot in any
wise entitle him to recover in
this action.

4. No vigilance has been shown upon the
part of plaintiff to entitle him to the
interposition of a Court of equity.

5. No proper or legitimate tender of money
due by plaintiff to defend at her own
been made at proper time to entitle plaintiff to relief.

6. There is no equity in allowing plaintiff
the relief sought.

7. The petition (cannot state facts) sufficient to
constitute a cause of action.

Because no proper parties to the suit sufficient set forth
in petition as true, the Basis Testis there is no

a party to the suit.
That there is another action pending between
the same parties for the same Cause, in this State.

Because much of said petition is irrelevant,
especially so much as relates to the agreement between
John O'Fallon & plaintiff about trading in stores & other
matters of assent, & about ~~the~~ Kennedy, failing to
give consideration full notes.

That the averments touching the sale are
clearly insupportable to constitute in favor
of plaintiff a just cause of action.

That all plaintiffs allegations of fraud are indefinite, &
describes no acts of fraud, sufficient to set aside the sale.
That the other clauses of said petition
on the face of Petition defendants
say that the petition is
unsupportable in law to entitle
plaintiff to recover. — Yours atty
for Defendants

4
Bacon
in
Kennedy & Co.

Beumer

Filed Nov 14 1865
Saml. A. McPherson

Jerome B Dover Plaintiff

vs

Thomas J Kennerly

James L Kennerly

Francis L Kennerly &

John O Fallon Jr Defendants

(amended Petition)

In the Circuit Court of Jefferson County Missouri

The plaintiff states that on the 2^d day of February 1858 he was the owner of the following described Real Estate situated and being in Jefferson County Missouri to wit. The North East fractional quarter of Section twenty Two, Township forty Two, Range five East, containing one hundred acres of land. Also the South East quarter of Section Twenty one, Township forty Two, Range five East, containing one hundred and sixty acres of land; that on the said 2^d day of February 1858, plaintiff conveyed said lands to James Burgess Trustee, in trust to secure the payment of six promissory ~~Notes~~ made by plaintiff and one H M Parker in favor of John O Fallon Jr, each Note payable for the sum of \$383 ^{33 1/2} ~~100~~, in one, ~~two, three~~ four, five and six years, all bearing interest at the rate of six per cent per annum from date until paid, that plaintiff ^{paid} off to ^{said} John O Fallon Jr the two notes payable & falling due in February 1859 & Feb 1860 and that John O Fallon took up in the store of said Dover & Parker goods & cash amounting to about the sum of \$400, that it was agreed

between plaintiff & said John O'Fallon that
these ~~items~~ were to be created and were
created for the purpose of being created
on the notes falling due in Feb 1861 & 1862.
But notwithstanding this agreement John
O'Fallon, being indebted to the Codefendants,
he placed these two notes falling due in Feb
1861 & 1862, in the hands of the Codefend
ants as collateral security for those debts
already due by O'Fallon to the said Kennedys
& did for that purpose alone assign
these two notes to said Kennedys. That
said Kennedys did not advance any con
sideration or cash to said O'Fallon on
his assigning said notes, that said Ken
nedys well knew at the time they received
said notes from said O'Fallon that O'Fa
llon was dealing with said Dover & Parker
and that there existed a set off & paym
ents on said notes on account of said
store account & cash, that as soon as the
note fell due in Feb 1861, Thomas J. James
& Francis L. Kennedy combined and con
spired with one another & with John O'Fallon
to cheat and defraud plaintiff out of the
title to the above land and to carry out that
purpose, they caused James Burgess the trustee
to advertise & sell the said above described
Real Estate under the power delegated
in said deed at the Court house door
in Hillsboro in Jefferson County, that

Prior to the sale of said lands which took place on the 15th day of March 1861, ^{The defendants} ~~the~~ ~~of~~ the combined and confederated together, to attend the sale & purchase said lands under a secret arrangement between them by which it was agreed for the land to be sold as if for cash and for one of the parties to bid it off with an express understanding that John O'Hallen might pay the codefendants at a future day a specified sum and then to have the land for his own benefit, that in accordance with this secret combination and agreement all the defendants attended the sale of said lands on the 15th day of March 1861. and also J. B. Dover attended the sale with the view of preventing a sacrifice of the property, that he had before sale endeavored to effect a settlement with the defendants but that the defendants would not give him credit for payments & offsets to which he was entitled in said matter, that the trustee at the announcing of the sale & the terms, made it known that the terms were cash down on bidding off of the property, that plaintiff supposing it to be a genuine cash sale bid \$1202 for the tract

where John O'Hallen bid \$1203. & the same was struck off to him but he did not pay the cash nor offer to pay it

Plaintiff further states that at the time of

Sale of said Real Estate Kuennerleys stated that they claimed on said notes about \$800 or \$850.

Plaintiff states had previous to the sale had the secret agreement that O'Sullivan might bid the land off & although it was a cash sale, yet he might have time to pay that said trustees duty was to have put the property up for sale again on the same ~~day~~ ^{on} account of O'Sullivan not complying with the terms of sale. That there were persons present at the sale who had money to buy said land and would have bid a larger amount for said property than was sufficient to pay said Kuennerleys all of the notes, that in consequence of the land not being sold again on non payment of the amount bid by said O'Sullivan, those persons who came to the sale to buy the property for cash, failed to get it and thereby plaintiffs indebtedness was not satisfied.

That afterward the defendants conceived the further idea of defrauding plaintiff out of the title to said lands and for that purpose caused James Burgess to advertise said lands for sale at Hillsboro in said County on the 6th day of May 1861, that defendants again combined and confederated together to cheat & defraud plaintiff out of said lands at the sale on the 6th of May 1861. That for the express purpose

of securing the said lands to themselves and defend plaintiff out of the same, the defendants agreed with one another that John O'Hallon should not ^{bid} against them said Kennellys for the lands at said sale, and previous to sale gave John O'Hallon a bond obligating them said Kennellys to bid off said lands and to convey the lands back to O'Hallon on his paying to said Kennellys a certain specified sum, the amount of which is unknown to plaintiff.

Plaintiff states that the notice of the sale on 6th of May 1861, did not come to the knowledge of plaintiff until after the sale, that said James Trustee again went through the ceremony of sale of said lands at the Court house door in Hillsboro on the 6th day of May 1861, that in accordance with the previous agreement ^{defendants} all attended the sale but the ^{said} O'Hallon ~~and~~ ^{refrained} from bidding at the sale. ~~John O'Hallon~~ ^{in accordance} with their agreement the said Kennellys became the purchaser that in consequence of the previous sale & the strange conduct in selling again, other persons would not attend the sale were afraid to buy the land, that the Kennellys bid only \$530 & no other person bid anything, that this sum was a great deal less than the value of the lands.

Plaintiff further states that James Trustee executed a deed for said lands

to James L. Thomas J & Francis L Kernerly
of date of 6th of May 1861. That said Kernerly
perhaps with the design of oppressing injur-
ying, extorting & defrauding plaintiff made a pre-
tended settlement with James Buggess Trustee
for the proceeds of Sale in which they
deducted out of said \$530, the amount of
the second sale, the sum of five dollars
for the advertising of the first sale and
of the second sale, also the sum of five
dollars for the deed of conveyance to of
allen for lands sold on 15 of March 1861
and also for the second sale and fifty
cents for acknowledgment of a deed to
John O'Hallen for the first sale, also
one dollar & fifty cents paid to the auctioneer
of both sales, also six dollars for services
attendant on the first & second sale &
other things

Plaintiff charges that before and after
the sales of 15 of March and of 6 of
May 1861, the defendants combined & con-
spired together, to cheat and defraud plaintiff
out of his said lands, that their several
sales & acts aforesaid were used for these
purpose, that said lands were worth
larger sums of money than sold for and
were sacrificed & sold below their actual
value by the combinations of said defendants
and absorbed by defendants, that said notes
transferred by O'Hallen to said Kernerly

were paid off before the transfer that there was nothing due on the note falling due in Feb 1861. that said Kennerlys paid no consideration for the transfer of said notes, that they were placed in ^{their} hands as collateral security for ^{part due} debts, & were to be returned to O'Sullivan, if not paid to Kennerlys, that the Kennerlys had a deed of trust & other sufficient security on property of O'Sullivan to secure the payment of the debts from O'Sullivan to Kennerlys that the placing said notes as collateral security was in addition to sufficient security & was intended as a means of defunding plaintiff out of his said lands. Plaintiff is ready and willing and here tenders and offers to pay to defendants on which of them is the owner thereof, the amount if any may be found due on said notes. Plaintiff asks the Court to take an account of the amount actually due and of the Rents & profits and timber received by defendants.

Plaintiff charges that the said Kennerlys have entered on said lands since their said silent purchase and enjoyed the Rents & profits and used large lots of valuable timber thereon. Plaintiff has sustained \$1500 damages. Plaintiff prays the Court to take an account of the Rents & profits received by said defendant and of the timber & wood used & sold by them, to ascertain if there is any thing due on the notes aforesaid.

The plaintiff prays the Court set aside the deed
made by James Burgess trustee to Thomas J
Kennedy, James L Kennedy & Francis L Kennedy
on the 6th day of May 1861 and to ~~revoke~~
+ vest the title in plaintiff for a writ of
possession and for judgment for the
amount of rents & profits and of timber
received by defendants and for all other
proper relief J At Real City for Plaintiff

J B Dover being sworn on his oath
says that the foregoing petition & the matters
therein as stated he believes to be true
Subscribed & sworn to }
before me this 27th day } Jerome B. Dover
of June AD 1865.
Samuel H. C. P. M. C. K.

Filed June 27 1865
Samuel H. C. P. M. C. K.

The State of Missouri, } ss.

COUNTY OF JEFFERSON.

The State of Missouri

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

We command you, that you summon

John O'Fallon Jr

if he be found in your County, that he
be and appear before the Hon. Judge of our Circuit Court, on the first day
of the next term thereof, to be begun and held at the town of Hillsboro, within
and for the County of Jefferson, on the second ~~Monday~~ after the fourth
Monday of *November* next, then and there to answer unto

Jerome B. Dover

upon his ^{amended} ~~original~~ petition, a copy whereof is hereunto annexed and ac-
companies this writ, and have you then there this writ.

Witness, *James T. Honey*, Clerk of our said Circuit
Court, with the seal thereof hereunto affixed, at office

4 24

TO JEFFERSON CIRCUIT COURT

November Term, 1865—

Jerome B. Davis
vs ³ Winmons

Plt Thomas J. Kemmerly
Dmtd & Remedy
Bernard & Kemmerly
John. & Jackson Pr

16000

Plt Netw Sheriff 3/5—

Filed Nov-14=1865—
Signed & Copy etc

J. B. Dover

vs.

Thomas Kennerly et al

In the Circuit Court
of Jefferson Co Mo.

The defendant John O'Fallon
for separate answer states, that it is true,
that he purchased one of the tracts of land,
as stated at the Trustee's sale on the 15th of
March 1861, for \$1203, that the sale was for
cash down, and that he did not pay to
Burgess the trustee the said sum by agreement
between him and said Kennerly and that
it was agreed between them, that he might
pay the purchase money in a few days, and
that he has never paid the purchase money
bid by him at the sale on 15th of March 1861,
That this defendant does not claim any
right or title to said land by virtue of
said sale on the 15th day of March 1861,
that J. B. Dover did not consent to the
purchase money of sale on 15th March
1861, might be paid after the sale.

Defendant further states, that it is true
that afterwards James Burgess administered
the property in controversy on the 6th of
May 1861, that prior to the 6th of May 1861,
this defendant Francis L. Kennerly, James
L. Kennerly and Thomas J. Kennerly made
an agreement, that they would attend the
sale and that John O'Fallon would refrain

from bidding at the sale, and that they the said Kemmerlys would bid the land in their own names, that they would give ~~them~~ a bond to this defendant to convey to him the land upon said O'Fallon certain sum of money, that in accordance with the contract the parties defendants executed said bond on 6th of May 1861, a copy of which is herewith filed, Defendant

further states that in compliance with their agreement this defendant and the other defendants attended the sale on 6th of May 1861, that on the sale this defendant was present, and refrained from bidding was agreed upon and the lands were sold by the trustee on the 6th of May 1861 for the sum of \$ that no other persons than the Kemmerlys bid on the land, that this defendant gave two notes of \$ 383, 33 to the other defendants and Dover and Parker in lieu of an indebtedness defendant owed the other defendants, that the interest on said ^{two} notes was paid by Dover for years as charged.

Defendant has not received any rents and profits from said land, that other defendants have had possession of said the lands and farm thereon in controversy since the sale and received the rents.

and profits, ~~but~~ and understands that the rents and profits of said land is worth one hundred and fifty dollars per year, besides the Defendant has understood that the other defendants have taken timber from said land, the amount of which is unknown to this defendant.

Defendant further states that he has paid the note held by his Co-defendants becoming due four years after and now has it in his possession - and Defendant charges that his Co-defendants are entitled to the money on the note falling due three years after date if entitled to any thing.

Defendant also denies that any act of his in the premises was intended by him ^{a group upon} ~~as~~ ^{Doan} held two of said notes and all that he did was for the mere purpose of securing himself -

Defendant avers that he does not claim a bid from the trustee under the sale on the 15th March 1861 & is now ready & willing to pay his Co-defendants on his bid at said sale the amount of the other note held by them against Doan if the Court should find that anything is due them after deducting rents and profits received by them.

Thomson & Ahlman, for Doan

J. C. Fallon Jr. makes oath & says that he
believes the above answer and the matters
as therein stated are true.

Sworn to & subscribed

before me Nov 16/85

Henry F. Palmer

John C. Fallon Jr.

Notary Public.

Andrew D. Fuller

Wm. D. Fuller

J. B. Brown

Filed Nov 14th 1885
Samuel A. DeJoy Clerk

Jerome B. Dover, - Plaintiff
 Against
 Thomas J. Kennedy }
 James L. Kennedy & }
 Francis L. Kennedy & }
 John O'Fallon Jr. - Defendants

In the Circuit
 Court of Jef=
 ferson County
 Missouri

Answer of Thomas J. Kennedy, James
 L. Kennedy & Francis L. Kennedy, to the amended
 petition of Plaintiff, filed June 27, 1865,
 These Defendants for Answer to said amended
 petition of Plaintiff, admit that Plaintiff
 was on the 2nd day of February 1858, the owner
 of the Real estate described in said petition,
 and that he on that day conveyed said land
 to James Burgess as Trustee, to secure the
 six promissory Notes therein described, made
 by Plaintiff, & M. N. Parker to John O'Fallon Jr.
 for the sum of \$383, 33 $\frac{1}{3}$ each, payable in
 one, two, three, four, five, & six years from date - but
 whether the Plaintiff paid to John O'Fallon Jr.
 the first two ^{due in February 1859 & February 1860} Notes, or not, These Defendants
 have not sufficient knowledge or information
 to form a belief, - nor whether John O'Fallon Jr.
 took up store goods & received cash out of the store
 of Dover & Parker amounting to \$400, -⁰⁰, nor
 whether there was any agreement between Dover
 & Parker, & John O'Fallon Jr. that such store
 account was to be credited on the Notes be=
 coming due in Feb. 1861, & 1862, - and of all
 that Defendants require proof, - Defendants
 deny that John O'Fallon Jr. delivered to them
 the Notes becoming due in February 1861, & Feb.
 1862, as Collateral security for a debt John

O'Fallon Jr. was owing these Defendants, but ~~stare~~
that they received said Notes from him in part pay-
ment of a debt of \$1385, for which they then
held his Note, & which was then one, and that
John O'Fallon Jr. endorsed the said two Notes
on Dover and Parker to Charles O'Fallon, who
endorsed them to these Defendants, - And
these Defendants deny that they knew at the
time they received said Notes from John
O'Fallon Jr. that he was dealing in the
store of Parker & Dover, and that they had
any set-off against said two Notes, or that
they had made any payments on said Notes
on account of their store account & cash a-
gainst him, But, on the contrary they knew
at ^{that time} that Dover & Parker were owing John O'Fallon Jr.
a large amount over & above the two said
Notes, which he transferred by assignment
to these Defendants, - These Defendants deny
that when the Note became due in February
1861, they combined & confederated with one
another, or with John O'Fallon Jr. to cheat
and defraud Plaintiff out of the title to the
Lands described in plaintiff's petition, - or
that they for any such fraudulent pur-
pose caused James Bingen, the Trustee
to sell said Land, They admit that, after
the Note on Dover & Parker became due in
February 1861, they caused Trustee to adver-
tise & sell said Lands under the said deed
of Trust, for the purpose of collecting the
money due on said Note, and not for any
fraudulent purpose, - These Defendants
deny that they prior to the sale of said Lands

on the 13th day of March 1861, or at any other time, combined & confederated together or with John O'Fallon Jr. to attend the sale & purchase said Lands under a secret arrangement between them by which it was agreed for the Land to be sold as if for cash & that one of them was to bid it off with the understanding that John O'Fallon Jr. was to pay these Defendants at a future day, a specified sum & to have the land for his benefit. They deny that any such arrangement or agreement was made by them. They admit they attended the said trustee sale of the land on the 13th day of March 1861, and that Dover and said John O'Fallon Jr. also attended. But they deny that before said sale, or at any other time, said Dover endeavored to effect a settlement of said two ^{by putting a credit on them} Notes, and deny that he even claimed at said sale, or before, or after it that he had made any payments on either of said two Notes, or that he had any set-offs, or credits to be allowed on said Notes. They admit it was a cash sale, and they expected the purchaser would pay the cash. They admit ~~Dover~~ ^{said} bid \$1202, for the 100 acre tract, (which was the only tract sold) But they believe Plaintiff was, by his own statement, greatly to blame for suffering his land to sell at all, - for, if he had \$1202, ⁰⁰ in cash to bid for the land, why did he not pay the Note due in February 1861, amounting to only about \$400, and thus stop the sale? These Defendants admit John O'Fallon Jr. bid \$1303, for the 100 acre tract, & that it was struck off to him for that sum.

These deny that they said at the time of said sale, that there was \$800, or \$850 due on said Notes, - but they claimed that the two Notes amounted to a little upwards of \$700, - both of which they considered were payable after the land was sold for \$1200, to John O'Fallon Jr. - But they deny that they made any secret agreement with said O'Fallon, by which he might bid off the land and have further time in which to pay the money. - They admit that ~~said Trustee had the power~~ ~~to set up the land & sell it over again the same day on John O'Fallon's failing to pay his bid,~~ ^{though he was not bound to do,} but it did not occur to these Defendants at the time that the Trustee might have acted in this manner, - and none of the parties thought of it, or spoke of it, or else these Defendants ^{deny} would have caused the Trustee to sell the land over again the same day. - But these Defendants ^{deny} that they intended to defraud Plaintiff in having the land sold a second time. They caused James Bingsess, the Trustee to advertise & sell the land again on the 6th day of May 1861, because they knew of no other way to get the money due on said Note, as John O'Fallon Jr. failed to pay his bid, & it was doubtful whether the money could have been ^{made} out of him by law, as Defendants believe he had no property at that time subject to Execution, But these deny that they, at said second sale, Combined and confederated together, or with said John O'Fallon to cheat & defraud Plaintiff out of said Lands at said sale, - and deny that they for the purpose of securing said Lands to themselves & to defraud Plaintiff agreed with ^{or John O'Fallon} one another that John O'Fallon Jr. should refrain from bidding at such

second sale, - and Defendants deny that they made any agreement with John O'Fallon Jr, previous to said second sale, to sell him the land in case they bought it, and deny that they gave him their Bond before said sale, obligating themselves to bid off the land and then convey it to John O'Fallon Jr, on his paying them a specified sum, - But they admit that some time after and got the deed for it they bought the land at said second sale, they agreed & gave their Bond to John O'Fallon Jr, to convey the land to him, at a certain day therein named, provided he paid them \$915.24 by that time, - Defendants had the ^{land} ~~sale~~ only advertised at said second sale, and believed that Plaintiff knew of the sale, as he lived in the same town with James Burgess the Justice, & saw him doubtless every day, - They admit they bought the land at the said second sale for \$530.00 that being the highest bid, and there were several persons present, and they say said sale was in every respect fairly made, And they deny that they bid it off in pursuance with any previous agreement with John O'Fallon Jr, - and deny that any fraud whatever was practiced by them at said second sale, or that they in any manner tried to circumvent Plaintiff, or to cheat him out of the land, - All these Defendants wanted was their money and on said Notes, They did not want the land, & bid the sum aforesaid to save themselves, They admit it was then a dull time for selling land, owing it part to the unsettled condition of the country, & they did not in fact want to buy the land, if they could have got their money without. Said Justice after these Defendants

paid the amount of their bid, by a Credit on said
Notes, executed a Deed to these Defendants for
the land. But, they deny that they with any
view of oppressing, ~~extorting~~ or defrauding plain-
tiff, caused any ~~more~~ money to be deducted
out of the proceeds of said sale, for the costs
& expenses of the same than they & the Trustee
considered just & right, If any improper
expenses were deducted they are willing ~~that~~
~~the same may be corrected.~~ And these Defendants again deny
Plaintiff's repetition of fraud. - and deny that
either before, or after the 13th of March 1861
& 6th of May 1861 - they combined & conspired
together, or with John O'Fallon Jr. to cheat
& defraud Plaintiff out of said lands, & deny
that their several sales & acts were used for
any fraudulent purpose, And they deny that
the lands sold for anything less than their value,
on account of any fraudulent combinations of
these Defendants. ~~They have no knowledge of~~
~~any such combination & fraud.~~
These Defendants deny that said
two Notes were paid off before they were transferred
to these Defendants ~~except that they believe they~~
~~were not paid off~~ as they know Plaintiff was
owing John O'Fallon Jr. two other Notes of the
same amount, and something for rents at the
time of said transfer, & they further know
that said Plaintiff never even claimed that
he had paid off said Notes, or any part of them
at the time or previous to either of said sales, &
that he stated to Defendants he was glad they had bought them.
They deny the allegation that they paid nothing
for the transfer of said ^{two} Notes to them by John O'Fallon Jr.
or that they were to return them to him in case
they should ^{not} be paid. They admit they had a Deed

of Trust against John O'Fallon Jr, at the time
they took said Notes, but it ^{is to go} to secure the pay-
ment of other moneys John O'Fallon Jr,
owed them to wit, the sum of about
twenty ~~seven~~ ^{seven} hundred dollars, which said
O'Fallon then owed the Kennerlys. And
they again deny said two Notes were received
as collateral security for any debt said O'Fallon
owed them, & deny the taking of said Notes was
intended as a means of defrauding Plaintiff
out of said Lands, - These Defendants deny
that Plaintiff has any legal or equitable
right to tender the money due on any of
said Notes, and have any decree to take an
account of the rents and profits of said
lands, or the timber received therefrom or of
the amount of money due on said Notes,
and deny that he has been ^{damaged} 1300 dollars, or any
sum whatever by the acts of these Defendants.

These Defendants state they have made valua-
ble & lasting improvements on said Lands, since
they took possession of ~~therein~~ which are of more
value the rents & profits received, And they deny
that they have taken off large amounts of timber
or ^{any} amount from said Lands, - These Defend-
ants deny that Plaintiff has any equitable
right to have the Deed made by James Bun-
ger, as Trustee, conveying to these Defendants,
^{said Lands} set aside or vacated, or to set aside said sale
of the land or vest the title of the same in
Plaintiff, - They say if Plaintiff has any
Equity in the case, it is an equitable and
legal right to judgment ^{against} John O'Fallon Jr,
for the difference between the amount these

Defendants bought the land for, (\$53000)
and the amount John O'Halloran Jr. bid for
the land at the first sale, - To wit, \$1203.00.
This loss, ^(if any sustained) Plaintiff ~~is entitled to~~ evidently
sustained by the failure, & refusal of
John O'Halloran Jr. to pay the amount of
his bid at said first sale, & ~~at~~ which the
land was sold to him for. And these
Defendants deny that they should be
held responsible for the breach of contract
on the part of John O'Halloran Jr., and they
deny that they consented for said trustee
to wait three or four days on him for the
money said lands were sold to him for at
said first sale. They deny that Plaintiff
is entitled to a decree divesting these Defend-
ants of title to said lands, & vesting the title
to the same in Plaintiff, and deny that Plain-
tiff has any equity in his case as against
these Defendants; and deny that Plaintiff
is entitled to judgment for possession of said lands,
or for rents & profits, or for timber, or for any thing
else, that said John O'Halloran should be plaintiff
instead of defendant, and that he is co-partner & copar-
tner with Plaintiff as acting attorney to Kennedy.
and now having answered all that they are
asked is prepared to be answered
may to be answered.

Thomas J. Kennedy & James
Kennedy

Thomas J. Kennedy makes oath
for himself & as agent for other defendants
that the matters & things contained
in foregoing answer are true
sworn to & subscribed
before me this 16th day
1865

Thomas J. Kennedy

Thomas J. Kennedy for himself ^{agent for} James B.

Francis L. Kennedy makes oath
that he believes the above answer
to the matters at issue therein contain
are true

Sworn Subscribed before
me the 16 day of Feb
1865

Thomas J. Kennedy

Samuel A. Rapply Clerk

June 13

Mon

21

Thos J. Henry

at ac

Am wa of

Henry 24

St. Louis Nov 14 1865
Amul A. Phelps

Jerome B. Dunn.

Against
Kennedy & John
O'Fallon,

In the Cir. Court
Jefferson Co.

Nov 7. 1865.

The Defendants come into the Court
to withdraw the deposition of John O'Fallon
taken by them in this case & object to its being
read upon the open facts following reasons.

1. It is permitting John O'Fallon to give
evidence for himself upon an issue, in which
he is directly interested.
2. The suit is prosecuted for the interest of John
O'Fallon.

3. Said John is now a party to the case
^{but was not when the deposition was taken}
& the suit is prosecuted to enable
John O'Fallon to secure ^{recover} a debt, ~~otherwise~~
which he could not otherwise secure.
~~irrelevant, & inadmissible~~ The evidence is irrelevant
& improper and inadmissible on any
account. Said Kennedy therefore object
to the reading of same & evidence
thereby give notice that they will object
to its being read in evidence as a fact.
on the trial of the case say other in which
said John is a party. asks the Court
to withdraw the same.

Green & Jones, Attys for Kennedy.

11

Jerome B. Davis

"

Henry et al

Proctor & Wheeler

Wallerstein & Puri

W. of York & Co

Co

Printed Nov 17 1865

Samuel A. Appleton

Jerome B. Davis
Against
J. J. Kennedy & others.

In Jefferson Co. Court Nov. 3
1863

The said Kennedy, defendant, comes & moves the Court
to set aside the judgment and decree and decree
mainwells allow cause to grant a new trial & a new hearing
for the following reasons to wit.

1. Because the judgment and decree is against
Law.
2. Because it is against both Law & Evidence.
3. Because said judgment and decree is for the
wrong party, & is against Equity.
4. Because the Court improperly declared the
law of the case.
5. Because the Court gave erroneous instruc-
tions.
6. Because the Court erred in allowing John
O'Fallon to be introduced as a witness & to testify
in the case.
7. Because the Court should have sustained the
objection to exclude John O'Fallon testimony &
had as a witness.
8. Because the Court admitted & accepted improper
& illegal evidence in the case.
9. Because the Court excluded evidence offered
by the Kennedy, which should have been admitted.
10. Because no facts or circumstances have been proved a-
gainst the Kennedy.

11 Because said party, Kennedy, is taken
by surprise by the action & judgment of the Court
in admitting the testimony of John O'Halla.
Further to the reason they ask that a new trial
maybe had in the premises, & a rehearing
of the case

12. Because John O'Halla is an
incompetent witness.

Given & sworn atty for
Kennedy, —

Dover —
against
Kennedy et
al —

Motion for
new trial &
rehearing of
the case. —

Filed at Dover 18/1865
Saml A. Peppercorn

Jerome B. Dover, Plaintiff } In the Circuit Court
 Against } of Jefferson County
 James L. Kennerly, } Missouri,
 and Others, - Defendants }

Thomas J. Kennerly, and Francis L. Kennerly,
 two of the above Defendants, being duly sworn, upon
 their oaths state, that the appeal taken by
 Thomas J. Kennerly, Francis L. Kennerly, and
 James L. Kennerly, defendants in the above
 cause, to the Supreme Court of Missouri,
 is not made for vexation or delay, but
 because these Affiants believe that the
 said Appellants are aggrieved by the judg-
 ment and decision of the said Circuit Court,
 Sworn to and Subscribed before me } Francis L. Kennerly
 this 22nd day of Nov } Thomas J. Kennerly
 1865. }

Samuel A. Reppy clk

Feb 13, 1865

15,

Gen. E. Kemmerly, State

Affidavit

Filed Nov 23 1865,
Samuel St. Phipps

James B. Devereux }
28. *of Jefferson County, State of Missouri*
IN THE *Circuit Court*
of *Jefferson County, State of Missouri*

James A. Kennedy }
James A. Kennedy &
Charles A. Kennedy, Deponents

Take Notice, that on the *26th* day of *November* 186*4*, between

the hours of eight o'clock in the forenoon and six o'clock in the afternoon of that day, at the *Seat*
office of *J. G. McCallan* attorney at *321st Street* in the *City of*
St. Louis in *St. Louis* County of *St. Louis*, State of *Missouri*, depositions
will be taken, to be read on the trial of the above entitled case, on behalf of the *Deponents*;
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

Parties } *J. G. McCallan*

Attorney to the above named
Deponents



State of Missouri } at St. Louis of Henry of Lewis and
County of Jefferson }
We on oath depose: I deposed the within and truthfully delivering
a true copy thereof to the said Henry of Lewis and
County of Jefferson on the 22nd day of November 1864, in my
County aforesaid.
Shewn to and subscribed before me Clerk
of the County aforesaid. in and for said County of
Jefferson and State of Missouri on this 22nd day
of November 1864
Samuel H. Hays Clerk

Depositions of witnesses, produced, sworn
and examined 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 before me the
undersigned J. W. 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,
County of Jefferson and State of Missouri
between Jerome B. Down Plaintiff and Thomas
J. Kennedy James L. Kennedy and Francis
L. Kennedy defendants on the part of
the defendants

John Fallon of lawful age being
duly sworn and examined on the part
of the Defendant deposes and says
I am acquainted with the defendants
to this suit, I know the land is
controversy in this suit, On the second
of February A.D. 1858 the Plaintiff
executed a deed of trust to James
Burgess, to secure six promissory notes
of that date given by Plaintiff ^{and} ~~one~~
^{Horace} M. Parker, payable to my order
at one, two, three, four, five and six year
after date, bearing six and a half per
cent interest per annum from the
second of February A.D. 1858, each
for three hundred and eighty three
dollars and thirty three ^{thirty} ~~and~~ cent \$383.33 1/3

(2)

And also to secure an annual
rent, later paid by them
for four years from that date
of two hundred dollars per annum
payable at the expiration of each year
from the second day of February
A.D. 1858, being for a storehouse of mine
at Sulphur Spring Landing in Jefferson
County Missouri rented by me to them.
I think the one and two years notes were
paid. ~~The~~ Of these notes, I think the
one and two years notes were paid by the
makers. Those due in three and four years
from date I traded ~~before~~ before they became
due, to Charles O. Hallan, and before they
became due. Charles O. Hallan again traded
them to me for value received, and
before they became due. I traded them
to the defendants for value received.
I gave these notes to defendants, in lieu
of an indebtedness I owed them. I do not
remember when Charles O. Hallan endorsed
these notes. They were delivered directly by
me to the defendants. I do not remember
whether Charles O. Hallan was present
when I delivered these notes to defendants.
The delivery was made at my house. Charles
O. Hallan was at my house at the
time. There was no special agreement
between the makers of these notes and myself
at the time they were given, or at any
other time, that they should ~~trade them~~

pay the notes in goods, except that
 when the notes were given, I remarked
 to them at the time, that I expected to
~~the~~ take the most of them out in goods.
 I ~~must~~ did not bind myself to take
 them out in goods. I remember the first
 sale that took place under this deed
 of trust on or about the fifteenth day
 of March A.D. 1861, I was present at
 that sale. Including the parties ~~interested~~
 I think there was ten or a dozen ~~persons~~
 persons present at the sale, probably
 more. The Plaintiff was there and one of
 his brothers and other names I bear the
 attorney for Plaintiff. I do not remember
 of any announcement made by ~~any~~ ^{the Plaintiff}
~~one~~ at the sale. On further recollection
 I remember he said something but what
 it was I do not now recollect. I do not
 think the Plaintiff was a bidder at that
 sale at least I did not hear him bid.
 His brother was the last bidder before me.
 I think, I bid in the property at a
 few dollars over twelve hundred. The
 dependants bid at that sale something
 over nine hundred dollars, to the best
 of my recollection. I think no one
 else bid besides those named by me
 as bidding. The property was bid in
 by me. I did not entirely complete
 my purchase at that sale, so far that
 I did not receive the deed. I did not
 pay any of the purchase money at the

Trustee Mr Burgess did never tender me a trustee's deed ~~for the property~~ in pursuance of that sale for the property. I do not remember of asking Burgess for four or five days time, to get the money from St Louis, to complete my purchase of the property. I am satisfied I did not. I do not remember asking Burgess not to sell the land again. I am satisfied I did not. ~~Mr Burgess was to deliver me a deed.~~ I was present at the second sale of this property in May 1861. I do not recollect how many persons were present at the second sale. The Trustee was present at the second sale and the defendant bid the property in. Both of these sales were made in the afternoon about two or three o'clock, as near as I can recollect. I ~~do not remember~~ think Jerome B. Dyer the Plaintiff was present at the ^{first} sale. I do not know how far he lived from Hillsboro at the second sale. At the first sale, I understood that Dyer's brother represented him. I think Dyer told me that his brother was going to bid for him.

Cross Examination, by James A. Beal atty for Plaintiff
 I ~~knew~~ before the first sale was to come off ~~that it~~ when it would come off. I think I was informed by Mr Kennerly or Mr Burgess, or I may have seen the advertisement. I think I went ~~to~~ with Mr Burgess, ~~from~~ to

5

Hillsboro from Sulphur Spring to one of
the sales, but to which one I cannot
now remember. After the first sale
the Mr Kennersly's and Burgess the Trustee
and myself went from the sale home
together.

Ques. What was the agreement between you and
the Kennerslys about the payment of the
purchase money, after the first sale?

A. Okey to by dependants Counsel
not because not elicited by the
examination in chief.

Qⁿ because illegal and incompetent.
Ans The sale came off and I bid in the
property a little ^{over} ~~at~~ hundred
dollars. Then the Mr Kennerslys
and I made an arrangement
wherein the money was to be paid
to them in eight or ten days I
think, I think the money was to
be paid to the Mr. Kennerslys at
Sulphur Spring, but I think they
did not come on the appointed
day. One of the Mr Kennerslys told me
^{I think recently} ~~see~~ Mr Burgess was to deliver me a
deed when the money was paid.
Mr Burgess never tendered me a deed
or demanded the money. Mr Kennersly
never tendered me a deed. I cannot
remember the Mr Kennerslys ever demanded
the money. ^{over} ~~of~~ The Kennerslys and Stathe the
matter over special Juries, and we deferred it from trial to trial and it was finally
(The testimony respecting the tendering of money
or deed, objected to as incompetent.)

passed over altogether

I do not remember who told me when the second sale was broken off. I think one of the other Kennerys told me that the land was advertised for a second sale. I do not remember any one being present at the second sale except the three other Kennerys the Trustee, and myself.

Ques

What agreement did you make with Mr. Kennery regarding the purchase of the land at the second sale?

Oky to my dependants Counsel as leading incompetent, illegal and not illicit by the examination in chief

Ans

There was an arrangement made by Mr. Kennery and myself, wherein I was to have some time to pay the money. They were to bid the land in and give me a bond for a deed which I looked upon as securing my debt. They gave me afterwards a bond for a deed which I got hold. In consequence of that agreement, I did not bid for the land at the sale, at the second sale the land sold for about five hundred dollars. I do not exactly recollect the amount. I regarded the one hundred acre tract as worth about three thousand dollars. There is a tax toll on the balance. And I do not regard it as worth much

Had not this arrangement been made between me and the Kennelys. I would have ~~but~~ made some arrangement by which the land would not have been ~~sold~~ sold for the price it was sold. ~~The first~~ The fourth year note I paid to Mr Kennely on behalf of my brother Charles. Charles had assumed the payment of it. The Dependents receive the rent of the place since the second sale. The place rents for one hundred and fifty dollars a year. I think,

Q. Examination

I never made a legal ^{tender} to the dependants of the ~~money~~ or to Mr Buyers of the money under the arrangement. at the first sale The second agreement spoken of at the second sale was ~~spoken~~ consummated in a written bond. The bond was given by dependants to my uncle Cal John O'Fallan

Ques. What were the provisions of that Bond?

A. O. because it is making the content of a writing, by parol.

Ans

We summed up the amount of the three year note principal and interest up to the date of the second sale upon which the Mr Kennelys added to that amount fifteen ^{per annum} per cent on the amount summed, for five months the long time specified in the bond wherein the money was to be paid. The

Bond also provided for the payment of the four year note when due Upon the payment of these amounts by the obligee in the bond the Kennelys were to deliver the property in controversy in this suit to the obligee in the bond and to deliver him up the four year note.

Ques Is not this bond of which you are speaking the bond spoken of by you in your cross examination by Mr Beal?

Ans Yes Sir

Ques Did Cal O'Fallon or anyone for him at the time of the execution of this bond and its delivery receive from the obligors the three year note

Ans ~~O'Fallon was incompetent~~
~~I think they delivered it to me I was not certain~~ I do not know what disposition was made of it

Ques Do you know what has become of that three year note?

Ans I do not know at present, I may have it with my papers at home

Ques Was it the understanding with you and the other Kennelys at the time of the execution of the bond that this note was to be given to Cal John O'Fallon or your self

Ans I do not know anything about it

Ques. Was it the understanding between you and the Kennedys at the execution of that Bond that no further claim should be made on account of that note by the Kennedys?

Ans. That was my understanding. The amount was computed and represented in the bond.

Ques. ~~Did you call for a bill of exchange for the amount of the bond?~~

Ques. Do you recollect of seeing at the second sale a man named Hesser present at the sale?

Ans. I do not remember. I may have seen him there. He lives in town.

Ques. Was the second sale an open public sale or not?

Ans. It was publicly cried off.

Re Cross Examination by James D. Beal attorney for Plaintiff

On the third or four years notes there was two years interest paid by Dover to me. I think this is so. In the settlement with the Kennedys I think they allowed me this interest. This was in the transfer of these notes to the Kennedys by me. I do not think that these two years interest on the notes and which had been paid by Dover was computed in the amount to be paid under the bond.

John O'Fallon

Not being able to complete the taking of said depositions by ^{consent of the counsel of both parties} ~~reason that the time~~ ~~has expired~~, I adjourn the further taking of the same till Monday the 28th day of November 1864 then to be continued at the same place and between the same parties mentioned in the annexed notice.

J. D. Adams Fitcher
Notary Public
St. Louis Mo

Pursuant to adjournment as above stated on Monday on the twenty eighth day of November 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. McCallum attorney, No 32 1/2 Pine Street in the City of St. Louis in the County of St. Louis, State of Missouri I continued the taking of said depositions as follows viz:

Harry J. Goodrich of lawful age being duly sworn and examined on the part of the defendants deposed and said:

I am not acquainted with the Plaintiff in this suit, and know only one of the defendants by sight. I know nothing of the matter in controversy in this suit ~~of my~~ ^{own} knowledge. I was not in Hillsboro Jefferson County Missouri on the fifteenth day of March A.D. 1861 nor on the sixth day of May A.D. 1861. I know nothing of the

11
matter in controversy in this suit except
from hear say.

Harry J Goodrich

Not being able to complete the taking of said
depositions, for the reason that no other witnesses
were in attendance, I adjourn the further
taking of the same till tomorrow, then
take continued at the same place
and between the same hours mentioned
in the annexed notice

W Adams Fitcher
Notary Public
St Louis, County
Missouri

Pursuant to the adjournment as above
stated, on the twenty ninth day of November
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. McCallan
attorney No 32 1/2 Pine Street in the City of
St Louis, in the County of St Louis State
of Missouri I continued the taking
of said depositions as follows viz.
Eber Peacock of lawful age being duly
sworn and examined on the part of the
dependants deposes and saith;

I am a resident of the City of St Louis
and by occupation an attorney at law
doing business at No. 32 1/2 Pine Street
in the City of St Louis. I know neither
the Plaintiff nor dependants to this suit
Eber Peacock

Not being able to complete the taking of said depositions, by consent of the counsel of both parties, I adjourn the further taking of the same till the ^{nineteenth} ~~fourth~~ day of ~~November~~ December A.D., 1864, then to be continued at the same place and between the same hours mentioned in the annexed notice.

J. D. Adams Fitchey
Notary Public

St. Louis Mo

Pursuant to adjournment, as above stated on the nineteenth 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. J. McCallan attorney at 32 1/2 Pine Street in the City of St. Louis in the County of St. Louis State of Missouri, I continued the taking of said Depositions as follows viz:

James A. Beal, of lawful age being duly sworn and examined on the perjury of the defendant, deposed and said;

I was present at the first sale of the land in question, in St. Louis, A.D. 1861. This sale took place in Hillsboro, whether at the Court House or not, I do not now recall. The sale was at public auction.

James Bugers was the Trustee and made the sale. The terms were cash, to the highest bidder. I don't remember whether the Trustee made any other ~~terms~~ announcement, than reading the advertisement, and announcing the terms of sale. I think the Trustee acted fairly in his duties as Trustee as far as I saw. This was before the sale. The land was struck off to John O'Halloran for about something over twelve hundred dollars. I expect there were some ten or a dozen persons present at that sale. Jerome B. Doney the Plaintiff was present at this sale. Some one, ~~a man~~ for him, ^{was} authorized to bid at the sale, bid for Plaintiff. I don't remember who it was. I remember that bid authorized ~~for him~~ by him was made for him. The bid made for Doney was in the neighborhood of twelve hundred dollars. I don't know the exact amount. It was the bid next below that of O'Halloran's. ~~And~~ ~~that~~ Before the first sale took place Mr. Doney told me that the land was going to be sold under a deed of trust and wanted to borrow money of me to stop the sale, or redeem it from sale. I loaned him no money, but an agreement was made ~~before~~ previous to the sale between Plaintiff, his brother and myself, ^{that Oscar Doney and myself} ~~and~~ would bid

on the land at the sale, and if it was
struck off tens, we should hold the
land as security for the money until
plaintiff was able to pay us, we
charging him ten per cent for the
use of the money, and if he did not
redeem it in a specified time
it was to be our land. I was not
present at the ^{second} sale in May, 1861.
Cross Examination.

At the first sale Oscar Dower had
about six hundred ^{dollars} and I had about the
same amount. On the day of this
sale Dower was dissatisfied and ^{ed} complained
to one of the defendants, that he had not
received the proper credits on the notes.
Before the sale I saw John O'Fallon Jr
The Trustee, and one of the defendants
conversing privately together, I was
acting as attorney for Plaintiff
He and I approached the party for
the purpose of making some arrange-
ment with them, when they
dispersed and we made no
arrangement. After the sale, I
demanded a settlement of the Trustee
and defendants of the purchase money
which they refused. Any arrangement
was then made between the Trustee, the
defendants and John O'Fallon Jr. whereby
they were to meet in a few days at
Lulphur Spring and settle up the sale

I demanded for the Plaintiff a settlement
 then or a new sale on that day ~~The~~
 The Trustee in the presence of the defendants
 replied that he would risk O'Fallon
 a few days. The defendants set up a
 claim of eight or nine hundred
 dollars, as a balance due on the notes
 held by them. (If the land had been
 sold for cash on the day of sale, it
 would have been bid in by Oscar Dyer
 and myself under the arrangement
 above spoken of. The object O'Fallon had
 for bidding in the property was that he
 intended applying the surplus over what
 was due the defendants, on the two notes
 to other indebtedness due him from
 Plaintiff) All this embraced in brackets
 objected to by defendant's counsel as
 incompetent and illegal

B

Re examination

Q. I have every reason to believe that
 John O'Fallon had just claims
 against Dyer, besides those notes
 he transferred to defendants. I do not
 know of my own knowledge that
 there was other indebtedness ^{unpaid} ~~due~~ by
 the Plaintiff, and secured by the
 deed of Trust under which the sale
 was made. I ~~do not remember~~ ^{do not remember} that at the
 time of the sale the indebtedness then
 claimed by O'Fallon, from Plaintiff
 was claimed by him under that deed

16

of Trust, O'Fallon has since told
me that he claimed ~~the~~ last two
remaining notes secured by the deed
of Trust ~~and cause, among others of~~
~~the cause of the difficulty~~ One of the
difficulties, among others, between
plaintiff and defendants, was that
the defendants claimed ^{payment of} both notes
held by them at that time
J. A. Beal

State of Missouri }
County of St Louis } ss

I J. Q. Adams, Fitching
a Notary Public within and for the County
and State aforesaid, do hereby certify that
John O'Fallon jr, Harry J Goodrich, Eben Peacock
and James A Beal, 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 notice, and continued the
same by adjournments, from, and to, the
days, as mentioned by me in the foregoing
depositions, by consent of the counsel of
both parties

And I further certify that the

deposition of John O. Fallon Jr was taken
and subscribed by him in my presence on the
twenty sixth day of November A.D. 1864, and
that of Harry J. Goodrich, was taken on the
twenty eighth day of November A.D. 1864 and
subscribed by him in my presence on said day;
and that of Eber Peacock was taken and subscribed
by him in my presence on the twenty ninth day
of November A.D. 1864, and that of James A.
Beal was taken and subscribed by him in my
presence on the nineteenth day of December A.D.
1864, all of which said depositions were taken
at the Law Office of J. Galt Cellan, attorney of 32 1/2
Third Street in the City of St Louis in the County
of St Louis, 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 \$11.50
paid by defendants

J. Adams Fitch
Notary Public

St Louis County
Missouri

Beal

JO Dover

W 23
J. J. Bennett



opened and filed
Mar 23 2 1865
E. J. Hoarey clerk

Know all men by these presents, that we,
Thomas J. Kennedy, Francis L. Kennedy, as principals,
and
as securities, acknowledge ourselves indebted to
Jerome B. Dover in the penal sum of five hun-
dred dollars, to be void upon this condition;

(Whereas, Thomas J. Kennedy, Francis L. Ken-
nedy, and James L. Kennedy, have appealed from
the judgment and decision of the Circuit Court
of Jefferson County Missouri, in an action
between Jerome B. Dover, plaintiff, and said
Thomas J. Kennedy, Francis L. Kennedy, James L.
Kennedy and John O'Fallon Jr, defendants, to
the Supreme Court of the State of Missouri,
Now, if on such appeal, the said Appellants
will prosecute their appeal with due diligence
to a decision in the Supreme Court, and shall per-
form such judgment as ^{shall} be given by the Supreme
Court, or such as the Supreme Court may direct the
Circuit Court to give, and if the judgment of
such Court, or any part thereof, be affirmed, that
they will comply with and perform the same,
so far as it may be affirmed, and will pay all
damages and costs which may be awarded against
the said Appellants by the Supreme Court, then said
Bond shall be null and void, otherwise to remain in full
force. Witness our hands and seals, this 18th day of November

1863
Approved: John H. Emerson }
Judge }

Francis L. Kennedy Seal
Thomas J. Kennedy Seal
Philip Piskin Seal
Oliver Green Seal

J. N. Dore

13.

Geo. L. Hamblet Esq

Bowen

for affidavit

Filed Nov 23 1865,
Samuel R. May Clerk