

Jefferson County Circuit Court
Case Files - Civil
November 1864

Folder 2 of 2

Box 15 Folder 61

Dover, Jerome B.

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

Title

Involved deed of trust on 260 acres
in S21, T22 R5E securing 6 notes
of \$383.33 each; sold by trustee James
Burgess to defendants; depositions;
Supreme Court

Jerome B. Dover, Plaintiff

vs

James L. Kennerly, Thomas

J. Kennerly, Francis

L. Kennerly, Defendants

We Jerome B. Dover Plaintiff
in the above entitled cause and
Abner Green Attorney for the
Defendants therein, hereby agree
that depositions in the above entitled
cause may be taken at the office
of the Clerk of the Circuit Court
in Hillsboro Jefferson County
Mo. on the 2nd day of December
1864 between the hours of eight
o'clock in the forenoon and
six o'clock in the afternoon
of that day if not completed on that
the same may be continued from
day to day at the same place &
between the same hours until
completed. It is further agreed
that E. F. Heoney Clerk of the Circuit
Court may swear the witnesses whose
depositions shall be taken & certify
to the same according to the Statute
for the taking of depositions

Given under our hands this 2nd
day of December 1864.

Jerome B. Dover
Abner Green
Attorney for Defendants

Depositions of Witnesses produced sworn and examined on the Second day of December in the year of Our Lord 1864. between the hours of Eight O'clock in the forenoon and six O'clock in the afternoon of that day at the office of the Clerk of the Circuit Court in the Town of Hollands in the County of Jefferson and State of Missouri before me the Clerk of the Circuit Court in a certain cause now pending in the Circuit Court of the County of Jefferson State of Missouri between Jerome B. Dover plaintiff and Thomas J. Kennerly, James L. Kennerly and Frances L. Kennerly defendants on the part of the plaintiff

James C. Pomeroy of lawful age being produced, sworn and examined on the part of the Plaintiff deposes and says that he recollects that sometime in the early part of the year 1861. he was at Sulphur Springs. Jerome B. Dover came to me and told me that the Kennerlys had his lands for sale under a deed of trust he had previously given to one John O. Fallon. as a friend he wanted to know if I had

any money or if I knew any person who had money, that he wanted to get the money to redeem it. My answer to him was that I had a little money and that his brother Oscar Dover had plenty money and that I would see Oscar Dover in a day or two, and make arrangements with him to let Jerome B. Dover ^{have} on the day of sale, sufficient money to buy the land on the day of sale. I saw Oscar Dover and succeeded in making the arrangement with him. He, Oscar Dover was to be here on the day of sale, and also Jerome, with the money. Our conclusion or agreement was that we would give for the land, twelve hundred dollars and give Jerome for it. I saw Oscar Dover a day or two after the sale. I asked him if Jerome got the property, his reply was No., that he bid the money agreed upon, but that John O. Fallon over bid him. I was not present on the day of sale, and further this deponent says not. (The defendants object to the statements of Oscar and Jerome B. Dover as being incompetent)

Cross examination

Did Oscar Dover show

you the money, Mrs. Wood did not show it to me at that time but I am confident he had it at that time; In this transaction I was to furnish Oscar Dover if he needed it some two or three hundred dollars, and in the conversation with O. Dover, I thought that Jerome B. Dover and myself could furnish about one half of the amount agreed to be given for the land, I did not advance any money at the time, but had it ready for the purpose, in case he bought it. The arrangement was that Jerome was to purchase the land and to secure us he was to execute a deed of trust in our favor on the same. James C. Power subscribed and sworn to before me, on the day, at the place and within the hours first aforesaid

Elias F. Hooney Clerk

I, Elias F. Hooney Clerk of the Circuit Court within and for the County of Jefferson in the State of Missouri do certify that in pursuance of the agreed agreement, came before me at the office of the Clerk of the said Court, James C. Power who was by sworn to testify the whole truth of his knowledge touching the matter in controversy aforesaid, that he was examined and his examination

ators reduced to writing and subscribed by him
in my presence, on the day, between the hours, and
at the place in that behalf first aforesaid, and his
said depositions is now herewith returned, and
I further certify that said James L. Power is a
resident in said County and State.

Given under my hand and the
Seal of said Court this Second
day of December A D 1864
Elias J. Honey Clerk

Fees
E. J. Honey \$2.00
J. L. Power 50
Mrs L Thomas 50
\$3.00

Given 13 Power
214 Sept for Plff
Thos J. Kernerly
Jas L Kernerly
Mrs L Kernerly

Filed Dec 22 1865
E. J. Honey clk

Depos. Jas. C. Power

Jerome B. Dore
Plaintiff. Against
Thos J. Kennedy, &
James L. Kennedy,
& Francis L. Kennedy, &
John O'Haller.

In Circuit Court Jefferson
County Mo Term
1865.

Be it remembered on the 11th day
of the above entitled cause, the plaintiff to main-
tain the issue upon his part of facts & evidence
the dec of trust executed by Jerome B. Dore to James
Burges, Trustee & John O'Haller of the trust bearing
date the 2nd day of February 1858 of her issue & copy
the dec of trust and funds.

Plaintiff then offered James Burges for the trustee, who
states in substance as follows that when one of the notes
in the hands of Kennedy, secured by dec of trust against
for about \$383.33 $\frac{1}{2}$, a check, & had fallen due, the
Kennedy, applied to him to proceed to advertise &
sell the property in the dec of trust mentioned.

Burges describes the land involved in evidence. I sold the same
13 March
1861 at Stillman for \$1203 to John O'Haller. Kennedy told
me to take for cash. It was so arranged. O'Haller bid it
off. He did not have the money to pay. Land was sold on
Friday. Trustee applied to O'Haller to pay the amount
of the bid. He failed to pay it. Told Burges he had not
the money. I told Kennedy what O'Haller said.
O'Haller said he could pay it next ~~Monday~~ ^{Thursday} & Kennedy
agreed to wait till next Thursday & meet at Sulphur
Spring to pay the money. O'Haller never paid the money.
I think Thomas Kennedy was present at the sale.

at Sulphur Spring, ^{on} Thursday ^{following} Dorn attended the sale.
O'Fallon now paid the money. Dorn was at the sale.
He got a witness to endorse a note with him for \$500.

Dorn was to buy the land as to give me a deed of trust to it to
secure Bump. The one hundred acre tract was sold about
one o'clock after dinner. That day the money ~~was~~ that
had been got of Bond was handed back to him with the note dis-
charged. (here insert copy word for word of note ⁱⁿ
controversy) ^{Bump, about ten days after this sale, tendered O'Fallon}

a deed, & demanded the money for which the land was sold,
but he refused to pay.

When the money was not paid, Ken nuff, a game note
fied to Bump, to sell the land, & accordingly ^{they} he
proceeded to sell the land in conformity by advertising same
according to law & sold the land on 6th day of May
1841, at the Court House in Still, Mo. at one o'clock. Ken nuff,

O'Fallon & several others were present. Land sold for
\$530. The Ken nuff bought it. Some one bid 300. Ken nuff
asked Bump, if he would be a good bidder.

He said bid \$300. Witness saw notice put up at Sulphur Spring when Dorn had asked
Dorn if he was going to attend ^{the} sale on 6th of May, he said, let this sale both tracts
be sold ^{together}. Dorn was not present.

O'Fallon did not bid. ^{Witness saw a note made by Ken nuff}
^{on note first given by Dorn, & signed by O'Fallon or Dorn.}

Witness saw the Bond from Ken nuff to O'Fallon
the Bond is here shown witness. The bond was made a short

time after the sale on Sunday. That O'Fallon then
only talk about the note, several days before the sale
Ken nuff, wanted their money, said if they were

secured they would wait. Witness states that
he made a deed to O'Fallon for the first sale, & then

it to O'Fallon, and demanded the money from
O'Fallon. I kept the deed it is now here in my
depository in the Court House. O'Fallon did not pay
~~the money~~

and never did pay said money.

O'Fallen said he could probably pay before
Bump could sell again, but did not.

Witup proceeded to advertise a few days after
the demand to proceed to sell. O'Fallen & Kennedy came
to Hillsboro together. I do not know, that there was any talk
about the bond before the sale. Col Fletcher was brought
then by the Kennedys, & Witup to do the writing. It
was prepared on the day of the sale. Plaintiff had intro-
duced account at both sales, (then in it account of
Jury (in)
Also Abstract & copy of bond of Kennedy to John O'Fallen 6th May, 1861 for con-
solidated)
Witup & O'Fallen went home immediately after the ^{first} sale was over.

It was shown that Kennedy received 100 dollars per year for first
two years & 125 for next year ^{and occupied the farm from 1861 to 1862} & 3 acres in cultivation
good land. Notices were regularly set up. Col
Fletcher put this up. I am satisfied they were
all put up. I saw no unfairness about the sale whatever, or in the offer

being bid on the land at the ^{at the sale of the} 1861. & no one was prevented. Sale was public.
The first note was paid off at this sale & taken up & the balance created on 2nd note.

J. Hopson stated that he was at the sale. Kennedy got
Witup to go and bid on the land. I bid 3200, there was
no private arrangement between me & the Kennedys
about it, sale was made publicly & saw no unfairness
about it, seven persons were present.

Charly's advaluation. I know the 100 acre tract referred to, good
land 30 or 40 acres cleared or it - paid 100 for first 2 years
12 years 125, paid 325 for more. Tupel was with him before
war. He paid 75 for the money. Finner has been
upside roof on corn crib & stable, cleared 1/2
acre of land. in all worth in improvement
over 1000. Kennerly took possession of same 1861 from Finner.

Ogle states land before the war worth 2000 per acre
No sale for land in 1861 - Perhaps it
might have brought \$1000, perhaps.

J. L. Perren states that Down in 1861, Down wanted
some money, that the Kennerly were going to sell
the land if he did not get money to pay off
the notes he would lose 3 others. I remember ¹³ Down
witness, \$101 can Down, agreed to pay \$1200 for the land.
Some have paid the money at first sale. (we
in case we lost the land)
were told Down had time to pay for it. It was
worth 1200 then.

John O. Fallon is introduced as a witness by plain-
tiff ^{on the ground that he was a party to the suit & interested with plaintiff} & Kennedy objected to his testimony. The Court over-
ruled the objection ^{to which decision of the Court the said} & allowed him to testify. — He stated
that the bond was given at the time of 6th
of July 1861. Col Fletcher wrote it. Witness was
at the time — witness states that he told Kennedy ^{that} ^{one}
a two year interest was paid on the note. No
amount of interest on the note ^{when transferred to} ^{after}
the Kennedys — (then these notes were for
and in hands of Kennedy & executed by
Dunn & Parker — payable to John O. Fallon &
^(to Kennedy) ^{after} the notes in controversy — There was no
pass & between me & the Kennedys ^{at} the second sale,
was fair & open to all to bid — witness states that
he paid the second note. Kennedy gave it up
to sometime after. Here O. Fallon showed to the Court
the Note due in February 1862 — having a credit of \$38.61
(which is as follows here copy same)

To the introduction of John O. Fallon Jr. as witness
and his testimony aforesaid the said Kennedys
Defendants, then and objected, but the Court over-
ruled the objection & permitted him to testify, to which
decision of the Court, the Defendants, the said Kennedys
then & there ~~objected & excepted~~.

Upon the part of defendant Kennelgrove in
witness deposition of Geo. Fletcher (his ~~copy~~
deposition of said Fletcher was for words)
Fletcher proved ^{since} notices were all put up regularly
More ^{than} 30 days before the day of sale. No bond was ~~at~~
~~on~~ ~~with~~ or entered into before the day
of sale of 6th May 1861 between the
Kennelgrove & O'Haller. Sale was fair
& known of no fraud ^{practised by any one at said date} (Copy his deposition
at length and for words)

Defendant also introduces ~~any~~ deed of
trust under which sale was made
(his copy it) and also the deed ^{of trust} as
made ~~to~~ ^{by James} Burgess, trustee, to
the Kennelgrove, for the land in Ar-
trivory — (See insert said deed
and for words, bearing date 2^d day
of Feb'y 1858 & recorded in recorder's office
of Jefferson on Arch, in book 8 page 344
signed by James Burgess, Trustee.)

The above answering was also the evidence
offered in the above cause on
both sides.

The plaintiff then moved the Court to give the following
instructions upon the part of the plaintiff, which are as follows
If the Court finds from the evidence that the Kennedy
held two notes against J. B. Brown falling due in Feb 1861
& 1862, respectively, that after the note fell due in 1861 the
Kennedy, induced the Trustee to sell the land in controversy
& that such sale took place on 15th March 1861; that at
such sale John O'Haller Jr became the purchaser of the 100
acres & for a sum large enough to pay the note then due

1st the Court of sale, that the Kennedy, agreed with
O'Fallon that he might have a few days time to
pay the amount due by him to the Trustee.
1st the Kennedy, made the amount due by
O'Fallon an undivided debt of John
O'Fallon In nothing was due then from
Levin on 6th day of May 1861 & conse-
quently no valid sale could take
place on that day but 6th day of
May 1861 - (Clerk will copy
witnesses with instructions ^{made} given
on part of plaintiff) -

The defendants then asked the Court to give
on the part ^{of defendants} the following instructions (here
insert the instructions asked by defendants) which
instructions were refused by the Court, to ~~which~~
Judgment and decree of the Court in refusing
to give the instructions asked ^{by defendants} the defendants ^{there & there} objected
and excepted to the Court overruled ^{the} objections & de-
fendants excepted ^{to the} ~~to the~~ refusal to give said
instructions -

The Court on announcing the judgment in
the case, stated that the testimony of John O'Fallon
was excluded.

Therefore the Court under the following had
granted & decreed in the case (then inserted
Judgment & decree word for word)
to the rendition of which the defendant
Kenny, objects & excepts, but the Court
overruled ^{the} objection and defendant
excepted,

The Kenny defendants then moved
the Court for a new trial (then ~~insert~~
insert motion for new trial word for
~~word~~ ^{new trial}) which being seen & argued the
~~defendant~~ Court overruled ^{the motion} & refused
to grant a new trial, to which Judge
& decree of the Court in refusing to
grant a new trial, the defendants
excepted —

The defendants thereupon filed & took affidavit
& bond for an appeal to the Supreme Court
(then inserted Affidavit & bond
word for word) which being seen by
the Court is approved and ^{the} appeal granted
to the Supreme Court & ordered to be entered. All
of which is prayed to be signed, sealed
made a part of the record & what is accordingly
done —

John H. Emerson Secy

James B. Davis

"

Henry B.

at

Bill of the
editors

James B. Dover
v. As
Thomas J. Kennerly et al
App'ts

In The Supreme Court
October 5 1866

Opinion of the Court

This was a petition in Equity by the grantor in a deed of trust on real estate made to secure the payment of six negotiable promissory notes, and it was brought against the defendants, Kennerly and company, holders of two of the notes, and purchasers at a sale under the deed of trust, praying to have the trustees deed to them set aside and annulled for the reason that one sale had already been made under a previous notice, and on the ground of fraud in making a second sale. The notes were drawn payable to John O'Dallon Jr. and two of them had been paid, two of them assigned by him to the firm of Kennerly & Co., and the other two to other persons not named; and O'Dallon was also made a party defendant.

It appears that when the notes held by the Kennerly became due, they caused

the property to be advertised for sale under the deed of trust, on the 15th day of March 1861; that at the sale the plaintiff was present and bid the sum of \$1402, having previously made arrangements to get the money from other persons to pay the amount of this bid, but that John O'Dallon Jr bid one dollar more, and the property was struck off to him; that O'Dallon failed to pay his bid, not having the money ready, but thought he could make the payment on the next Thursday; that the Kennerslys on being informed of this by the trustee consented to wait, that some ten days afterwards, the money not having been paid, the trustee declined a deed to O'Dallon and demanded payment of his bid, which he refused; and thereupon the Kennerslys directed another sale to be made upon a new notice; and the property was again advertised and sold, on the fifth day of May following, after due publication of notice, when the Kennerslys became the purchasers for the sum of \$530, and a deed was made to them by the trustee, conveying the land sold.

The petition alleges that there was a fraudulent combination between O'Dallon and the Kennerslys to prevent the plaintiff from becoming the purchaser, to deter others from bidding, and to enable the defendants to obtain the land at a reduced price, and that there was a secret agree-

ment between them whereby the Kenners were to become the purchasers for the benefit of O'Fallon, on being paid the amount of their debt.

It was also alleged that a payment had been made in goods from a store to O'Fallon before the assignment of the notes to the Kenners of which they had notice and which had never been credited on the notes; and some other circumstances were charged as amounting to fraudulent conduct on the part of defendants.

The defendants answered denying any fraud, secret agreement, or fraudulent combination, or notice of any payment on the notes prior to the assignment; and they deny that any previous sale was actually made.

The proofs failed to show any actual fraud on the part of the defendants.

There was no evidence whatever of any secret agreement or fraudulent combination between them prior to the actual sale, whereby any person was restrained, or prevented from bidding.

It was proved that after the second sale had taken place, & the Kenners had become the purchasers, they agreed with the defendant O'Fallon that they would convey the land to him, on being paid the amount of their debt; but this was never done.

nor did the evidence show any payment on the notes of which the

indorsees had notice before the assignment of the notes to them.

The court below rendered a judgment for the plaintiff, finding that upon an account taken of the rents and profits of the land sold, while in the possession of the purchasers and deducting the same from the amount due them on the notes which they held, there was a balance due them of \$94.36 and that the holders of the other two notes, as well as the amounts due them, were unknown to the court, and ordering, first, that the verdict be and, "is hereby set aside and annulled;" second, that the plaintiff deposit with the clerk of the court on or before the first day of the next term of the court the said sum of \$94.36, in satisfaction of the balance due the Kennersly; and third, that if the plaintiff failed to pay the other notes to the holders thereof, on presentation, before the first day of the next term, "then this bill is to be dismissed."

We do not see any ground or principle, on which such a decree as this can be sustained.

It is contended for the Appellants that the debt of Kennersly Co, in consequence of

the consent given by them that the trustee might wait until the next Thursday for the payment by O'Dallon of the amount of his bid, became thereby the individual indebtedness of O'Dallon and therefore that they had no right to direct a resale of the property. There was no proof of any agreement beyond this in effect. Doubtless the bidder was bound by his bid.

His contract might have been enforced against him, in a court of equity, if the trustee had chosen to hold him to his bargain, or he might have been held liable at law for damages on a breach of the contract. (Gardner v Armstrong, 31 Mo 535)

But the trustee in effect elected to waive the bid and, on a refusal to accept a bid and pay the money, to declare it no sale. He might have rejected the bid on the spot, unless paid at once, and then proceeded with the sale, or he might have struck off the property to the next highest bidder. He suffered the time to pass by and there was simply no sale. There being no sale at that time it was proper for the trustee to advertise the property again for a sale on another day. Barnard v Duncan, (March 7 1866)

The proceedings upon the resale appear to have been regular, and upon full notices. Nothing amounting to fraud or a fraudulent

agreement or combination or any unfairness, is established by the evidences. The time may have been unpropitious, or the condition of the plaintiff unfortunate; and the property may have been sold for less than its value; but neither this nor the inability of the plaintiff to save himself, nor his neglect to attend the sale, can constitute a ground for the relief which he asks, in the absence of any satisfactory proof that the beneficiaries, officiously or unfairly intermeddled with the duties of the trustee, or did anything to prevent other persons from bidding at the sale, or took any unfair advantage for the purpose of getting the property at a price below its value.

In *Hooton v Binkley* (20 Mo. 290) and *Neal v Stone* (20 Mo. 294), which were cases of sales by the sheriff in partition, there was some evidence of an express agreement and a combination to prevent other persons from bidding, or of such management and contrivances on the part of those who were to reap the advantage of the sale as to prevent the attendance of bidders and hinder the bidding of those who were present. It may be concluded that in the view of a court of equity, sales of this kind are to be put on the same footing as judicial sales as it was intimated in *Stone v Hill-Kuison* (10 Mo. 94)

but we have not found in this case any substantial ground on which this Court can undertake to set aside and annul this Sale and deed.

We think the judgement that was rendered below was not warranted by the facts of the case, and that it was entirely erroneous. Judgement reversed and the Cause remanded.

The other judges concur
C. Holmes

State of Missouri SS

I O. O. Dickbach Clerk of the Supreme Court held at St Louis of the State of Missouri certify that the above and foregoing is a full true, and complete copy of the Opinion delivered in the above entitled cause as fully as the same remains on file in my office.

In Testimony Whereof I have hereunto set my hand and affixed the Seal of said Court at Office in the City of St Louis this



(copy)

James B. Dorer
Resp

v

Thomas J. Kennedy
et al
Appels

Opinion
Reversed and remanded
Holmes

Sched Oct 29 ch 1866
O'Donoghue
et al



Twentieth day of December A
D eighteen hundred and fifty six
O'Donoghue et al
by E. M. G. Dyer et al

In the Supreme Court held at St. Louis, of the State of Missouri,

October Term 1866.

Commenced 29th 1866

James A. Over
Respondent

vs

Thomas Kearney et al.
Appellants

Appeal from
Jefferson Circuit
Court

Now again come the parties aforesaid, by their respective attorneys, and the Court being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment rendered herein by the said *Jefferson Circuit Court* be reversed, annulled, and for naught held and esteemed: That the said *Appellants* be restored to all things which *they* have lost by reason of the said judgment: That the said cause be remanded to the aforesaid *Jefferson Circuit Court* for further proceedings to be had therein, in conformity with the opinion of this Court herein delivered and filed, and that the said *Appellants* recover of the said *Respondent* *their* costs and charges herein expended, and have execution therefor. *Opinion filed*

STATE OF MISSOURI, SS.

O D Distback
I, **ANDREW W. MEAD**, Clerk of the Supreme Court, held at St. Louis, of the State of Missouri, certify that the above and foregoing is a full, true and complete copy of the judgment rendered in the above entitled cause, as fully as the same remains of record in my office.

In Testimony Whereof, I have herunto set my hand and affixed the seal of said Court, at office in the City of St. Louis, this *twentieth* day of *December* A. D. eighteen hundred and *Sixty-Six*

O D Distback Clerk.
by M. G. Early - Deputy Clerk

Supreme Court of Missouri.

James D. Over
vs
Reaper

Thomas Stewart
Appellee

MANDATE.

Judgment Jefferson Circuit Court
Reversed and Remanded.



Jerome B. Dover, - Plaintiff	}	In the Circuit Court
Against		of Jefferson County
Thomas J. Kennerly		Missouri,
and others, - Defendants		November Term 1867

The Defendants move the Court to set aside the finding and judgment in the above entitled cause, and grant them a new trial, for the following reasons, -

- 1 - Because the finding ^{of the Court} is against the evidence in the Cause, and against the weight of evidence,
- 2 - Because the finding ^{of the Court} and judgment thereon is against the law of the Cause,
- 3 - Because the Court admitted illegal and improper evidence in the case, offered by the Plaintiff,
- 4 - Because the Court refused to admit legal and proper evidence offered by the Defendants,
- 5 - Because the pleadings not having been amended, and no new issue formed, besides what had ^{been} previously decided by the Supreme Court, the matters in issue were res adjudicata, and it was therefore illegal to hear evidence upon the matters which had been once adjudicated,
- 6 - Because the Court erred in admitting the evidence of John O'Hallow, upon the subject of an agreement with Defendants not to bid at the second sale of the land,

- 7 - Because the Court erred in finding and in rendering judgment for the Plaintiff, when the judgment should have been rendered for the Defendants,
- 8 - Because there was not any evidence to warrant the Court in setting aside the second sale of the land in question, and in entering a decree for Plaintiff to redeem the land,
- 9 - Because the Court gave illegal & improper declarations of law as prayed by the Plaintiff,
- 10 - Because the Court refused to declare the law of the case, as prayed by Defendants,
- 11 - Because the Court misconstrued the law governing the case.

Abner Green
Attorney for the Defendants,

In Circuit Court
Jefferson County

Jerome B. Dover

vs.

Thomas J. Hamerly
and others

Motion for
a new trial

Filed Nov 18th 1887
C. F. Kennedy clerk

Jerome B. Dover, - Plaintiff } In the Circuit
 Against } Court of Jefferson
 Thomas J. Kennerly and } County Missouri,
 Others, — Defendants } Nov. Term 1867,

Thomas J. Kennerly (one of the Defendants in the above entitled Cause) being duly sworn, on his oath states that the application of the Defendants in the above Cause, Thomas J. Kennerly, Francis L. Kennerly, and James L. Kennerly, for an Appeal from the Judgment of the Circuit Court of the County of Jefferson aforesaid to the Second District Court of the State of Missouri, is not made for vexation or delay, but because the Affiant believes that the said Appellants are aggrieved by the Judgment or decision of the Circuit Court aforesaid.

Subscribed & sworn to before
 me this Nov 13th 1867

Elias A. Honey doo Clerk,

By L. D. Boone Deft.

Thomas J. Kennerly

Dever
Remembrance

Off. for an Appendant

~~Dec 18 1867~~
~~Wm. H. H. H. H.~~

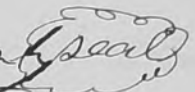
Dec 11 1867
E. H. H. H. H.

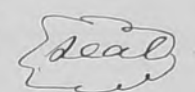
Jerome B. Dover, - Plaintiff } In the Circuit
 Against } Court of Jefferson
 Thomas J. Kennerly } County Missouri
 and others, — Defendants } November Term 1867,

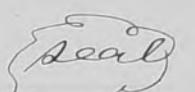
We, Thomas J. Kennerly, Francis L. Kennerly, and James L. Kennerly, as principal, and Abner Green as securities, acknowledge ourselves indebted to Jerome B. Dover in the sum of Seven hundred — dollars, to be void upon this Condition, ^{Francis L. Kennerly} ~~as principal, and~~
 Whereas, Thomas J. Kennerly, Francis L. Kennerly, and James L. Kennerly, have appealed from the Judgment of the Circuit Court of Jefferson County aforesaid, in an action between Jerome B. Dover, plaintiff, and Thomas J. Kennerly, Francis L. Kennerly, and James L. Kennerly, of John C. Fallon, Defendant to the Second District Court of the State of Missouri, — Now, if the said Appellants will prosecute their appeal with due diligence to a decision in the Second District Court of the State of Missouri, and shall perform such judgment as shall be given by the Second District Court, or such as the Second District 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 appellants by the second District Court, aforesaid, then this Bond shall be void, otherwise, to remain in full force.

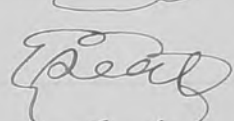
Witness our hands and seals this 11th day

December
of ~~November~~ A.D. 1867.

Thomas J. Kennerly 

Francis J. Kennerly 

James L. Kennerly 

Abner Green 

Approved by me
Decr 11th 1867

Elias J. Honey, clk

In Circuit Court

Hoffman County

Jerome B. Dover

vs.

Thos. J. Kennerly
and others

Do not
for affidavit

Attest Decr 11th 1867
E. J. Honey, clk

Jerome B. Dover, - Plaintiff
 Against
 Thomas J. Kennerly,
 Francis J. Kennerly, &
 James L. Kennerly, - Defendants

In the Circuit
 Court of Jef-
 ferson County
 Missouri
 Nov. Term 1867

Be it remembered that on the 8th day
 of November 1867, the above entitled Cause
 coming on for trial before the Court, neither
 party requiring a jury, the Plaintiff to sustain
 the issues on his part, offered the follow-
 ing testimony:

To the admission of the whole of the testi-
 mony offered by the Plaintiff, the Defendants
 at the time objected, - on the ground that all
 the issues involved in said Cause, have been
 adjudicated by the Supreme Court, on an
 appeal of said Cause heretofore, taken from
 the judgment of the Circuit Court, and which
 judgment was reversed upon the evidence
 presented in said Cause, - and that said
 Cause was not remanded for retrial, and
 no alteration or amendments of the pleadings
 having been since made, - that therefore said
 Cause has become res adjudicata, and is not open
 for further investigation, - and Defendants referred
 the Court to the Opinion of the Supreme Court.

in said Cause, then on file among the papers, and reported in the 38 vol. No. Reports page, 469) in support of said objection, - But the Court overruled the objection, and permitted Plaintiff to introduce the following testimony in said Cause, - to which objection of the Court, the Defendants then and there objected & excepted,

Jerome B. Dover, the Plaintiff, being sworn, states, I was owner of the Land described in the Petition, in 1853, and gave to James Burgess, as Trustee, a deed of Trust on said Land, to secure six promissory Notes, to John O'Hallow, each for \$383 ²³/₁₀₀ dollars, - I paid off two of the Notes when they became due to John O'Hallow. He agreed to take up in my Store goods and as his trading with me, & that the amount should be credited on the Notes, - I paid interest on the other Notes, for three years, - and before the Notes became due, the Kennedys came to me & told me, they held two of said Notes one me, I wanted to know if I could pay them, I told them that one of the Notes should have a credit on it, - They then asked if I could get some one to buy the Notes. Up to the time I knew the Kennedys had the two Notes, O'Hallow's account in the Store with me, was some \$500, or \$600, - The Land in Controversy was sold twice under the said Deed of Trust, - The first sale

was on the 13th of March 1861, and the Second sale was about a month afterwards. Before the first sale, I came out & made arrangements to get the money to buy the Land in, - and when it was sold, it was bid off, - that is, 100 acres of it, by John O'Hallon, for 1203 dollars, I bid 1202 dollars for the 100 acres. This was more than enough to pay the two Notes held by the Kenners on me, I did not attend the second sale, I had a Conversation in the fall or winter of 1862, with the Kenners at Sulphur Springs, I had rented the land in Controversy to one Dressel for the year 1861 & that his Note for 100 dollars for the same, The Kenners went next morning after the Second sale of the Land and got Dressel to attorn to them, I had transferred the Note for the rent to Mr. Bruger, & there was a suit between the Kenners & Bruger about that rent, The Kenners claimed the rent, & I said to them, they ought not to be hard with me about the rent, as they had got the Land for almost nothing, and they said if I had come to them before the sale they would have done with me as they did with O'Hallon, & I asked what it was, & they said they had given to O'Hallon a bond to redeem the land, - I had made arrangements at the first sale, to get 500 dollars from Mr. Beal, & I was to get the balance of the money from my brother Oscar Dover, & Mr. Powers, if I bought the land, and I was to give them a deed of Trust on the land to secure them, - I had been offered for the

land, a short time before the first sale, 1800 dollars in gold, & I considered the land worth at the time of sale 2000 dollars. The reason I did not bid more for the land than \$1200, at the first sale, was that I was not able to raise any more money. - The Land was worth for rents in 1861, 100 dollars, & after that 150 dollars. - Thomas Kennerly was the man that did the business mostly. At the first sale, - On the 15th March I saw O'Fallon & the Kennerlys together at the de Count House, I saw Thomas Kennerly & O'Fallon come down from up stairs in the Court house, & said the sale might go on. - Cross examination, - The reason I did not get the money & pay off the Note then due was that I could not give security without buying the land. I had made arrangements with Beal, my Brother, & Mr. Power to get the money. O'Fallon was taking store goods in my store all the time after I gave the Notes, so long as I did business. The reason I did not pay the amount of the store goods on the last Notes held by O'Fallon, was because the arrangement was to apply ^{it} to the first Notes becoming due. The last Notes were not due. - I said that the Kennerly, said if I had gone to them before the second sale, they would have given me the same chance they did O'Fallon that they had given him a Bond for a Deed

I ~~have for it~~ ^(my Attorney) I did speak
to Mr. Thomas, several times about
Gallen & Kinnerly going up stairs
at Court house, and I spoke to
him to night also about it
after we went to supper. I saw
a notice of ^{the} first sale but not
of ^{the} second sale. I had heard
of the ^{2nd} sale, - heard it spoken of by
different persons - I did not come
down to ^{the} second sale because I had
no means. I had tried to get the
money of Mr. Beal but could
not also of Mr. Green and
I think I swore before ^{in O'Halloran's suit for this land, -} that I did
not think they could sell the land, ^{again}
and also that I could not get the
money. The arrangement was
not made ~~for~~ with the Beal for him
to buy the land and hold it for
me - I did not tell the Kinnerlys
that I had ~~not~~ concluded to let
the land sell, as ^{well} as I now
recall. They said they did not
want the land. all they wanted
was their money. The 160 acres was
worth at ^{the} time of second sale some 300 ^{to} 400
dollars.

The Defendants asked if witness had anything but
a tax title to the 160 acres, - but Plaintiff objected to the
witness answering the question, and the Court sustained the objection. I would not
allow the witness to answer the question, to which decision of the Court the
Defendants at the time excepted.

James C. Powers, sworn -

Latter part of month 1861
Lyon applied to me for help &
I said I had money - He said
he wanted to raise money to
buy in his land or save it as
it was then sold - He was to
give us a lien on the land to
secure us. That is Oscar Doney &
myself, and we had a thousand
dollars ready to pay over on day
of sale

John O'Fallon, sworn.

There were two sales of the
land, - one ⁱⁿ March 1861 & the other ⁱⁿ May following -
I was present at both sales - Had a connec-
tion with the Kinnelgo, and I bid
off the land ^{at the first sale} for 1203 dollars, and I
^{at Hillsborough the day of sale} made an arrangement ^{with them} to pay the
~~money~~ money in a few

days after the sale. Before the
Second sale, ^{Thomas Kennedy's} several times we had
Conversations about this land & this business

The Kennedys claimed all their money
on the two notes & we made an
arrangement for me to pay the
money the Thursday following
the first sale. I never paid
the money, and the land was
^{I told Burger to sell the land again & the Kennedys}
^{also directed him to sell} re-advertised for sale in May.
Before the 2^d sale a few days
I had a conversation with I
think ~~with~~ Thos. Kennedy.
They knew I was coming down
and I told ^{Thomas Kennedy} that I wanted to make
my money I held two notes in-
dividual & the Kennedys' two
Notes, I said I did not want to lose
my money as the land was all
the security I had except ~~but~~
~~the~~ ^{I had with Thomas Kennedy} the amount of the
conversations, was that we did
not want to lose our money.
At the time of sale and before
the sale ^{Thomas Kennedy} made an agreement
that ^{the Kennedys} they should buy the land in
that I should not bid & that they
should buy the land, in and

by paying the amt due them from Dower
let me redeem it - I did not bid
The Kennedy bid the land in at
500 or 500 dollars - I don't know
whether the hundred acres was
sold or all of it.

The second sale took place about
two o'clock, I was present, close by
and watching like a hawk, I saw
them take Keper out around Court
house and talk to him, and I
believe Keper ~~did~~ bid ~~some~~ on the land
The Bond the Kennedys gave me
was executed on same day of
sale, (The Bond offered in evidence
objected to ^{as being irrelevant and incompetent,} by Dept, but ^{was} admitted
by the Court, ^{to which I object at the time excepted}) (here copy the
Bond word for word.)

The Bond was fixed up soon after
the sale, and we all went home
together and got home late.

I transferred two notes to the
Kennedys for what I was owing
them on other notes. I don't think
the notes had been paid by Dower
when I transferred them to Kennedy.

I hold three of the notes, now.
I paid the Kinnelup for the 3^d note and
they gave it back to me - I paid it in
St. Louis, in satisfaction of the bond
read in evidence, I am not certain
whether all the interest was paid on
the notes for two years, or not, - me, Down
and myself have never had a settlement
I got ^{groceries} ~~groceries~~ in ^{his} store, & he never asked
me for a settlement, Down and me
for rents ^{all the time} ~~also~~, I has not paid me yet, -

On Corp Examinations,
I am certain Down paid no interest
on the notes transferred to Kinnelup.

Down paid up first & second notes and
am certain that Down paid interest for
one year and perhaps two on the other
notes. I cant say certainly whether
I told the Kinnelups there was any interest
^{on the two notes I transferred to them}
paid or not, my impression is that
I did, and why it was not entered on
the notes I cant say.

I did not want the land never did
want it - I watched the sale for I
wanted to save myself, I righted to
pay in the first place for the land
that I bid off at ^{the} first sale, and
never did pay it, - as it was not convenient,

I never saw any thing at the second
sale to prevent persons from bidding, ^{for the land in controversy} except
what took place between the Kennells
and myself, ~~I know what I heard~~
~~them to say, but~~. I never saw them try
to prevent any persons from bidding -
I had no intention to cheat and
defraud Mr. Dover, I don't know
~~what~~ ^{that} the Kennells intended, ^{to defraud him} - I wanted
to save myself & I suppose they
wanted to save themselves, and we
entered into the arrangement for
them to buy the land and I was
^{in order to save ourselves on the note held on Dover,}
not to bid on it. They wanted
to save themselves & to save myself,
They were to buy & then give me a bond
for a hundred & in pursuance of this
agreement I did not bid -
The note that they gave back to me I
paid off, it was over 400 dollars, ~~it~~
~~was paid in a note of 2700 dollars,~~
and the same described in the bond.
It was incorporated in another bond of
2700 dollars, by the Kennells, which
they gave to Sophia O'Fallon & when
that was paid I lifted this note & they
put it in ^{the Sophia O'Fallon bond} themselves perhaps to make it
more secure

I don't think I ^{ever} ~~then~~ told Thomas
Kimmerly I wanted this note & settled
with Charles O'Fallon. My uncle
John O'Fallon gave or loaned me
the money, ^{to pay to the Sophia O'Fallon bond} and gave ^{me} a check for
2400 dollars, I think I did not get
the note that day, ^{that I paid the money} but shortly
after. - Don't think it was nearly a
year, after, but the first time I
saw Kimmerly after the money was
paid, - I did not ask ^{them} to credit the
amount on ^{their} bond nor give a receipt
for it - - I don't recollect conversation
in ^{the} dining room, nor that ^{the} Kimmerly
said that he had me and Charles both
bonded for the notes.

Anton Hycarson, sworn,

I know the Dancer
place, the land in Centerville, in
1860 - I offered Sam in 1860 \$1800 -
and think it worth that in 1861 -
The rent of the place is worth per year

\$16,000 dollar - I would have given
in 1861 \$1800 - I would have given
for ~~that~~ ¹⁰⁰⁰ ~~1600~~ ¹⁶⁰⁰ acres \$1600 - I did not consid-
er the 1600 acres worth much as the title
to it was a mere tot title.

Janus Bunge

I was trustee ^{in a} ~~of~~ ^{of trust} given by
Dover. To secure notes given to O'Fallon, I
was called on by the Knutshyp & all
the land in Feby 1861 & sold
land ^{in controversy on} 15 March 1861 at Killbuck
at Cant House. The three Knutshyp
~~and~~ and John O'Fallon & Dover
and Real & Dover brother were
there and others. The ^{Kennerys} ~~XXX~~ produced
one note to me, that was due,
at ^{the} time of sale - O'Fallon bought
the land ^{for 1200} and the terms were
cash and to be paid in coin
The ^{Kennerys} ~~XXX~~ instructed me to ^{announce} ~~make~~
those terms. O'Fallon & I think
Dover brother bid on the land.
The cash ^{was} not paid at ^{the} sale. O'Fallon
had a considerable roll of bills
but no gold or silver. The Knutshyp

agreed with O'Fallen to give him
until the following ~~Wednesday~~ or
Friday as he did not have the
gold, and I was then to make
O'Fallen a deed. I am positive
that such was the agreement made
by the Kinnelups with O'Fallen.

Hillsburg

I would have sold the land
after O'Fallen failed to pay the amount of his bid,
even if they had required it.

I made an offer and could not find it
O'Fallen ^{demanded the amount of his bid} and he did not comply -

The demand

this, some ten days after the sale
I advertised and sold the ^{land} on

May ^{afterwards} by direction of the Kinnelups.

O'Fallen

The Plaintiff offered to prove by
the witness the declaration of O'Fallen

in regard to the sale, ~~the Plaintiff~~ ^{what he said about the sale}

Defendants

objected and the court sustained
the objection and ~~defer~~ the Plaintiff
excepted).

The Kinnelups O'Fallen &
Joseph Heper ~~and several persons~~ and

myself and Alfred Heper and perhaps

of the land

Mr. Honey, were present at ^{the second sale} ~~the sale~~

The Kinnelups bought the land at

this sale for \$530. All the land

was sold, ^{at once} ~~but I do not recollect~~ though

I am not certain

whether Joseph Heper bid on the

land O'Fallen did not bid, he

A statement of the account shown
brought and proven to be the one
made - (Here copy come

I think the Kennells ^{come to me} ~~was present~~
^{on day of sale on 6th May 1861} at one time, and wanted me ^{to bid} ~~to bid~~
on the land & I said, I did not
have the money and they said I
need not be alarmed that they had
the gold in their pocket. & They
asked me if Mr. Kiper would
not be a good bidder, and they
took Kiper to one side ^{present at the sale}
There were but few persons ~~here~~ that
day, and I thought the land would
not sell at all at one time. Kiper
bid I think \$300 - I saw O'Halloran
& the Kennells together that day
^{several times in conversation}
^{before the sale took place} - The sale took place about 2 o'clock.
I made the sale. ^{Alfred} Kiper wrote it
I think. The whole ^{matter} was fixed up &
we got home that night late, I & the
Kennells came together that day, got
here about 11 o'clock. Distance
from here 16 miles. O'Halloran did
not come with us, but went
back with us - O'Halloran got here some
time before the sale. I am positive he was here before sale

On Corp Examination ^{trust}
I set up notice of sale generally. ^{was prescribed by the deed of}
A notice ^{was} not set up at Dams store door
but ^{one was} at Depot house in Sulphur
Springs. I spoke to Dams about
it, ^{I showed him the notice} and he said he did not think
it a legal sale and would
not attend. The Knudsen seem
to want bidders, bidders were scarce
and they said they did not want
the land they ^{only} wanted their money.
Land sales were dull, none selling in
1861 about ^{the} time of ^{said} sale, \$1200 was
a fair price about that time, for the
land. — Fallon said at first sale
he was not prepared to pay. ^{He said he had money but no gold.} I don't
know whether he had money enough
to pay the amt of his bid
and he did not show me enough.
The premium on gold at that time
was about 1 or 2 per cent. — I saw nothing
unfair at the second sale & saw no efforts made
use of to prevent persons from bidding.

Joseph Sheper

I was living in Kellaborn
in 1861. — Mr. Thomas Knudsen came
down at the Court house and asked
me if I would bid on the land

I did bid, but had no intention
of buying the land, ^{unless it went cheap} I don't think
there was a half dozen persons
at the Court house at that time.
John Fallon was there before the sale
of Examination

I saw nothing unfair in
the sale.

Exhibit offered and read, (true
copy same word for word) as
follows— Also from witness
(true copy the same word for
word) —

John Fallon, recalled.

The object I and the
Kimmerlys had in buying ~~and~~
agreeing not to bid, against each
at the second sale, for the land in controversy
other, nor to save expenses, and commissions,
and to get the land as cheap as we could
~~and to get the land as cheap as we could~~
~~and to get the land as cheap as we could~~
and then they were to let me
have it, and in consequence ^{of this agreement} I did not
bid.

Examination. — We did not expect
the land would sell for more than the amount
of the Notes held by the Kimmerlys and myself on
Dover, and we intended for them to bid the land off
to save ourselves for such indebtedness.

The Plaintiff here closed his testimony.

Defendants ~~Exhibits~~ then introduced the following evidence in support of their defence.

Thomas J. Kennedy. sworn, states

At ^{the} first sale of the land, ^{in controversy,} neither I nor my brothers made any arrangement to ^{bid for him for the land} go with John ^{fallen} for the money, a few days. No such arrangement was made. ~~At second sale~~ I don't think I saw John ^{fallen} but once after the 1st sale until the ^{second sale of the land} ~~and that was at a block and the shop.~~ I did not make any agreement at either sale with John ^{fallen} for him not to bid on the land. I made no agreement at second sale. Before the sale, D. let ^{John} ^{fallen} have the land, ^{in case I bid it off,} and for him not to bid. The agreement ^{to sell him the land} was made after the sale and while the deed was being drawn up, in presence of Thos C. Fildes who was acting for Ruggs, ^{the} trustee. The agreement I made was D. let him have the land for seven months & us and all expenses, and a bond was drawn up by Fildes and the same produced in Court to convey the land on payment of the money therein specified.

I don't recollect to have seen Mr.
Fallon at ^{the} second sale ^{before the sale took place} ~~that~~ ^{as I}
^{I made no agreement with him about the land, before the sale}
as I had no confidence in him
as he had fooled us in the
first sale - Neither before nor
at the second sale did I make
any agreement with ^{O'Fallon, or} any one
not to bid on the land in order
that I might get it cheap.
I ~~used~~ ^{used} no persuasion ^{and made no} effort
^{to induce} ~~any one~~ ^{the first or the second} at sale not to
bid. Land sales were dull at that
time, and a good deal lower than
they had been - The object in selling
the land was to get our money.
I did not know ^{the} value of the land
at the time ^{as} I had never seen them.

I think I spoke to Mr. Miller & Thomas
Bryce & come down ^{and bid} on the land ^{at the}
that ^{was} ~~was~~ to be sold.

Crop Ex -

I swear positively that I made
no agreement with Fallon and Bryce
before ^{at first sale} time, for Fallon to pay
and I am also certain that
I never made any agreement
with Fallon before the ^{second} sale
not to bid. I am just as

When we sold the land we did not get the money but it cost us
some \$27. in cart for expenses of sale which we had to pay.

as certain of the one as the other,
I had ^{only one} conversation before ^{the} sale with
Fallon, ^{that was} at the Blacksmith ^{shop where} and
Bugs Townsend, ^{a deed} and D. Fallon
and Fallon said he considered
pay and Fallon, ^{told} Bugs
he would ^{have} sell again - Fallon never
said any thing to me about making
him safe - I never saw ^{to} him that
I recollect of until after this
sale! After ^{the} sale Fallon asked what
the land sold for, and ^I told ^{him} ^{he} said
the land sold too cheap and ^{he} wanted
like to have the printer of getting
the land to save himself. And
we said all we wanted was our
money and if he would pay
our debt and all expenses we
should have the land, and we
gave a bond to that effect -
The reason I had for selling the land was
to get our money - The reason I did
not give down the ^{further time} ~~deed~~ was I considered
I also considered Fallon not good. When I gave
him the money, and he was not sure
I considered I had no security for the money except the land
I never spoke to Bugs that day to bid
on the land - I never went up stairs
that day and to have a talk with
Fallon. I spoke to ~~Glenn~~ Keper
to bid on the land so that the

sale could not be upset again.
✓ I don't recollect to have asked Bump
that day if Keper would do to
live - I did not know when I asked
Keper, but ^{that} it required more than one
bidder to make the sale good -

I got papering ^{of the land} the day after sale
and received that year a portion
of the crop & the next year \$100
in 1863 \$100 - and since that time 125¢.
a year, except perhaps ⁱⁿ 1864 which I am
not sure was 100 or 125. dollars.
Re Examination

I prepaid the title to the
land to a deed of trust on Dover, and

Francis L. Kennedy

I was present at ^{the} first
^{of the land in controversy} sale, John O'Fallen decided us in paying
the money & said he would pay
it some time next week. Dover
was present ^{at the first sale} - No objection was made.
to this arrangement. We got into a dispute
about the 2nd note - as to whether it was pay-
able or not. - Was present when ^{the} land ^{was} sold ^a second
time, some half dozen persons ^{or more} ~~there~~ were
present.

I don't recollect any arrangement that was made about the sale. I made no agreement with O'Fallon for him not to bid on the land before the sale, nor did I know of any such arrangement being made. I think I bid myself. We made an arrangement with O'Fallon after the sale, that he could have the land. Thomas Kennedy my brother did the business with O'Fallon, and as well as I recollect O'Fallon was to pay our money and all expenses ^{for the land}. I know of no person who would to keep persons from bidding. We spoke to Miller & came down and bid ^{on the land at the second sale}. Land sales ^{were} held.

Crop Examination

I don't recollect telling Bunge & give O'Fallon till next Thursday after ^{the} first sale ^{to pay the amount of his bid}. Thomas Kennedy did the business & bid on the land. We did not want the land, we only wanted our money.

James Kennedy

I was present at ^{the} first sale ^{of the land}. I did not bid on ^{the} land.

Francis Kinnaly bid - I was present
at ^{the} 2nd sale - never made ^{any} ~~an~~ /
agreement before or at ^{the} 2nd sale
to let Gallum have the land, nor
for him not to bid at ^{the 2nd} sale - he
agreed to let Gallum have the land
after the sale ^{was made} and not before.
I was ^{governed} ~~present~~ in the matter mostly
by ^{the} judgment of my brother Thomas,
and was willing to do what he
and Francis I, did.

I never used any persuasion
before or at ^{the 2nd} sale ^{of the land} to induce any one
not to bid.

~~The Cross Examination.~~ The Defendants then read in
evidence The Deposition of Thomas C. Fletcher, which is as
follows to wit (here Copy said Deposition)

The Defendants here closed their testimony
and the foregoing being all the evidence adduced
by the Parties ^{in said Cause}, the Plaintiff asked the following
declarations of law, to wit, (here Copy the same,)

which were ^{not} given by the Court, - and to the giving
of which the Defendants ~~at the time objected & excepted~~.
The Defendants asked the Court to declare the law
of the Case as follows To wit, (here Copy declarations
of law asked by Defendants) but the Court refused
to declare the law as prayed by Defendants, - and
to which refusal the Defendants excepted at
the time. The Court then found for the Plain-
tiff, and gave Judgment for Plaintiff as fol-
lows, (here Copy the Judgment.)

The Defendants then filed their motion
for a New trial, for the following reasons,
To wit, (here Copy motion for a new trial)

But the Court overruled Defendants motion
for a New trial, - and to which decision of the
Court in overruling said motion for a new trial
the Defendants then & there excepted, and here
prays that this their Bill of exceptions may
be signed, and sealed, and made a part of
the record in said Cause, which is accordingly
done.

J. H. Fair, Judge 15th Circuit Court

In Circuit Court
of Jefferson County

Jerome B. Dover

vs.

Thomas J. Kennedy
and others

Bill of
Exemption

Dated Dec 11th 1867
C. J. Honeycutt

In the Supreme Court, held at St. Louis, of the State of Missouri,

October — Term 1868

November 9th 1868

Jerome B. Doer
Defendant in Error

vs.

Thomas & Henry, Francis L.
Kearney and James L. Kearney.
Plaintiffs in Error.

Error to the Second
District Court.

Now again come the parties
aforesaid by their respective Attorneys; and the Court being now
sufficiently advised of and concerning the premises doth consider
and adjudge that the judgment rendered herein by the ^{saide} said
Second District Court and also the judgment rendered
herein by the Jefferson County Circuit Court be reversed annulled
and for naught held and esteemed; that the Defendant in Error
take nothing by his suit in this behalf but that his bill herein
be dismissed and that the Plaintiffs in Error go hereof without day and
and that the said ^{recover of the aforesaid}
Defendant in Error their costs and charges herein expended and have execution
therefor. Opinion filed

STATE OF MISSOURI, SS.

O. T. Fishback

I, ~~ANDREW W. NEAD~~ Clerk of the Supreme Court, held at St. Louis, of
the State of Missouri, certify that the above and foregoing is a full, true and
complete copy of the judgment rendered in the above entitled cause, as fully as the
same remains of record in my office,

In Testimony Whereof, I have hereunto set my hand and affixed
the seal of said Court, at office in the City of St. Louis,
this Eleventh day of May —
A. D. eighteen hundred and sixty nine

O. T. Fishback Clerk.
J. W. Baird
D.C.

Nov 22 46

Supreme Court of Missouri.

Deane A. Doer, D.E.

v.

Thomas H. Kennedy,
Francis F. Kennedy and
James F. Kennedy D.E.

MANDATE.

of Second District Court
Judgment of Second District Court
Jefferson Circuit Court Deane A.
Doer D.E. vs. Thomas H. Kennedy
Francis F. Kennedy and James F. Kennedy
D.E.

ANDREW



Jerome B. Dover } Mandate supreme Court
 Thomas J. Kennedy et al. }

ES Honey clk. copy Pet. cas.	370
Print & 3 copies affd. 15.	140
Files 10 Docket 10. order 35 Cont ²⁵ ord ²⁰ attach 50. app ^r 10.	160
1 spw 20. Ind 5- costs ²⁵ F.B 10 Cts 50	120
Judgt 50 ⁴ issues 100; costs 80. Sub 35. Inds 10	280
Not 20 Rule ²⁰ Ent app. 35 off 25 Bond ⁵⁰ App ^r 10.	160
outk 50 Bail Ex. 35. Spas 75. Costs 50 cl sh 50	260
Making trans 26. 208. undrfig @ 15 ⁴	3331
Cts to same 50 postage 500 Ind 20	250
same 50 per 200 Cnt 20	270

John Williams Sine. 8 Spas.	400
Leaves 100.	100
Geo Burgess.	506.
A Genger.	100
J P Hesser	200
John A. Allen	472
Whesses	229

Same A Rippy CLK copy Ret ex d.	370
int 3 Cops 130. Stamp 50 ⁴ Files 35.	210
Docket 10 Inds. 40. Bond 50 fee 10.	110
Spas. 50. costs 105. Not 20. ans ²⁰ . Dm 25.	220
Not 20. Dm. 100. com Cts 250.	370
Not 20. ord 20. Ent app. 35. affd 25- Ric 35 ⁴	135
C. G. I. Shift 300	300
Shift I. Lums Comif	350
	<u>2270</u>

1865-

~~Witness~~

John Ogle	420
Hesser	100
Cleodis alla da	388
Jno O'Hallon	672
Mc O'Hall	672
J. P. Dwyer Jr	672
	29,56
	7220
	2270
	\$134,46 Cuse's

James
Dwyer
Rumelup
for Bill

Dover
 Keenerlyp }

Money Ak, May Term 1867,

Cont 23⁰⁰ on 20 attach 50 app 10⁰⁰ repa 25⁰⁰

1.50

Ind 5⁰⁰ matg cost, 25⁰⁰ P.B. 10⁰⁰ & 50⁰⁰

.90

John Williams Ship 15p 50⁰⁰ calls 25⁰⁰

.75

Mr Piler

Money Judgt 50⁰⁰ issues J, \$100⁰⁰ orders 50⁰⁰,

2.35

Sub 35⁰⁰ Ind to Judgt, 10⁰⁰, motion 20⁰⁰ rule 20⁰⁰

.85

Ent appl 35⁰⁰ app 25⁰⁰ bond 50⁰⁰ app 10⁰⁰ out 50⁰⁰

1.10

Lib Ex 35⁰⁰ Spas @ 25⁰⁰ 75⁰⁰ making costs 50⁰⁰ & 50⁰⁰

2.10

paid - Make Manuscript 26, 208, 10 of, @ 15 per hundred

3.31

Get Sto manuscript 50⁰⁰ indexes, 20⁰⁰

.70

Postage

1.50

John Williams, Sheriff

Serv 5 Spas 50⁰⁰ calls 50⁰⁰

3.00

James Burgess & 23⁰⁰ 5.56

5.56

A. Meyer 1

1.00

J. P. Kesser, 2

2.00

John O'Hallan, 3⁰⁰ 34⁰⁰

7.72

James D. Owen
201=
Henry Kennedy
Jas. J. Kennedy
H. H. Kennedy

Wm. Hill

Jerome B Dover &ff

vs

Thomas J Kennedy

James L Kennedy &

Francis L Kennedy &

John O Hallen Jr

vs

Now at this day come
the said plaintiff and said defendants
in their proper persons as well as by
their respective attorneys and all and sing-
ular the matters and things in controversy
in this cause being submitted to the Court,
neither party requiring a jury, the Court
after hearing all the evidence of the parties, doth
find the issues for the plaintiff

And the Court proceeding ^{to ascertain} the amount
of money due by Jerome B Dover on the
Notes specified in deed of trust from
J B Dover to James Burgess of date
of _____ find doth further
find that J B Dover owes on Note dated
February 2^d 1858 & falling due February 2^d 1861
the sum of \$580.45 and on the Note
falling due 2^d February 1863 the sum
of \$38.61. ~~that~~ to which sums amounting
to \$619.36 in all the said Thomas J, James
L & Francis L Kennedy are entitled. The
Court doth further find that Thomas J

Kennedy, James L & Francis Kennedy have received the rents & profits of the premises in controversy amounting to \$525. & which is chargeable to them, and which the Court deducts from \$619.36 found to be due on said notes leaving a balance of \$94.36 that ought to be paid by said Dover to said Kennedy's on account of the two notes mentioned in petition of plaintiff as having been transferred to said Kennedy's

And said notes being negotiable & said Thomas J. James L & Francis L Kennedy not having the note falling due in February 1862, in their possession, the Court was not enabled to determine who was entitled to the balance due them & the Court not being able to determine who was entitled to the money due on the two notes in petition mentioned as falling due in February 1863 & 1864.

It is therefore ordered, adjudged & decreed that the deed made on 6th of May 1861 by James Rogers Trustee of J. B. Dover to James L. Kennedy, Thomas J. Kennedy & Francis L. Kennedy conveying to them the NE 1/4, S 22 T 42 R 5 E containing

one hundred acres of land; and also S E 1/4
S 21. T 42. R 5 E containing 160 acres of land
be set aside & annulled. and the same
is hereby set aside & held for naught
and it is further ordered that J B Dover
deposits with the clerk of the Circuit
Court of Jefferson County on or before
the first day of the next regular term
of this Court the sum of \$94 36
for said Thomas J. James & Francis
Kennedy in satisfaction of the balance
due as aforesaid

And the Court doth further order
that J B Dover pay to the holder
of the note falling due February ^{2^d} 1862
the balance of said note on presen-
tation of the same by the legal holder
thereof before the first day of the
next Regular Term of this Court
and also to pay the two notes
outstanding falling due February 2 1863
& 1864 on presentation by the legal holder
thereof on or before the first day
of the next term of this Court

And if said J B Dover fails to
pay said sums of money in accordance
with this decree on or before the next
Court then this bill is to be dismissed

J. B. Down

as

John J. Steenwyck

Deer

Dover

Kennedy et al

If the Court finds from the evidence that the Kennedys held two notes against J.B. Dover falling due in Feby. 1861 & 1862 respectively; that after the note fell due in 1861 the Kennedys induced the trustee to sell the land in controversy and that such sale took place on the 15th March 1861; that at such sale John O'Hallor Jr. became the purchaser of the 100 acre tract for a sum large enough to pay the note then due and the costs of ~~sale~~; that the Kennedys agreed with O'Hallor that he might have a few days time to pay the amount bid by him to the trustee. then the Kennedys made the amount bid by O'Hallor an individual debt of John O'Hallor Jr. & nothing was due then, from Dover on the 6th May 1861 and consequently no valid sale could take place on that day - Court the 6th May 1861.

That the understanding between the Kennedys and John O'Hallor Jr. to the effect that said O'Hallor should not bid at the trustee sale May 6th 1861

and that the Kennedys should buy said land and let O'Hallen
have it, at a price greatly below its value, was a fraud upon
this Defendant Plaintiff for which the sale should be set aside
and the deed cancelled.

Given That the testimony of John O'Hallen is not a
competent witness in this case

Subscribed
and attested by J. P. O'Hallen

Jerome B. Dover,

vs.

Thomas J. Kennerly & al.

The Defendants ask the Court to declare the law of the above Case as follows;

1 - That, if the Court believes from the evidence that no efforts were made use of before, or at the second sale of the land, by the Defendants to prevent persons from attending the sale, or ^{from} bidding ~~for~~ said property, then it is immaterial whether O'Fallon made any agreement with Defendants or not, to the effect that he would not bid, provided they would convey the land to him, if they bid it off at a certain price, - and unless the Court should believe that said O'Fallon & Defendants, in pursuance of said agreement, did make use of some unfair means and practices to deter, or prevent other persons from attending said sale, or bidding at the same, then there is no ground for setting aside said sale for fraud.

Instructions of
DePaula

Given in lieu of 6th instruction asked by the
defendants, - By the Court

1st. That even if the Court should find from the
evidence that O'Fallen hid off the property in
Controversy on the 15th of March 1861 and failed
to pay the money, and the Trustee failed to sell
the property again on the same day, ~~such~~ this
would not render the second sale void or fraud-
ulent so as to authorize this Court to set the
same aside. But if the defendants agreed at the
time of the sale, 15th March 1861, to give O'Fallen
time to pay the purchase money bid by him, and for
which the land was stricken off to him, then the sale
on the 6th day of May 1861 operated as a fraud, because
no money was then due from O'Fallen to the defendants.

(In lieu of 7th asked by deft.)

2- In this case it is not material whether the 2nd
note has been paid subsequently to the sale, either in
whole or in part by John O'Fallen.

Over

is,

Hennock's

Instructions

given by the Court

Defendant

9 If the Court believes the second sale was made openly and fairly, and that due Notice had been given, and that plaintiff had notice of the sale, and that the Kennerys did not use any means to conceal the notice of sale, or to prevent persons from attending the sale, or ~~any~~ means to induce them, not to bid thereat, then the fact that they Kennerys may have bought said lands at less than their value, affords no just grounds for setting aside the sale for fraud,

10 10 - Although the Court may believe that the Kennerys, after John O'Halloran failed to pay the amount, at which the land was struck off to him at the first sale, consented to his proposal to pay the money on the following Thursday, yet this did not operate to release him from his Contract in the purchase of said Land, or liability to pay Plaintiff the difference between the amount the Kennerys bought the land for, and the amount of said O'Halloran's bid,

J. B. Stone
Esq,

Wm. L. Kennedy

Witten

Sept 10

Instructions

Defendant

1 That the Court cannot set aside the sale from Burgess the trustee to Kennedy, ~~unless~~ for the land in controversy, unless the Court should be satisfied from the evidence that the Kennedy, ^{although} at said sale committed a fraud upon the rights of Doremus by fraudulently selling said land in controversy.

2 That if the Court sitting as a jury should find from the evidence, that the sale of 6th of May 1861 as made by Burgess the trustee was bona fide & conducted without fraud upon the part of the Kennedy, ~~then~~ as Burgess the trustee, ~~then~~ the Court cannot interfere to set said sale aside.

3 That the Kennedy, should not be affected by the default of John D. F. Allen to pay the amount bid at the ^{sale} which took place 13th May 1861 —

4 That if the Court find from the evidence that the sale of the property in controversy was made ~~for~~ fairly without fraud upon the part of the trustee Kennedy, ~~then~~ the Court can not set aside the sale ^{made} for May 6th of May 1861 —

5 That the failure of Burger to sell
over the property in controversy on 15th of March
1861, ^{with O'Hallen's failure to pay for the} is not a fraud, to which plaintiff
to set aside the second sale

6 That even if the Court should find for
the view that O'Hallen bid off the property
in controversy on 15 March 1861 & failed to pay
the money, & the Trustee failed to sell over
the property on same day, yet such O'Hallen
cannot render the second sale fraudulent
to set aside the Court to set aside
said sale ~~to give said O'Hallen time to pay the amount of his bid~~

7 That in this controversy it is not material
whether the second note has been paid
subsequently to the sale either
in whole or in part by John O'Hallen
if the Court find that the sale of the property
of 6th of May 1861 was bona fide &
without fraud, then and there I will make
a deed taken duly in conformity with the
of sale, then the title paper & vest in Kennedy
a perfect title, & the Court should not
interfere in setting aside said deed.

Dr. T. M. M. M.
asked

J. D. D. D.
M.
H. M. M. M.

Whereas, Jerome B. Dover and Margaret his wife by their deed dated the second day of February A D Eighteen hundred and fifty eight, did convey to the undersigned, James Burgess the fee simple of the following described land situate in Jefferson County Michigan, to wit, the North East fractional quarter of section number Twenty Two in Township number forty two of Range number five East, containing one hundred acres, ~~the~~
 ~~quarter of section Twenty two Township number forty two of Range five East containing one hundred and sixty acres, which conveyance was duly recorded in the office of the Recorder of Deeds of Jefferson County in Book O page 344, and said conveyance was in trust to secure the payment of six promissory notes all of even date with said conveyance, each for the sum of Three Hundred and eighty three dollars and thirty three and one third cents payable in one, two, three, four, five and six years with interest at the rate of six and one half per cent per annum, and whereas by the said deed of trust it is expressly provided that if default be made in the payment of said notes the said James Burgess may proceed to sell the above described property for the payment of the same for cash at the Court House door in Hillsboro Jefferson County Michigan, and whereas default having been made in the payment of one of said notes due on the second day of February 1861, at the request of the holder of said note I did by virtue of the power given me by said deed of trust offer the said land hereinbefore described for sale at public auction to the highest bidder~~

for cash. at the Court House door in Hillsboro Jefferson
County, Nipariss on the fifteenth day of March 1861.
having first given thirty days notice of the time terms
and place of sale and of the property, to be sold by six
written hand bills put up in different public places
in Jefferson County Nipariss, a copy of which advertise-
ment and the affidavit of the person who put up said
notices is hereto annexed as part of this deed, and
at said sale so made as aforesaid.

became and was then and there the
highest and last bidder for all of said land as herein
before described and the same was stricken off and
sold to him at and for the price and sum of One
Thousand two hundred and three dollars, which sum
he has fully paid to me the receipt whereof is hereby
acknowledged, It is therefore this Deed Witnesseth:
that I James Burgess, Trustee as aforesaid, in consider-
ation of the premises and the said sum of money, and
by virtue of and in pursuance of the powers upon me
conferred by said deed of trust, do by these presents
grant, sell, alien, release and convey to him the said
all the right, title, interest
Estate, claim, demand and property that I can or of
right ought to convey to him by virtue of the said
deed of trust, advertisement, sale and payment of
the purchase money aforesaid, being all the title by
me acquired to said land by said deed of Trust,

To Have and to hold the same with all the
rights, privileges and appurtenances thereto belonging

or in any wise appertaining, to him the said
his heirs and assigns
forever.

In Witness whereof, I the said James
Burgess Trustee of aforesaid have hereunto set
my hand and affixed my seal this Twenty first
day of March A.D. Eighteen hundred and sixty
one,

James Burgess Trustee

State of Missouri
County of Jefferson
For it remembered that on this 29.
day of March. A.D. Eighteen hundred and sixty one before
me the undersigned Justice of the Peace in and for
said County came James Burgess who is personally
known to me to be the same person whose name is sub-
scribed to the foregoing conveyance as having executed
the same and acknowledged the same to be his act and
deed for the purposes therein mentioned.

W. M. Schaefer
Justice of the Peace,

Trustee's Sale

Whereas Horace B. Dover and wife by their deed dated the 2nd day of February 1858 recorded in the recorder's office of Jefferson County in Book Page 344 did convey to the undersigned the following described real estate to wit the north East fractional quarter of Section twenty two in Township forty two of Range five East containing one hundred acres also the south East quarter of Section twenty one Township forty two Range five East containing one hundred and sixty acres which conveyance was in trust to secure the payment of six promissory notes made by said Dover and Horace M. Parker all dated February 2nd 1858 each for the sum of three hundred and eighty three dollars and thirty three and one third cents payable in one two three four five and six years after date and all bearing interest at six and one half per cent per annum the interest on all said notes payable annually and Whereas default having been made in the payment of one of said notes and the interest on another of said notes although due and payable therefore at the request of the holder of said notes and in pursuance of the powers given me by said deed of trust I will on Friday the fifteenth day of March 1861 at the Court House door in Hillsboro Jefferson County Missouri sell at public sale to the highest bidder for cash the above described land or so much thereof as may be sufficient to pay the amount due on said notes and yet unpaid with costs

February 8th 1861 } James Burges
Trustee

State of Missouri } ss.

County of Jefferson } Thomas C Fletcher, being by me duly sworn,
upon his oath states, that he did on the ninth and tenth days
of February 1861. set up six copies of the within notice at
six public places in different parts of the county of Jefferson
to wit, one at the Court House door in Hillsboro'. one at the
Post Office in De Soto, one at Chas Vinyards store door in Victoria
one at the Station House at Sulphur Spring, one at the Station
House at Peenebly, one at the Station House at Kimmswick,
and that he put up each of them securely and conspicuously.

Signed and sworn to before me
this 21st day of March 1861.

Witness my hand and notarial
seal at De Soto,

Clement B Fletcher

Notary Public

1883 31

Four years after the date we or either of us promise
to pay John O'Allen three hundred and eighty three
dollars and thirty cents and one third cent for value we
give negotiable promissory without defalcation, bearing due
and a half per cent interest from date until paid, of which
interest to be due monthly

Feb 2d 1888

Protested
=ment of
5th 1861.

Notary

Devenue B. Dwyer
He M. Dwyer

Due Feb 2 1862

\$383. $\frac{53}{11}$

Dove & Parker

note

I do hereby transfer
the within note to
Charles C. Fallon

John C. Fallon

Aug 16th / 89

Charles C. Fallon

for you after

Dad

Rec'd on the within note from sales of land on 6th May 1861. Fifty eight dollars
Sixty one and two third cents,

\$383 $\frac{33}{100}$

Three years after date over either of us promise
to pay John Jackson three hundred and eighty three do
llars and thirty three cents per value ree
ived, negotiable after the without deduction or discount
bearing six or a half per cent from date until paid
and interest to be reckoned annually
Feb 22 1855

Protested for non
payment 1861.

Witnessed
Notary

Thos B. Davis
John Butler

due Feb 2 1861

\$ 383. ³³/₁₀₀

Dover & Parker

vs

Exhibit B

I do hereby
transfer the
within note to
Charles C. Fallon

John C. Fallon

Aug 16th / 59

Charles C. Fallon

Interest to May 27th 1861

\$80.95

note & Interest \$464.28 ¹/₂

paid in full
James Burges

1864

February 5th

James D. Abner &

Wm Parker

\$383 ²³/₄

with balance

\$383³¹/₁₀₀

Six years after date we or either of us promise to pay John F. Allen three hundred and eighty three dollars and thirty three & one third cents for value received, negotiable payable without defalcation, bearing six and a half per cent interest from date until paid & said interest to be due semiannually

Feb 2d 1858

Levi W. Allen
to the Order of

Dec Feb 1864

\$383.³³/₁₀₀

Dover & Parker

Now

I do hereby
transfer the
within note to
Charles O'Halloran

John O'Halloran

Aug 16th / 59.

Charles O'Halloran

1863

Atchafalaya 5th

Jerome & North
H. M. Parker

\$383 $\frac{33}{4}$

Just from date

\$383 $\frac{33}{100}$)

Of five years after date we or either of us promise to pay
John Galton three hundred and eighty three dollars and
thirty three and one third cents for value received, negro
trade & freightable without defalcation, bearing date and one
half per cent interest from date until paid, & said interest
to be semiannually

Feb 2d 1858

Received B T

of the Court

3

Due Feb. 1863

\$383.³³/₁₀₀

Dover & Parker paid to August
second 1860.

note

John C. Fallon *pr*

I do hereby
transfer the
within note to
Charles C. Fallon

John C. Fallon *pr*

Aug 16th / 69

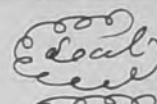
John C. Fallon *pr*

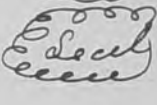
Charles C. Fallon

This Deed of Trust made this 2^d day of February 1858, by and between Jerome B Dover and Margaret his wife of the first part, and James Burgess of the second part; and John O Fallon Jr. of the third part; all of Jefferson County Missouri; Witnesses: That said parties of the first part; for and in consideration of the sum of One dollar in hand paid, and for the better securing the several sums of money hereinafter mentioned have this day granted bargained and sold unto the said party of the second part, and to his heirs and assigns forever, the following parcels of land lying in Jefferson County Mo. Viz: The North East fractional quarter of Section twenty four Township forty two range five East, containing one hundred acres, also the South East quarter of Section twenty one Township forty two range five East containing one hundred and sixty acres. To Have and to hold the same unto said party of the second part, his heirs and assigns forever, together with all and singular the privileges, and appurtenances. Provided however that there presents are upon there express conditions Whereas, the said Jerome B Dover, together with Horace Parker, have this day made and delivered to John O Fallon, their six promissory notes of even date herewith, each for the sum of three hundred and eighty three dollars and thirty three and one third cents, payable in instalments

of One, two, three, four, five & six years, and bearing
Six and one half per centum per annum from
date, and have also rented a Store house of said
O'Fallon at Sulphur Spring Landing, in Jef-
ferson County Missouri, for four years from this
date at the annual rent of two hundred dollars
payable at the expiration of each year from
this 2nd day of February 1858. Now if said prom-
isor pay notes and annual rent are well and truly
paid with all interest according to the tenor thereof
when the same become due & payable, then this
deed shall be void & the property herein conveyed
shall be released to said grantors: but if default
be made in the payment of the same or if any
instalment or of the rent after the same becomes
due, then said Burgefs may proceed to sell the
above described property for the payment of
the same, for Cash, at the Court House door at
Hillsboro in Jefferson County Missouri, first giving
thirty days notice of the time, terms and place
of sale and of the property to be sold, by six
written handbills put up in different public
places in Jefferson County Mo. and upon
the sale shall execute a deed for the property sold
to the purchaser in fee simple, and out of
the purchase money pay first the costs and
expenses of this trust, and next whatever may
remain shall be applied to the satisfaction

X of said notes and annual rent, and after
the payment of all there the balance shall
be subject to said Dovers order. In Testimony
whereof said parties have hereunto set their hands
and seals the day and year first written

Jerome B Dover 

Margaret Dover 

State of Missouri }
County of Jefferson }

Be it Remembered, that
on this 16th day of February A D 1858 personally
came Jerome B Dover and Margaret his wife
who are personally known to me to be the same
persons whose names are subscribed to the forego-
ing instrument of writing as a party thereto and
acknowledged the same to be their act and
deed for the purposes therein mentioned: She
the said Margaret being by me first made
acquainted with the nature and contents of
said deed and being separate and apart from
her said husband acknowledged that she. Exe-
cuted the same of her own free will and accord
and that she relinquished her right of Dower
to the lands therein specified. Taken and
certified the date above written

J. H. Crowe

Justice of the peace

Filed and Recorded April 28th 1858

Elias F. Horney Recorder

1861.
 May 6 James Durgess Trustee
 In ac with Kennerly & Bros
 To proceeds sale of Land of J B
 Dorer under deed of Trust. Dr.
 \$530.00

On
 To amt \$ [redacted] for writing & putting
 up advertisements twice for sale \$5.00
 " Paid same for writing two trustees deeds 3.00
 " Paid for acknowledgment of 1st deed .50
 " Commissions on 530.00 @ 2¢ 10.60
 " Paid Auctioneer for two sales. 1.50
 " " Acknowledgment of deeds .50
 " Services in attending at Hillsboro to make
 first sale, and at Sulphur Spring two days
 to make settlement, including trouble & expenses } 6.00
 \$27.10

\$502.90
 Recd Pay in full May 6 1861.

James L. Kennerly
 Thomas Kennerly
 Francis L. Kennerly

Dear
Sirs

Stenously

Exhibit 101



Now all men by these presents that, it is hereby
Covenanted and agreed by and between James L Kennerly
Francis L Kennerly and Thomas J Kennerly on the one part
and John O'Hallon of St Louis of the other part as follows
the said Kennerly's covenant and agreed to and with the said
O'Hallon as follows, that upon the payment to them by
said O'Hallon his heirs or assigns of the sum of Five
hundred and seven dollars on the 12th day of June 1861,
and the sum of Four hundred and eight dollars and
twenty four cents on or before the 2nd day of February 1862
they will make to said O'Hallon his heirs or assigns a
good and sufficient deed conveying to him the following
described lands in the County of Jefferson Mo, to wit,
The N E 1/4 quarter of Section No 22, Township 42
Range 5 E, containing 100 acres, also the S E quarter
of Section 21 Township 42 Range 5 E containing one
hundred and sixty acres ^{without warranty,} and will deliver up to him a
certain note held by them for the sum of \$383 ^{33/100} dated Feb
2nd 1858, due four years after date made by James B Dover & H W
Parker endorsed by bro O'Hallon for Charles O'Hallon, But it
is hereby expressly agreed and understood that a failure to make
either of said payments at the date agreed shall operate as
a forfeiture of all rights under this agreement.

Witness our hands and seals this 6th May 1861.
John C. Fletcher

Francis L Kennerly
James L Kennerly
Thomas J Kennerly

Copy of Receipt given to James Burges Trustee

James Burges Trustee

1861 In act with Kennerly & Bro. Dr
May 6 To Proceeds of Sale of Lands of JB
Over under deed of Trust \$530.00

Credit

To, and Paid J. C. Fletcher for writing and putting
up advertisements twice for sale \$5.00
Paid same for writing two Trustee Deeds 5.00
Paid for acknowledgment of first Deed 50
commission on 530.00 at 2 ct 10.60
Paid Auctioneer for two sales 1.50
acknowledgement of 2nd Deed 50
Services in attending at Hillsboro to make
first sale and at Sulphur Springs two days
to make settlement including trouble & expenses 6.00
27.10
\$ 502.90

Received Payment in full May 6th 1861

James L. Kennerly
Thomas J. Kennerly
Francis L. Kennerly

The notes due J. O'Halloran 4,5 & 6 years after
 date which by agreement draw
 interest from Feb 2 1860 - 76. ¹/₄ in all \$1150.00
 Deduct from this, the amt the Kennedys
 are entitled to on the note falling
 due ~~there~~ 4 years after date

38,61 ²/₃
 \$1111.38 ¹/₃

In the same from Feb 2 1860 to
 Feb Nov. 18" 1865

366.75
 \$1478.13 ¹/₃

Deduct interest on not held by
 the Kennedys which is
 paid to Feb 2 1860
 Amt due O'Halloran
 Amount due O'Halloran

49.82
 \$1428.51 ¹/₃

Each party to pay the costs made by himself.

The note due the Kennedys 3 years after date
dated Feby 2nd 1858 bearing 6 $\frac{1}{2}$ %

Interest on same to Feby 2 1862

\$383.33 $\frac{1}{3}$

99.76

\$483.09 $\frac{1}{3}$

Cr By Rent of farm for 1861

100.00

\$383.09 $\frac{1}{3}$

Interest on same to Feby 2 1862

22.98

\$406.07 $\frac{1}{3}$

Cr By Rent of 1862

100.00

\$306.07 $\frac{1}{3}$

Inst on same to Feby 2 1863

18.36

\$324.43 $\frac{1}{3}$

~~Cr By~~ Rent of farm

100.00

224.43 $\frac{1}{3}$

Inst on same to Feby 2 1865

15.58

\$240.01 $\frac{1}{3}$

Cr By rent of farm 1864

100.00

\$140.01 $\frac{1}{3}$

Inst on same to Nov. 18th 1865

7.13

\$147.14 $\frac{1}{3}$

Cr By rent of farm for 1865

121.00

\$22.14 $\frac{1}{3}$

Add this amt due Kennedys &
note falling due ⁴ years after

38.61 $\frac{2}{3}$

\$60.76

Int. on the \$38.61 -

10.39

\$71.15

Expenses of 1865 advertisement of sale

3.25

Excess paid on land

20.21

Amount due Kennedys

\$94.36