

Tofferson County Circuit Court
Case Files - Civil
May 1865 No. 44

Box 16 Folder 7

Bird, A. G.

vs

North, Arthur C.

Appeal

Defendant appealed from J P
Alfred Stewart on \$100 note;
depositions

100

186

to the order of _____
after date, promise to pay

100 Dollars.

for value received, negotiable and payable, without deduction or discount, and with interest from maturity, at the rate of ten per cent. per annum.

Sower, Barnes & Co., Philada.

State of Missouri

To the Constable of Merriam Township in
Jefferson County Greeting,

We command you to summon Arthur C.
North, to appear before the undersigned, One
of the Justices of the peace, within and for
the township & county aforesaid, on the 13th
day of August 1864, at ten o'clock in the
forenoon at his Office in the same Township
to answer the complaint of A. G. Bird,
Given under my hand this 2nd day of
July 1864

Alfred Stewart Justice

I Executed this writ in Merremue Township this
9th day of July 1864 By Reading the Same in
presence and hearing of the defendant A. C. North
within named

Chas Brandriff Constable

<u>Due</u>	
A. C. North	
do	
A. C. North	
Debt -	100.00
Debt -	25
Interest	25

A Cuto of the same }
County of Jefferson } Co George Wellborn, who was formerly
Commissioner to do and Obolton Peter Alfred Howard a voter
of said land, within 500 yds of the town ship of the same, in Jefferson
County, on the 13th day of August 1864, at the Court within the forsee-
of that day, at my office in the same town ship to testify and the truth
to say in a certain matter controversy now depending before the
the said Justice, between A. & B. and C. and D. who is in the
and the Court of the said and you are authorized to give it your
verdict,
Witness my signature this 6th day of Aug. 1864.

Alfred * Howard

I return this writ not executed the within named Geo. Bellows not

found in my County

Aug 13th 1864

Wm^d Brawickrigg Justice

Geo

A. G. Bird
vs
A. C. North

Witness for def.

Geo Bellows
Justice fees 35

Filed May 8th 1865
Samuel A. Repp
Clerk

U. G. Kirby
vs } refers Alfred Stewart Justice
A. C. North }
State of Missouri }
County of Jefferson }

The above named deft.
Arthur C. North being by me duly sworn. Says
that he can not safely go into trial in the
above entitled cause on the account of a
material witness George Bellows. and that
he has used due diligence to obtain the same,
and by the same being continued to the next
regular court day being the 2nd Saturday in
February 1864, he will be able to procure such
testimony to be used on the day of trial,
where to subscribe

I. Before this 10th day of Decr 1864.

Alfred Stewart Justice of the peace.

Wm. B. York.

6 00
3
 18

2	bus	25
	bus	30
	add	25
		30
		<u>1.50</u>

Wm. C. C.
Continuance

W. C. C.

as

W. C. C.

Continuance 25

Filed May 17-1866,
 Samuel A. C. C.
 W. C. C.

State of Missouri }
County of Jefferson }

A. G. Bird

us
A. C. North }



Before Alfred Stewart.
Justice of the peace,

This Affiant A. C. North doth,
state that the application for an appeal in
the above entitled cause, is not made for retardation
or delay, but because he believes that he is injured
by the judgment of the justice,
Subscribed and sworn to

Before me this 17th day of
April 1865

Alfred Stewart Justice of the peace,

Arthur C. North

Wm. S. Appleton

A. H. Davis Esq.

no
A. H. Davis Esq.

Proctor's pro 40

Sched May 1st = 1865
Saml. A. Appleton

He the undersigned, A.C. North and Charles
Brandriff, acknowledge our selves indebted
to A.G. Bird in the sum of Two hundred and
forty Dollars, to be void upon this condition,
Whereas, A.C. North, has appealed from the
Judgment of Alfred Stewart, a Justice of the
peace in an action between A.G. Bird Plain-
tiff and A.C. North, defendant, now if, on
such appeal, the Judgment of the Justice be
affirmed, or if, on the trial anew, in the
appellate court, Judgment be given against
the appellant and he shall satisfy such
Judgment, or if his appeal shall be dis-
missed, and he shall pay the Judgment
of the Justice, together with the costs of
the appeal.

The recognizance shall be void

Approved April 17th day
1863

Alfred Stewart
Justice of the peace

A.C. North
Charles Brandriff

Abigail Hunt

A. H. Bird

^{no}
A. H. Smith

Notes per 35-

Filed May 13 1866

Samuel A. Phelps

ALL

A. G. Bird
vs
A. C. North

Aug. Term 1864,

Before Alfred Stewart J. P.

Filed for suit a promissory note
dated Oct. the 18th 1861, payable one day after date
for the sum of One hundred Dollars,
Summons issued and placed in the hands of Chas
Brandriff Constable,

Made returnable Aug. 13th 1864,
Also Sp. Issued for George Bellows for deft,
Summons Returned served as the law directs.
George Bellows not found, the deft A. C. North
appeared and not being ready for trial, therefore
the cause continued to Oct. 13th 1864, Term 1864,
Aug. 13th 1864. } Alfred Stewart Justice,

The Sp. Issued in the above cause returned by Const
not served on said Bellows, the parties did not
appear, the said cause continued to the Dec. Term/64,

Alfred Stewart Justice
Now at this day comes the parties, the deft, tendered
his affidavit, stating that he is not ready for trial
for the want of a material witness. George Bellows,
therefore the said cause continued to the 11th day
of Feby, 1865. } Alfred Stewart Justice,
Dec. 10th 1864. }

Feby. the 11th 1865.

The said cause continued by the consent of the
parties, to the 8th day of April 1865.

Alf. Stewart Justice
Now at this day comes the deft. by his attorney
John L. Thomas, and having made no defense
it is therefore considered & adjudged by the Justice

that Plaintiff recover of said defendant
 the sum of _____ \$100-00
 debt, and for his int. 20-75
 and for costs of suit. 1-75
 and that Execution issue therefor
 Apr. 8th 1865, J Alf Stewart J.P.

This day comes the deft. & tenders his
 affidavit and appeal Bond for two
 hundred & forty Dollars of himself, and
 Cha. Brandriff as security, and prays
 an appeal to the circuit court from our said
 judgment which being deemed sufficient,
 it is ordered that an appeal, as prayed, be
 allowed, doct,
 Apr. 17th 1865, J Alf Stewart Justice

affd. & stamps 40c Bond 35c Transcript 1.50 - 1.75

State of Missouri } so A. G. Bird Pet.
 County of Jefferson } vs
 A. C. North deft.

I, Alfred Stewart, a Justice of the peace within and for Meramec
 township, in Jefferson county, hereby certify that the above &
 foregoing is a full, true & complete transcript of all the entries made
 in my docket, relating to said cases of A. G. Bird ^{Pet.} vs A. C.
 North deft, and that such transcript is accompanied by all
 the process & other papers filed with the justice relating to
 such suit.

Given under my hand this 17th day of April 1865
 Alfred Stewart Justice

Truro 17th Dec 44

A. G. Davis Esq.

or

W. G. Davis Esq.

debt

120-75

Debt to A. G. Davis Esq.

Debt to A. G. Davis Esq.

25

Recd May 17th 1845

Ernest H. Davis

W. G.

A. G. Bird, Plaintiff } In the Jefferson Circuit
vs } Court, on appeal
Arthur C. North, Dep't. } from J. P.

To A. G. Bird, the above named
Plaintiff:

You are hereby notified that depositions
of witnesses to be read on the trial of the
above entitled cause on the part of
the Defendant will be taken at the office
of the Clerk of the Circuit Court of
Pettis Co. in the State of Missouri,
at the Town of Sedalia in said County
of Pettis, aforesaid, on the 1st day of May
1866, between the hours of eight o'clock
in the forenoon and six o'clock in
the afternoon of that day.

John L. Thomas
Atty for Defendant.

I executed the within notice on the 16th day of
April 1866 at Wellsford Jefferson Co. Ind.
by delivering to Abner Green, the atty of
said A. G. Bird, a true copy of the within
notice.

John L. Thomas
Sworn to and subscribed before me April 16th
1866,

Witness my hand and notarial seal
this 16th day of April 1866.

Henry F. Ahlness.
Notary public.

A. G. Bird

as
H. C. North

Notice to take dep-
ositions

1 Depositions of Witnesses, produced, sworn and examined
on the 1st day of May in the year of our Lord 1866, between
the hours of eight o'clock in the forenoon & six o'clock
in the afternoon of that day at the office of the clerk of
the Circuit Court of Pettis County, in the City of Sedalia
in the County of Pettis & State of Missouri before me
D. E. Bassett Clerk of the County Court in a certain cause now
depending in the Circuit Court of Jefferson County in the
State of Missouri between A. G. Bird Plaintiff and
Arthur L. North Defendant on the part of the Def-
endant.

George Bellas, of lawful age, being produced
sworn & examined on the part of the Defendant
deposed & said

Q Where are you now living, your business & age

A I live about 9 miles from Sedalia in Pettis County
Missouri. Am a farmer & 45 years old.

Q Where were you in October 1861

A I was on my way home from Springfield Mo

Q Did you stay all night at a man's house, named Lelay
who lives about 25 miles East of Springfield Mo in
company with Mr A. L. North about that time

A I did.

Q Did you see a certain A. G. Bird the plaintiff in this
action during your stay at Mr Lelay's?

A I did.

Q Now Mr Bellas tell us what you know about a
sale of a mare by Mr Bird to Mr North made
during the time you were at Mr Lelay's?

2

A Well in the morning after we had staid at Mr Blays house & before we left, Mr A. C. Bird proposed to sell Mr A. C. North a mare, Mr North's horse having been stolen the preceding night, for One Hundred Dollars, which was accepted by him the North giving him note on payment thereof.

Q Were you present at the sale?

A Yes

Q Did Mr Bird warrant the mare he sold Mr North

A He did warrant the mare to be Six years old & perfectly sound.

Q Please describe the mare in controversy

A Well she was a Sorrel mare & I believe blaze face cannot recollect her description well.

Q Did you notice anything wrong about the mare at the time of the sale? different from Mr Birds representations?

A No nothing except I believed the mare older than represented by Bird

Q Do you know what became of the mare & what time did you leave Mr Blays house?

A We Mr North & myself together left Mr Blays some time during the evening after the sale of the mare. We rode together a day or so when the mare which Mr North was riding gave out, & he was compelled to leave her at a neighbors house & borrow a horse to go on further work. I have not seen her since.

Q This mare rode by Mr North & that broke down was the same mare he purchased of Mr Bird

A Yes -

Q Did you ^{or him} ride in such a manner as to injure or sound horse?

A No. We rode tolerably slow, common traveling gait

Q Did the mare give out or break down from fatigue or from what cause

A Well Sir the truth is she was perfectly worthless why & from cause she broke down I cant say. I only know she could not travel, was no account & had to be left

Q How old do you suppose the mare was when purchased by Mr North

A About 16 or 18 years old -

Geo Bellas

Subscribed & sworn to before me this 1st day of May 1866 at the place & within the town first aforesaid

J. E. Bassett

clerk of the County Court
of Pettis County



I J. E. Bassett clerk of the County Court of Pettis County in the State of Missouri do certify that in pursuance of the annexed notice came before me at the office of the clerk of the County Court of Pettis County in the County & State last aforesaid George Bellas who was by me sworn to testify the whole truth of his knowledge touching the matter in controversy aforesaid

That he was examined & his examination reduced
to writing & subscribed by him in my presence
on the day between the hours & at the place as
that behalf first aforesaid & his said deposition
are now returned herewith

And I further certify that said George Bell
is a resident of said County of Pettis in the State
of Missouri

I the undersigned Clerk of Pettis Co. in
Given at Sedalia Pettis County Missouri
this 1st day of May 1866

J. E. Bapett
Clerk Pettis County

Clerks fees \$3.05

Stamp

Paid by Defendant

A. G. Byrd
against
A. G. North

Received by mail
opened and filed
May 11th 1866
J. A. Pappay, Clerk



A. G. Bird
vs
A. C. North

In the circuit Court
of Lewis County Mo

The plaintiff moves the
Court to suppress & exclude the depori-
tion of George Bellas filed in this
cause for the following reasons
to-wit

1 Because Because the deposition is
taken before J. E. Bassett clerk of the
County Court of Pettis County Mo &
because the clerk of the County Court
is not authorized by our laws to take
depositions

2 Because the notice was served
on the Atty of Reed instead of the
plaintiff

3 Because there are leading questions
at page 42 to-wit

2. Did Mr Bird warrant the mare he
sold Mr North

A He Did warrant the mare to be six
years old & perfectly sound

Green & Seal

Attys for plaintiff

A. G. Bird
vs
A. L. Smith

Notice to Defendants
depositions

Filed Nov 7 1866
Daniel A. R. Spay

A.G. Bird, Plaintiff

vs

A.C. North, Defendant,

In the Jefferson
Circuit Court,

To Abner Green Attorney for the above
named Plaintiff.

Take notice that depositions of witnesses
to be read in evidence on the trial of the above
entitled Cause on the part of the Defendant
will be taken at the office of the Clerk
of the Circuit Court in Sedalia, Pettis County,
Missouri, on the 8th day of April 1867, between
the hour of nine o'clock in the forenoon and
five o'clock in the afternoon of that
day.

A.C. North Deft.
By John L. Thomas his atty.

I hereby accept notice & waive the necessity of
service of the within notice on me by an officer
This 18th day of March 1867,

Almer Green, Attorney
for Plaintiff

Deposition of witnesses, produced, sworn
and examined on the 8th day of April
1867, between the hours of nine o'clock
in the forenoon and five o'clock
in the afternoon of that day at the
Office of the Circuit Clerk of Pitts
County in said Pitts County
Missouri before me Orestes A. Crandall
a Notary Public within and for said
County and State, in a certain Cause
now pending in the Circuit Court
of Jefferson County and State of Missouri
between A. G. Reid Plaintiff and
A. C. North Defendant on the part
of the Defendant,

George Bellas of lawful age
and a resident of Pitts County and
State of Missouri being produced
sworn and examined on the part
of defendant deposes and says
I am acquainted with defendant
have seen plaintiff. In October of
1861 I was travelling on my way from
Springfield Mo. ~~Pittsburg~~ to St Louis
in company with defendant,
We stopped to stay over night at the
house of one McClays in Webster County
some 25 or 30 miles from Springfield
In the morning defendant North bore

was missing, and had been as we supposed stolen during the night.

Bird the Plaintiff who was a neighbor of Mr. Clays, proposed to sell to North a mare to enable him to proceed on his journey. Bird offered the mare at one hundred dollars, and warranted her to be only six years old and perfectly sound. North accepted her at that price and executed to Bird ^{his note} for that sum. This was on Sunday morning but I think the note bore date the day prior or day after I don't remember which.

Mr. North was induced to purchase the mare on the recommendation of and warranty of Bird that she was only six years old and perfectly sound. After closing the bargain with Bird we started on our journey together, and traveled about twenty five miles a day for ^{about} two days when she gave out, and North was compelled to leave her, and procure another.

She was completely broken down and perfectly worthless. At the time she was left by North, she was unable to travel, and it was impossible to get her along at all. From the appearance

of the mare I would think she was
eighteen years old, The travelling
she did would not have injured
her in the least. ~~My horse was not~~

George Bellas

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

I Orestes A Crowell a Notary
Public within and for the County of Pettis
and State of Missouri do certify that in pursuance
of the within notice came before me at the
Office of the Circuit Clerk of Pettis County
in Session Pettis County and State of Missouri
George Bellas who was by me sworn to
testify the whole truth of his knowledge
touching the matter in controversy aforesaid
That he was examined and his
examination reduced to writing and
subscribed by him in my presence on the day
between the hours and at the place in that
wholly first aforesaid and his deposition is
now herewith returned, I further certify that
George Bellas resides in Pettis County in
the State of Missouri

In testimony whereof I have hereunto set
my hand and Notarial Seal this
8th day of April 1867

Orestes A Crowell Notary Public

A. G. Davis

As
A. G. Davis

Deputy of
George Deane

Rec^d for mail opened
and filed April 10 1866
Wm. S. Hooley Clerk

A. G. Byrd, - Plaintiff } In the Circuit Court
Against } Jefferson County,
A. C. North, - Defendant } May Term 1867,

The Plaintiff moves the Court to set
aside the verdict and Judgment of the Court
in the above Cause, and grant him a New
Trial, for the following reasons;

- 1- Because the finding of the Court, sitting as a jury, is against the evidence and the weight of evidence.
- 2- Because the finding of the Court, and the judgment rendered, is against the law of the Case.
- 3- Because the Court erred in construing the law governing the Cause.
- 4- The Court gave judgment for the Defendant, when the evidence showed the judgment should have been for the Plaintiff.
- 5- There was no Contract proved, which amounted to a warranty on the part of plaintiff, of soundness of the mare sold.
- 6- The Court erred in construing the law, so as to allow Defendant to rescind the Contract of sale, without returning, or even offering, to return the mare, - and without even giving notice to Plaintiff that he had abandoned said property.
- 7- The Court erred in permitting the deposition of _____ to be read in evidence,
- 8- The Court erred in allowing Defendant's claim for unliquidated damages, arising upon a claim for breach of warranty, to be used as an offset.

9 - As there was no proof that Defendant re-
turned, or offered to return the money pur-
chased, or even gave Notice to Plaintiff that
he (Defendant) claimed that there was a breach
of the warranty, Defendant was, in law, barred
from setting up such breach as a defence
to the Note sued on, and the Court erred in
receiving such claim of breach of warranty
as a defence to the action.

Alfred Green
Attorney for Plaintiff

In Circuit Court
Jefferson County

A. S. Byrnes

vs.

A. S. North

Motion for

New Trial

Filed May 10th 1867
Edw. J. Honey Clerk

overruled