

May 1866

State ex rel
Bryant, David W., adm.
Horne, Thomas M.

vs.

Smith, Francis J.
Fletcher, John W.
Dunklin, James L., adm.
Clark, William E.

Administrators' bond

Defendant failed to pay over to
plaintiff \$1,932.50 on revocation
of letters of administration;
bill of exceptions; John O'Fallon
garnishee

Copy of Bond of Francis J. Smith administrator
of Thos. M. Horine Decd.

Know all men by these presents that Francis J. Smith as principal & also John M. Blatcher and W. E. Clark as securities are held & firmly bound unto the State of Missouri in the full & just sum of Twenty Thousand Dollars to the payment whereof well & truly to be made we bind ourselves our heirs, executors administrators & assigns jointly and severally firmly by these presents, sealed with our seals & dated Hillsboro, this seventeenth day of December 1856. The condition of the above bond is, that if Francis J. Smith administrator of the estate of Thomas M. Horine deceased shall faithfully administer said estate account for, pay and deliver all money and property of said estate and perform all things touching said administration required by law or the order of any court having jurisdiction then the above bond to be void otherwise to remain in full force

Francis J. Smith Seal

John M. Blatcher Seal

W. E. Clark Seal

Recorded December 17th 1856.

I Wm. McMullen Clerk of the County Court within & for the County of Jefferson in the State of Missouri hereby certify that the above and foregoing is a full true and correct copy of the bond of Francis J. Smith as administrator of the estate of Thos. M. Horine on file and recorded in my office

In Testimony whereof, I hereunto set my hand and affix the seal of the Court at office in Hillsboro this 2nd day of April 1856
Wm. McMullen
Clerk,



Wm. McMullen, Clerk, 1856

Copy of
Bureau of

J. J. Smith
Jno. W. Helstos
Mr. E. L. Lark

Filed April 19th 1866
Samuel A. DePoy Clerk

The State of Missouri to the use
of David W. Bryant, Administrator
de bonis non of the Estate of Thomas
M. Morine, deceased, — Plaintiff,

Against
Francis J. Smith, John W. Fletcher
and James L. Dunklin, administrators
of the Estate of William E. Clark, deceased, — Defendants,
In the Circuit Court of
Jefferson County, Missouri,

The Plaintiff to the use aforesaid states
that, on the 17th day of December 1856, the County
Court of Jefferson County aforesaid appointed the
said Francis J. Smith Administrator of the
Estate of Thomas M. Morine, deceased, and that
on said day, the said Francis J. Smith, as Principal,
and John W. Fletcher, and William E. Clark
as Securities, executed and delivered to the State
of Missouri their Bond under their hands and seals,
whereby they bound themselves, their heirs, executors,
administrators and assigns jointly and severally
to pay to said State the sum of Twenty thousand
dollars, if the said Francis J. Smith should fail
in the Condition of said Bond therein contained,
and which Condition is as follows; "The Condition
of the above Bond is, that, if Francis J. Smith, ad-
ministrator of the estate of Thomas M. Morine, de-
ceased shall faithfully administer said estate, ac-
count for, pay and deliver all money and prop-
erty of said Estate, and perform all things touching
said administration required by law, or the order of
any Court having jurisdiction, then the above bond
to be void, otherwise to remain in full force."

Which said Bond was only approved by the County Court
aforesaid, and was, on the 17th of December 1856, filed and
recorded in the Clerk's office of said County Court, - a copy
of which is herewith filed. Plaintiff to the use
aforesaid states that the said Francis J. Smith af-
terwards took in charge the Estate of said Thomas
M. Morine, dec'd, and undertook the administration
thereof, - that he, as such Administrator received a
large amount of personal property and money, be-
longing to said Estate, as appears by his Inventory,
appraisement list and sale bill filed, and by his
first annual Settlement, made March the 17th 1858, by
which it appears he received assets of said Estate, amount-
ing to \$10654.25, & had disbursed \$8319.89, leaving a balance
due the Estate of \$2434.36, - That said Administrator
afterwards received other assets, and on the 10th of Jan-
uary 1861, he made a settlement by which the bal-
ance appearing in favor of said Estate was \$7139.41.
After which, said Francis J. Smith left the State of
Missouri, and neglected and failed to carry on said
administration; and in the year 1860, his Letters of
administration were revoked, and on the 10th day of
October 1860, said David W. Bryant was appointed ad-
ministrator de bonis non of said Thomas M. Morine's
estate by said County Court, & duly filed his bond as such,
And that after the revocation of said Letters, said
Smith failing to make any settlement of his accounts,
the County Court aforesaid, on the 10th day of July 1863, pro-
ceeded to examine & make a settlement of the same, by
which it was found that he was indebted to said
Estate, for assets received, in the sum of two thousand
two hundred and sixty nine dollars & seven cents, which
said County Court ordered to be paid over by said Fran-

is J. Smith to David M. Bryant, as Administrator
de bonis non of said estate of Thomas M. Horine. That
afterwards this Settlement was appealed to the
Circuit Court of said Jefferson County; and that on
the 15th day of November 1863, the said Circuit Court
rendered judgment in favor of said David M. Bry-
ant, administrator de bonis non of the Estate of said
Thomas M. Horine against said Francis J. Smith
for the sum of Nineteen hundred and thirty two
dollars and fifty cents, and awarded execution therefor,
And which said judgment the said Francis J. Smith
has failed to pay or any part thereof.

The Plaintiff to the use aforesaid therefore says that
the said Francis J. Smith has committed a breach
of said Bond and the Condition thereof, in this, - that
he has utterly failed and refused to pay over to said
David M. Bryant, as administrator de bonis non of
the estate of said Thomas M. Horine, dec'd, the judg-
ment of the Circuit Court aforesaid, amounting to
nineteen hundred and thirty two dollars & fifty cents,
or any part thereof, although often requested so to do,
and as by the judgment of said Court he was required
to do; and that he has not therefore faithfully admin-
istered, paid over, and accounted for the assets of said
Estate according to law, and the order of said Court.

Plaintiff to the use aforesaid states that by reason
of the breaches of said Bond and the Condition thereof
the same has become forfeited, and that an action
has accrued to Plaintiff to the use aforesaid, to
have and ^{recover} judgment for twenty thousand dollars
the penal sum thereof, and for which judgment
is prayed; and that the Court will assess the dam-
ages Plaintiff to the use aforesaid has sustained
by reason of the breaches aforesaid, amounting to

Nineteen hundred and thirty two dollars and
fifty cents, with interest from the 15th of November
1865, and award Execution therefor.

Abner Green

Attorney for Plaintiff,

Abner Green, Attorney for Plaintiff, makes
and says that the above Petition and the matter
therein as stated he believes to be true.

Sworn to & subscribed before me this

13th day of April 1866

Wm McMillin Clerk Court

Abner Green
Atty for P. Off.

In Circuit Court
Jefferson County

The State of Missouri,
to the use of David M.
Bryant, Administrator of the
Estate of George M. Moore

vs.
J. J. Smith, Jno. M.
Pletcher & Jno. J. Smith
Debtors of M. E. & Co.

Plaintiff vs. Defendants and
Debtors of same

W. H. Green
Att. Genl.

Filed April 13th 1860
David M. Bryant clerk

The State of Missouri, } ss.

COUNTY OF JEFFERSON.

The State of Missouri

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

We command you, that you summon Francis J. Smith
John W. Fletcher, and James J. Danckler,
Administrators of the Estate of William E. Clark
Deceased

if they be found in your County, that they
be and appear before the Hon. Judge of our Circuit Court, on the first day
of the next term thereof, to be begun and held at the town of Hillsboro, within
and for the County of Jefferson, on the second Monday after the fourth
Monday of May next, then and there to answer unto
The State of Missouri to the use of David W.
Bryant, Administrator, executor and administrator of the
Estate of Thomas M. Harine, Deceased

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



Witness, Samuel A. Papp, Clerk of our said Circuit

Court, with the seal thereof herewith affixed, at office
in Hillsboro, this Thirteenth

day of April A. D. 1866

Samuel A. Papp

Clerk Circuit Court.

I Executed the within writ at the County of Jefferson State of Missouri on the 14 day of April 1866 by delivering to Geo W Fletcher the first an served a copy of the writ and annexed petition as furnish me by the Clerk and I further Executed the within writ on J I Smith and Jas L Dunklin owner of the Estate of W E Clark Dec^d on the 19 day of April 1866 by leaving a True copy of this writ at the usual place of abode ^{in Jeff county} of J I Smith with a white person over the age of fifteen years of age and a member of his family and on the 19 day of April 1866 on J L Dunklin owner of the Estate of W E Clark Dec^d by leaving a True copy of this writ at his usual place of abode in Jeff county Mo with a free white person over the age of fifteen years and a member of his family.

C. C. Fletcher
Sheriff

2348
TO JEFFERSON CIRCUIT COURT

May Term, 1866
The State of Missouri to
the use of D. W. Bryant
Adm^r de bonis mori of
the Est of Geo. M. Hearne

vs
Summons
Francis J. Smith
Col John W Fletcher and
James J. Dunklin Adm^r
of Est of William C. Clark

Fletcher Sheriff 150

David W. Byant Admr of
the Estate of Thomas W.
Morine, Deceased -

Francis J. Smith, John W.
Fletcher and James L. Dunklin
Admr of the Estate of Wm. C.
Clark Deceased -

Now at this day come John W. Fletcher
and James L. Dunklin Admr of the Estate
of Wm. C. Clark Deceased and for
Answer to the petition of the Plaintiff
heretofore filed in this behalf state,
that it is true as is in said petition alleged
that Francis J. Smith on the 17th day of December
1856, became the Admr of the Estate of
Thomas W. Morine Deceased and that John
W. Fletcher & Wm. C. Clark became his
Securities on his administration: That the
condition of said bond is correctly set
forth in said petition and the amounts appear-
ing against Smith as Admr of said Estate
of Thomas W. Morine Deceased on his
Settlements thereon in the Jefferson County
Court are properly set forth in said in
said petition.

These Defendants for further answer

by way of defence to said petition state David
W. Bryant after he became administrator de bonis
non of said Estate of Thomas M. Harine, com-
menced proceedings in the Jefferson County
Court against said Francis Smith for
the purpose of ascertaining the balance
due said Estate from said Smith: That
after a trial in the County, an appeal was
taken to the Circuit Court, which appeal
was still pending and undetermined on
the 27th day of July 1865: That said County
Court had found a balance against said
Smith in favor of said Estate of two thousand
two hundred & sixty nine $\frac{9}{10}$ dollars: That in
ascertaining this balance the said County
Court did not allow said Smith credit
for \$1300. the amount of a note dated
Oct. 1860, executed by one Armstrong
and endorsed by one Clayton, payable
one year after date, which was shown to
have been given to said Smith for a
negro man, slave, sold and delivered
to said Armstrong in Oct. 1860, but which
was in Memphis at the time of trial & could
not be produced at that time and also
a note of about \$1100 - dated in 1858
or 1859 signed by Lindlow & Co
of St Louis Mo. to said Smith as admin^r

aforsaid; that on the 27th day of July 1865
the attorney of these Defendants had the
note of \$1300. in his possession, & would
have obtained a credit therefor on the
2nd trial in the Circuit Court of said
County and also the note of \$1100, could
have been obtained in time for said trial,
the amounts of both of which said ~~Smith~~
Smith as Admr^r oforsaid had been
charged with, in his settlements with
said Estate & for which he was clearly
entitled to a credit in ascertaining the
balance against him; but these Defend
ants over that said Plaintiff without
the knowledge or consent of these Defendants
entered into an agreement with said Smith
on the 27th day of July 1865 by which Smith
acknowledged that he owed said Estate
two thousand four hundred and thirty two ⁵⁰/₁₀₀
dollars, the consideration of such promise on
the part of said Smith being the delivery up to
him by said Buyer the two notes above described
the interest and principal of which amounted
at that time to near \$3000. - about \$4
hundred dollars more than said Smith
confessed that he was indebted to said
Estate, although this consideration was
not specified in said agreement - and these

dependants aver that the Judgment rendered
in the Circuit Court Nov 15th 1865 for
Nineteen hundred & thirty two ⁵⁰/₁₀₀ dollars
(the said Smith having previously paid
\$600) was in pursuance of said agreement
and was rendered without the Consent of
these dependants. These dependants
therefore say that said Smith is not
indebted to said Estate in the sum of
Nineteen hundred & thirty two ⁵⁰/₁₀₀ dollars
or any other sum, for which these
dependants are liable - that said judgment
last above referred to was obtained by
collusion between Plaintiff & said Smith
and contrary to the wishes of said dependants
that said Bryant having delivered up
to said Smith \$3000 of the assets of
said Estate in consideration of a promise
on the part of said Smith to pay him
\$2432 ¹⁰/₁₀₀ operates as a constructive
fraud upon Smith's securities & they
are not liable under the circumstances
dependants therefore say that so far
as they ~~they~~ concerned the said Smith
has not been guilty of any breach of
said bond as charged by Plaintiff &
having fully answered, as to be discharged

Thomas & Ahlens
Atty for Dan Klein & Fletcher

2 M Bayard & others
of N. H. House

3
T. J. Smith, J. M.
Mellen & J. L. Munkin
Attorneys at Law, Wash. D. C.

Shewen of Mellen
& Munkin

Filed Sept 26 1866,
Saml. H. P. P. & Co.

David W. Bryant, Adm^r, }
of the Estate of Thomas }
M. Horine, deceased, — Plaintiff

Against
Francis J. Smith, John W. }
Gletcher, and James L. }
Dunklin, Adm^r of the Estate }
of William E. Clark, dec^d, — Defendants,
} In the Circuit Court of
} Jefferson County Missouri

The Plaintiff by his Attorney demurs
to the Answer of the Defendants for the
following grounds of objection;

First, — Because the Answer does not state
facts sufficient to constitute a defence to
to the action,

Second, — The securities on said Administrator's Bond, are by law, estopped from
going behind the Judgment obtained, in
the Circuit Court of Jefferson County Missouri,
on the 13th of November 1863, against Francis
J. Smith, the ^{bonner} administrator of said Estate, and
the whole of the Answer contains allegations,
in reference to Credits claimed before
said Judgment was obtained,

Third, — The Answer seeks to re-investigate the
whole of said Francis J. Smith's accounts
as such Administrator, prior to the time said
Judgment of the Circuit Court was obtained

against him.

Fourth, - The Credits of \$1300, and \$1100 on Notes, claimed and set up in said Answer, have been passed upon by a Court of Competent Jurisdiction, and are not now open for investigation.

Fifth, - It is not averred in said Answer that the Circuit Court Judgment against the former administrator was obtained by fraud, and hence the Defendants are precluded from going behind said Judgment, in claiming Credits, - and are barred by said Judgment.

A. Green
3 Atty. for Plaintiff

Devina M. Bryant
Stam. of the M. Moore

1871

To J. Smith, Sen. M. M.
and J. L. Smith's
Stam. of M. E. Clark

Donnered
To Stramer

West Orange 1866
at the Perry alk

David M. Bryant, Administrator
of the Estate of Thomas M. Noine,
deceased, — Plaintiff
Against
Francis J. Smith, — Defendant, — } In the Circuit
Court of Jefferson
County Missouri
May Term 1867,
— On Execution
returnable to the May Term
1867 of said Court,

The Plaintiff states that John O'Fallon
has been summoned as a garnishee, under & by
virtue of the Execution issued on the Judgment in
the above Cause, on the 20th day of February 1867,
and returnable on the 9th day of May 1867, — and
that the Plaintiff therefore propounds the fol-
lowing Interrogatories, to said John O'Fallon to be
Answered under oath, touching his indebtedness
to said Defendant; To wit,

First, — At the time of the service of the said gar-
nishment on you, had you in your possession, or
under your Control any property, money, or effects, of
the above Defendant? — If so, state what property,
how much, and of what value, and what money
and effects?

Second, — At the time of the service of the said garnish-
ment, did you owe the said Defendant any money,
or do you owe him any money now? If so, how much,
on what account, and when did it become due? And
if not yet due, when will it become due?

Plaintiff asks that said John O'Fallon

may be required to make full, direct, and true
Answer, under oath, to the Interrogatories afore-
said.

} Abner Green
} Attorney for Plaintiff

In Circuit Court
Jefferson County

David W. Bryant
vs. Thos. M. Morine

187

James J. Smith
John Q. Hutton
Examiners

Interrogatories

Jiles May 6th 1877
Geo. H. May 6th 1877

David W. Bryant, Administrator, of the Estate of Thomas M. Horne
deceased. — Plaintiff
Against
Francis J. Smith, — Defendant
& John O'Fallon Sinner — { returnable to the May term
1867 of said Court.

Court of Jefferson
County Missouri
May term 1867
on Execution

Now comes John O'Fallon and in
answer to the garnishee and interrogatories
in the above entitled cause, States
First that he (John O'Fallon) has a note
drawn by one Garnett, & payable to Francis
J. Smith and now tenders the same in
Court. He O'Fallon further states that he
does not owe Smith any thing on the above
note on in consequence of having the same.
He O'Fallon further states that some time
since, about the time that he was starting
South to his Plantation, Francis J. Smith
came to him and told him that he would
transfer to him a certain note drawn by
one Armstrong & he thinks Clayton as endorser.
The note was transferred to O'Fallon and left by
him for collection in the hands of certain
parties in Memphis, Tennessee, ^{whose names I do} which sum
^{not now recollect} of collected is to be for the benefit of
Francis J. Smith. He O'Fallon further states
that he has not said note, in his possession.
over

Second. That he, O'Fallon ~~does~~ not owe
Francis J. Smith any money, nor did he
owe him any thing at the time of service
of Garnishment; but on the contrary F. J. Smith
owed him. Also that at the time of the service
upon him of said garnishment he did not have nor
has he since had nor has he now in his possession
or under his control any property money or effects
of the said Defendant except as hereinbefore specified.
And so having fully answered the Defendant asks
to be discharged with an allowance for having

answered herein - This garnishment further states that at the same time of his being garnished
therein he was garnished in an execution in favor of Chas. A. Croft. Admin of said Croft's estate. -
against said Smith. and this garnishment avers that the said note made by said Farnett may be disposed
of in accordance with the directions of all the above named parties -

State of Mo. }
County of Jefferson. }

John C. Fallon makes oath and
says that the above answer and the matters and
statements therein made he believes to be true.

John C. Fallon.

Sworn to and Subscribed
before me this 17th Day of May 1867,

David M. Bang and others
of State of Illinois vs
Morrie

James D. Smith &
John Galen Garrison

Andree of Garrison
to interrogatories —

Filed May 16th 1867

David M. Bryant, Adm^r of }
The Estate of Thomas M. Worine, dec^d — Plaintiff

Against
Francis J. Smith, — Defendant, }
v John O'Fallon, — Garnishee }

} In the Circuit Court of
} Jefferson County Missouri,

To John O'Fallon the above named Garnishee,
You are hereby Notified that the Plaintiff in
the above entitled cause, has this 7th day of August
1867, filed in the Clerk's office of the Circuit
Court in the County aforesaid, Exceptions to your
Answer, filed at the May Term 1867, of said Circuit
Court, to the Interrogatories filed for you to Answer
^{under oath} as a garnishee in said Cause; also, that the Plain-
tiff has this day, filed in said Clerk's Office a
Denial of said Answer.

August the 7th 1867, } David M. Bryant Adm^r
} of T. M. Worine, dec^d,
} By A. Green, his Attorney

g. served this notice on John O Fallon on the
2nd day of October 1867 by Delivering
to him the said John O Fallon a true copy
of this notice

John Williams
Sheriff

In Circuit Court
Jefferson County

David W. Bryant, Adm'r
of E. M. Worine, dec'd

vs,
Francis J. Smith, deft,
John O Fallon, - Garnishee

Verdict

of filing Exception, & denial
to Garnishee's Answer

John Williams
Sheriff per 50

Served Oct 2

David W. Bryant, Administrator of the Estate of Thomas M. Morine, deceased, - Plaintiff	} In the Circuit Court of Jefferson County Missouri, On Execution,
Against	
Francis J. Smith, - Defendant, & John Q. Fallon, - Garnishee.	

The Plaintiff by his Attorney excepts to the Answer of John Q. Fallon summoning as a garnishee in said Cause, and files on the 16th day of May 1867, as being insufficient, vague, indefinite and uncertain, - and states the following objections thereto;

- 1 - Said Garnishee admits he has a Note drawn by one Garnett & payable to Francis J. Smith, - but he does not state the date, nor amount of said Note, - nor when he received it, - nor for what purpose, - nor whether he collected the money said Note called for, or any part of it, - or why he did not realize some benefit or profit out of said Note, or return it, - nor does he return said Note, or file it with his Answer.
- 2 - Said Garnishee states that some time since, Francis J. Smith transferred to him a certain Note drawn by one Armstrong and endorsed by Clayton, and that said Note ^{was} ~~was~~ left with said Garnishee for collection, for the benefit of said Smith, - but said Garnishee does not state the date, or amount of said Note, nor whether he collected the money due on it, or any part of it, - nor what ^{nor whether he owes any money} became of it.
- 3 - Said Answer is indefinite as to whether said Garnishee owes said Francis J. Smith, any money at the time said garnishment was served on him, or not, - or whether he owes him any money now.

4. - Said Answer is vague, evasive, indefinite, and insufficient throughout, and is not responsive to the interrogatories filed against said Garnishee,

5. Said Answer is not sworn to as required by law.

Plaintiff therefore asks the Court to require said Garnishee to make instantly, a full, direct, and true Answer to the Interrogatories filed, and in default thereof, to render judgment against him by default, for want of a sufficient Answer.

Abner Green
Attorney for Plaintiff

to Capt. Corint

Jefferson County

David W. Bryant & sons
of L. W. Boone

As

James L. Smith & sons

of Jno. C. Hollen

James L.

Execution to

James L. Smith & sons

July 22nd 1857

Wm. Henry Bell

By the same order

David W. Bryant, Administrator }
 of the Estate of Thomas M. Morine, deceased, — Plaintiff
 Against
 Francis J. Smith, — Defendant }
 & John O'Fallon, — Garnishee. }

In the Circuit Court of
 Jefferson County Missouri

The Plaintiff denies the Answer of John O'Fallon, summoned as a Garnishee in the above cause, and filed on the 16th day of May 1867, — and states that he has reason to believe, and therefore charges that said Garnishee did receive about one thousand dollars on the Garnett Note, for the use of Francis J. Smith, and that he has failed to pay over or account for said money to said Smith, — In regard to the Note given by Armstrong to Francis J. Smith and endorsed by Clayton, & which was transferred by said Smith to John O'Fallon for collection for the use of Smith, the Plaintiff understands said Note was for some thirteen hundred dollars, and although he does not know & cannot charge that said Garnishee has collected the money, yet he charges that, as said Garnishee has held said Note for over four years, and the maker & endorser are solvent, and said Garnishee does not tender the Note, nor show what has become of it, the presumption is that he has realized something on it, and at all events, that he by his negligence has become liable in law to account for the amount of said Note to and Plaintiff's charge, that said Garnishee bought said Note for 900 dollars, then failed to pay it. Francis J. Smith, — Plaintiff further states that he has been informed & believes, and therefore charges, that said Garnishee has received a large amount

of money and personal property belonging to the wife of said Francis J. Smith, at various times, by loans and otherwise, Plaintiff is unable to state the particulars of the transaction, or the exact amount, but believes from information received that the amount of said property & money so received by said Garnishee is about 1500, \$ or 2000 \$, C Plaintiff therefore states that from information received, he has good reason to believe and therefore charges that, at the time said Garnishment was served on the said John O'Hallon, he was indebted in the aggregate to Francis J. Smith, in the sum of at least three thousand dollars. And for which sum, or sufficient ^{thereof} to pay said Execution of Plaintiff against the said Francis J. Smith and costs, the Plaintiff asks judgment against said John O'Hallon as such garnishee.

Abner Green
Attorney for the Plaintiff

In Circuit Court
Jefferson County

David H. Bryant
vs. J. M. Monroe
28' Francis J. Smith, et al
vs. J. M. Monroe, Garnesha

David of
Garnesha's answer

Filed Aug 7 1867,
C. J. Money atty
By C. M. Monroe Depy,

The State of Missouri, to the
use of David W. Bryant, Adm^r,
of the Estate of Thomas M. Horne, dec^d. - Plaintiff
Against
Francis J. Smith, John W. Fletcher,
and James L. Dunklin, Adm^rs of the
Estate of William E. Clark, dec^d. - Defendants,
In the Circuit Court of
Jefferson County Mo.

The Plaintiff for Replication to the Answer of John W. Fletcher and James L. Dunklin, administrators of the Estate of William E. Clark, denies that said Defendants are entitled to a Credit for a Note of 1300 dollars, given by one Armstrong, and endorsed by Clayton, to said Francis J. Smith, as former Adm^r of Thomas M. Horne's Estate, - As Plaintiff states that said Note was claimed by Defendants in the County Court of said Jefferson County, as a Credit for said former Adm^r, - and was disallowed, by said Court, and is not open for further investigation, - and further that said Note was given for a Negro Slave belonging to said Estate, sold by said Francis J. Smith without any order of the County Court, on a Credit, some five or six years ago, and the maker & endorser of said Note, are unknown to Plaintiff, - and he therefore denies that he is bound to

receive said Note as assets of the Estate, and allow
said former Adm^r Credit for the same, when he
believes said Note is worthless. He therefore avers
that said former Adm^r of said Estate is in law,
liable to account for said Note to the Estate,
- And the same being included in the Judg-
ment of nineteen hundred and thirty two
dollars and fifty Cents, rendered by the Circuit Court
of said Jefferson County, on the 15th day of November 1865,
against said Francis J. Smith, as such former ad-
ministrator of said Estate, Plaintiff avers that the
said Judgment is binding upon all the Defend-
ants herein, - And Plaintiff further avers that
said Francis J. Smith, or his Securities on his Bond
are not entitled to a Credit on said Judgment
for a Note of 1100 dollars, dated in 1858, or 1859,
and signed by — of St. Louis Mo, & given to said
Smith, as such former Adm^r, - As said Note has
never been produced in Court, - or shown to be
worth anything as assets of said Estate, - and
was taken by said former Adm^r, and not acc-
ounted for, except ^{as} it is embraced in said Judg-
ment, - and Plaintiff ^{states} that said Francis J. Smith
is liable to said Estate for the amount of said Note,
And Plaintiff further states that he has ne-
ver received as Adm^r of said Estate, either
of said Notes, - the 1300-dollar Note, or the Note for
1100 dollars, - that said Francis J. Smith now

retains both of said Notes, and to allow him a Credit for the same on said Judgment would in fact be giving him Credit twice for the same thing. And Plaintiff denies that said Judgment of the Circuit Court against Francis J. Smith for nineteen hundred & thirty two dollars & fifty Cents, was obtained by Collusion or fraud, and denies that any agreement made with said Smith by Plaintiff, in regard to the amount due the Estate by Smith, operates as a Constructive fraud on said Securities. -

Plaintiff therefore avers that said Judgment of the Circuit Court, rendered on the 15th day of November 1863, against said Francis J. Smith is binding and conclusive upon his Securities on his administration Bond, - and that they are estopped from Controverting the same, - that they are bound by said order of the Court, - and that therefore neither of the aforesaid Notes, or interest on them, can be allowed, as a Credit upon, or offset against said Judgment, - Plaintiff therefore asks Judgment against Defendants for nineteen hundred and thirty two dollars and fifty Cents, & interest on the same, as prayed in his original petition.

Abner Green
Attorney for Plaintiff

In Circuit Court
Jefferson County

The State, to use of
D. M. Bryant, Sheriff,
vs.
Smith, Fletcher &
Smith, Sheriff, &c.

Repleviation

Filed Nov 3-1867
C. J. Moseley Clerk

The State of Missouri to the use
of Davis M. Bryant Administrator
of the Estate of Thomas M.
Horsine, decd. — Plaintiff

Against
Francis J. Smith, John W. Fletcher
and James L. Dunklin, Admin-
istrators of Estate of Wm. E. Clark — Defendants
In the Circuit Court
of Jefferson County Mis-
souri, — Nov. Term 1867,

The Plaintiff moves the Court to
set aside the finding and judgment ren-
dered in the above entitled Cause, and grant
him a New-Trial, for the following reasons,

- 1 - Because the finding is against the evi-
dence in the Cause,
- 2 - Because the finding and judgment is
against the law of the Cause,
- 3 - The Court erred in admitting illegal and
improper evidence offered by the Defendants,
- 4 - Because the Court refused proper and
legal evidence offered by the Plaintiff,
- 5 - Because the Court admitted evidence in
support of the illegal claims of a Note for
\$1300⁰⁰, and one for \$1100⁰⁰ set up by De-
fendants as a Credit on the judgment
rendered against Francis J. Smith, former
Admin^r of said Horsine's Estate,
- 6 - The Court misconstrued the law govern-
ing the Cause,

- 7- Because the Court erred in refusing to declare the law of the case as prayed by Plaintiff,
- 8 - The Court gave illegal and improper declarations of law prayed by Defendants,
- 9 - The Court erred in admitting evidence offered by Defendants that occurred prior to the Judgment heretofore rendered against Francis J. Smith, the former Administrator of the Estate of Thomas M. Morine,
- 10 - Because said Judgment is binding and conclusive upon the Securities in said former Aunt's Bond, - and the Court therefore erred in permitting Defendants to offer testimony on ~~pleas~~ ^{credits} set up as credits prior to said Judgment,
- 11 - Because the Court, ^{rendered} Judgment for the Defendants, when the Judgment should have been rendered for the Plaintiff.

Abner Green
Attorney for Plaintiff

Of Circuit Court
Superior County

There is no of

D. M. Bryant, Maine

15,

Y. D. Smith, L. R.

Walter J. Jones, Jr.
Care

Detm.

for Neutral

Gilded Her 1848
 Elias & Henry
 Overmule

The State of Missouri to the
use of David W. Bryant, Adminr,
of the Estate of Thomas M. Worine
deceased, Plaintiff

Against
Francis J. Smith, John W.
Fletcher, and James L. Dunklin
Admins'trator of the Estate of
William E. Clark, decd. - Defendants,

In the Circuit Court
of Jefferson County Mis-
souri, - Nov. Term 1867,

Abner Green, Attorney and Agent
for the Plaintiff in the above entitled Cause,
being duly sworn, on his oath states that
the application of said Plaintiff for an
Appeal from the Judgment of the Circuit
Court of the County aforesaid to the Second
District Court of the State of Missouri,
is not made for vexation or delay, but
because said Affiant believes that the
said Plaintiff (the appellant) is aggrieved
by the Judgment or decision of the Circuit
Court aforesaid.

Abner Green
Attorney & Agent for the
Appellant,
Sworn to and subscribed
before me Decr 11 '1867
Elias J. Honey cl

In Circuit Court
Jefferson County

We state to use
of D. M. Bryant & Son
of J. M. Whornd

18,

Frank J. Smith
& others

affidavit
for appeal

Filed Dec 11, 1867
C. J. Henry clk

The State of Missouri to the use
of David W. Bryant, Administrator
of the Estate of Thomas M. Worine, dec'd. - Plaintiff

Against

Francis J. Smith, John M. Fletcher, &
James L. Dunklin, administrators
of the Estate of William E. Black, dec'd. - Defendants
In the Circuit Court of
Jefferson County Missouri
November Term 1867.

Be it remembered that on the 11th day of
November 1867, the above entitled Cause coming
on for trial before the Court sitting as Jury, the
Plaintiff to sustain his Cause, offered in evidence

1- The record of a judgment of the Circuit Court
of Jefferson County Missouri, rendered on the 13th
day of November 1865, in favor of the above Plain-
tiff, David W. Bryant as Administrator of Thomas
M. Worine and against Francis J. Smith, as the
former Administrator of said Thomas M. Worine,

for nineteen hundred and thirty two dollars, in words to
witness, which judgment was admitted by the answer
as follows: (The clerk will here copy said judgment)

The Plaintiff here closed his testimony

The Defendants then to sustain their defence,
offered the following testimony,

1- John M. Fletcher, (one of the Defendants) who was
asked by Defendant's Counsel to state his knowl-

page about a certain Note for \$1300⁰⁰ given some
years ago to Francis J. Smith as former Acct^y of
said Thomas M. Morine, by one Armstrong, & endorsed
by Clayton, and which was claimed by Defenda-
ants as a credit for said ^{former} Acct^y. - To the intro-
duction of which testimony the Plaintiff objected, on the
ground that said Note was worthless, and that it
was not admissible to affect the Judgment ren-
dered heretofore against said Francis J. Smith
in favor of the Plaintiff, - that ~~the~~ ^{the} ~~Defendants~~ ^{Securities}
of Francis J. Smith were bound by said Judg-
ment and that it was conclusive upon them, -
but the Court overruled said objection & permitted
the witness to testify on said subject, - To which de-
cision of the Court in admitting said testimony the
Plaintiff then and there objected and excepted,
- Said Witness then stated that he went to Mem-
phis and got said Note, and brought ^{it} here and

delivered it to John L. Thomas, his Attorney, for the
purpose of being used to the Credit of said Francis J. Smith in
his settlement with said Estate in the suit then pending in the Circuit
Court on appeal from the Jefferson County Court.

Said Witness also on cross examination, stated that
Francis J. Smith had conveyed ^{and Wm E. Bluff} to him, his
interest ~~in~~ a certain deed of trust given by some persons in
St. Louis,
to indemnify them against anything they might
have to pay as his securities on his administra-
tion Bond, - That they had collected on said Deed
of trust about \$600, - & after paying certain
expenses, had \$200⁰⁰ left, - as one on said Deed of
trust, but had not collected it. -

James L. Dunklin, - a defendant, - states that he was present when David M. Bryant, the Plaintiff settled with Francis J. Smith as former Admr. of said Thos. M. Horine, and ^{that Bryant} allowed said Smith to keep the Note of \$1300⁰⁰ and another Note of \$1100, - - ^{was} Witness, there Admr's trustee of William E. Clark, and made no objection to said settlement or the ^{retention} of said Notes, - ^{not did he assent to it. He did nothing at all.} This testimony was also objected to, for the reason that this occurred before said Judgment was rendered, & was not therefore admissible to affect it - but the Court overruled the objection, & to which decision the Plaintiff then & there excepted,

John O'Hallow says that F. J. Smith Admr of J. M. Horine's Estate about the year 1859, or 1860 sold some wood taken from land of said Estate to McCallum & Co, for something like \$1100. This note has never been paid, nor any part of it. The note was in St Louis, & could have been obtained to be put in as a credit in the suit of this Plaintiff vs said Smith taken by appeal from the Jefferson Co. Court to the Circuit Court. McCallum & Co were solvent when this above note was given, but ^{the note fell due} became insolvent before,

The Defendants have closed their testimony, and the Plaintiff in rebuttal offered the testimony of David W. Bryant, Adm^r. & Plaintiff, who states that, some time in the summer of 1865, he and Francis J. Smith, (after examining the various settlements of said Smith, as former Admⁿ of said Morine's Estate,) had a settlement of his accounts with said Estate, by which said Smith was found to be indebted to the Estate in the sum of \$2450.⁰⁰ - That ^{said} Smith then paid him \$500.⁰⁰ leaving a balance of \$1950.⁰⁰ yet due from said Smith in favor of said Morine's Estate, - That, in said Settlement, he agreed for Smith to keep the Note he then had in his possession for \$1300, on one Armstrong, and endorsed by Clayton ~~which~~ ^{belonging to Morine's Estate &} which Note was for a slave sold by Smith as Adm^r of Morine's Estate, - as Bryant knew nothing about said Armstrong, & Clayton, and did not consider ^{the} Note worth anything, - Also, said Bryant agreed that Smith might keep another Note for \$1100, - ~~given by one Smith~~ ^{indorsed by one Smith} to Smith, as former Adm^r. of said Estate, - as he had never seen said Note, - Smith did not then have ^{with him} it, - and Bryant did not believe he, as such Adm^r. could ever realize anything out of said Note. By said Settlement Smith agreed to Confess

John L. Thomas on the part of defendants states that during the pendency of the suit between this Plaintiff vs. J. Smith in the Circuit Court on appeal from the County Court of Jefferson County I had in my possession a note in favor of ~~Beason~~ endorsed by ~~Armstrong~~ for \$2600. credited with \$1300. (here copy note & endorsements): the same had been procured & placed in my hands as attorney by J. W. Fitch to be used as a credit in the suit in Court on appeal as aforesaid and that the compromise between Beason & Smith I delivered the note up to Smith I had been the attorney of Fitch & Clark the securities of Smith all along but when Smith appeared in Court to confess judgment I withdrew from the case & said nothing further.

Supts. Fitch & Clark & Adams also introduced in evidence ^{County Court settlement} the record & proceedings of the Court on appeal (here copy all the papers in the case)

Said Supts also offered in evidence the settlement made by Smith of Horine's Estate in 1861, in order to show that he had charged

himself with the note above described and
also had charged himself with wood & timber
(Here copy said settlement.)

Judgment in the Circuit Court, on the appeal sent then pending in said Court by said Bryant as present Adm^r of said Horne's Estate against said Smith as the former Adm^r - for the balance found against him in said settlement, as before stated, To wit the sum of \$1932.⁵⁰ after deducting the \$500, Smith had paid. —

Said agreement & settlement was put in writing, and is here read in evidence and is as follows, To wit, (here copy said agreement)

In ascertaining the balance of \$2460 against said Smith former adm^r of Horne's Estate we did not give Smith credit for the Clayton note of \$1300, nor the Ludlow note of \$1100. as I was not willing to receive said Notes, and give Smith credit for them, — as I did not consider said Notes worth anything.

The Defendants here closed their testimony, and the foregoing was all the evidence introduced by the Parties in the Cause. The Plaintiff then asked the Court to declare the law of the Case as follows, To wit (here copy the declarations of law prayed by Plaintiff, No. 1, 2, 3, & 4,) But the Court refused to declare the law as prayed by Plaintiff, and to which decision of the Court the Plaintiff then and there excepted, - The Defendants then asked the following declarations of law, To wit (here copy same) which ~~were not~~ given by the Court, & to which decision ^{of the Court} the Plaintiff at the time ~~excepted~~, - The Court then, on motion of Defendants, decided that Defendants had the right to conclude the argument ^{in the Cause}, & to which ruling & decision of the Court, the Plaintiff at the time excepted.

The Court then found for the Defendants, (John W. Fletcher & James L. Dunklin,) and gave Judgment for said Defendants, ^{but gave judgment in 2 1/2 months} which Judgment is as follows (here copy same)

The Plaintiff then filed his motion for a New Trial, which motion is in words & figures as follows, To wit, (here copy same)

But the Court overruled said motion & refused to grant a new trial, To which decision of the Court the Plaintiff then and there excepted, - and now here prays that this his Bill of exceptions may be signed, sealed, and made a part of the record in said Cause, which is accordingly done

J. H. Vail Judge B. H. Circular Seal

In Circuit Court
Jefferson County

The State to us of

D. M. Bayant, Sheriff
vs,

J. L. Smith, J. M. & L. L. Lott
Jas. & Dunklin

Bill of
Exception

Filed Dec 11/44
C. H. May, Clerk

The State to the use of
David W. Bryant, Adm^r
of the Estate of Thomas M. Morine, } Plaintiff
Against
Francis J. Smith, John W. Fletcher
and James L. Dunklin, Adm^s of William
E. Clark, deceased, — Defendants

- The Plaintiff asks the Court to declare
the law of the above case, as follows;
- 1- That the Judgment obtained on the 15th day
of November 1865, in the Circuit Court of Jefferson
County Missouri, for nineteen hundred and thirty
two dollars and fifty cents, by Plaintiff against
Francis J. Smith, as former administrator of the
Estate of Thomas M. Morine, ad^r, - is binding and
Conclusive on the securities of said Francis J.
Smith, on his administration Bond, - unless the
Court believes from the evidence that said
Judgment was obtained by fraud or Col-
lusion.
 - 2- Unless fraud or Collusion ~~was~~ practiced
in obtaining said Judgment, then it is
not Competent for the Defendants to go be-
hind said Judgment to prove any claims
of said Francis J. Smith as such former
Adm^r, for the purpose of obtaining a credit
of the same, against said Judgment.

3- If the Court believes the notes of \$1300⁰⁰,
and \$1100⁰⁰, were for debts due said Es-
tate of Thomas M. Hornie, for property
sold by said Francis J. Smith, as Adm^r,
of said Estate, belonging to said Estate,
- and that said property was sold without
any order of Court, - and that said Adm^r
has never accounted for said notes, ex-
cept as they are included in the judg-
ment of the Circuit Court against him,
as aforesaid, then the Defendants are
not entitled to any Credits on said judg-
ment for said Notes, -

4- If the Court believes that said Notes were
retained by said Francis J. Smith, by the
consent of David W. Bryant the present Adm^r,
of said Hornie's estate, in any settlement they
may have made prior to said judgment,
- and for the reason that ^{said} Bryant had reason to
believe he could not realize any thing out of
them, - then such settlement cannot affect the
judgment aforesaid, nor can said Notes be received
as a credit on the same in favor of Defendants,

~~5- If the Court believes said Notes were in-
cluded in the Credits claimed by said Francis
J. Smith~~

Wrote to use of
David M. Bryant
Steward of Monroe's Estate

As:
W. J. Smith, J. W. Stetson
J. Jan, & Drunkard
Admiral of Mr. S. Black

Decorations
of Louis, asked by
J. L. Smith

Buyout Adm^ece.

²⁷
F. J. Smith, J. L. Dunklin
& J. W. Fletcher

Now at this day come the Plaintiff
and J. L. Dunklin & J. W. Fletcher
two of said dependants and all and
singular the matters in issue between
them being submitted to the Court. The
Court after hearing the evidence ~~deposited~~
offered by the parties doth find the issues
for said Dunklin & Fletcher - It is
therefore considered by the Court that
said Dunklin & Fletcher two of said
dependants go hence without and
that they have and receive of and
from said Plaintiff their Costs herein
expended and have execution thereof.
And Francis J. Smith making no defence
to this action, the Court doth find that
he is indebted c. \$2163.12 ^{cts}