

Jefferson County Circuit Court
Case Files - Civil

Box 18 Folder 59

May 1867, No. 15

Janowsky, Joseph

vs.

Moder, Joseph

Title

40 acres in S31T43R5E

Joseph Danowsky, plaintiff In the County
against Plaintiff of Jefferson
Joseph Mader, defendant, Co. County
May Term 1867,

Plaintiff states, that he and the
above named defendant in the year
1854, entered and bought of the United
States for the sum of fifty dollars, pay-
able in two instalments, the follow-
ing described Real Estate, situate in
the County of Jefferson and State of
Missouri, to wit: The South East
quarter of the North East quarter
of section 31, in Township 43. in
Range 3 East, containing 40 acres,
that he, plaintiff has paid one half
of each instalment of the purchase
money to the defendant, when those
instalments became due; that it
was understood between him plain-
tiff and defendant, at the time of
the purchase aforesaid, that they were
to buy and hold said land as tenants
in common, and also that it was
understood between him and de-
fendant, that defendant should
pay his, the plaintiff's, half of the pur-

chase money, paid to defendant, as
aforesaid, and his, the defendants
own half, to the proper Officer, and
~~receive~~ ^{obtain} from him a certificate of
purchase, executed to him plaintiff
and defendant as tenants in common,
that defendant however, wholly dis-
regarding this mutual understanding
and agreement has obtained the
certificate of purchase for said land,
in his the defendants name alone,
and thereby excluded from the public
records of lands his, the plaintiffs,
name as the owner of an undiv-
ded half of the land aforesaid,

Plaintiff further states that, as
aforesaid, he ~~is the~~ has an equitable
title to an undivided half of
the land aforesaid, and that ever
since ~~said~~ ^{the} purchase of said land
he has paid half of the taxes
and expenses connected with
said land, and that defendant he
uses to make ~~for~~ ^{for} plaintiff good for the undivided ~~1/2~~ of said land.
Plaintiff therefore prays, that
the defendant be divested of the total
legal title to one half of said land
and that such title to one half
of said land be vested in plaintiff

by a proper decree, and that defen-
dant pay costs against,

Iman to and
subscribed he
for me

Henry F. Ahlner
Atty for pettr.

Joseph Janomsky, plaintiff, being
duly sworn upon his oath, says,
that the foregoing petition and
the matters and things as therein
stated, he believes to be true.

Sworn to and sub-
scribed before me
this 12th day of March
1867.

Joseph Janomsky

Henry F. Ahlner
Notary public.

Joseph Lawrence

"

Joseph Mockett

Patron for Piece of title to
Land

Dec 12th 1867
Chas J. Mearns Clerk

Price paid by Mearns 15.00

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 *Joseph Moder*

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

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

Witness, ELIAS F. HONEY, Clerk of our said Circuit Court,
with the seal thereof hereunto affixed, at office in Hillsboro, this
Twelfth day of *March* A.D. 18*67*

Elias F. Honey
Clerk Circuit Court.



Page 15

2540

JEFFERSON CIRCUIT COURT.

May Term, 1867

Joseph Hancock
vs & Dammours

Joseph Moller

John Williams Sheriff

fee \$1.00

I Executed the Within Writ in Jefferson
County State of Missouri on Joseph Moller
on the 19th Day of April 1867 By Delivering
to him a true of the Within Writ and Petition
as furnished by the Clerk

John Williams
Sheriff

Joseph Jonowsky Plaintiff }
vs }
Joseph Mader Defendant }
} In the Circuit Court of
} Jefferson County Mo

Now comes the defendant and for answer
to plaintiffs petition assigns the following
objections,

1. From the face of the petition it
appears that, if plaintiff had any cause
of action, the same is barred by the
Statute of Limitations, because suit
was not brought within two years
next after the accruing of said
cause of action,

D. Phipps and
for defendant.

Joseph Panowsky, pett., } In the Circuit
against } Court of Jeffe-
Joseph Moder, depd. } son Co. Mo.
May Term 1867.
Amended petition.

Plaintiff, in this his amended pe-
tition, ~~states~~ in the above entitled case
states, that in the year 1854. he and
the above named defendant Joseph
Moder mutually agreed to enter and
buy of the United States the follow-
ing described Real Estate, situate in
the County of Jefferson and State of
Missouri, to wit: the South East
quarter of the North East quarter
of section 31, in Township 43. in
Range 5 East, containing 40 acres;
that plaintiff and defendant then
agreed, that each of them should
furnish one half of the purchase
money for said land or parcel
of land, which purchase money
amounted to Fifty dollars, and
that it was then understood be-
tween the parties to this suit,
that defendant was to go to the
proper land office and enter said

land and get a certificate of purchase in the names of both plaintiff and defendant; Plaintiff further states, that in accordance with the aforesaid agreement he paid defendant one half of the purchase money required as aforesaid, to wit: the amount of twenty five dollars, for the purpose aforesaid; that defendant thereupon with this money and twenty five dollars of his own in addition entered the land above described, but took a certificate of purchase in his name exclusively, and thereby excluded the name of plaintiff from the records of lands as the owner of one undivided half of said land.

Plaintiff further states, that by his furnishing one half of the purchase money, as aforesaid, he became the owner in equity of one undivided half of said land, and that defendant, when entering said land, and ever since has held the same to the extent of one equal and undivided half in

Trust for the use and benefit of plaintiff.

Plaintiff further states, that ever since the purchase of said land he has paid and contributed one half of the taxes and other expenses connected with said land, and that defendant refuses to make a deed to plaintiff for one half of said land.

Plaintiff therefore asks a decree, that the defendant be directed of the legal title to one half undivided half of said land and that the same be vested in plaintiff, and for such other relief, as may be proper.

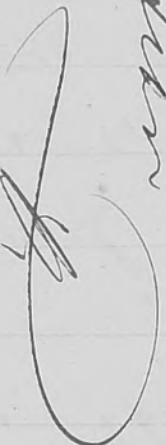
Murray F. Ahlers
Atty for plaintiff

Joseph Janowski

against

Joseph Proctor
Leport

Adminded Justice
their



Shelby 8/1867
E. J. Horney

Notice is hereby given, that I, Joseph Janowsky of the County of Jefferson and State of Missouri, have filed in the Clerk's Office of the Circuit Court of said County on this 12th day of March AD 1867, a petition in which I am plaintiff and Joseph Moder is defendant, and in which I pray a decree of title to the undivided one half of the following Real Estate, situate in the County of Jefferson aforesaid, to wit: the S. E. 1/4, of the N. E. 1/4 of sect. 31, Town, 43, R. 5 East containing 40 acres, and that said suit is brought to the May Term of said Court for 1867.

This 12th day of March 1867.

Joseph Janowsky
by Henry F. Ahlers his
Attorney.

State of Missouri, Jefferson County, ss.

I, ~~SAMUEL A. REPPY~~ ^{E. J. Honey}, Clerk of the Circuit Court and ex-officio Recorder, within and for said county, do hereby certify that the foregoing instrument of writing was filed for record in my office on the 12th day of March 1867, and that the same is truly recorded therein, in Book No. 270

IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed the Seal of said Circuit Court, at office in Hillsboro, the date last aforesaid.

E. J. Honey, RECORDER.

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no.

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notice of such
for deceit of little

direct March 13th 1867

of Henry Reardon

270

did

Joseph Janowsky, plaintiff,
against
Joseph Mader, defd.

In the Circuit Court
of Jefferson Co. Mo.
May Term 1867.

Plaintiff in this his second amended petition in the above entitled cause states, that in or about the year 1854, he and the above named defendant Joseph Mader agreed to enter and purchase of the United States the following described Real Estate situate in the County of Jefferson and State of Missouri, to wit: the South East quarter of the North East quarter of sec, 31, in Township 43, in Range 5 East containing 40 acres; that plaintiff and defendant then agreed, that each of them should furnish one half of the purchase money, and that the title-papers or conveyances of said land should be made to and received by both of them plaintiff and defendant as tenants in common; that the purchase money for all of said land was one dollar and twenty five cents per acre, amounting to Fifty dollars in all; that plaintiff furnished defendant the sum of Twenty five dollars being one half of said purchase money for the purpose of entering said land,

that defendant with this money, thus furnished him by plaintiff, and twenty five dollars furnished by himself, did enter ^{and purchase} the land above described, but not in the names of plaintiff and defendant jointly, as he ought to have done, but in his, the defendant's name alone, and that the title papers to said land were executed in the name of and to said defendant alone, and that therefore the legal title to said land was vested and still is in defendant in severalty.

Plaintiff further states, that, although the legal title to said land is thus vested in defendant alone, still the equitable title thereto is in plaintiff and defendant jointly, and in each of them to an undivided one half of said land; and that by the plaintiff's furnishing one half of the purchase money as aforesaid a resulting trust in said land arose in favor of plaintiff in proportion to the amount furnished by him, that is in an undivided one half of said land, and that therefore the defendant holds the said land to the extent of an equal and undivided half as trustee, in trust and for the use and benefit

of plaintiff,

Plaintiff further states, that ever since the purchase of said land as aforesaid, he has paid and contributed one half of the taxes and other expenses, connected with said land, and that defendant refuses to make a deed to plaintiff and to convey the legal title to him for one half of said land,

Plaintiff upon the premises aforesaid, prays the court to decree, that the defendant be divested of the legal title to one undivided half of said land and that the same be vested in plaintiff, and for such other relief as may be proper,

Wm F. Sherness
Atty for plff,

Joseph Jannetty
Mumby

or,

Joseph Mader,
Defendant

J. C.

and
I amended for
Tutun,

—

Dated June 10th 1867.
D. F. Honey, clk
vs. & The Marine M.

COUNTY OF JEFFERSON,

The State of Missouri,

To Maria Schuchel, Jacob Schuchel & John Schuchel

You are Hereby Commanded, That setting aside all manner of excuse and delay, you appear before our Circuit Court for the County aforesaid, on the third day of November 1867 at Hillsboro, then and there to testify and the truth to say in a certain matter of controversy, now pending in our said Court, wherein

Jacob Janovsky is
Plaintiff, and Jacob Mosden is

Defendant, on the part of Plaintiff and herein you are in no wise to fail.

WITNESS, ELIAS F. HONEY, Clerk of our said Court, with the seal thereof hereunto affixed, at office, this 1st day of October, A. D. 1867.

Elias F. Honey Clerk.
Bartholomew Schuchel

I Recanted this writ upon the within named
and Maria Kroupa John Schweld
by reaching the same to them, & Jacob Schweld
by leaving a copy of the same at his
place of residence with a member of
the family over the age of 15 years
This the 31st day of October 1867

John Hunt

SUBPENA.

TO

Jefferson Circuit Court

Nov. TERM, 1867.

Sanowsky

vs
Moder.

our Plff
Maria Kroupa
Jacob Schweld
John Schweld

Sheriff fee 150

Joseph Janowski

vs

Joseph Moran

3

In the Jefferson
Circuit Court.

The defendant for answer to plaintiffs
amended petition filed since the
adjournment of the Court, at the last
term states that the land in controversy
was entered by defendant under the
following circumstances.

In 1854 the plaintiff and defendant
both wished to enter the land under the
"Graduation Act." and each furnished
half the money for that purpose.
Defendant applied in good faith to enter
the land in the joint names of plaintiff
and defendant, but was told at the land
office that such an entry could
not be made as it would be in violation
of the said act. At the same time
one Ellis also applied to enter the
land, and under the rules in force in
the Land Office at that time, the land
was put up and sold at auction, to the
highest bidder, this defendant becoming
the purchaser at the sum of fifty dollars.
After this said Ellis contested the entry

and said Contract was not decided
until several years after, nor was the
patent issued until within this year.
Defendant avers that when he learned
that he could not legally enter said land
in the joint names of plaintiff and
defendant, and after the same was sold
off by him as stated above he tendered
back the money which plaintiff had
furnished him, and plaintiff refused to
take the same.

Defendant denies that said plaintiff
contributed one half of the taxes and
expenses connected with said land, and
also denies that this defendant holds
any portion of said land in trust
for the plaintiff.

For further answer defendant says
that if plaintiff ever had any cause
of action against this defendant on
account of said entry, the same is
~~barred because~~ said cause of action
accrued more than ten years next
before the bringing of this suit.

Defendant therefore says that said
plaintiff should not have and maintain
his said action against this defendant,
and prays judgment for costs.

P. P. Perkins for
def't.

Joseph Hancock

23

Joseph Worcester

Left answer

which the clerk
will please file

Filed Oct 16 1867
Clerk J. H. May Jr

Joseph Janinsky, pl.
vs.

Joseph Mader, defd.

In the Jefferson
Circuit Court
Nov. Term 1867.

Plaintiff in reply to defendant's answer, filed October 16th 1867., states, that he has no knowledge or information, sufficient to form a belief, that defendant applied to enter the land in question, in the joint names of plaintiff and defendant and that he was told at the land office, that such an entry could not be made and that it would be in violation of the graduation act, and that at the same time one Ellis also applied to enter the same land, and under the rules in force in the land office the land was sold at auction to defendant, he being the highest bidder. And plaintiff also denies any knowledge or information sufficient to form a belief, that said Ellis contested the entry and that said contest was not decided until several years after, and that defendant soon after the purchase as aforesaid, tendered back the money to plaintiff, which the latter had furnished.

Plaintiff further says, that his right
to this action is not barred
by the statute of limitations, as
said statute, is not applicable in
this case.

Henry F. Ahlens
Atty for plaintiff.

Joseph January,
1867

or
Joseph Snider

Representation of
Self to deposed
anwar.

Filed Oct 17 1867
Ohio Wesley Clark

County of Jefferson.
The State of Missouri

To Joseph Moder. You are hereby com-
manded That setting aside all manner of excuse and
delay, you appear before our circuit court for the
county aforesaid on the Ninth day of November 1867
at Hillsboro, then and there to testify and the
truth to say in a certain matter of controversy
now pending in our said court, wherein Joseph
Janowsky is Plaintiff and Joseph Moder is De-
fendant on the part of Plaintiff, and you
are further commanded that you produce in
said court a patent from the United States
to you, for the South East quarter of the
North East quarter of Section 31. Township
43, Range 5 East, and herein you are
in no wise to fail,

Witness Elias D Honey Clerk of our said
Court, with the seal thereof here to
affixed at office this 28th day
of October 1867

Elias D Honey Clerk
By C. D. Hinson Deput

Subpoena

Quocitum

Jefferson Circuit Court

Nov. Term 1867

Jamowsky

vs

Moeden

For Plaintiff

Joseph Moeden

John Williams

Sheriff per 50

I Executed this notice in Jefferson County
Missouri on the 28th day of October 1867
by Delivering to Joseph Moeden
above copy of this notice
John Williams Sheriff

Joseph ~~Good~~ ^{vs} ~~vs~~ ^{vs}
Joseph Mader }

Now comes
the defendant & moves the Court
to Cause Francis Galt to be made
a party defendant herein
because the said Galt is a
necessary party & a complete
determination of said suit.

P. Pipkin atty
for Deft.

Joseph J. J. J.
J. J. J. J.
Joseph J. J. J.

Martin & make
Thomas J. J. J.
to my depth.

2. 1868 Nov 8th 1869
J. J. J. J. J. J.
J. J. J. J. J. J.

Joseph Jarvinsky
vs
Joseph Mader

Defendant for answer
to plaintiff's amended petition in
this cause avers that the plaintiff
and himself mutually agreed to enter
and buy of the United States the
land in petition described,
Avers that they agreed that each
should furnish one half of the
purchase money for said land,
Avers that it was understood
between them that defendant
was to go to the proper land
office and enter said land
and get a certificate of
purchase in the name of
both parties plaintiff and
defendant, Defendant avers
that plaintiff paid him one
half the purchase money
required to enter said land and
twenty five dollars for the purpose
of entering said land
Defendant avers that said
plaintiff has paid one half
of the taxes on said land since
said entry

defendant for further answer
says that if plaintiff ever had
any right of action the same
is barred by the statute of
limitations because he says
that said right of action accrued
more than two years before the
bringing of this suit.

wherefore defendant asks judgment
per costs

P. Peckham atty
for defendant

Joseph Jannetty
3
Frank Meador

Soft rounded
curves

Filed for regd
Edw May 21/84

Joseph Janowsky, petff, vs. Joseph Mader, depd. In the Jefferson
2d. Circuit Court
3 March Term 1867

Plaintiff in replication to defendants
amended answer, filed this day, makes the
same arguments, which he has made in
his 2nd amended petition, and denies
that his right of action is barred by
the statute of limitations, as that
statute does not apply in this
case.

Henry F. Ahrens
Atty for petff.

January

Mr.
Maden,

Reproduction
to amended
answer of defect,

—

Filed Nov 12 1867

John H. Henry Clerk

We the undersigned witnesses Swear here by
aforesaid that we do not claim any fee
in the case of Joseph Janaway against Joseph
Katie Wood as share in our Bath in
Whitboro Jefferson County. Ohio.

Testem before me at
Fairfield June 18th 1861
Charles H. not Notary Public

Dec
Filed Dec 28th
C. F. Honeygl

Henry

Cape port, 41. 2nd 1. Cape 10" Slough 50" 2.60

at 000" on the 20" answer 30" do 35" 1.40

Dep 35" Seneca 20" Dep 35" and 35" ~~400~~ 1,25

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