

Jefferson County Circuit Court
Case Files - Civil

Box

20 Folder 14

November 1867, No. 76

Weber, August

vs.

Miller, John W. A.

Trespass

Shot and killed plaintiff's ox; \$120
damages

August Weber, plaintiff, } In the Circuit Court
against } of Jefferson County
John W. A. Miller, defd. } Mo. November Term 1867

Plaintiff states, that the above named
defendant on or about the 21st day of
November AD 1866, at and within the
County of Jefferson, State of Missouri,
unlawfully, wantonly and maliciously
shot and killed a certain marking ox
being then from eight to nine years old,
and the property of plaintiff, that said
Ox was worth sixty dollars, at the
time of aforesaid,

Plaintiff asks Judgment against defendant for the amount of One hundred and twenty dollars, being double the value of the ~~of~~ destroyed and killed by defendant as aforesaid,

Henry F. Ahlvers,
Atty Gen Seattle,

August Meier

Sept

Oct,

John W. A. Miller

Sept 1,

Insurance

Patience

Sept 1st - 80.85

Sept 1st - 15

Sept 1st - 32

Sept 1st - 1.00

Sept 1st - 0.5 - 1.55

Sept 21st 1867

Ed. H. Money 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 *John W A Miller*

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 *September* next, then and there to answer unto
August Weber

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

21st day of *August* A.D. 186*7*

Elias F Honey
Clerk Circuit Court.

No. 76

25797

JEFFERSON CIRCUIT COURT.

November Term, 1867

August Weber

vs } Defendants

John W. A. Miller

John Williams Sheriff

for \$1.00

Served September 4th 1867

I executed this Writ in Jefferson County Missouri
the 4th Day of September 1867 By Delivering
John W. Miller a true Copy of this Writ
and Petition as furnished by the Clerk
John Williams Sheriff

154

August Weber In the Circuit Court
vs of Jefferson County
John W. A. Miller Missouri

For answer to the Petition
of Plaintiff says that it is not true as
stated in Plaintiffs petition that he
Defendant wantonly unlawfully & wilfully
shot & killed an ox of plaintiff on the 31st of
November 1866 or at any other time.

Defendant admits that about the time
alleged he did shoot & kill an ox of plaintiff but
says that the same was not done either unlawfully,
wantonly or wilfully, and states the truth
to be that Defendant at the time he killed said
ox ~~that~~ owned a farm or field of cultivated
land near to and immediately adjoining the
farm of plaintiff, that Defendants field was
enclosed by a good & sufficient fence viz by
a worm fence of rails sufficiently close at least
five feet high to the top rail & having the
corners locked with strong rails, poles & stakes
and that having such fence around his said
field, the plaintiffs said ox did on divers
occasions in fact daily to the number of three
times and a great many more immediately
next before said ~~part~~ of the day on which
he was shot & killed by Defendant break
through said fence of Defendant and

and so into said field in which Defendant then had a crop of corn and did then and there destroy a large amount of corn on divers days to the number of three and a great many more immediately next before the day on which Defendant shot him which corn then standing in and upon said field was the property of Defendant and did on the day on which Defendant shot & killed him break into said field and was in said field destroying said corn of Defendant at the time he was shot by Defendant.

Defendant says that Plaintiff well knew for many days before Defendant shot said ox that the ox was trespassing as aforesaid on Defendant but took no steps to prevent the same.

Defendant Denies that said ox was worth sixty dollars; but says that he was not worth more than twenty dollars if so much, that in fact owing to his old age and bad habits as a break fence he was not worth any thing except for Beef. That the time said ox was killed he was fat enough for Beef & was killed & died near the Plaintiff's dwelling house, & that Plaintiff knew of it at the time, and Defendant says that

Plaintiff ~~used~~ made use of said ox
for Beef or might have done so, as
also converted to his own use the hide &
tallow. Defendant therefore says that
Plaintiff is not entitled to recover judgm^t
=ent for any sum against Defendant
and has not been damaged in any sum by
any act of Defendant

Jos. J. Williams
Atty. for Defendant

J. W. Miller

J. W. Miller

Andrew

Filed Nov 5 1868
E. J. Miller
Per Office Clerk

COUNTY OF JEFFERSON,

The State of Missouri,

To August Shober Jr. Attorney

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 16th day of May 1868 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 August Shober is

Plaintiff, and

John O. A. Miller 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 hereto affixed, at office, this 2nd day of April A. D. 1868.

E. F. Honey Clerk.

Per C. J. Shober

SUBPŒNA.

TO

Jefferson Circuit Court

May TERM, 1868.

August Weber

vs
J. A. Miller

For Plaintiff

August Weber, Jr.

Wm. Guly &

Nathaniel

Sheriff fee \$150

I serve the within in Jefferson County, Mo on the 4th day
of May 1868 on Lewis Charles Miller & August Miller
and their family by directing the same to each
of them

John Williams Sheriff

The State of Missouri,

CONSTITUTION

To Jack Zimmerman
William & the mother

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 18th day of May 1868, 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 *Edward*

certain matter of controversy, now pending in our said Court, wherein
Robert vs. *August*
 Plaintiff, and *John M. A. Wheeler* is

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

WITNESS, **ELIAS F. HONEY**, Clerk of our said

Court, with the seal thereof hereto affixed, at office,

this 1st day of May A. D. 1868

Clark.

By Arnold

SUBPOENA.

To Jefferson Circuit Court.

May Term, 1868.

Aug. Weber

vs
J. W. A. Miller

subps for jess

John Williams
Sheriff fee \$1.00

I execute the within in Jefferson County Missouri
on last anniversary of the Congress by holding the same to
back of the on the 19 day of May 1868

John Williams Sheriff

August Weber, pett

against

John W. A. Miller, defd

In the Circuit
Court of Jefferson
County, Missouri
Term 1867.

Plaintiff in replication to defendants answer denies, that defendants field was enclosed by a good and sufficient fence viz. by a warm fence of rails, sufficiently close, at least five feet high to the top rail, and having the corners locked with strong rails, poles and stakes as stated in defendants answer, and plaintiff also denies, that his ox, killed by defendant as stated in plaintiffs petition did on divers occasions in fact daily to the number of three times and a great many more immediately next before the day on which said ox was killed as aforesaid, break through said fence of defendant and go into said field of defendant, and then and there destroyed a large amount of corn on divers days to the number of three and a great many more immediately next before the day on which defendant killed said ox as aforesaid, and plaintiff also denies, that his ox, killed by defendant, as stated

in plaintiff's petition, did on the day on which defendant shot and killed him, as stated in said petition, break into said field of defendant and was in said field, destroying corn of defendant, at the time, he was killed by defendant, as stated in his answer.

Plaintiff denies, that he well knew, for many days before defendant killed his ox, that his, plaintiff's, ox was trespassing on defendant, as stated in defendant's answer, and that plaintiff took no steps to prevent the same.

Plaintiff denies, that his ox, killed by defendant, had bad habits as a break-fence, and that said ox was not worth anything except for beef; denies, that at the time, said ox was killed, he was fat enough for beef, and that plaintiff knew of the killing of said ox right at the time of killing, and plaintiff denies, that he made use of said ox for beef, or might have done so, and that he converted to his own use the hide and tallow.

Plaintiff therefore repeats his statements, made in his petition, and asks judgment as therein asked.

Henny F. Ahlborn,
Atty for petiff.

On the burial
house at Pepper-
son Co. Mo.

Charter. Term 1868

August 1868
settled,

against
John W. A. Miller,
settled,

Reorganization of
settled to settled,
annexed,

settled April 1868,
C. H. Hays Esq

Said sum of money in full
payment of ~~said~~ all claim
of plaintiff against Defendant
on account of said ore, and to
dismiss this suit at the cost of
Defendant That said sum of
money was not to be paid on the
day said Contract was made
nor was the time of such payment
agreed upon it being the under-
standing that it was to be paid in
a short time, Defendant says that
in pursuance of such contract
between him and Plaintiff he tendered
to and offered to pay to Plaintiff
said sum of Thirty-Dollars the
sum so agreed upon on the 21st
day of ~~May~~^{April} 1868 and then and there
offered to comply with and carry
out his said Contract with Plaintiff
but that Plaintiff in violation of his
said Contract refused to accept
said sum of Thirty-Dollars so tendered
and refused to dismiss his said
suit against Defendant at the
cost of Defendant, Defendant avers
that he has at all times since the making
of such Contract with Plaintiff been
ready & willing to carry out & perform
his part of said Contract and to

pay to said Plaintiff. Said sum of Thirty Dollars & all costs which had accrued in said Cause up to the time of making said Tender to Plaintiff as aforesaid, and is now ready and willing to perform his said contract with Plaintiff.

Defendant says that said ox was old and such a bad break fence that he was not worth Thirty Dollars and in fact was scarcely worth any sum, so that Defendant denies that said ox was worth sixty-Dollars or the half thereof, and that at the time he was killed Plaintiff took and used his hide and Tallow worth about five Dollars. So that Defendant says that Plaintiff was not Damaged by the killing of said ox more than Twenty-Dollars, but to avoid the vexation and probable cost of this Suit Defendant agreed with Plaintiff to pay him said sum of Thirty-Dollars and ~~the costs accrued in said Cause~~ to pay the costs accrued in said Cause up to the time of the aforesaid agreement with Plaintiff and up to the time of making payment of said sum of money to Plaintiff for said ox.

Defendant says further that he has on the 12th day of May 1868 and before

the filing of this Amended answer deposited with the Clerk of the Circuit Court of said County of Jefferson he being the Clerk of the Court in which this suit is pending for the use of Plaintiff the sum of

Thirty Dollars the amount agreed on as aforesaid between Plaintiff and Defendant to be paid by Defendant - and received by Plaintiff in payment for the killing of said ox of Plaintiff by Defendant, as aforesaid and which sum Defendant avers is more than Defendant is damaged by the killing of said ox by Defendant together with all costs accrued in said Cause up to the time of making such deposit.

And Defendant prays Judgment for all costs which may hereafter accrue in this Cause.

Geo. J. Williams
Atty. for Defendant

August 9th 1888

John A. Miller

Amended Answer
of Defendant

Giles May 12th 1888,
E. A. Kiney, Ql,

August-Weber } In the Circuit
J W. A Miller } Court of Jefferson
County Missouri

D^{Defendant} ~~Plaintiff~~ moves the Court
to make a rule on plaintiff to
file Bond for costs in this
case

1st Because said costs can
not be collected from said
plaintiff by Law

Joe J. Williams
Atty for D^{Defendant}

A. W. Eker

John A. Miller

notion (or) account
for cash

Wiley May 14 1887,
E. A. Wimer Co.,

August Weber, pl^{tf}

vs.

John W. A. Miller, def^{dt}

On the Jefferson Co.

Superior Court,

May Term 1868.

Now on this day comes plaintiff and moves the court, to strike out the amended answer of defendant, filed May 12th 1868. and to require the same to be made definite and certain and otherwise to conform to the law, for the following reasons;

1st because said answer contains duplicity in this, that it relies upon an agreement between plaintiff, and defendant, which, if true, would bar the action, and also contains allegations, which put the question of damage, claimed by plaintiff, in issue.

2^{ndly} because the allegations in said answer are so indefinite and uncertain, that the precise nature of the charges and denials in said answer are not apparent, and

3^{dly} because the allegations in said answer fail in every respect, to conform to the requirements of the law.

Berry F. Wheeler
Atty for pl^{tf}

August Weber

22,

John Dr. & Miller,

Produce to
shrike and
arrived
arrived

—

Quilley May 16th 1888,
C. A. Stoner & Co

August Weber, petff
vs.
John W. A. Miller, defdt. } In the Jefferson County
} Circuit Court.
} May Term 1868.

Plaintiff in replication to the amended answer of defendant in the above entitled case, filed May 12: 1868., here again avers, that defendant maliciously and wantonly shot and killed the ox in question.

Plaintiff in further replication denies, that since this suit was commenced to wit: on or about the 10th day of April 1868: plaintiff and defendant made an agreement as stated in said amended answer, to wit: denies, that on said day or any other time defendant agreed to pay plaintiff the sum of thirty dollars, ^{or any other amount} in full payment for said ox and in full payment and satisfaction of all claim of plaintiff against defendant on account of the killing of said ox by defendant, and denies, that plaintiff then and there agreed to receive said sum of money in full payment of all claim of plaintiff against defendant on account of said ox, and to dismiss this suit at the cost of defendant, denies, that in pursuance of such contract or any other contract defendant tendered and offered to pay to plaintiff

said sum of thirty dollars on the 21st day of April 1868. and then and there offered to comply with such a contract as any other contract, and Plaintiff denies, that in violation of the contract set up by defendant, he, plaintiff, refused to accept said sum of thirty dollars, and to dismiss this suit, as stated in said amended answer, and also denies that defendant was always willing to pay said thirty dollars and costs of suit as stated in his said answer.

Plaintiff denies, that said ox was old and such a bad break fence, that he was not worth thirty dollars, and in fact was scarcely worth any sum, and repeats that said ox was worth sixty dollars, and denies, that at the time the ox was killed, plaintiff took and used his hide and tallow, worth about 5 dollars, and plaintiff here again avers, that by the killing of said ox by defendant, plaintiff was damaged as stated in his petition, and positively denies the agreement, set up in said amended answer.

~~Defendant~~ Plaintiff says, he has no knowledge or information, sufficient to form a belief, that on the 12th day of May 1868, or on

any other day, ^{defendant} before the filing of his amended answer, deposited with the clerk of the circuit court of said county of Jefferson, for the use of plaintiff the sum of thirty dollars, to be paid by defendant, as stated by him in his said answer, but denied by plaintiff.

Plaintiff therefore asks judgment as asked in his said petition.

Wm. F. Ahlers

Atty for pett.

In the brief
hour of supper
sunday, June,

May Term 1868

August Weber,
Justice

vs.
John W. A. Miller

Replevin of
Justice to debt
amounted annex

Chas. Meyer 19th Nov.
G. A. Kiley 22

August Weber } In the Circuit
vs } Court of Jefferson
John W. A. Miller } County Missouri

Defendant moves the Court to
Tax all costs accrued in this
Cause since the 12th day of May
1868 including the costs if any
accrued on said day for the
following Reasons, To-wit,

1st Because this Defendant did on
said 12th day of May 1868
Deposit with the Clerk of this
Court the Sum of Thirty Dollars
being the amount & no less than
the amount recovered by said
Plaintiff against said Defendant
by the verdict of the Jury this day
Rendered together with all costs
in said Cause which had accrued
in said Cause up to & at the time
of making said Deposit which
said Sum of Thirty Dollars & all
costs so accrued in said Cause up
to the time of so making such Deposit
was deposited for the use of Plaintiff

Jos. J. Williams
Att. for Defendant

A. Prick

vs
J. Pr. A. Moller

Motion to Stay
Case against
Plaintiff

Filed May 20 75
J. Pr. A. Moller

August Weber, petff

vs
John W. A. Miller, defd

Now on this day comes plaintiff by his attorney and moves the Court, to vacate and annul the order of the Court, by which the costs in the above case since the 11th day of May 1868, are retaxed against plaintiff, for the following reasons, to wit:

- 1st that there was no proof during the trial, that a deposit, as alleged in the amended answer, was made,
- 2^d that there was no proof, that plaintiff had notice of the deposit alleged, and
- 3^d that said order is against law and evidence.

Henry F. Ahrens
csty for petff.

August Meier

our
John W. A. Miller

Pruthi
to make order
of sound.

John May 21st 1868
E. F. H. H. H.

If the jury believe from the evidence that the deft. maliciously or wantonly killed the ~~ox~~ of plaintiff mentioned in his petition the jury will find for plaintiff double the ^{proved} value of the ox unless the jury further find that the plaintiff and defendant had a settlement of the matter, in which plaintiff agreed to take a certain price for the damage in that event the jury will find for plaintiff the sum he agreed to take if they further find that defendant on his part offered to pay, the sum so agreed upon ^{plaintiff} and tendered to plaintiff.

An offer to pay by deft or his agent (or one authorized ^{by deft.} to settle with plaintiff) and a refusal by plaintiff to accept the money is a legal tender

At the very first opportunity
the amount agreed upon is paid
James M. McKim

W

August Weber } In the Circuit Court,
 John W. A. Miller } Judgt. for Plaintiff,
 And Plaintiff adjudged to pay costs
 of suit since May 11th 1868.

Fee Bill.

Exp. Honey. Rep 20 ^c ans 20 ^c motion 20 ^c rule 20 ^c	.80
motion 20 ^c rule 20 ^c Motion 20 ^c rule 20 ^c	.80
motion 20 ^c Judgt. on motion 50 ^c Index to same 10 ^c	.80
ord 20 ^c motion 20 ^c rule 20 ^c	.60
Indices 35 ^c files 20 ^c appr. 10 ^c	.65
Serv & ent jury & deliv cop. #1. 7 calls 35 ^c	1.35
ent verdict. 35 ^c ord 20 ^c marking costs 50 ^c	1.05
D.B. 275. #1.50 1 shw 25 ^c	<u>1.78</u>
	7.80

John Williams Sheriff serv 2 writ	# 1.00
Serv jury, #1. 7 calls 35 ^c	<u>1.35</u>
	2.35
Jury Fee	12.00

Witnesses

Landau Williams	2d 8m,	# 2.64	
Geo St Johnston	3 " 12 "	3.96	
L Hartman	4 " 8 "	4.64	7.80
Jacob Zimmerman	3 " 8 "	3.64	2.35
		<u>14.88</u>	12.00
			<u>14.88</u>
			<u>37.03</u>

~~1 James~~

~~1 Wm Bennett~~

2 Jas Taylor

3 E Mance 1

4 Lewis Parbrey 2

5 Wm Muel 3

6 Jno W a Miller 4

7 Algeo Struett

8 Jno Boly 5

9 M McNamee 6

~~10 J Pitt~~

11 Leonard Muel 7

12 Robt Henth X

13 Algeo Callahan X

14 Jas Hensley 8

15 Jno Amer 9

16 Jno Pomer

17 Jno Pomer

File put,	00 ³ -	
Copy	20-	
C + V	50	
Write & copy	1,10	
Do etc	05-	
Ent & file Rep	35-	
" * " Ans	35-	
Indices	15 ^c -	
dis	35 ^c -	
Making cast,	25-	
7	\$ 3.30	
1 Spd	<u>25-</u>	3,55-
Jno Williams Sheriff	Serv Draft	\$ 1.00
Serv	3 wch	<u>1,50</u>
		2,50
		<u>6,05-</u>