

DeFerson County Circuit Court
Case Files - Civil
September 1871, No. 32

Carr, Charles Bent

vs

Smizer, James W.

Ejectment

102 acres in S2T43R4E;
\$500 damages; depositions

Box

28 Folder 38

State of Wisconsin } ss.
County of Jefferson }

Charles Bent Carr Plaintiff } In the Jefferson
against } County Circuit
James W. Smizer Defendant } Court September
Term A.D. 1871

Plaintiff states that on the 18th day of July — A.D. 1871, he was entitled to the possession of the following described premises, situate in the County aforesaid, to wit: Beginning at the North West corner of Section Two in Township Forty Three North of Range Four East of the 3rd Principal Meridian thence South with the western line of said Section Twenty four Chains and Sixteen links to a corner, thence East Forty one Chains and Eighty nine links to the middle line of said section, thence North Twenty four chains and sixteen links to the half Section Corner on the North line of said Section Two. thence West with said North line to the place of beginning containing one hundred and Two & $\frac{46}{100}$ acres

more or less, and being so entitled
to the possession thereof, that
the defendant afterwards to wit,
on the 20th day of July A.D.
1871 entered into such premises,
and unlawfully withholds from
the Plaintiff the possession thereof,
to his damage in the sum of
Five hundred dollars. He further
avows that the monthly value of
the rents and profits of the premises
is fifty dollars, Wherefore, he
demands judgment for the recovery
of the premises, and five
hundred dollars damages for
the unlawfully withholding of the
same from the plaintiff, and
fifty dollars for monthly
rents and profits from the
20th day of July - A.D. 1871 until
the possession of the premises
is delivered to plaintiff, and
for other proper relief.

Sterling Brooks and
John L. Thomas & Bro
Attys for Plaintiff

no 32

Charles Burt. Leary
against

James W. Switzer.

Exemption

Filed Aug 8th 1871

W. D. Boyce cler

By Geo. H. Hine Deft

State of Missouri }
County of Jefferson }

Charles Bent Carr Plaintiff }
against } In the Jefferson County
James W. Smiger Defendant } Circuit Court September
Term A.D. 1871

Plaintiff states that on the 18th day of July A.D. 1871 he was entitled to the possession of the following described premises, situate in the County aforesaid, to-wit: Beginning at the North West corner of Section Two in Township Forty three North of Range Four East of the 5th Principal meridian, Thence South with the western line of said section Twenty four chains and sixteen links to a corner, Thence East Forty one chains and Eighty nine links to the middle line of said section, Thence North Twenty four chains and sixteen links to the half section corner on the North line of said section Two. Thence West with said North line to the place of beginning containing one hundred and two $\frac{4}{100}$ ~~dollars~~ acres more or less, and being so entitled to the possession thereof, that the defendant afterwards to-wit: on the 20th day of July A.D. 1871 entered into such premises and unlawfully withheld from the plaintiff the possession thereof to his damage in the sum of Five hundred dollars. He further avers that the monthly value of the rents and profits of the premises is fifty dollars, wherefore he demands judgment for the recovery of the premises and five hundred dollars damages for the unlawful withholding of the same from the Plaintiff.

and fifty dollars for monthly rents and profits from
the 20th day of July A.D. 1871 until the possession
of the premises is delivered to plaintiff and for
other proper relief

Merling Bros & Co and
John L. Thomas & Bro
Attys for Plaintiff

A true copy of the original petition now on file in my office
Witness M. S. Boyce clerk of said
court with the seal thereof hereunto
affixed at office this August 10th 1871

M. S. Boyce Clerk
By C. M. Horine Deputy

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 *James H Smizer*

if he be found in your County, that he be and appear before the Honorable 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 *Third* ~~Monday after the fourth~~ Monday of *September* next, then and there to answer unto

Charles Bent Carr

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

Witness, W. S. BOYCE, Clerk of our said

Circuit Court, with the seal thereof hereunto affixed, at office in Hillsboro, this *Dench* day of *August* A. D. 18*71*

W. S. Boyce

Clerk Circuit Court.

By

W. H. Marine

Deputy.

7082

RETURNABLE

TO

JEFFERSON CIRCUIT COURT.

September TERM, 1871.

Charles Bank Leant

vs

James W. Smyser

18698 ~~18698~~ 1871

Copied for Sheriff

John Williams

Sheriff fee \$1.00

Charles this case

\$12.00

I Served the within writ on the within Defendant
James W. Smyser by leaving a copy of the within
writ at his place of a Board the 24th day of Aug. 1871

John Williams Sheriff

By J. B. Inge

Deputy

No. 32.

Charles Bart Carr

vs

James N. Smizer

Answer of Defendant

1. Denial of Plaintiff's
title.

2. Adverse possession
for more than ten
years.

Thos J. Gault *per*

Filed Sept 19th 1871

W. J. Boyce *clerk*

Deposition of witness, produced, sworn and examined, on the 9th day of December, A.D. 1872, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon of that day, at the Law Office of Samuel Reber, S.E. Cor of Third and Pine Streets in the City and County of St Louis and State of Missouri, before me H.E. Mills, a Notary Public, in and for said County and State, in a certain cause, now depending in the Circuit Court of Jefferson County, in the State of Missouri, between Charles Bent Law plaintiff and James W. Smixer defendant, on the part of the defendant.

John W. Smixer, of lawful age, being produced sworn and examined, on the part of the defendant deposes and saith.

Samuel Reber appeared and examined on the part of the defendant

My name is J. W. Smixer, John W. I am 37 years of age & reside in St Louis Co Mo near Eureka. I expect to leave the county to go to Mississippi & should have been off before this time. From 1850 to 1860, ^{I lived} on the Meramec in St Louis County on the farm known as the Smixer farm. I lived on the farm until 1857 & afterwards in the neighborhood of

~~Good~~ of the Meramec. My father was George Smizer. I lived at home with him until 1857. I knew Joseph Ridgeway as far back as 1851 & from that time up. I may have seen him before that time. He lived in the city part of the time & a part of the time on East. From 1850 till 1857 I think he lived in the city. I am not certain that he lived in the city all the time. I know a tract of land which he claimed in Jefferson Co on Antyr creek. I have been over it with him. The Ridgeway land is 4 or 5 miles from the Smizer farm.

Q From 1850 to 57 was the Ridgeway in the habit of coming to your father's house?

Objected to

A. Yes Sir he was in the habit of visiting
— I have been with him

Q Have you ever been with him over the Ridgeway tract?

Objected

A Yes Sir.

— There was somebody living on the Ridgeway tract when we went over it. I think I first went over it with

him in 1852. I went over it with him
several times until 1855 or perhaps
1856. Old man Tow was living on it
at first. I think his name was Ande-
son^{Tow}. John Brinley was also living on
the tract and a man by the name
of Fuller, Tow & Fuller were there
when I first went there & I think
Brinley also. They lived in different
houses & had separate improvements.
Brinley lived on the most northerly
improvement, Fuller lived next to him.
Tow lived on the place where the
Hermitage now stands the most south-
easterly of the improvements. When I went
over the land with Ridgway we saw
those people. We went to see them.
The understanding was that Brinley
was to make some improvements on the
place & pay a certain sum of money
to Ridgway. Brinley & Ridgway talked
the matter over in my presence
} Objected to -

I also went there once myself about
it.

Q Did you ever talk to Fuller about
the lands on which he was living there
or did Fuller & Ridgway ever talk

about it in your presence at any of your
visits to the place.

Objected to.

A Yes sir I heard them speak of it.

Q What was said between them at that time of the terms on which Fuller should continue them?

Objected to

A I think the nearest I can recollect the conversation, Old man Ridgway thought he ought to have about 7 dollars a month for the use of the place. Old man Fuller thought that too much. They finally agreed on about 4 dollars per month, Ridgway asked for some 14 dollars which was then due, Fuller did not pay but afterwards settled for it at our store. My father settled the matter for them at the store.

Q Do you know from any conversation between yourself & Dow or between Dow & Ridgway ^{any of} at your visits to the place upon what terms Dow was living on the place, or was to continue living on the place.

Objected to

A. No Sir, I don't remember the terms Dow was living on the place. Mr Ridgway went off & talked with

Tow apart from me, I didn't hear their conversation. Ridgway rode up to the yard fence & talked to Tow, I didn't ride up.

Q Did these conversations take place on the occasion of your first visit to the Ridgway land

Objected to.

A. I think not sir. The first visit we just rode over it, we didn't call to see the tenants that time. I know Ridgway had been there before but I was not with him.

Q Can you state about the year the conversations took place

A In 1852 or 1853.

I can't tell when Brinley moved off the place. Tow died on the place I think. He lived there until 1856 or 7 perhaps longer. as long as I had anything to do with the place, until I moved away. Fuller died ~~on~~ the place as late as 1860 or 1861. I went off some 5 or 6 yrs & he was dead when I came back. I suppose he died on the place. I know nothing further of my own knowledge of these parties paying Ridgway rent. They were known as his

tenants. What they did afterward I don't know. My Father & Mr Ridgway were old friends. My father was requested by Ridgway at some time to look after their lands. I don't know whether my father visited the lands with Mr Ridgway. I don't know of his collecting any rent except as already stated.

Huller settled his account with us for Huller agreed that there was

Q. State whether Huller paid or settled with your father any rent for Ridgway
Objected to

A I think he did. 14 dollars in the store for him.

Q Are the parties you have named as far as you know all the people that lived on the land up to 1857?

A I think they were all the permanent residents. Wamen Corley & a man by the name of Perry squatted on the place for a while. Don't think he was considered a tenant.

Q How long did Perry & Corley remain on the place?

A Perry lived there a short time. Had no

land in cultivation, Corley lived there one year & might have lived there longer.

Q Had they moved before 1857

A. It was about 1857 that Corley lived there. Perry was sometime before that perhaps as early as 1851 or 1852, he was one of our customers.

Q After 1857 when did you make your home or when were you staying.

A I lived in that neighborhood. In 1857^{or 8} I went to Montgomery County I lived there 1 year & came back to the old place & lived there a year then I lived on a place known as the G. W. Goode tract adjoining the Ridgway tract I lived there till 1861.

Q Do you know who was living on the Ridgway land while you lived on the Goode Tract.

A. Fuller and Now & I think a man by the name of George Head lived there & continued to live there till some time afterward.

Q What house did Head live in?

A I think a part of the time in the Brinley house, he afterwards moved up in a hollow near there. I am not sure he lived in the Brinley house.

Q Do you know whether he lived on the place as the tenant of Ridgway?

Objected to,

A. I think he did

Q During the war were you absent from the county.

A. Yes sir in the rebel army.

Q Did you know David Carter?

A. Yes sir

When did he live?

A. Near this Ridgway land in Jefferson County.

Q Do you know whether he had charge of the land as agent of Ridgway?

Objected to.

A Yes Sir

Q If you know when he took charge

It of it state when

A. It was either 1856 or 1857. It may have been a year before or after.

Q. Do you know how long Carter had charge of it?

A. Up to the time of his death. I think or at any rate up to the time Ridgway ~~assumed~~ ^{sold} it.

Mr. A. N. Sterling appeared and examined on the part of the plaintiff. CROSS EXAMINATION.

Q. What was the occasion of your going over this land so many times with Mr. Ridgway.

A. To show Mr. Ridgway land, to go with him as company, to assist him in any way I could about his land.

Q. How far was this from the Smizer farm?

A. About five miles.

Q. How old were you when you heard this conversation between Fuller & Ridgway?

A. About 16 or 17.

Q. Which did you first call upon Brinkley or Fuller.

A. Fuller. We passed Towns

These conversations all occurred at one visit. Dow lived where the Hermitage is now. Brinley had 12, 15 or 20 acres improved. His name was John Brinley - he lives out at Eureka. I visited those grounds 5 or 6 times. I never went there to collect rent myself. I think I called on Brinley once. It wasn't a special trip to collect rent. I never went there myself to collect rent specially.

Q How did you know Carter had charge of those lands for Ridgway.

A He told me himself that was all the information I had on the subject.

Q Where are your Father's books now?

A Some at my house. Some are destroyed. Some in Baton Rouge.

The houses are not standing now in which Brinley, Dow & Fuller lived. A portion of the old Fuller house is standing. Where Dows house stood is the house now known as the Hermitage. Gen Hamer built a stone house where the Brinley house stood.

Q What kind of houses were those?

A Log houses. The Fuller house was a double log also Dows. Brinley's was a one room house with a loft.

In what year did you have this conversation

In 1852 to the best of my knowledge
Perry moved to Arkansas & I
don't know what became of Head,

Re direct

I saw Brinley, Dow & Duller after the
conversation mentioned on some of my sub-
sequent visits to the place. Brinley I think
moved away in 1853 or 1854.

John W. Smizer

Subscribed and sworn to before me this 19th day of Dec
ember A.D. 1872.

J. H. E. Mills

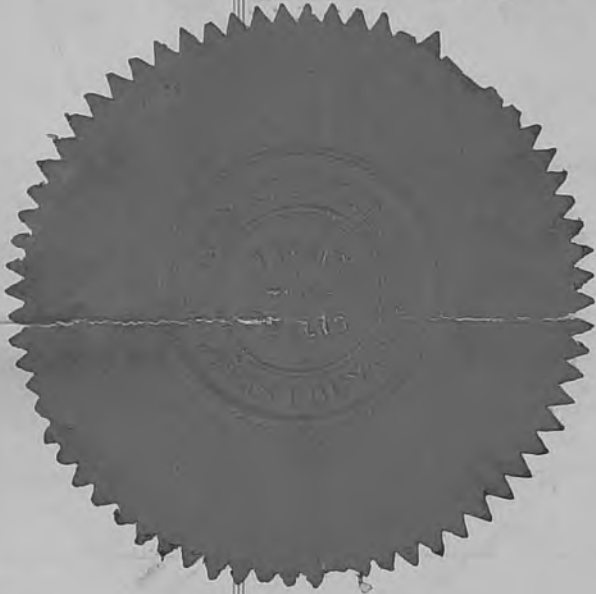
Notary Public St. Louis Co. Mo.

J. H. E. Mills, a Notary Public within and for the county of St. Louis
in the State of Missouri, do certify that in presence of the agreement
of the respective counsel, Hon Samuel Reber appearing on the part of the
defendant and A. N. Stealing on the part of the Plaintiff, came before me, at
the office of Hon Samuel Reber, S.E. Cor. Third and Pine Streets, in the City and County
of St. Louis and State of Missouri. John W. Smizer, who was by me sworn
to testify the whole truth of his knowledge touching the matter in con-
troversy aforesaid, that he was examined and his examination re-
duced to writing by me, and subscribed by him, in my presence
on the day, between the hours, and at the place in that behalf

first aforesaid, and his ^{said} deposition is now herewith
returned.

Given at St Louis in the County of St Louis
and State of Missouri this 19th day of December 1872

A. E. Mills
Notary Public
St Louis Co. Mo.



In the Circuit Court
County of Jefferson
State of Missouri

Charles Bent Carr
vs Plaintiff
James W. Smixer
Defendant

Deposition of John W
Smixer for

Notary fee \$5.00
Paid by defendants atty.
Received Payment

A. E. Mills
Notary Public
Filed Jan 9th 1873
W. J. Day & Son

C. Bent Carr Plaintiff
against
James H. Snitzer Defendant }

Now at this day comes said Plaintiff and for replication to the plea of the statute of limitations set up by Defendant in his answer states, that he denies that Defendant and those under whom he claims have been in the peaceable, open, notorious, continuous, uninterrupted possession of the premises sued for more than ten years prior to the commencement of this suit or that Plaintiff, his grantors, predecessors and ancestors were not seized of said premises within ten years next before the commencement of this suit.

Plaintiff further states by way of defense to said plea of the statute of limitations states that in 1843 one John Kerr was seized of said premises in fee simple and during that year executed a will bequeathing the property in question to his wife — Kerr for and during her natural life with a remainder to the children of George Washington Kerr and after the execution of the same departed this life, that said will

was duly Probated by the Probate court
of St Louis County Missouri where
said John Kerr died and that
Mrs. Kerr the wife of said
John Kerr did not die till 1866
and at the time of her death in 1866
the right of the children of George
W Kerr to institute a suit for
the recovery of said premises first
arose and that the Plaintiff
derives title to the same from
the children of said George W.
Kerr and his ~~children~~ claim
is not barred by the statute
of limitations

John S. Thomas & Co
Attys for Plaintiff

Le. Bent. Carr

205

J. W. Smutzer

Replication

Filed Aug 15 1873
w/Boyes & Co

" Le Bent Carr. }
 James M. Sniger } Fee Bill.
 Bryce Sr.

Sept. 1 1871, 1 files ³⁰ 2 copies set @ 30° ⁶⁰ (2000) writ & copy ¹⁰⁰ / 3.10
 and ²⁰ cont. ²⁵ sockets ¹⁵ .50

May 1 1872, Dock ¹⁵ cont. ²⁵ 40

Sept 1 1872, " ¹⁵ " ²⁵ 40

Jan 1 1873, " ¹⁵ rep ²⁰ cont. ²⁵ 60

May 1 1873 " ¹⁵ cont. ²⁵ 40

Sept 1 1873 " ¹⁵ " ²⁵ 40

Jan 1 1874 " ¹⁵ " ²⁵ 40

May 1 1874 " ¹⁵ " ²⁵ 40 \$ 6.60

Jan 1 1875 Horine Clerk,
 order to, certain claim for damages ³⁵ dock ¹⁵ .50

" " " Sub ³⁵ vers ³⁵ Judgt. ⁵⁰ ifues joined ²⁵ 1.45

order setting aside Judgt. ³⁵ 35

Sub. ³⁵ vers ³⁵ Judgt. ⁵⁰ ifues joined ²⁵ 1.45 \$ 23.75

C. Ho. Horine Clerk

FB ¹⁰ masking costs, ⁴⁰ .50

John Williams Shff. writ ¹⁰⁰ calls ¹⁵ 1.15

\$ 17.90

No. 3876

Circuit Court.

Term, 18

L B Carr

vs.

Wm Snitzer

Judgment, - - \$

Date 18

Fee Book No. Page

Judg't Docket, Page

Plaintiff's Atty.

ATTORNEYS: Exercise care and return promptly.

C. F. Chamberlin & Co., Printers and Stationers, St. Louis.