

Jefferson County Circuit Court
Case Files - Civil
March 1872

Box 29 Folder 50

Carr, Charles Bent

vs.

Dings, William

Ejectment

320 acres in S3T43R4E; bill
of exceptions; depositions;
Supreme Court

State of Missouri } ss.
County of Jefferson }

Charles Bent Carr Plaintiff } In the Jefferson
against } County Circuit Ct.
William Dings Defendant } March Term 1872

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: The East half of Section No Three (3) in Township No Forty Three (43) North of Range Four East of ^{The 5th principal Meridian} containing three hundred and Twenty 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 with-holds from the plaintiff the possession thereof to his damage in the sum of Five hundred dollars. He ~~therefore~~ ^{further} avers that the monthly ~~rent~~ 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 pas-
sion of the premises is delivered to plaintiff
and for other proper relief

Sterling Bros & Co
John L. Thomas & Co.
Attys for Plaintiff

No 12

Chas Bent Carr
against
William Dings
Exemption
Original

Filed Nov 27th 1871.
W.S. Boyce Clerk
By C. Tho. Horne Deft.
Clerk please issue
to St Louis Co.
Thomas & Bro
attys for Pl.

757, 520
4

1875, 16, 19, 22, 32

A true copy of the original petition now on file in
my office

Witness, W. S. Boyce clerk of said Circuit
court with the seal thereof hereunto
affixed at office this November
27th 1871.

W. S. Boyce Clerk,
By E. H. Horne. Depy.

The State of Missouri, }
COUNTY OF JEFFERSON. } ss.

The State of Missouri,

St Louis

TO THE SHERIFF OF THE COUNTY OF ~~JEFFERSON~~---GREETING:

We command you, that you summon

William Ding

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 *March* 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 *27th* day of *November* A. D. 1871

W. S. Boyce

Clerk Circuit Court.

By

Le Thorne

Deputy.

✓ No 12
CA

RETURNABLE
TO
JEFFERSON CIRCUIT COURT.

March TERM, 1872.

Charles Bank Lewis

vs.

William Dingo.

about 6 miles from
Burdette in
the Henry James

(original)

Shilling & McArthur, atty
will pay for

Executed this writ in St Louis County
on the 2nd day of February 1872 by delivering
a copy of the writ & petition as furnished
by the clerk to William Dingo the defendant

Philip Clayton Claff
by L. W. Crutinger
J. H. L.

\$
Fees \$1.00
Mileage 1.75
\$ 2.75

Charles Bent Carr
Plaintiff

William Dins
Defendant

In the Jefferson Circuit Court
March Term 1872

The defendant comes and for
answer to the petition of the
said plaintiff says that the
said plaintiff was not at the commencement of
this action, nor is he now, but entitled to the posses-
sion of the premises and real estate in his said
petition described. Wherefore he prays judgment
of said petition

Thomas T. Gantt

Attorney for Defendant

Charles Bentham

v

William Dings

Assignee of W^m Dings
Defendant.

Thos T. Gant Att^y. &c.

Filed March 19th 1872

W. S. Joyce Clerk

D. C. Ho. Marine Dept.

Charles West barr. Plaintiff vs William Dings. Defendant In the Circuit Court of Jefferson County Missouri

Now at this day the Defendant Comes and for answer to the Petition of Plaintiff says it is not true as stated in said Petition that Plaintiff was on the 18th day of July 1871 or at any other time entitled to the possession of the Real Estate in said petition described or any part thereof

And Defendant denies the allegation in said petition that the Plaintiff being entitled to the possession thereof he (the Defendant) afterwards to wit on the 20th day of July 1871 entered into said premises and denies that he now does or did when this suit was commenced unlawfully withhold the possession thereof from Plaintiff to his damage either in the sum of five hundred Dollars or any other sum, and denies that the monthly rents and profits of the premises is fifty Dollars. Defendant denies that Plaintiff is entitled to judgment for the recovery of said premises or for five hundred Dollars Damages for the withholding of the same from Plaintiff by Defendant or for fifty Dollars for monthly rents and

profits from July 20th 1871 till rendition
of judgment herein or for any sum for
Damages or Rents & profits,

For further answer Defendant says that
he and those under whom he claims said
Real Estate have been in the open,
notorious, uninterrupted possession
of the same and every part thereof as
in plaintiffs petition described claiming
the same as their own absolute
property under title and claim of title
thereby denying the title of all other
persons thereby for more than ten
whole consecutive years next before
this action was commenced, and
that neither the plaintiff nor his
ancestors, predecessors or grantors,
or other person under whom plaintiff
claims said Land have been
seized or possessed of said Lands
or any part thereof or interest therein
for more than ten whole years
next before the commencement of
this action wherefore Defendant
avers that plaintiff is not entitled
to have or maintain this action
for the reason that the same is

barred by the Statute of Limitations
in such Cases made and provided
And having answered fully
Defendant prays Judgment for
his Costs

Thos. J. Gantt
Saml. Reber &
Jos. J. Williams
Attorneys
for Defendant

Jefferson Circuit Court

Charles Bent Carr

vs

William Dings

Defendants answer

Filed Aug 7th 1872

W. S. Royce Clerk

Gantt, Reber & Williams
for Defendants

STATE OF MISSOURI,

COUNTY OF JEFFERSON,

To

Robert Stanley & Jerome D D Over

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 14th day of September 1872, 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

Charles D Over is

Plaintiff, and

Robert Stanley is

Defendant

Defendant, on the part of

; and herein you are

in no wise to fail.

Witness, W. S. BOYCE, Clerk of our said Court with the seal thereof
hereto affixed, at office, this 5th day of

Sept. A. D., 1872.

W. S. Boyce Clerk.

W. S. Boyce

Stanley served this the
9th day of September
" 1872

Carr
vs
Stanley

Deft.

Robert Stanley

Jerome V B Dover

Sheriff Fee 1.00

These exhibits were examined by the court at
Hartford on the 9 day of Sept 1872
J. B. Dover vs R. B. Stanley
J. B. Dover vs R. B. Stanley

STATE OF MISSOURI,
COUNTY OF JEFFERSON.

To

William Dingo & Jerome W. Doss

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 *13th day of September 1872*, 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 *Charles W. Carr is*

Plaintiff, and

William Dingo is

Defendants

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

Witness, W. S. BOYCE, Clerk of our said Court, with the seal thereof
hereto affixed, at office, this *2nd* day of
September A. D., 1872.

W. S. Boyce Clerk.

By O. H. Quinn Deft

Dings Now resident of Jeffes
son County

Carr
vs.
Dings

Deft.

William Dings
Jerome W. Doves

Sheriff Fee 75-

State of Missouri
County of Jefferson

I Greedice the within Subpoena
by J. Reading to J. B. Doves and
Jm Dings is not in the county
the 9. day of Sept 1892
W. B. Prop Sheriff

STATE OF MISSOURI,
COUNTY OF JEFFERSON.

To

James W. Smayer & Jerome V. D. Jones

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 *11th day of September 1872*, 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 *Charles Dent Carr* is

Plaintiff, and

James W. Smayer is

Defendant

and herein you are in no wise to fail.

Witness, W. S. BOYCE, Clerk of our said Court, with the seal thereof
hereto affixed, at office, this *2nd* day of
September A. D., 1872.

W. S. Boyce Clerk.

W. S. Boyce

James W Smizer
not found in this
County this the 9th day of
"September"

Carv 1872
vs

Smizer

Deft.

James W Smizer
Jerome B Dover

Sheriff Fee 75-

State of Missouri
County of Jefferson

I served the within subpoena by
Reading to J. B. Dover and James
Smizer is not in the County this
the 9 day of Sept 1872

J. B. Dover Sheriff

STATE OF MISSOURI,
COUNTY OF JEFFERSON.

To

Reuben M. Nose

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 *13th day of January, 1873*, 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

G. R. Carr is Plaintiff, and *Wm. Dingo* is

Defendant, on the part of *Sept.*,
in no wise to fail.

; and herein you are

Witness, W. S. BOYCE, Clerk of our said Court, with the seal thereof
hereto affixed, at office, this *1st* day of

Jan'y A. D., 1873.

W. S. Boyce Clerk.

May, C. Ho. Horine Depy

Carr
vs
Dingo

Deft
R. McHose

Sheriff fees 50

I presented the within subpoena at the county
of Jefferson, State of Arkansas on the within
named R. McHose by reading the same in
his presence and hearing

Jan. 13th 1893

J. B. Woodworth

By J. W. J. Jones

STATE OF MISSOURI,
COUNTY OF JEFFERSON.

To

Jerome R. Daven

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 *15th* day of *January* *1873*, 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

Plaintiff, and

W. S. Boyce vs
Wm. George

Defendant, on the part of

the Def^t

; and herein you are

in no wise to fail.

Witness, W. S. BOYCE, Clerk of our said Court, with the seal thereof
hereto affixed, at office, this *15th* day of *January* *A. D.*, 187*3*.

W. S. Boyce Clerk.

W. S. Boyce

Carr
vs
Ling

L
J. W. Doven

Sharp Dec 25-

STATE OF MISSOURI,
COUNTY OF JEFFERSON.

To *William C. Byrnes, Napoleon B. Dorton, John Boyce Jr.,*
Thomas Price, Darius L. Emiser, John Brimley, John
H. Wilkinson, Adley Weber, William Fay.

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 *15th*
day of January 1873

and the truth to say in a certain matter of controversy, now pending in our said
Court, wherein

Chas. Wm. Gargo is
Plaintiff, and

the Defendant ; and herein you are
in no wise to fail.

Witness, W. S. BOYCE, Clerk of our said Court, with the seal thereof
hereto affixed, at office, this *4th* day of
January A. D., 1873

W. S. Boyce Clerk.
W. S. Boyce
depr

~~Served on Byrns Jan. 9~~

Served the within Summons
to John Boly sen. N. B. Douling, John H. Wilkins
Wm C. Byrns, John Brinley, Wm Fay and
Adolf Weber. on the 11th of Jan. 1843.

John H. Wilkins

Costs 61.00

Carry
over
to
page 2

C. Bent Carr, Plaintiff } In Circuit
vs } Court, Jefferson
William Dings, Defendant } Co. Mo.
also

C. Bent Carr Plaintiff } In Circuit Court
vs } Jefferson
Robert Stanley, Defendant } Co. Mo.
also

C. Bent Carr Plaintiff } In Circuit
vs } Court of
James W. Smizer, } Jefferson
Defendant } Co. Mo.

To John L. Thomas & Bro. attys.
of Record for the Plaintiff in The
Three Cases above styled
Take notice that Depositions of
Witnesses to be read in Evidence
on the part of the Defendants
respectively on the Trial of the
Three Causes above entitled
respectively will be taken in

Each said Case respectively,
at the residence of Abagil
Wilkinson on the farm on which
David Carter deceased lived at the
time of his death in Merinae Towns-
hip Jefferson County Missouri
between the hours of eight o'clock
A.M. and six o'clock P.M. on the
7th day of January 1873

Samuel Reber &
Jos. J. Williams
Attys. for Defendants

January 2nd 1873

We acknowledge notice of the foregoing notice
and waive service thereof on us by an
officer, we also agree that but one Deposition
be taken and that it be filed in each of
the Cases above styled & read in evidence in
the three Cases above styled with the same
effect as if a separate Deposition were
taken in each separate Case, we also
agree, that the same be taken before Joseph
J. Williams Judge of Probate for said County
who is of Counsel for Defendants - with the
same effect as if he were not such Counsel
John Z. Thomas 1873
attys for Plaintiff

C. Bent Carr Plaintiff } In Circuit Court
 vs } of Jefferson
 William Dings, Defendant } County
 also } Missouri
 C. Bent Carr, Plaintiff } In Circuit
 vs } Court of Jefferson
 Robert Stanley, Defendant } County Mo.
 also }
 C. Bent Carr, Plaintiff } In Circuit Court
 vs } of Jefferson
 J. W. Smizer, Defendant } County
 Missouri

Depositions of witnesses produced
 sworn and examined on the 7th
 day of January in the year of
 our Lord 1873 between the
 hours of eight o'clock in the
 forenoon and six o'clock in
 the afternoon of that day at the

Residence of Abagil Wilkins=
on on the farm on which
David Carter lived at the
time of his death in Merimac
Township Jefferson County
Missouri before me

Joseph J. Williams Judge of
Probate within and for said
County of Jefferson in three
certain causes now depending
in the Circuit Court of the County
of Jefferson in the State of
Missouri, ^{is one} between C. Bent
Carr Plaintiff and William Dirges
Defendant also one case between
C. Bent Carr Plaintiff and Robert
Manley Defendant, also one case
between C. Bent Carr Plaintiff and
J. M. Smitzer Defendant on the part
of the several Defendants therein

Abigail Wilkinson of Lowell age
being sworn says -

Ques What is your name -

Ans Abigail Wilkinson

Ques. What relation are
you to David Carter decd

Ans I am his niece

Ques, Is David Carter

dead & if so how long

Ans He is ~~about~~ he died

3 years ago next April

Ques - did you live with

David Carter in his life

time & if so how long -

Ans. I did I lived with
him I think 12 years before
before he died

Ques. Did you know Joseph
Ridgway?

Ans I did

Ques. Did you ever see

Joseph Ridgway at David

Ques- State about the year
you come to live with David
Harter in Jefferson Co. Mo?

Ans About the year 1858

Ques. About how long was
it after you come to live
with your Uncle before
you saw Mr. Ridgway there
Ans About 4 or 5 months

Ques- At Mr Ridgways
first visit at your Uncle,
did you recollect hearing
your Uncle & him talk
anything about land owned
by or claimed by Mr. Ridgway
Ans I did I heard them

speaking of land that Holcomb
lived on & Reuben McHaw
lived on,

Ques Did you or did you not

not know where that land was
that they were speaking
of & if so where was it
situated

Ans McKays lived on the
tract of land where
Darwin, Snitzer now lives
& Halcomb lived where
the Hermitage now is
Ques. What were they saying
in regard to those lands if
you recollect?

Ans. I recollect Uncle telling
Ridgway he must give
them a chance as they
were poor men, referring
to Halcomb & McKays
Ques. Did you ^{did you} not at that
~~first~~ wish of Ridgway at
your Uncle, hear them talk
anything about your Uncle

being Ridgway's ^{rent Ridgway's land} agent?
Ans I can't say that I did
but from their general
conversation I took it
that he was

Ques did you or not hear them
say anything about your Uncle
renting the lands or collecting
any rents?

Ans I do not know as I
did at that ^{time} particular
but I have heard them
talk about it frequently
Ques, did you or not hear

Ridgway and your Uncle
speak about, your Uncle
collecting any rent from
Reuben McKays for Mr.
Ridgway?

Ans yes I have

Ques. About what year was ^{it} that
that you heard ^{your} Uncle &
Ridgeway speak about collec-
ting rent from Reuben McHarg?
Ans. It was soon after I
came here -

Ques. Did you or did you not
any time hear Mr Ridgeway
direct your Uncle to
rent the land (Lij.)
Ans. I heard Ridgeway say
to my uncle if these men
did not pay up to
take it away from
them & rent to some one
else

Ques. What men was Ridgeway
referring to at that time?
Ans. Holcomb & McHarg
~~men~~ was this, or was it rather
when Holcomb & McHarg were
living ^{Ridgeway} ~~and~~ ^{then} ~~the~~ land

that you heard this conversation? (obj.)

Ans It was

Ques Please state as near as you can when this conversation took place?

Ans. I think it was about 1859

~~If you know whether or not~~
~~Ques. Please state whether or not~~
~~it is~~

Ques. If you know please state whether or not this conversation between Mr. Ridgway & your Uncle took place while M^cHorse was living on the land now occupied by Carin, Snizer?

Ans It did take

Ques. Did you ~~ever~~ know of
your Uncle ever collecting
any rents for Mr. Ridgway?
Ans. I have a faint recollection
about something, I know
on one occasion about
Uncle speaking & saying he in-
tended to send Ridgway
some rent money —

Ques. Having spoken of seeing
Mr. Ridgway at your Uncle's
house, ^{on} several different oc-
casions — please state about
what period of time generally
elapsed between his visits?

Ans. about 12 & 18 months

Ques. did you on any other
occasions than you
have spoken of, hear your
uncle & Mr. Ridgway talk

About Ridgeway's lands?
and if so what lands
were referred to?

Ans. These lands were that
Harney bought of him
Ques. Did you or not on oc-
casions other than the one
you have spoken of hear
Mr. Ridgeway say anything
to your Uncle about
renting his lands?

Ans. I do not think I did
Ques. Did you or not hear Mr.
Ridgeway and your Uncle say
anything about the place
having been rented to John
Brinley?

Ans. I do not recollect of
hearing such conversation
between them when Ridgeway
was present, I heard my
uncle tell Ridgeway that

he had had, a good deal
of trouble with the loan
+ his business +
had not received any
-thing for it ^{that} ^{the} pay ^{from}
the tenants' debts, that
it had caused him a great
deal of fatigue + trouble
+ that Ridgway had to
sell it or ~~take~~ charge
it himself. This was the
last time Mr. Ridgway
was in the house except
the time when Ridgway
+ Harney was trading.
Ques did you or not know
of your Uncle + Ridgway
corresponding by letter?
Ans Yes I do.
Ques, did you ever write
letters for your Uncle to
Ridgway? Ans No I did not

Ques. Did you ever see any
of Ridgway letters to your
uncle? (Obj.)

Ans. I have seen ~~the~~ letters
from Ridgway to my
uncle, & casually looked
over but did not note
what was in them.

Ques. Do you know whether
or not your Uncle kept any
account between himself
& Mr Ridgway?

Ans. I cannot say

~~Ques. State what is the~~
Crops examined

Ques. Are you certain whether
the conversation was between
Ridgway & your uncle or
was it not more from
conversation from your
uncle to you?

Ans. It was between ~~you~~

Ridgeway + my Uncle
Ques. How much land
did McHow have in
cultivation?

Ans. I don't know -

Ques. How much rent
did he pay if any?

Ans. I do not recollect.

Ques. ~~What~~ Who put
him on the place?

Ans. Uncle at least I
heard him say he did
put him on it the
second time.

Ques. You say you did
not hear Ridgeway
tell your Uncle to rent
the place for him, how
did you come to the
conclusion that he

was Ridgways agent
to rent the place? (obj)
Ans. from what Mr Carter
said & from Ridgway
calling on him for rent
& telling my uncle if
the tenants did not
clear up the the land
they must be turned
off & rent the land
to others,

Ques When was this?
Ans It was about the
second time I saw
Ridgway at my uncles.

Alfred Wilkerson

Sworn to and subscribed before me on
the day, at the place and within the hours
first aforesaid. Jos. J. Williams Judge of
Probate in & for Jefferson Co. Mo.

I Joseph J. Williams Judge of Probate within & for the County of Jefferson in the State of Missouri do Certify that in pursuance of the annexed notice came before me at the residence of Abigail Wilkinson on the farm on which David Carter deceased lived at the time of his death in Merimaec Township, Jefferson County Missouri ~~Abigail Wilkins~~ Abigail Wilkinson who was by me sworn to testify the whole truth of her knowledge touching the matter in controversy aforesaid; that she was Examined and her Examination reduced to writing and subscribed by her in my presence, on the day, between the hours, and at the place in that behalf first

aforesaid namely at the place
first aforesaid between the
hours of the day first aforesaid
on the 7th day of January 1873
as aforesaid, and her said
Deposition is now herewith
returned, I further certify
that said Abagil Wilkinson is
a resident of Jefferson County,
in the State of Missouri

In Testimony whereof I
hereunto set my hand and
affix the seal of the Probate
Court of the aforesaid County
of Jefferson in the State of
Missouri this 7th day of January
1873

Joseph J. Williams
Judge of Probate within
& for Jefferson Co. Mo.

C. Bent Carr }
vs
William Dings }

also
C. Bent Carr }
vs
Robert Stanley }

also
C. Bent Carr }
vs.
James W. Emizer }

Depositions on the
part of Defendants
in each several case

C. Bent Carr	}	In the Circuit Court of Jefferson County, Missouri
William Dings		
also		
C. Bent Carr		
Robert Stanley		
also	}	Missouri
C. Bent Carr		
James W. Smizer		

Depositions on the
part of the Defendants in
the three cases above
styled

To the Clerk of the Court
of Jefferson Co. Mo.

Wills

Filed Aug 9 1872
Wm. Boyer

Charles B. Carr Plaintiff
against
The Sims 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, 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 says 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 ~~Time~~ 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
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 ~~his~~
title to the same from the children
of said George W. Kerr and his claim
~~children~~ is not barred by the statute
of limitations

John S. Thomas & Bro
Attys for Plaintiff

C. Bent Carr
vs
Wm. Dwyer

Replication

Filed Jan 15 1873
Wm. Dwyer case

I accept service of the within notice
this 9th day of January 1873.

Jos. J. Williams
Atty. for Defendants

Deposition of witnesses, produced, sworn and examined
on the 14th day of January, in the year of our Lord
1873 between the hours of nine o'clock in the forenoon
and six o'clock in the afternoon of that day, at the
office of Sterling Bros & Co. No's 315 and 317, ^{cheesnut street,} in the City of
and County of St Louis and State of Missouri before me F. G. Flanagan
a Notary Public within and for the County of St Louis State
of Missouri, in a certain Cause, now depending in the
Circuit Court of the County of Jefferson in the State of Missouri
between Charles B. Carr, plaintiff and Robert Stanley
defendant, on the part of the plaintiff.

Walter C. Carr, of lawful age, being produced, sworn and
examined, on the part of the plaintiff deposes and
saith - Mrs. John Kerr married Genl Mullop of
Louisiana in July or August 1847 at my father's
in Fayette County Kentucky, Genl Mullop
died of Cholera in New Orleans La: in the year
1849. In 1852 I think in the Month of May
Mrs. Mullop married again at my house in
St Louis Mo: to John A. Craig of Arkansas.
John A. Craig died at Helena Ark: the 4th or
5th of February 1864. his wife Susan F. survived
him one year and one day, she died at the

same place, February the 5th 1865. The said Susan
J. was the widow of Genl Gaulap and the said
John Kerr

Subscribed and sworn to before
me this the 14th January 1873

J. G. Hawayan

Notary Public St Louis Mo.

I J. G. Hawayan a Notary Public within and for the
County of St Louis in the State of Missouri, do Certify, that
in pursuance, of the annexed Notice, came before me, at the
office of Sterling Bros Ho. 315 & 317 Chestnut Street in the
City and County of St Louis and State of Missouri, Walter
C. Carr who was by me sworn to testify the whole truth
of his knowledge touching the Matter in Controversy afore-
said; that he was examined, and his examination re-
duced to writing, 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 - And I further Certify,
that said Walter C. Carr is a resident of the City
and County of St Louis State of Missouri.

Given at ^{the City and County of} St Louis State of Missouri this the 14th day
of January 1873.

J. G. Hawayan

Notary Public
St Louis County
Mo.

Fees \$2.50

Paid by Plaintiff

J. G. Hawayan

Notary Public

to Bent Carr Plaintiff
^{vs}
~~John~~ ^{James} ~~Kim~~ ^{Quings}
Robert Stanley Defendant

Plaintiff comes and for application to the plea of the Statute of limitation set up by Defendant in his answer states that he denies that the right of Plaintiff to maintain this action is ~~not~~ barred by limitation because he states that John Kim was right in fee simple of the premises ~~and for an~~ in 1842 and that in December 1843 said Kim executed in proper form a will by which he bequeathed to his wife Susan Kim the said premises for and during her ~~natural~~ life with remainder to the children of George Washington Kim: that ^{will} after executing said ^{said} Kim departed this life ^{in 1843} leaving the same as his last will which was after his death duly probated and recorded by the Probate Court of St. Louis County. Where he died: that in May 1852 the said Susan was married to John A. Craig and she and her husband lived ^{together} till 1864 as man and wife in said latter year the said Craig departed

^{this life}
and in 1865 the said Susan died.
Plaintiff states the adverse possession of defendant and those under whom he claims if any such possession ever existed, did not commence till about the year 1862 and hence the Statute did not commence to run against the said Susan until she became discoverd in 1864. The Plaintiff further states that he claims title by and from Mrs. Glendine and George W. Kern the only children of George Worthington Kern and he therefore avers that the right of him and those under whom he claims to institute suit in ejectment for said premises did not arise till the death of the tenant for life Mrs. Susan Kern, afterwards Mrs. Craig which occurred in 1865.

John H. Woodward & Co
Attys for Plaintiff.

C. Benbless
Wm Dingo
Robert Stanley

Replication.

Harr
vs
Dingo

Filed Jan 15 1873
W. S. Boyce Clk

Filed Jan 15 1873
W. S. Boyce
Clk

C. B. Carr Plaintiff

William Dings Defendant

In the Circuit Court of
Jefferson County, Missouri

Now at this day comes said Plaintiff and moves the Court to set aside the non suit taken herein and grant him a new trial for the following reasons.

1. Because the Court erred in refusing to declare the law as prayed for by Plaintiff.
2. Because the Court erred in declining the law as prayed for by Defendant.
3. Because the Court erred in sustaining the demurrer of the Defendant to the evidence of Plaintiff and decreeing that Plaintiff was not entitled to recover on the case as made.
4. The Plaintiff proved that he had a legal title to the property in controversy and was entitled to judgment.
5. The Court in excluding the will

John Tenoffend in evidence
by the Plaintiff.

John T. Howard & Bro.
With Sterling Bros & Co.
Atty for Plaintiff

8
C. B. Tenoffend

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William Deugs

Motion to retract
non suit and
grant a new trial.

Filed July 16 1873

W. S. Boyce Clerk

Charles B. Carr Plaintiff }
vs
William Dings, Defendant }

In the Circuit Court of Jefferson Co. Mo.

Whereas the above entitled Cause was tried at the January Term of said Court for the year 1873 and final judgment rendered therein for Defendant. And whereas it was agreed at the time the said judgment was rendered, ^{by the parties hereto} that the Plaintiff should have thirty days after the adjournment said term to prepare, have signed & filed his bill of exceptions therein but on account of the sudden and unexpected adjournment of said term no order was entered of record to that effect. And whereas the Defendant did not ^{desire} to take advantage of that omission.

It is therefore agreed by and between the parties to this suit represented by their respective attorneys that the said Court may make an order at its May Term 1873 permitting the Plaintiff to file his bill of exceptions at that time with the same effect to all intents and purposes as

if the same had been filed at the
Term of said Court at which the
trial was had and the final
judgment rendered.

Witness our hands this day of
1873.

Charles B. Carr
By his attys John T. Howard Bro.
With Sterling Bros & Co.
Wm Dings, Deft.
By Reber & Williams
Attorneys.

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Answer

C. B. Carr
vs
Wm. Dings

Agreement in
regard to filing
Bill of Exception.

Filed May 12th 1873
W. S. Pryce Cor

Charles B. Carr, Plaintiff }
v.
William Ding, Defendant }

In the Circuit Court of Jefferson
County Missouri.

Be it remembered that on the trial
of the above cause the Plaintiff
to sustain the issues on his part
introduced and offered to intro-
duce the following testimony
1. A patent from the United States
for the land in controversy as fol-
lows (Here copy the patent).
2. A copy of the will of John Kern
as follows (Here copy the will) but

It is also admitted by Defendant that Ber-
enly Allen the executor appointed by said
will departed this life about the year
1848.

80.63
79.00
164.59
924.22

3. The deposition of W. C. Carr as follows (Here copy the first deposition taken)

✓ 4. The deposition of W. C. Carr as follows (Here copy second deposition of Carr)

4. A deed from E. W. Kerr and Mrs. Blendenin and husband to Plaintiff as follows (Here copy this deed).

And this was all the evidence offered by the Plaintiff.

The Plaintiff then admitted that Defendant had acquired the title to the land in controversy by the Statute of limitation and adverse possession unless the life Estate which Mrs. John Kerr acquired ~~and~~ under ^{read in evidence} her husband's will, prevented the Statute from running against the Children of George Holt Scripton Kerr and whom Plaintiff claims title until 1865 when she died.

And this was all the evidence offered by either party.

The Plaintiff asked the Court to declare the law as follows (Here copy declaration of laws No. 1, 2 as prayed for by Plaintiff)

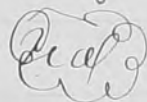
which the Court refused to give and to which ruling of the Court in refusing to declare ^{the law} as proposed by him the Plaintiff at the time accepted.

And the Defendant asked the Court to declare the law as follows (See Copy the instruction asked for by DFT) which the Court gave and to which action of the Court in declaring the law as proposed by Defendant the Plaintiff at the time accepted. The Plaintiff thereupon took a nonsuit with leave to move to set the same aside. And afterwards viz: on the day of January 1873 ^{Plaintiff} filed his motion to set aside the nonsuit taken herein and for a new trial as follows (See Copy said motion) which motion was by the Court overruled to which action of the Court in overruling said motion the Plaintiff at the time accepted.

And at the May Term of this Court the parties to this suit filed the following agreement viz: (See copy the same) upon which agreement the Court made

the following order on the day
of May 1873 viz: (Here copy the
order of the Court.)

And in pursuance of said agree-
ment and order the Plaintiff tenders
this his bill of exceptions at this
time and prays that the same
may be signed, sealed and made
a part of the record in this
Cause which is accordingly
done in open Court.

J. H. Vail, Judge. 

C. B. Carr
vs
Mrs. Dings

Bill of Exceptions

Filed May 12th 1873
 vs. Royce & Co
 B. C. Ho. No. 100 Sep 11.

In The Supreme Court of Missouri
October Term 1873.

Charles Bent Carr, Appell.
vs
William Duggs, Respondt. } Appeal from
Jefferson
Circuit Court

Opinion of the Court.

This was an action of ejectment brought to recover a tract of land in Jefferson County.

The defendant by his answer denies the plaintiff's title to the land or his right to the possession thereof.

And for further answer avers that he and those under whom he claims said land have been in the open and notorious possession of the same and every part thereof, claiming the same as their own absolute property under claim of title thereto, denying the title of all other persons, for more than ten years next before the action was commenced; and that neither the plaintiff nor his ancestors, predecessors or grantors or other persons under whom plaintiff claims said land have been seized or possessed of said lands or any part thereof, or interest therein, for more than ten years next before the commencement of this action. Wherefore, &c.

To the plea of the statute of limitations the plaintiff replied, denying that his right of action was barred by the statute, and averred that one John Kerr was seized in fee simple of the premises in question in the year 1843, and that in the month of December of that year said Kerr executed, in proper form, his last will, by which he bequeathed to his wife, Susan Kerr, the said premises, for and during her natural life, with remainder to the children of George Washington Kerr. That after executing said will said Kerr departed this life in 1843 leaving the same as his last will; that said will was after his death duly probated and recorded by the Probate Court of St. Louis County where he died.

That in May, 1852, the said Susan was married to John A. Craig.

That in the year 1864 said Craig died, and that in the year 1865 the said Susan also died.

That the adverse possession of defendant and those under whom he claims if any such possession ever existed did not commence till about the year 1862 and could not commence or run against said Susan until she became discoverd in the year 1864.

The plaintiff further replied that he claimed title by deed from Mrs. Glendennia and George W. Kerr, the only children of George Washington Kerr, and avers that the right of him and those under whom he claims to institute a suit for the recovery of said premises did not arise till the death of said Susan Craig in the year 1865.

The cause was tried by the court, a jury having been waived by the parties.

The plaintiff introduced in evidence: 1st. The exemplification of a patent from the United States, for the land in controversy, to John Kerr, dated July 15, 1825.

2d. The last will of John Kerr, the substantial portion of which is as follows:

"First, I revoke all former wills by me at any time heretofore made. Second, I hereby constitute and appoint Beverly Allen, of the city of St. Louis, aforesaid executor of this my last will and testament.

"Third, I devise and bequeath to my said executor all my estate, real, personal and mixed, and whether held by me as joint tenant, tenant in common or severalty, in trust for the payment of my debts, which he will pay and discharge in the order prescribed by law for the payment of debts of deceased persons, hereby giving to my said executor power to lease or sell the same, without intervention of courts, as to him shall seem best for my estate and creditors; Also in trust, after the payment of my debts, to convey whatever may remain of my estate to my wife, Susan Kerr, to be used and appropriated by her, in and about her maintenance and support, with power to my said wife to dispose of one-fourth of the same, remaining at time of her death, as to her shall seem fit, and the residue of what may so remain shall, at the time of her death, pass to and be vested in the children of my deceased brother, George Washington Kerr. In Testimony, &c."

This will was shown to have been duly proved up in the Probate Court of St. Louis County.

3d. Plaintiff offered evidence tending to prove that John Kerr died in 1843, that his wife, Susan, died in March 1865 or 1866, and that the only children of George Washington Kerr were George W. Kerr and Isabella Kerr, who afterwards married with William A. Clendennin, and that the said George Washington Kerr died between the years 1836 and 1840. It was also shown by the evidence that after the death of John Kerr, his widow, Susan Kerr, was married to Gen. Dunlap, of Louisiana, in 1847; that Dunlap died in the year 1849; that she afterwards, in the year 1852, was married to John A. Craig who died in 1864, and that said Susan died in February 1865.

4th. The plaintiff then read in evidence a deed from George W. Kerr and Mrs. Isabella Clendennin and her husband, conveying the land in controversy to the plaintiff. This deed bears date the 12 day of July, 1871.

The foregoing was all of the evidence given on the trial of the cause.

It was then admitted by the parties that the defendant had acquired the title to the land in controversy by the statute of limitations and adverse possession, unless the life estate which Mrs. John Kerr acquired in said land under her husband's will, read in evidence prevented the statute from running against the children of George Washington Kerr, under whom plaintiff claims, until 1865, when she died.

After the evidence was closed, the court at the request of the defendant, declared the law to be that "on the pleadings and evidence the plaintiff is not entitled to recover in this action." To this declaration of law the plaintiff at the time excepted.

The plaintiff then took a non suit, with leave to move to set the same aside, and in due time filed his motion to set aside said non suit, because the court had improperly declared the law, and refused proper declarations of law asked for by the plaintiff.

This motion being overruled by the court and judgment rendered against the plaintiff he again excepted and has appealed to this court.

The only question for the consideration of this court grew out of the declaration of law given by the court.

The declaration of law asked for by the defendant and made by the court is in the nature of a demurer to the evidence given on the trial, and it follows that if the evidence given by the plaintiff was sufficient *prima facie* to show a title to the land in controversy in the plaintiff the declaration of law given by the court was improper, otherwise it was correct.

It is contended by the defendant that by the will of John Kerr the title to the land in controversy was vested in Beverly Allen, his executor in trust to hold, first, for the payment of the debts of the deceased, and then in trust to convey the remainder of the property, after the debts were paid, to the widow of the deceased for her life and after her death the legal estate still remains in the trustee, unless it is affirmatively shown by the plaintiff that the debts have all been paid. It is true that the will vests the property of the testator in Allen the executor in trust to enable him to pay the debts of the testator, but when the debts are paid by the provisions of the will this trust is at an end, and the executor is directed to convey the property of testator, of every description, to the widow for her life, and she is authorized to use and dispose of the property for her support during her life, and at her death she may dispose of one fourth of the property conveyed to her, and the balance the will provides, "shall pass to and be vested in the children of my deceased brother George Washington Kerr."

There is no question in my mind but what upon the happening of the two events named in the will (the payment of the debts and the death of the widow) the property remaining by force of the bequest in the will would vest in the children of George Washington Kerr. *Mitchell vs. Mitchell*, 35 Miss. R. 108; *Harris vs. Lincoln*, 2 Peere Williams 135; *Roberts vs. Mosely*, 51st Mo. 282

There is no question in this case about the death of the widow, that is clearly proved and uncontradicted; but it is contended that there is no proof that the debts of the testator have been paid, that for aught that appears there may be debts still existing, and that the executor or his heirs may have portions of the testator's property leased for the purpose of raising money to pay the debts, and may still be executing the trust, and that until it is shown that the object of the trust has been fully accomplished, and the trust at an end, the legal estate cannot vest in those who are to hold the remainder.

This is true but it must be recollected that John Kerr died in 1813, nearly thirty years before the commencement of this suit, and that the trustee has long since been dead, the common law presumption of the payment of a debt after the lapse of twenty years still exists, notwithstanding our statute of limitations, almost thirty years having elapsed since the death of John Kerr all debts against him at his death are presumed to have been paid and if this presumption is not true in fact, it devolved on the defendant to rebut the presumption by evidence on his part. (*Smith vs. Benton*, 15 Mo. 311; *Clemens vs. Wilkinson* 10, Mo. 97.

In the case of Smith vs. Benton the learned judge delivering the opinion of the court says:

"The law as declared by the Circuit Court is, that after the lapse of twenty years, a bond is presumed to be paid, and that this presumption like any ~~any~~ *prima facie* evidence of a fact stands good unless it be rebutted by evidence to be given by the party setting up the bond satisfying the jury that in fact the payment was not made."

There is no presumption to be made that the testator owed debts that were not due, or at least there could not be any, that he owed debts which would not be due in six or eight years.

In this case the testator has been dead nearly thirty years, and if he owed debts they are presumed by law to have been paid, the plaintiff could therefore rely on this presumption, and the death of the widow having been proved, the property would vest in the legatees of the remainder, and the plaintiff having acquired ~~the~~ *Their* right in the absence of opposing evidence, had a right to recover.

accrue The only remaining question is as to the defence of the statute of limitations. It is well settled that the right of action of one who claims an estate, which can only take effect after the termination of a life estate, does not ~~accrue~~ until the termination of the life estate, and in this case the widow did not die until the year 1865, less than ten years before the action was commenced but the defendant does not rely on the statute of limitations in this court so it is not necessary to refer authorities on this subject.

The other judges concurring the judgment is reversed and the cause remanded.

H. M. Vories.

State of Missouri, ss.

I, **JOSIAH THORNBURGH**, Clerk of the Supreme Court, held at St. Louis, of the State of Missouri, certify that the above and foregoing is a full, true and complete copy of the opinion delivered in the above entitled cause, as fully as the same remains on file in my office.

In Testimony Whereof, I hereto set my hand, and affix the seal of said Court at office in the City of St. Louis, this

23rd

" day of

December

one thousand eight hundred and seventy three

CLERK.

Thornburgh

R. Smith Davis Secy.

In the Supreme Court, held at St. Louis, of the State of Missouri,

October Term, 1875
Monday November 24 1878

Charles Butler
vs.
William Dings
Appellant
Respondent

Appeal from Jefferson
Circuit Court

Now again come the parties aforesaid, by their respective attorneys, and the Court being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment rendered herein by the said Jefferson Circuit Court be reversed, annulled, and for naught held and esteemed: That the said Appellant be restored to all things which he has lost by reason of the said judgment: That the said cause be remanded to the aforesaid Jefferson Circuit Court for further proceedings to be had therein, in conformity with the opinion of this Court herein delivered and filed, and that the said Appellant recover of the said Respondent his costs and charges herein expended, and have execution therefor

STATE OF MISSOURI—ss.

I, JOSIAH THORNBURGH, Clerk of the Supreme Court, held at St. Louis, of the State of Missouri, certify that the above and foregoing is a full, true and complete copy of the judgment rendered in the above entitled cause, as fully as the same remains of record in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at office in the City of St. Louis, this 28 day of December A. D. eighteen hundred and seventy three

Thornburgh Clerk.
Per Jos. H. Davis & Co.

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SUPREME COURT OF MISSOURI.

Chas. Bentham
vs.
Wm. Dingus

MANDATE.

JUDGMENT OF

Jefferson Circuit Court
REVERSED AND REMANDED.

Filed Dec 24 1873
W. S. Boyce Clerk
By Chas. H. H. H. H. H.

Charles Bent Carr, Plaintiff } In the Circuit
vs. } Court of
William Dings, Defendant } Jefferson
County
Missouri

Now at this day the defendant
comes and for amended answer
to the petition of Plaintiff denies
that the Plaintiff was on the 18th day
of July 1871 or at any other time
entitled to the possession of the
Real Estate described in his
petition or any part thereof

And denies the allegation
in said petition contained that
the Plaintiff being entitled to the
possession thereof he (the Defendant)
afterwards, to wit, on the 20th day
of July 1871 entered into said
premises and denies that the
defendant now does or did when
this suit was commenced
unlawfully withhold the possession
of said Real Estate or of its
from the Plaintiff to his
damages in the sum of five
hundred dollars or any other
sum and denies that the
monthly rents and profits of

Said premises is fifty Dollars
or any sum whatever, defendant
denies that plaintiff is entitled
to judgment for the possession
of said premises or for five
hundred Dollars or any other
sum for damages for the
withholding of said premises by
defendant from plaintiff or for
fifty Dollars per month or any
sum whatever for monthly
or other rents & profits from
July 20th 1871, till rendition of
judgment herein or for any
sum for damages or rents
& profits

(11)
And for further answer to the plaintiffs
petition this defendant says that
in the 182 John Kerr and Augustus
Kerr were copartners under the name
and style of J. & A. Kerr, and that in
that year said John Kerr among & with
other land, entered the land described in
the petition of plaintiff in the proper land
office of the United States, in his own name
but for the use & benefit of the said firm of
J. & A. Kerr, and paid for the same with
the moneys of the said firm, and afterwards
on the 15th day of July 1825. said land was patented
by the United States to the said John Kerr
in his own name, but for the use & benefit
of said firm - and said land, being the
land sued for and other land conveyed
by the same Patent - was ever treated
and regarded by said firm as partnership
property. - said firm continued until about
the year 1833. when George W. Kerr was
taken into it as a partner, the style
of the firm being then changed to A. G.
W. Kerr & Co. - and consisting of the three
persons above named. - This last firm con-
tinued until about the year 1838 when it
was dissolved by the death of said George W.
Kerr, - and ~~from~~ at the time of said George

W. Kerr's death the said John & Augustus Kerr
reconstituted a partnership between themselves
under the original name of J & A. Kerr --
and all the property and effects which had
belonged to the first firm of J & A. Kerr
which had not been disposed of meantime
was passed to & vested in the last firm of
that name, ^{as partnership property} - The said firm of J & A. Kerr
continued in business until the year 1841 or
1842, when it broke up and became
unsolvent and totally unable to pay
its debts or the debts of said firm of
J & A. Kerr & Co. - and only a portion of
the debts of either of said firms have ever
been ^{paid} - and a large portion still remains
unpaid. --

Defendant further says that in
the month of December 1843, said John
Kerr died - he and all the said firms of
which he had been a member, being in-
solvent - and without means either in-
dividual or partnership to pay his
individual or partnership debts - ~~and~~
~~that afterwards on the 14th day of January~~
~~1844 - Augustus Kerr, the surviving part-~~
~~ner of the said~~ And defendant further says
that on the 9th day of December 1843, John
Kerr executed and delivered, a Declaration

under his hand and Seal - a copy of which
is herewith filed - ^{marked} wherein he declared that
all Lands in the State of Missouri (and other
States mentioned in said declaration, which now
stand in the name of either John Kerr or
John & Augustus Kerr or John Augustus and
George W. Kerr, with the exception of a
Lot in St Louis - were entered and ac-
quired with partnership funds and represent
the Mercantile Capital of said firm of J.
Kerr & ought to be applied in same
manner as if the same were personal instead
of real property. And he further therein de-
clared that said lands were acquired with
partnership funds, and in reality consti-
tute the Stock of said firm & ought in equity
to be applied to the benefit of said firms respec-
tively. -

Defendant further says that af-
terwards on the 11th day of January 1844. -
Augustus Kerr, surviving partner of said
firms & J. A. Kerr and A. & G. W. Kerr
& Co. - made an assignment of all the
partnership property and effects of the said
firms to Beverly Allen, by which assign-
ment the title to said ^{including the land sued for by plaintiff} property & effects, was
vested in said Allen in trust to sell
and dispose of the same according to his
discretion and by public or private sale

for the benefit of the Creditors of said
firms. - a copy of which assignment
with the Schedule annexed as hereto
with filed Marked B & C. - The
Said Allen entered upon the said
trust but before executing the
same he in the year 1846, died,
and afterwards in the month of June 1846
the Circuit Court of St. Louis County, ap-
pointed Charles S. Rennells, assignee
in the place and stead of said Allen
and he as such succeeded to all the
rights, powers & duties of said Allen
and executed a bond with securities ac-
cording to law which bond was approved
by said Court on the 30th of July 1846. - a
Copy thereof is herewith filed with Ex-
hibit "C". And afterwards on the

day of ~~1848~~ 1848 said Charles
S. Rennells, having been appointed and qualified as such
Assignee commenced an action in the Circuit Court
of Jefferson County Missouri against Penelope Allen
the widow and Ann Allen, Lucretia Allen, Beverly
Allen & Penelope Allen children and heirs at
Law of said Beverly Allen who was then deceased to
divest them of all title whether at Law or in Equity of all
and to the Real Estate described in the plaintiffs
petition held by them by reason of the deed of
assignment from Augustus Kerr survivor
of the firm of A. & G. W. Kerr & company & J. H. A. Kerr
in which action a final Decree was rendered
by said Circuit Court on a Trial of an issue
joined therein by all parties to said action both
Plaintiffs and Defendants on the 24th day of May

1848 divesting the defendants therein of
to wit, said widow and heirs of Beverly Allen
deceased of the title both at law & in equity held by
them as such widow and heirs in and to said land
by reason of the deed as before stated to said ~~Beverly~~
Beverly Allen from said Augustus Kerr ~~survivor~~
Survivor of said firm of A. & G. W. Kerr & company
and J. & A. Kerr

Defendant further says that the said
Charles F. Pannells in discharge of
the trust reposed in him as such as
signer and for the purpose of paying
the debts of said firm of J. & A. Kerr
on the 18th day of December 1848. - for the
consideration of \$532.21, to him paid by Joseph
Ridgway - sold and conveyed to him the
land described in plaintiffs petition together
with other land, ~~as set forth in the record~~
which conveyance is recorded in the Records office
of Jeff County in Book K p 8 & fol. & is
herewith filed marked D. - And said
Ridgway entered upon & took possession
of the land described in said deed including
the land sued for by plaintiff - and on the
5th day of June 1862, for the sum of \$4000.
then paid to him by William S. Harney, sold
and conveyed the same to him, - said con-
veyance being recorded in the Records of-
fice of said County in Book S. p 149 & fol. and
is herewith filed marked E. - And the
said Harney immediately entered upon all
the said land and held the same until
the 4th day of December 1866 where he

Sold and conveyed the North East
Quarter of Section Three Township Forty
Three North of Range Four East to
Virginia E. Smizer and by Deed of the
same date also conveyed the South
East Quarter of the same section to
✓ G.W. Smizer which Deeds herewith
filed are duly recorded in the Records
office of said County of Jefferson, and
are for the same Land described in the
✓ plaintiffs Petition, that said Virginia
E. Smizer and G.W. Smizer entered respectively
into the possession of the Lands conveyed
respectively to them as aforesaid by said
Harney immediately after such
conveyances and continued to
hold and occupy the same till
the 16th day of March 1867 when they
sold and conveyed the same
Township, the whole of the East half of said
Section No. Three to this Defendant
who took immediate possession of
the same and held it up to the
commencement of this action,

Defendant further States that the Said John Kerr, made and published his last Will, which after his death to wit on the 22nd day of December 1843, was duly probated in the Probate Court of St Louis County in this State, whereby he appointed Beverly Allen his executor and devised & bequeathed to him all his Estate of every kind, in trust to sell and dispose of ^{the same} for the payment of his debts, also in further trust after the payment of his debts to convey what might (or may) remain of said Estate, to his wife Susan Kerr to be used and appropriated by her in and about her maintenance & support with power to the said Susan to dispose of one fourth of same remaining at the time of her death so to her ^(should) shall seem fit & the residue of what may ^{so} remain shall ^(should) at the time of her death pass to ~~and~~ be vested in the children of George W. Kerr the deceased brother of said testator. --

The said Susan Kerr died before the commencement of this Suit, and the plaintiff claims title to the land described in his petition under the children of the said George W. Kerr ~~and~~ who claim ^{Solely} under the said Will and plaintiff has ~~and~~ claims no beneficial

interest in the said land but prosecutes this
 suit solely for the benefit of the said
 children of the George W. Kerr decd. - ~~Defendant~~
~~but further says that the estate of said John~~
~~Kerr has never been found and that~~
 Defendant claims and avers that the
 children of said George W. Kerr ^{did and} can take
 no title or interest in said land under said
 Will of John Kerr decd. - but if the Court
 shall be of opinion and decide that
 they did or could take an interest un-
 der the said Will, then the defendant
 prays the Court to decide that the
 said interest shall be held subordinate to the
 title so as aforesaid acquired by the defend-
 ant under the said assignment of Au-
 gustus Kerr - and that the plaintiff may
 be estopped from setting up any title
 he may have acquired under the said
 Will, against the title of the defendant
 acquired as aforesaid - And the Defendant
 prays the Court by its ~~decree~~ decree to divest
 out of plaintiff all the ^{the} title the Court
 may hold he has in said land described in
 his petition & vest it in defendant, and
 defendant prays to be hence dismissed with costs

Samuel Reber
 & J. J. Williams
 Attorneys for Defendant

Charles B. Carr
vs
Wm Dinges

Amended answer
Filed by Leave
of Court

Filed May 13 1874
W. S. Joycelly

Charles B. Carr
Plaintiff

vs
Jas. D. King, Deft

In the Jefferson circuit
Court May Term 1874.

Plaintiff comes and for replication to the new matter set up in Defendant's amended answer filed May 13, 1874, states that he has no knowledge or information sufficient to form a belief as to whether in the year 182 John Ken and Augustus Ken were copartners and hence requires strict proof thereof. He admits that John Ken entered the land in controversy in his own name ^{and using a partner's name for 1825} but he denies that he entered it for the use and benefit of the firm of J & A. Ken or paid for the same with money of the firm. Plaintiff denies that any partnership ever existed between John and Augustus Ken until the year 1846 and it was dissolved in 1842 by mutual consent. Plaintiff denies that said

John Ken and insolvent or that
the firm of J. & A. Ken at the time
of the dissolution thereof in 1842
was insolvent or that a large
portion of the debts due by said
John Ken or by the firm of J. & A.
Ken were never paid or still remain
due. Plaintiff denies that on the 9th
day of December 1843 or at any other
~~time~~ ^{time} he executed or delivered a declaration
to the effect as stated in said answer
or to any other effect or that he executed
or delivered any declaration as
stated in said answer. He
denies that on the 11th day of January
1844 ^{or any other time} Augustus Ken as surviv-
ing partner of the firm of J. & A.
Ken and A. G. N. Ken did make
~~assignment~~ assignment of all
partnership property belonging
to said firm or either of them
to Beverly Allen for the purposes
mentioned in said answer or
for any purpose whatever or
that any such assignment was
ever made as stated in said answer.
As to the other matters in reference
to the sale of said property by Russell

and the derivation of title from Kays-
way by Defendant as alleged in
said answer Plaintiff has no
knowledge or information to form
a belief as to their truth or falsity
and hence requires proof of the
same.

Plaintiff admits that John Ken
made and published his last will
which was probated at the time
and in the manner as alleged
in said answer and that the
support of said will is correctly
set out by Defendant in said answer.
He owns that Susan Ken died
in 1805 or 1806. He admits that he
claims title to said premises under
the children of George W. Ken as
stated in said answer but he
denies that the children of said George
W. Ken took no interest in said
property but on the contrary he
owns that by the provisions of
said will the said children took the
whole of said property in fee sim-
ple at the death of Susan Ken the
wife of said John Ken and that
said Susan did not convey devise

or otherwise dispose of any said
property.

Plaintiff denies that Defendant is
entitled to any relief in equity or
at law or prayed for in his said answer.

John L. Thomas & Co

Attys for Plaintiff.

C. B. Carr

vs

Wm. Dings

Replication

Filed May 15 1874

W. L. Boyce

Clk

Chas Bent Carr } In the
 Wm Dings } Circuit
 } Court of
 } Jefferson
 } County -

... it now comes the
 defendant and moves the
 Court to set aside the
^{or finding of the Court}
 verdict & grant him a new
 trial for the reason that
 the ~~the~~ Court refused to
 give legal & proper instructions
 asked by ^{him} the Defendant -

Because the finding of the Court
 or verdict is against law and
 against the evidence -

Because the Court excluded competent evidence offered
 by the defendant -

Because the verdict or finding
 of the Court should have been
 for Defendant. - and

Because the defendant is entitled to a
 finding & judgment in ^{his} favor. -

~~Because the plaintiff moves~~

Rec

Sam Reber &
 Jos J. Williams
 for Dept

Carr

7

Mr Briggs

Wrote for a
new tract

Filed May 15 1874

W. S. Boyce clerk

Defendants Instructions -

Refused

1

On the pleadings and evidence the plaintiff is not entitled to recover in this action.

2

Refused

The Will of John Kerr did and does not operate to pass the title of said Kerr or any interest he has in the land sued for - to the Children of George Washington Kerr.

3

3

Given

~~The Will of John Kerr~~ ^{take} The plaintiff can ^{no} title under the Will of John Kerr unless it appears that his (said Kerr's) debts are paid or barred by lapse of time. -

4.
Inquired

The will of John Kerr passed all the title he had in his property to his widow Susan Kerr. absolutely subject to the payment of his debts

5.
Inquired

The plaintiff can in no event claim more than three fourths of the property of John Kerr which remained at the death of his widow Susan Kerr. And the plaintiff therefore is not in any event entitled to recover more than three fourths of the property sued for

Depts Instruction

Leann
as
Wingo

Filed May 15 1874

W S Boyce
also

C. Bent Barr, Plaintiff
 against
 William Dings, Defendant

In the circuit
 Court of
 Jefferson
 County

Missouri

Be it remembered that on the Trial of
 the above entitled cause the Plaintiff
 to sustain the action on his part
 read in evidence a patent from the
 United State to John Kerr for the
 Land in suit dated July 15th 1825

The land was
 for E. Said
 Kerr.

Also the Plaintiff offered in evidence
 a certified copy of the Will of John
 Kerr of date December 1st 1843
 with certificate of probate thereof
 of date December 22nd 1843 which
 will certificate and probate are
 in the following words and figures
 To wit, (Clerk here copy same)
 Upon the offering of said Will in
 evidence the Defendant objected to
 its being read in evidence for
 the following grounds of objection
 viz, because it was irrelevant
 and did not tend to prove title in
 the Plaintiff in that it does not unites
 George W. Kerr, Wm A. Clendenen and
 Isabella R. Clendenen the Plaintiffs

2
Grantors as heirs of George W. Kerr
with any title or interest in said Land,
or in other words the will aforesaid gave
no title or interest to the Children of
George W. Kerr -

but the Court overruled the objections of Defendant
and allowed the plaintiff to read said will in
evidence to which action of the Court in
overruling said objections & allowing said
will to be read in evidence the defend-
ant at the time accepted,

4
It was then
admitted by the defendant that George
W. Kerr & Isabella Clendenen ^{wife} ~~and~~ Wm. A.
Clendenen ~~husband of said Isabella~~
~~Clendenen~~ ^{children or their descendants} are the only heirs ^{deceased} of George
W. Kerr the brother of John Kerr
mentioned in his will - It was further
admitted that plaintiff had at the
commencement of this action whatever
title said Isabella Clendenen and her
husband and said George W. Kerr took

3
under the will of John Kerr by virtue
of a quit claim Deed from them to ~~him~~
him, dated July 12th 1871 —

It was also agreed
and admitted by both parties to this suit
that Susan Kerr the widow of John
Kerr died in February 1865 and
that Beverly Allen who is mentioned
as Executor in the will of John Kerr
died subsequently to the death of
said John Kerr and prior to
the year 1848 or about that year,

~~It was also admitted by the
Plaintiff that although he has a quit
claim Deed from Geo. W. Kerr and
Cubella Glendene & her husband
that this suit is prosecuted by him
for their benefit,~~

There ~~being~~^{was} no
further evidence offered by either
party —

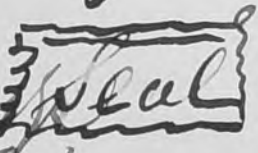
The Defendant then asked
the Court to declare the Law as
follows, to wit, (Clerk here copy
declarations of Law numbers
1. 2- 3- 4- & 5) The Court gave
the declaration of Law Number 3-
but refused to declare the Law as
prayed by Defendant in the other

declarations of Law asked by him
 to wit, Numbers 1-2-4 & 5 to
 which action of the Court in ~~refusing~~
 refusing to give said declarations
 of Law Numbers 1-2-4 & 5
 the defendant at the time accepted -

✓ The Court thereupon found
 the issues for the plaintiff and
 against the defendant and so decided
 ✓ and rendered judgment for plaintiff
 to which defendant at the time
 accepted - Defendant then on
 the same day of said trial
 filed his motion to set aside the
 verdict & finding of the Court and
 grant defendant a new trial
 which motion is in the following
 words and figures, to wit, (Clerk
 Here copy motion for a new trial)
 which motion being seen by the
 Court and understood was by the
 Court overruled to which action
 of the Court in overruling said
 motion defendant at the time
 accepted

The trial was had and
 motion for new trial overruled on
 the 15th day of May 1874 at the

Close of which Leave was given
Defendant by the Court the Plaintiff
Consenting to the same to file his
Bill of Exceptions within sixty
days from the adjournment of the
Court for the then Term which
adjournment was May 18th 1874
✓ which leave is shown by an entry
of Record as follows (Here copy
same) and now here on this first
day of June 1874 the defendant
Tenders this his Bill of Exceptions
which he prays may be signed,
sealed and made a part of
The Record which is accordingly
done

Louis F. Downing 
26th Cir
Mo

Jefferson Circuit
Court May Term 1874

C. Bent Carr
vs
Wm Dinger

Bill of Exceptions

Filed June 13th 1874
W. A. Boyce
clerk

By A. H. Marine
Sefr

In the Supreme Court, held at St. Louis, of the State of Missouri,

October Term, 1874
Monday November 16 1874

Charles Bent Barr,

Respondent

vs.
William Dingo

Appellant

Appeal from Jefferson
Circuit Court.

Now again come the parties aforesaid, by their respective attorneys, and the Court being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment rendered herein by the said Jefferson Circuit Court be in all things affirmed and stand in full force and effect, and that the said Respondent recover of the said Appellant his costs and charges herein expended, and have execution therefor. Opinion filed.

STATE OF MISSOURI—ss.

I, JOSIAH THORNBURGH, Clerk of the Supreme Court, held at St. Louis, of the State of Missouri, certify that the above and foregoing is a full, true and complete copy of the judgment rendered in the above entitled cause, as fully as the same remains of record in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at office in the City of St. Louis, this 16th day of December A. D. eighteen hundred and seventy-four

Josiah Thornburgh
Clerk.

SUPREME COURT OF MISSOURI.

Charles Bent Carr.
70 Prof.

William Dingee ap.

MANDATE.

JUDGMENT OF

Jefferson Circuit Court

AFFIRMED.

Filed Dec 17 1874
W. F. Boyce cler

C. B. Kerr

Mr Deings

The Court declares the law to be that the will of John Kerr now in evidence by the Plaintiff operated to vest in Mrs. Susan Kerr a life estate in the property in controversy with remainder to the children of George Washington Kerr: that at the death of Mrs. Kerr in 1865 the legal title to said property vested by virtue of said will in the children of said George Washington Kerr, and Plaintiff being the grantor of said children has the legal title to said property and therefore has a right to maintain this action.

That the Statute of limitation did not commence to run against the children of said George Washington Kerr till the death of the tenant for life Mrs. Susan Kerr in 1865 and this action is not barred by said Statute,

C B Leary }
Wm Dings } Eminent

On the pleadings and
evidence the plaintiff is
not entitled to recover
in this action - -

It is admitted that the firm of J. & A. Kerr was formed in January 1826, & continued until about 1833, when George W. Kerr came into it - under the firm name of J. & G. W. Kerr & Co. - that firm consisted of John Augustus & George W. Kerr, and continued until about 1838, when George W. Kerr died and the business was continued by John and Augustus Kerr under the firm name of J. & A. Kerr - until 1841, or 1842, when the firm was dissolved and the firm of Kerr & Peters was formed consisting of John Kerr & Ralph Peters, which firm continued until the death of John Kerr in December 1843. It is further admitted that the firm of J. & A. Kerr was insolvent, and that a large amount of debts were proved up against the estate of John Kerr in the Glasgow Probate which have not been paid out of his estate.

The above admissions are made to be used as evidence in the suit of Carr & Dings in the Jeff County Circuit Court - subject however to all objection as to relevancy & competency.

Stetling Bros & Co
Attorneys for plaintiffs

C B Carr }
 Wm Dings } Fee Bill.

Mar 172

Bayer

25 files ^{1.25} (copy set. ⁶⁰) 2 cts ^{1.00} writ & copy ¹¹⁰ dock ¹⁵ \$ 4.10

May 1 1872

Dock ¹⁵ have to and ²⁰ cont ²⁰ .60

Sept 5 1872

" ¹⁵ cont. ²⁰ 3 sps. ⁷⁵ 1.15

Jan 5 1873

" ¹⁵ rep. ²⁰ 3 sps. ⁷⁵ and amended rep ²⁰ 1.30

" " "

Sub ³⁵ non-suit ³⁵ Judgt. ⁵⁰ order ²⁰ 1.40

" " "

motion ²⁰ rule ²⁰ 40

May 1 1873

agreement. ³⁵ Bill Ex ³⁵ Dock ¹⁵ Trans. Bond & Post. ^{10.37} 10.22

" 1 1874

Dock ¹⁵ amended and ²⁰ rep ²⁰ 35

" " 1874

Sub ³⁵ vers ³⁵ Judgt. ⁵⁰ (issue joined ²⁵ motion ²⁰ rule ²⁰) 1.85

order ³⁵ appeal ³⁵ order for Trans ³⁵ 1.15 \$ 22.64

2 Trans.

~~10.37~~

Marine Clerk F B ¹⁰ casks. ^{1.00}

1.10

John Williams Shiff with ¹⁰⁰ calls ¹⁵

1.15

Amtpd by Plff. for Sept

2.50

F B Map 6 sps ^{3.00} 1 honest. ²⁰

3.20

Sept 5 1872

F B Dover Surveyor 1 day 10 miles \$ 2.30

Rm Harro

1 " 44 " 4.52

Jan 5 1873

Wm Mizer

2 " 56 " Mizer's Co. 6.98

Mo Price

1 " 50 " " 6.50

John Wilkins

1 " 50 " " 6.50

Retained by Bro. M. J. Judge

1 " 40 — 4.20

(31.00)

~~77.74~~

71.99

ant Court.

3475-3875 Term, 18

C. B. Carr

vs.

Wm Dings

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.