

Jefferson County Circuit Court
Case Files - Civil
May 1875

Box 34 Folder 13

Dolan, Thomas C.
Dolan, John

vs.
Wilson, James A.

Ejectment

80 acres in S28T41R3E; \$100
damages; bill of exceptions;
Supreme Court

State of Missouri }
County of Jefferson }

In The Circuit Court of Jefferson County

Thomas C Dolan &

John Dolan

as Plaintiffs

James A Wilson

Defendant

May Term
1875

Plaintiffs state that on the ninth day of January 1875 they were the owners of and entitled to the possession of the following described premises situate in the said County of Jefferson to wit: The west half of the South West Quarter of Section twenty eight in Township Forty one Range Three East and being so entitled to the possession thereof that the defendant afterwards on the eleventh day of January 1875 entered into such premises and unlawfully with holds from the plaintiffs the possession thereof to their damage in the sum of One hundred Dollars that the monthly value of the rents and profits of the premises is Fifty Dollars

Wherefore said Plaintiffs pray judgment for the recovery of the Premises and One hundred Dollars damages for the Unlawfully holding of the same from Plaintiffs and fifty dollars for monthly rents and profits from the rendition of the Judgment until the possession of the premises is delivered to plaintiffs and for such other and further Judgment as to the Court may seem meet

J J Williams

Wells Lindholm

Attys for plffs

Thomas C Dolan

John Dolan

no

James A Wilson

Filed Jan'y 13th 1887

Chas. Morine 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 *James A Wilson*

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 *Second* ~~Monday after the fourth~~ Monday of *May* next, then and there to answer unto

Thomas L Dolan & John Dolan

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

C. Ho. Horine
Witness, **W. S. BOYCE**, Clerk of our said
Circuit Court, with the seal thereof hereunto
affixed, at office in Hillsboro this *13th*
day of *January* A. D. *1875*
C. Ho. Horine Clerk Circuit Court.

Es

Deputy

I Executed the within Summons on the within nam-
ed Defendant James A. Wilson at the County of
Jefferson State of Mo. by Delivering him
a true copy of the writ and Petition
as furnished me by the Clerk of
Said Court on the 15. day of Jan 1875-

J B Moschiff
by J H Williams, Deft.

RETURNABLE

TO

JEFFERSON CIRCUIT COURT.

May TERM, 1875.

Thomas C. Dolan

John Dolan

vs

James A. Wilson

original

Shoff for 100

#3. ps. H. H. H.

Thomas C. Dolan &
John Dolan Plaintiffs
against
James A. Wilson Defendant

In the Circuit
Court of
Jefferson
County Mo.

Sept. Term 1875

Now at this day comes the defendant in the above case and for answer to Plaintiffs petition herein denies that the Plaintiffs on the 9th day of Jan'y 1875 or at any other time were the owners of & entitled to the possession of the $11\frac{1}{2}$ of the SW $\frac{1}{4}$ of Sec. 28 in Township 41 Range Three East, denies that he afterwards on the eleventh day of Jan'y 1875 or at any other time ^{unlawfully} entered into such premises & unlawfully withholds them from the Plaintiffs, denies that the Plaintiffs are damaged in the sum of one hundred dollars, denies that the monthly rents and profits of said premises is fifty dollars or any sum, defendant denies each and every material allegation in Plaintiffs petition -

Defendant further answering says that ~~the~~ neither the Plaintiffs or any or either of them nor the ancestors, predecessors

~~predecessors~~, grantors of them or
Either of them or other person or
persons under whom they claim or
either of them claim said premises
have been seized or possessed of
said Real Estate or any part thereof
within ten years next before the ^{bringing} filing
of this suit, but to the contrary thereof
Defendant avers that he & his grantors
under whom he claims said land have
been in the actual, undisturbed, peaceable
continuous, hostile and adverse possession
of said Real Estate, holding occupying
enjoying possession and claiming the same
by virtue of title and also by color of title
adverse to all persons whomsoever said
possession being open notorious hostile
and continuous and under color of title
and claim of title by deed and
under absolute title to the same, and
defendant avers that the Plaintiffs
ought not to have and maintain
this action and that this action is
barred by the Statute of Limitations
And having answered fully defendant
asks to be discharged with costs
John L. Thomas & Son
attys for Defendant

Thomas Dolan &

John Dolan
against

James A. Wilson

Answer of
Defendant

Filed Aug. 14 1875

Leah M. Maine

Clerk

Thomas C. Dolan &
John Dolan, Plffs.
vs
James A. Wilson Def.
In the
Circuit
Court of
Jefferson
Co. Mo.

Now at this day Plaintiffs come
and for reply to Defendants answer
say it is not true that neither
the plaintiffs ^{either them} or their ancestors or
predecessors or grantors or other
person under whom they claim
said premises described in their
petition have been seized or
possessed of said Real Estate or
any part thereof within ten years
next before the bringing of this suit,
and Plaintiffs deny that Defend-
ant or his grantors or either of
them or those under whom the
defendant claims said land
have been in the actual, undisturbed
peaceable, continuous, hostile and
adverse possession of said Real
Estate holding, occupying, enjoying
possession and claiming the same
by virtue of title or by color or claim
of title adverse to all persons
whomsoever - deny that the
Defendant has held any such
open, notorious or adverse possession
possession of said land or
that he has had any continuous

open, or notorious or hostile
possession of said Land or any
of it for ten consecutive years
next before this suit was
commenced either with or without
color of Title thereto either by deed
or otherwise, Plaintiffs
further replying say that—
~~they are minors under~~ their
father Francis Dolin who was
the legal owner of said Land
having entered it died
on the 10th of November 1863
leaving as his heirs at Law
these Plaintiffs to whom said
Real Estate descended subject to
the Dower therein of their mother
the wife of said Francis the
father of Plaintiffs who has
since conveyed her Dower
therein to Plaintiffs that at the
time of the death of their said
father the Plaintiff Thomas C.
was of the age of eleven years &
the Plaintiff John was of the
age of ten years so that they
aver they have been up to the
institution of this action under
disability so that the Statute of
Limitations could not have
run against them to bar

their title to said Land even
of the Defendant had been
in the open & exclusive
possession thereof which
however Plaintiffs deny,
and Plaintiffs therefore
pray judgment as in
their original Petition is
prayed

Hewershot & Williams
for Plaintiffs

Dolan

my
Wilson
Rappley

Filed Sept. 17 '98/5-
L. Th. Osborne
Clerk

STATE OF MISSOURI, }
COUNTY OF JEFFERSON.

To W R Darnell

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 Seventh day of , 187 , 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 Solan & Dulan is Plaintiff, and John Wilson is Defendant, on the part of Sight, ; and herein you are in no wise to fail.

Witness, C. THO' HORINE, Clerk of our said Court, with the seal thereof hereto affixed, at office, this 17th day of Sept., A. D. 1875.

C. Tho' Horine,
CLERK.

S. T. 75

Dobson & Dobson
21

J. A. Wilson

D

W. R. Donnell

Filed Sept. 17, 1875
C. H. Horner
CER

Shuff Free \$ 50

I executed the order of the county of Jefferson in the
of back of Superior this 17th day of Sept. and 1875-76
Receiving the same to the within named of
W. R. Donnell

W. R. Donnell
By W. R. Donnell

Refused

The Court Declares the Law to be that the possession of Land which under the Statute of Limitations will defeat ~~defeat~~ the Legal Title of the true owner in Ejectment must be with the intention on the part of the possessor of asserting a Title adverse to the true owner and that if the defendant Wilson went into the possession of the Land in suit under a Title which he did not consider good and held such possession up to within ten years of the institution of this suit continuing to consider his Title invalid and believing that the true owner had the Legal right to redeem said Land and thereby defeat the claim of Title of defendant by paying all Taxes ^{costs} and charges ~~Costs~~ which had been paid thereby thereon by defendant or his grantor then in that case the action of plaintiffs is not barred by Limitation and plaintiffs having shown by evidence that a Legal Title to said Land are entitled to recover in this action

The Court declares the Law to be that if Defendant went into the possession of the Land in suit under his deed from Pipkin believing that Pipkin who conveyed to him was not the owner of the Legal Title but that he - defendant, merely held said Land relying on his warranty from Pipkin and under the belief that his ~~Title~~ Claim of Title upon said Land might be defeated by the true owner claiming the same and with the intention of resorting to his warranty upon the happening of such event then in that case the plaintiffs are not barred of their action by Limitation and are entitled to recover in this action,

Refused

Refused

The Court declares the Law to be that upon the evidence in this case the defendant has not made out his defence of the Statute of Limitations and having failed to do so the finding of the Court showed he for the plaintiffs

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\$

Wolman }
 " }
 Wilson }

If the court finds from the evidence that the defendant went into possession of the property in 1859 & during the life time of the legal owner and that the legal owner died in 1863 leaving two minor sons, and that these sons commenced their suit for the recovery of the land in 1865 within three years after the oldest became twenty one years of age. Then the court declares the law to be that although the statute may have commenced to run against the ancestor, it could in no wise affect the rights of these plaintiffs.

Given

Refused

1
Doolin

²
Nelson

1 The court declares the law to be that if the Court sitting or Jury find from the evidence that James A. Nelson, the Defendant in this cause, took possession of the land in controversy in the fall of 1859 or 1860 by fencing and using a field thereon and he continued ~~from~~ that time to hold possession of the same openly, notoriously adversely and continuously, paying the taxes thereon, ^{under color of claim of title} from that time till the institution of this suit, then the finding should be for Defendant.

2. That in order to constitute the possession of Nelson adverse to Francis Doolin it is not necessary at the time he took possession that he believed his title was good ~~but~~ or that it could not be defeated, but if he took possession of said land with the intention of holding it adversely to the true

Pl. p. 100

owner and held the same adversely
continuously and peaceably for
a period of ten years before
the bringing of this suit, paying
taxes thereon under color and
claim of title, then the finding
should be for Defendant.

Thomas B. Dolan and
John Dolan Plaintiffs

^{vs}
James A. Wilson
Def

In the Jefferson Circuit
Court. September Term 1875.

Now comes said Defendant
and moves the Court to set aside
the finding and judgment
in this cause and grant
him a new trial for the following
reasons

1. Because the Court gave
wrong instructions as prayed
for by the Plaintiffs against
the objection of Defendant
2. Because the Court admitted
improper and incompetent evi-
dence on the part of Plaintiff
and excluded competent
evidence offered by Plaintiff
3. Because the instruction given
by the Court on the part of the
Plaintiffs is ~~not the~~ in regard
to the Statute of limitations is
not the law & is erroneous.
4. The finding should have

been for Defendant instead of
the Plaintiffs.

John L. Thomas & Bro
Attys for Defendant.

Thomas C. Dobson
et al

James H. Wilson

Motion for a new
trial

Filed Sept. 21 1876
C. H. H. H. H.
Clk

Thomas C. Dolan and
John Dolan, Plaintiffs

vs
James A. Wilson

Defendant

In the Circuit Court of
Jefferson County Mo.

Be it remembered that on the trial
of the above entitled cause the
Plaintiffs to sustain the issue on
their part introduced the following
evidence

1. Plaintiffs read in evidence a patent
from the United States to Francis
Dolan dated Aug 1 1844 conveying
to said Francis, Dolan the land in
controversy.
2. They also read in evidence a deed
from Mary J. Dolan to Plaintiff
dated Jan 6 1875 conveying to them
all her right title and interest
in the premises, as widow of Francis
Dolan, in the land in controversy.
3. Mary J. Dolan was sworn & testified
as follows - I am the widow of Francis
Dolan, Francis Dolan died on the
10th day of November 1863 leaving
myself as his widow and only

two children and no other descendants.
His children were named Thomas
C. Dolan and John Dolan. Thomas
C. Dolan was born Jan. 18, 1857 and
John was born Dec. 23, 1853.

The Plaintiff here closed this case
and the Defendant to sustain the
issue on his part offered to read
in evidence as color of title upon
which to base his plea of the Statute
of Limitation a deed by the Register
dated ^{to Philip Diggins} 1856 as follows
(Here copy the same with the Certificate
of record), to the introduction of
which in evidence Plaintiff objected
for the following reasons:-

1st Because the said deed
was not acknowledged by the
officer who purported to have
made it & was therefore utterly
void & no color of title on which
to base the Statute of Limitations

2nd because it did not describe the Land sued for only abbreviations being used for the description of the Land which were not sufficient to describe it for which reason it said Instrument 1 was not color of title to said Land as it does not describe it.

But the Court overruled said objections and permitted Defendant to read said tax deed for the purpose for which it was offered, to which ruling of the Court Plaintiffs at the time accepted.

Defendant then read in evidence a deed from Philip Pipkin and wife to Defendant for the Land in controversy dated 1859

as follows (Here copy the same) Defendant then proved that said Land was assessed to Philip Pipkin for the years 1857, 1858, & 1859 and the taxes thereon paid by said Pipkin for 1857 and 1858: that said Land were assessed from 1860 to 1869 inclusive in the name of Defendant and after 1869 have been assessed without any name and that Defendant has paid the taxes regularly

from 1859 to 1874 inclusive of those years.

Defendant was then sworn and stated I bought the land in controversy from Philip Pipkin in the fall of 1859 and paid him \$200 for the same. In a short time after I got the deed I took possession of this land. I took possession of this land in the fall of 1859 by inclosing it or eight acres with a fence. There was an old field there before that but the fence had gone down and I fenced the same old field and took in some wood lands beside, and I have kept the field fenced ever since and still have it fenced. I used the field for pasturing and feeding my cattle & stock. It was near a good spring & therefore a good place to keep stock. This land adjoins other land I own. From the time I got the deed from Pipkin to this time I have claimed this land as my own.

Exors Examined

I had the lines of this land run out

by the Surveyor and know where the
lines ^{are}. I know that the field I have
spoken of, is on this land.

The Plaintiffs asked the witness his
opinion about the validity of his title
to the land in controversy to which
Defendant objected because it
was violent and incompetent
and that it is not necessary to con-
stitute an adverse possession for
the occupying claimant & believe
that his title is a valid one, but the
Court overruled Defendant's said
objection, and permitted Plaintiffs
to ask said question to which ruling
of the Court Defendant at the time
accepted. The witness in answer
to said question then said. I paid
Pipkin \$200 for this land. Pipkin
told me his title was only a tax
title and he would let me have
it for less than \$200 if I would take
a quit claim deed but I refused
to take a quit claim deed and
paid the \$200 & he gave me a
warranty deed. I did not think
a tax title was a genuine title, but
I was no lawyer & did not know

whether the title were good or bad. Some people said they would be good in ten years and some said they never would be good. My idea was that if minor heirs should come in ten years they could redeem from the tax sale or if Dolin should come in ten years he could redeem if the tax deed was not good.

On redirect examination the witness stated

Ques. What has been the nature of your claim to this land since you have been in possession of it? The ~~supra~~ Plaintiff objected to this question because

but the court overruled said objection and permitted the witness to answer to which ruling of the court Plaintiff at the time accepted.

Ans. I claimed the land under my deed. I claimed title to the land.

Ques. Did you or did you not during

the time you were in possession of this land admit or think that Dolin or his heirs had an absolute right to redeem this land ^{will?} against you?

Ans. I did not. I thought I had the best right but if any minor heirs should come they might have the right to redeem the land in ten years or if the tot deed should prove to be not good Dolin himself might redeem the land in ten years by paying up the taxes & costs.

Ques. While you were in possession of this land did you or did you not claim title to ~~the~~ it against Dolin and his heirs and every one else? Plaintiffs objected to this question because it was only a question of law & is improper but the Court overruled the objections & with the ruling of the Court the Plaintiffs at the time accepted.

Ans. Yes Sir. I claimed ^{title to} the land against ~~Dolin and his heirs and everyone else.~~

Ques. Was it or was it not your intention while you occupied the land to

abandon and give it up if Dolan
or his heirs should come and claim
it?

Ans. I did not until I tested it.

On Re cross examination he said
Ques. What do you mean by saying that
that you did not intend to give up
possession of this land to Dolan
or his heirs without testing the
title?

Ans. It is not likely a man would give
up land he thought he had a title
to without testing it.

Ques. If you did not think a tax title
was a genuine title what title did
you rely on for this property knowing
that Pipkin's title was only a tax
title?

Ans. ~~I thought I had the best right~~
I relied on my deed from Pipkin
knowing it was good for the money
I paid out if I should lose the
land. Pipkin was amply good for
his money.

And this was all the evidence offered by either party.

At the instance of Plaintiffs the Court gave the following instruction (Here copy the instruction given at the instance of Plaintiffs) to the giving of this instruction the ~~defendant~~ the Defendant at the time ~~accepted~~ objected to giving said instruction but the Court overruled said objection and gave said instruction to which ruling of the Court in giving said instruction Defendant at the time accepted.

The Plaintiffs asked the Court to give the following instructions (Here copy instructions ^{1, 2, 3} ~~4, 5, 6~~ as prayed for by Plaintiffs) which the Court refused to give to which ruling of the Court in refusing said instructions the Plaintiffs at the time accepted. The Defendant asked the Court to declare the law as follows (Here copy the two instructions asked for by Defendant) The Court gave instruction no one as prayed for by Defendant but refused

to give instruction. No two or more by defendant to which ruling of the Court in refusing his said second instruction the defendant at the time excepted.

The Court then gave judgment for Plaintiff.

And the defendant on the 21st day of September 1875 filed his motion for a new trial as follows (See copy the same) which the Court overruled and to which action of the Court in overruling his motion for a new trial the defendant at the time excepted.

Plaintiff agreed in open Court that defendant ~~at~~ might prepare, have signed and filed this bill of exceptions within thirty days after the adjournment of this Court and said Court adjourned on the 25th day of September 1875. In accordance with that agreement and consent which was entered of record this bill of exceptions is signed, sealed and ordered to be filed in this case as a part of the record this 14th day of Oct. 1875.

Louis F. Downing ^{Clk} Judge

4024

Thomas C. Dolan Esq

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James A. Wilson

Bill of Receptions.

Will Corvick
^{Attorney}
for Wells.

Filed Oct. 18 1875

C. H. H. H. H.

Clerk

Supreme Court of Mo
October Term 1878.

Thos C and John Polie Defendants in Error,
vs. Error to Jefferson County Circuit Court,
James A. Wilson Plaintiff in Error.

Now at this day Comes the said
Plaintiff in Error by his attorney and moves the Court
to dismiss the writ of Error herein. Wherefore it
is Considered and adjudged by the Court that the
writ of error herein be dismissed and that the said
defendants in error recover against the said plain-
tiff in error their costs and charges herein expen-
ded and have therefor execution

State of Missouri, } SCT.

I, HENRY W. EWING, Clerk of the Supreme Court of the State of
Missouri, certify that the foregoing is a full, true and complete transcript of
the judgment of said Supreme Court, entered of record at the
October Term thereof, 1878, in the above entitled cause.

Given under my hand and the seal of said
court, at the City of Jefferson, this
17th day of Nov.

1879.

Henry W. Ewing
Clerk.

4024

Dolan v. Dolan

vs

James A. Wilson
— " —

Filed Dec. 26th. 1879
C. H. H. Marine

Clear