

Jefferson County Circuit Court
Case Files - Civil
September 1876

Box 36 Folder 10

Henroid, Louis Henry
Henroid, Alexander Henry
Henroid, Henry Albert
Henroid, Henry Gaspar
Edwards, Elizabeth
Edwards, Herman

Vs.

Newsbaumer, Francis Joseph

Ejectment

80 acres in S32,33T39R5E;
\$500 damages; Supreme Court

Louis Henry Menroid, Alexander
Henry Menroid, Henry Albert
Menroid, Henry Gaspard Menroid
and Elizabeth Edwards and
Herman Edwards her husband Plaintiffs,

Jefferson County
State of Mo.

against

Francis Joseph Newsbaurer Defendant.

In the Circuit Court September Term 1876.

Plaintiffs state that on and prior to the 24th day
of September ad 1875 they were entitled to the
possession of the following described premises
situate in the County of Jefferson and State of
Missouri to wit: The North East qr. of the North
East qr of Section no. thirty two, also the
North West qr of the North west qr, of Section
thirty three in Township no. thirty^{nine} of Range
no Five East, containing in the whole eighty
acres, and being so entitled to the possession
thereof, that the defendant afterwards on
the 25th day of September 1875 entered into
said premises and unlawfully withholds
from the plaintiffs the possession thereof to
their damage in the sum of five hundred
dollars.

Plaintiffs further state that the monthly value
of the rents and profits of the premises is twenty
dollars.

Wherefore plaintiffs pray judgment for the recovery
of the premises and ~~two~~ five hundred dollars
for the unlawfully withholding of the same
from plaintiffs, and twenty dollars for
monthly rents and profits from the rendition
of the judgment until possession of the
premises are delivered to plaintiffs and
for other proper relief.

Jos Williams,
Atty for Plaintiffs

Louis Henry Newbold
et al

Francis Joseph Newbanner
Def't

In Equity

Filed Aug 24th 1876
C. H. W. W. W.
Clerk

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

The State of Missouri,

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

I command you, that you summon *Francis Joseph Newsbaumer*

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 *September* next, then and there to answer unto *Louis Henry Neuroid, Alexander Henry Neuroid Henry Albert Neuroid, Henry Gaspard Neuroid and Elizabeth Edwards and Herman Edwards,*

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

Witness, C. THO. HORINE, Clerk of our said Circuit Court, with the seal thereof hereunto affixed, at office in Hillsboro, this *24th* day of *August*, A. D., 1876.

C. Tho. Horine, Clerk Circuit Court.

4200 36

RETURNABLE

TO

JEFFERSON CIRCUIT COURT.

Sept. TERM, 1876

13-74
no
Jens Henry Meinrad
etal

Francis Joseph Newsbomer

original
J B Moss Sheriff fees \$1.00

#3. paid by holder
Sept 28 1876

I served the within writ at Jeff Co on the 25th day of August 1876 by delivering a true copy of the writ and return as furnished me by by the Clerk, to the defendant Francis Joseph Newsbomer he being the first served on this 25th day of August 1876

J B Moss Sheriff
By M. W. Young Deputy

Henry
vs
Gaspard

Lower Court
Compared

Henry J. About the year 1843 one Henry Heroid died in Jefferson County seized of the tract of land in controversy, leaving a widow and four children the plaintiffs herein. After the death of said Henry the defendant and his widow intermarried, and they and the children continued to reside on the land. In February 1864 the mother of the plaintiffs died, and they, except the youngest, Henry Gaspard, were subsequently driven from their home by the cruelty of the defendant. In 1864, on his motion, he was appointed guardian of Henry Gaspard, and immediately, as such guardian, filed a petition in the Circuit Court of said County for a partition of the land among the heirs, alleging that it was not susceptible of division, and obtained a judgment for the sale of the land. It was publicly sold by the Sheriff in May 1866, and the defendant became the purchaser, at the price

2.

of \$100, ten per cent of which was then paid, and for the balance, he executed his promissory note, which was subsequently paid by him to the Sheriff, who afterwards returned it to him. The land was then worth between \$700 and \$1000.

Defendant testified that he offered to the plaintiffs, each his share of the purchase money, and that the sheriff had previously offered it to them, but they declined to receive it. They testified that neither defendant, nor the sheriff, ever offered them any portion of the money for which the land was sold. The Sheriff did not testify. All but one of the plaintiffs were minors when the sale occurred, and could neither read nor write and testified, that when they were served with process in the partition suit, they did not understand what it meant. The defendant testified that he had lived for some years on the farm, had paid taxes, and reared the children

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and that he went to Almer Green Esq. an Atty. and laid the matter before him, and was by him advised to the course he pursued. Mr Green on the contrary, testifies that defendant came to him, and said he wanted the land sold - and enquired how it could be accomplished. The sale was advertised according to law, but several of defendant's nearest neighbors were not aware that it was to be sold, or that a suit in partition had been instituted. That they frequently saw defendant and conversed with him, but the sale of the property or pendency of the suit was never mentioned by him. Several of the plaintiffs were in the habit of visiting defendant during the pendency of the partition suit, but he never mentioned the subject to them.

The defendants testified that they knew nothing about it, and there is no evidence, other than the Sheriff's return to the ^{writ} ~~suit~~ in the partition suit, tending to prove

4.

that either of them, except Henry Gasford, was aware that the land was to be sold, and the only evidence tending to show that he knew it, was the testimony of Frank Smith to the effect, that about three weeks before the sale, he heard John ~~Mcnamara~~ tell Henry, in De Soto, that the land was to be sold. Henry testified that this conversation occurred after the sale.

The defendant testified, that after he purchased the land, but at what time he does not state, he erected upon the land a barn which cost him \$500, cleared five acres of land and made a few other trifling improvements.

To state this case, is to decide it. The defendant, after having occupied the land from the date of his marriage until the death of the mother of plaintiffs, as soon as she died, commenced systematically to mistreat and abuse the children, except the youngest, and continued it, until

4.

they were driven from their home. He continued in possession, and, the evidence warrants the statement, procured his appointment as guardian of the child that remained with him, in order to defraud his ward, and its brothers and sister out of the little estate which they inherited from their father. The purchase money paid by him was returned to him by the sheriff. why it does not appear he holds the land worth from \$700 to \$1000, and all he in fact paid was the lawyers fee in the partition suit and the costs of that suit, fraudulently instituted by him. He claims to have reared the children, and expended large sums of money in paying taxes and making improvements.

They certainly owe him but little for their rearing for they can neither read nor write, and if he had done his duty toward them, they would have been able to read the process served upon them in the partition suit, and

6.

would not now be here alleging that defendant took advantage of their ignorance to cheat and defraud them.

The partition suit was conceived in fraud, which taints the whole proceeding.

A Court of Equity will not go into vulgar fractions to ascertain what proportion of such a transaction may be upheld.

The defendant's conduct toward these plaintiffs, his step-children was shameful, and a party, guilty of such conduct, should not be heard, when he asks that he may have a fractional part of the avails of a proceeding which was entirely fraudulent.

There is no such bar here as precludes plaintiffs from receiving the relief they ask. It was not shown, that, without asserting their rights, they stood by and saw defendant making improvements on this land after they were aware of the fraud which had been perpetrated upon them.

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There is nothing in the evidence, tending to show that defendant was actuated in his conduct by any honest motive: but on the contrary, it conclusively proves that he deliberately planned a scheme to defraud his ward, and other step-children, out of their small patrimony.

The judgment of the Circuit Court was a most righteous one, and is affirmed.
All concur.

State of Missouri,--ss--

I, HENRY W. EWING, Clerk of the Supreme Court of the State aforesaid, do hereby certify that the foregoing is a full, true and complete transcript of the opinion of said Court in the therein entitled cause, filed in my office on the 24th day of March 1899

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of our said Supreme Court. Done at office in the City of Jefferson, State aforesaid, this 10th day of May 1890

H. W. Ewing Clerk Supreme Court.
By Chas. J. Green D. C.

Supreme Court of Missouri,

October Term, 1878.

Lewis Henry Neurid, Alexander Henry Neurid,
Henry Albert Neurid, Henry Gaspar Neurid and
Elizabeth Edwards ^{and} Herman Edwards her husband Defendants in Error
v. ^{vs.} Errors to Jefferson County Circuit Court
Francis Joseph Neustauner Plaintiff in Error

Now at this day come again the parties aforesaid, by their respective attorneys, and the Court here being now sufficiently advised of and concerning the premises, do consider and adjudge that the judgment aforesaid, in form aforesaid, by the said Jefferson County Circuit Court rendered, be in all things affirmed, and stand in full force and effect. And it is further considered and adjudged by the Court that the said Defendants in Error recover against the said Plaintiff in Error their costs and charges herein expended, and have therefor execution. (Opinion filed)

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 24th day of April

1880.

Henry W. Ewing, Clerk
By Chas. L. Greucher, D.C.

4255

Neuroid
vs
Newbannen

Opinion Supreme
Court

FILLED
MAY 13 1880

To the Marine
CLERK.