

Jefferson County Circuit Court
Case File - Civil

Box

11

Folds, 50

June 1859, #47

Burgan, Isaac
Burgan, Elizabeth

vs

Cockrill, Starks S.
Byrne, Patricia

Ejectment

213 acres in Survey 908 on Big River;
#25 damages; depositions

Isaac Borgan and Elizabeth Borgan his wife Plaintiffs
against

Starks S Cockrill and Patrick Byrne Defendants

In the Circuit Court Jefferson County,
State of Missouri.

Plaintiffs state that by act of Congress, there was confirmed to the heirs and legal representatives of ~~said~~ Isaac Heldebrand deceased, a tract of six hundred and forty acres of land situate on the waters of Big River in the County of Jefferson State of Missouri, being United States Survey number nine hundred and eight, that the heirs and legal representatives of said Isaac Heldebrand, were his two sons Abraham Heldebrand and Isaac Heldebrand, and a daughter Elizabeth, the Plaintiff, since intermarried with Isaac Borgan, he also left surviving him a widow Margaret Heldebrand who afterwards married Michael Stull and has since died, that said Abraham and Isaac Jr. conveyed their interest in said land to Michael Stull, who conveyed the said interest & acquired by him from Abraham & Isaac Jr. to the defendant Starks S Cockrill, in and to one third part or $2\frac{1}{3}$ acres of said survey, being "the upper third" or the western third of said survey.

Plaintiffs state that they are entitled to the possession of one ^{undivided} third part of said $2\frac{1}{3}$ acres

of land and were so entitled on the first day of March 1850, and being so entitled to the possession thereof that the defendant Patrick Byrne afterwards to wit, on the first day of March 1859 entered into said premises and unlawfully withheld from the plaintiffs the possession thereof, to the damage of the plaintiffs of the sum of Twenty five dollars

They therefore demand judgment for the recovery of the said one third part of said land and twenty five dollars damages for the unlawfully withholding the same from plaintiffs and for other proper relief, Fletcher for Plffs.

Thos C Metcher attorney for plaintiffs on oath states that the foregoing petition and the matters therein as stated he believes to be true, signed & sworn to before me, this 29 April 1859.

Chas J Honey Clerk

Mr C Fletcher

No.
Leicester Leach
June 7 1859.

Shane Morgan & wife
= Ad. =
Stacks & Lockwood
and Patrick Byrne

Exemption

Filed April 29th 1859
Edw J Hooley clerk

Isaac Burgar & Elizabeth Burgar his wife Plaintiffs
against

Thomas Allen & Patrick Byrne Defendants

In the Circuit Court

Jefferson County, ^{State of} Missouri

Plaintiffs state that by act of congress there was confirmed to the heirs and legal representatives of Isaac Heldebrand deceased, a tract of six hundred and forty acres of land, situate on the waters of Big River in the County of Jefferson in the State of Missouri being United States Survey number nine hundred and eight. That the heirs and legal representatives of said Isaac Heldebrand, were his two sons, Abraham Heldebrand and Isaac Heldebrand, Jr. and a daughter Elizabeth, the plaintiff, who has since intermarried with Isaac Burgar,

Plaintiffs state that on the 12th day of November 1857 they were entitled to the possession of one third part of said tract of land, and being so entitled to the possession thereof that the defendant Patrick Byrne afterwards to wit on the first day of March 1858 entered into and upon "the lower or eastern third part of said Survey containing two hundred and thirteen acres and one third of an acre and unlawfully withholds from the plaintiffs the possession thereof. That said defendant Thomas Allen claims to be the owner of said eastern third of said Survey. Plaintiffs demand judgment for

the recovery of the possession of the one third part
of said $21\frac{3}{4}$ acres of land. and for such other
relief as they may be entitled to receive

Hetcher for Plff.

Thos. C. Hetcher attorney for plaintiffs on oath says
that the foregoing petition and the matters therein
as stated he believes to be true

Signed & sworn to before me } Thos. C. Hetcher
April 29th 1859

Elias J. Honey Clerk.

Filed April 29th 1859

A true copy of the original peti-
tion and affidavit on file in my office

In Testimony whereof I have to
sign my name and affix the
Seal of said Court at office in
Hillsboro April 29th AD 1859

Elias J. Honey Clerk

COUNTY OF JEFFERSON, SS.

The State of Missouri.

To the Sheriff of the County of Jefferson--Greeting:

We command you, that you summon Stark S. Lockrill
and Patrick Byrne

----- if they be
found in your County, that they be and appear before the Hon.
Judge of our Circuit Court, on the first day of the next term thereof,
to be begun and held at the town of Hillsboro, within and for the
County of Jefferson, on the second Monday after the
fourth Monday of May
next, then and there to answer unto Isaac Burgar
and Elizabeth Burgar his wife

upon ~~there~~ original petition, a copy whereof is herunto annexed and
accompanies this writ—and have you then there this writ.

Elias J. Honey

Witness, ~~THO. C. FLETCHER~~, Clerk of our said Circuit
Court, with the seal thereof hereto affixed, at
office, in Hillsboro, this thirteenth
day of April A. D. 1859

Elias J. Honey

CLERK CIRCUIT COURT.

I executed the within writ in the county of Jefferson
State of Missouri on Patrick Byrne by delivering him
A true copy of this writ and petition as furnished me
by the clerk on the twelfth day of May A.D. 1859

Starks cockered not found within my county - non Est. ⁵⁰

Oscar Dover Sheriff

No 47

Jefferson County Court

June term 1859

1623

Isaac Burigand wife

vs. Summons

Starks & Cockered

Patrick Byrne

Sheriff fee \$1.50

May 16th 1859

Oliver Honeycutt

clerk

page 3-83

Recd for defendant June 13th 1863 Book No 4

COUNTY OF JEFFERSON, SS.

The State of Missouri.

To the Sheriff of the County of Jefferson--Greeting:

We command you, that you summon Patrick Byrne

if he be
found in your County, that he be and appear before the Hon.
Judge of our Circuit Court, on the first day of the next term thereof,
to be begun and held at the town of Hillsboro, within and for the
County of Jefferson, on the second Monday after the
fourth Monday of May
next, then and there to answer unto Isaac Burgan
and Elizabeth his wife

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



Elias Honey
Witness, ~~THO. C. FLETCHER~~, Clerk of our said Circuit
Court, with the seal thereof hereto affixed, at
office, in Hillsboro, this twenty ninth
day of April A. D. 1859

Elias Honey

CLERK CIRCUIT COURT.

James Morgan and wife

vs

Jatrick Syme et al

Coping Petition served for
Defendant

A true copy of the writ
attest E. J. Honey Clerk

Isaac Burgan & Wife

vs
Starks S. Cockrell & Patrick Byrne

} Ejectment

Now at this day comes said Defendants & for answers to Plaintiffs petition heretofore filed in this behalf state that it is true as is alleged in said petition that by act of Congress there was confirmed to the heirs & legal representatives of Isaac Hildbrand deceased a tract of six hundred & forty acres of land situated on Big River in Jefferson County, State of Missouri being United States Survey No. 908

They admit that Abraham & Isaac Jr. children of the said Isaac, deceased, conveyed their interests their interests in said land to Michael Hull, who conveyed the interests thus acquired to Starks S. Cockrell, one of said Defendants. They deny that Plaintiffs are entitled to the possession of one undivided third part of said interest, which are $213\frac{1}{3}$ acres, or to any other amount, deny that they were so entitled on the first day of March 1858 or on any other day. Deny that Patrick Byrne on the first day of March 1859, entered into said premises & unlawfully withholds the same from Plaintiffs to the damage of Plaintiffs of Twenty five dollars or any other amount.

Defendants for further answers state that the said Starks S. Cockrell & those under & through whom he claims have had quiet & uninterrupted adverse possession of the said $213\frac{1}{3}$ acres for more than ten years before the commencement of this suit; that they have had such possession of said land more than twenty years before the commencement of this suit. They allege therefore that the Plaintiffs right of action if any ever existed

which is denied, has not occurred within twenty
nor within ten years.

Defendants for further answer allege that Elizabeth
Burgon together with the other heirs of the said Isaac
deceased, made partition of all the lands belong-
ing to this father some thirty five or forty years
ago. & that the said Elizabeth shore was given to
her out of an other tract of land, that she accepted
of her share in full satisfaction of all her
claims to the real estate of her father & has
long since disposed of the same & appro-
priated the proceeds to her own use.

Defendants deny that the said Elizabeth has
any interest in the land described in said
petition & allege that the whole belongs to the
said Cockrell, the said Byrnes claiming
no interest.

Pipkin & Thomas.

Attest Mr. Cockrell one of said defendants
makes oath & says that he believes the above
answers & the matters therein stated are
true,

Sworn to & subscribed before
me this day
1859.

Burgess & wife
by

Lockmiller & Co

Shreve

Filed, August 29th 1859.

Edwin S. Honey

COUNTY OF JEFFERSON.

THE STATE OF MISSOURI,

To Washington Stephens. vs. Stephens

Patrick Byrne

GREETING:

You are hereby commanded, that setting aside all manner of excuse and delay, you appear before our Peace Court for the County aforesaid, on the 16th day of December next 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 Burgan and wife Plaintiff and J. Woodhouse Defendant on the part of defendant and herein you are in no wise to fail.

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

with the Seal thereof hereto affixed, at office this

14th day of November A. D. 1859

Elias F. Honey

Clerk.

I executed the within ~~Spec~~ in the County of
Jefferson on Wash Stephens Mrs Stephens &
Patrick Byrne by reading on the 22nd day ^{of November} 1859
Oscar Dover Sheriff

Do. Percut Bench
Decer. Term 1859

J. P. Morgan wife

J. J. Lockridge

For debt
Wash. Stephens

Mrs. Stephens

Pat. Byrne

Sheriff fee \$1.50

COUNTY OF JEFFERSON.

THE STATE OF MISSOURI,

To

Elizabeth W. Bourkney

GREETING:

You are hereby commanded, that setting aside all manner of excuse and delay, you appear before our *bench* Court for the County aforesaid, on the

10th day of December next 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 *Joac. Dearborn and wife* Plaintiff and *Stark Rockwell and* Defendant on the part of *Plaintiffs* and herein you are in no wise to fail.

WITNESS, ELIAS F. HONEY, Clerk of our said Court with the Seal thereof hereto affixed, at office this

21st day of *November* A. D. 185 *9*

Elias F. Honey

Clerk.

Elizabeth Mcoustney not found within my
county 1859
Oscar Doret Sheriff

Colinvaud Court
December term 1859

Joac. Burgenmfe

"
Hards J. Lockwell

for OJts
Elizabeth Mcoustney
Sheriff fee non est 25c

Isaac Bungo and Elizabeth
Bungo,

against
Starks & Cockrill

In the Jefferson
Circuit Court.
Dec. Term 1860.

Amended Answer.

Now at this day comes the Defendant and for an amended answer, states that it is true as is in plaintiffs petition alleged, that by an act of Congress there was confirmed to the heirs and legal representatives of Isaac Nettibrand Deceased, a tract of Six hundred and forty acres of land situate on the waters of Big River in the County of Jefferson, State of Missouri being United States Survey Number Nine hundred and Eight and that the heirs and legal representatives of said Isaac Nettibrand were his two sons Abraham Nettibrand and Isaac Nettibrand Jr. and a daughter, Elizabeth.

Defendant admits that said Abraham and Isaac Jr. sold their interest in said land to one Michael Mull and that the said Mull afterwards transferred the interest thus acquired by him to Starks & Cockrill the Defendant. in & to one third part of said survey, to wit to the Two hundred and Thirteen and one third acres, it being the upper third of said survey.

Defendant denies that Plaintiffs are entitled to one undivided third part of said 213 & 1/3 acres of land, or that they were so entitled on the first day of March 1830 or at any other time, denies that he ~~was~~ wrongfully entered into said premises, on the first day of March 1839 or at any other time & that he now owns

lawfully withholds the same from Plain^{iffs} &
denies that Plain^{iffs} are damaged by reason
of any acts of Defendant in the sum of Twenty ^{five}
dollars or any other sum.

Defendant further answers states that about
the year 1806 the said Isaac Heltibron^d Sr. de-
ported this life seized of two thirds of said
Survey No. 908 and also of one undivided
fourth part of Survey No. 897 confirmed to
the legal representatives of Peter Heltibron^d
Deceased, situate on the west side of Big
River in Jefferson County Missouri:
that the heirs and legal representatives
of Peter Heltibron^d Deceased, were, said Isaac
Heltibron^d Sr. Abraham Heltibron^d Sr. Da-
vid Heltibron^d and Betsey Heltibron^d
who after wards intermarried with one
John McCourtney that said Survey con-
tained 800 acres of land.

Defendant further states that after the
death of the said Isaac Heltibron^d Sr. his
three children & heirs, to wit, said Abraham
Jr. Isaac Jr. and Elizabeth, who is Plain^{iff},
in this suit, amicably and without suit divid-
ed their father's lands among them as
follows, to wit, the said Abraham Jr. and
Isaac Jr. took each their full share of all
their father's lands, the two thirds of Survey
No. 908 which the said Isaac owned in his own
right at the time of his death, and the said
Elizabeth, (who is plain^{iff} herein) took as
her full share of all her father's lands
the one undivided fourth part of Survey 897

which the said Isaac Sr. owned at the time
of his death as on his of Peter Heltbrond
deceased: that this division and partition
as aforesaid was consummated about
Thirty five or forty years ago: that the
said Elizabeth first named, one, David
Null & that she and said David Null on
the 24th of December 1824 by deed, conveyed
200 acres of land, it being one undivided
fourth part of survey No. 897 to Abraham
Heltbrond Sr. thereby affirming and rati-
fying the division so made as aforesaid
between herself and her two brothers and
that the said Isaac Jr. & Abraham Jr. long
since transferred their two thirds which
they took in survey No. 908 to Michael
Null, which latter sold the upper third
aforesaid to S. S. Cockhill dependant
herein, the said Abraham Jr. & Isaac Jr.
thereby on their part ratifying and confirm-
ing the division so made as aforesaid be-
tween them and their sister Elizabeth -

Dependant further states that he has
had the continued, uninterrupted adverse
possession of said upper third for more than
ten years before the institution of this suit &
that he has had such possession for more
than twenty years before the commencement
of this suit.

Dependant therefore denies that Plaintiffs
are entitled to the possession of one third
of said upper third or to any portion of it,
but that by reason of the division & parti-
tion aforesaid & by reason of the

Said conveyance, the ~~defendant~~ is entitled &
by reason of ~~said~~ of his said possession he
is entitled to the whole of said upper tract —
wherefore he asks to be discharged with
his reasonable costs.

Jps Kin & L. Thomas.

Attys for ~~Defendant~~

Makes oath
I say he believes the above answers &
the matters as therein stated are true.
Sworn to & subscribed }
before me this 28 day } John L. Thomas.
of August 1866.
Elias D. Honey Clerk

Burgess & wife
against

L. S. Covert & wife

Answers Answer.

Filed August 28th 1866

Elias D. Honey Clerk

In the case of Isaac Burgan and wife
against Starks & Cockrill & Pat Byrnes
in the Circuit Court of Jefferson County,
Missouri, in Exemption, it is agreed
that the subjoined statement of Washington
Stephens, may be read in evidence on
the trial of said cause in like manner
as though the same was his deposition
regularly taken, subject to all exceptions
for irrelevancy & incompetency.

Thos L. Fletcher
Atty for Plff.

Septim & Thomas
Atty for Defts.

Washington Stephens duly sworn, upon
his oath states, I know the tract of land
on which Crommell's farm is and the
old still place on Big River. Crommell
is now on the land, I am acquainted with
plaintiffs, have known them twenty or
twenty five years dont know exactly how
long but as much as twenty years. They
have lived all that time in the neigh-
borhood of Big Springs. so far as I
know, we always called Mrs Burgan
Aunt Betty and understood she
was a daughter of Wildetrand,
Have heard Mrs Burgan talk

about her father's land how illegally things had been done in relation to them, she said she had two brothers Ike was one of them I knew him, she said that it was all illegally done but in a division the boys got the land above spoken of and she got her share in a tract up big River, but it was all illegally done and she didn't know what her children would do about it when she was dead but for her part she had got her share and would not disturb it. I understood from her that it was an arrangement of her father, but don't know that she said her father so directed it, I understood from her that her father said to the boys Abe and Ike are to have this land down here and Betty the land up the river, I understood from her that she had disposed of her land. I only paid particular attention to the conclusion she seemed to come to not to claim the land and I was pleased to hear her say so, think this was two or three years ago,

I am a minister of the Gospel
of the United Baptist order, have
Charge of a church in the neighbor-
hood of Big Springs, Mrs Burgan
is a member of my congregation
at that church, Washington Stephen,

Burgan & wife
At
Coastville et al

Statement on oath
of Mark Stephens

Subscribed 13th 1868
Chas J Honeywell

Isaac Burqan & Elizabeth his wife Plaintiffs
against

Starks & Co & Krill & Patrick Byrne Defs.
In the Circuit Court

Jefferson County
The said plaintiffs for reply to
plaintiffs ^{amended} answer states that he has not a
sufficient knowledge to enable him to form a
belief as to what interest Isaac Heldebrand had
in Survey 897 nor what became of said interest.
They deny that the heirs of Isaac Heldebrand
divided their father's land among them as
stated in the answer of defendant, or that any
partition of said land was ever made among
the heirs of Isaac Heldebrand, or that the
plaintiff Elizabeth took as her full share
the undivided fourth part of Survey 897.
They deny that such a division was consum-
-mated thirty five or forty years ago or at any
other time, they deny that said Elizabeth
on the 24th Dec 1824 or at any other time ever
conveyed 200 arpens of Survey 897, or
that she ever in any manner affirmed
or recognized any such partition as is
alleged in the defendants answer.

They deny that defendants have had
the continued and uninterrupted &
adverse possession of the land in
controversy for the period alleged or
any thing like such a length of time.

Sketch & Carter atty for
Plaintiffs

Isaac Burqan plaintiff in the above entitled cause
makes oath & says that the foregoing Replication and the

Matter therein as stated he believes to be
true

Subscribed & sworn to before me
this 13th day of December AD 1860

Elias F. Corey

Clk

Isaac Burgar

Isaac Burgham wife

vs

S. S. Corwin

Reple'ation

Filed Decr 13th 1860

Elias & Hooney

Clerks

We, John L. Thomas, Attorney for Starks S. Cockrill
Defendant in a certain cause now pending
in the Jefferson Circuit Court, wherein Isaac
Burgan & wife are Plaintiffs and Starks S.
Cockrill et al are defendants, Thomas C.
Fletcher, Attorney for the said Burgan wife
in said cause, & also Attorney for said Burgan
wife ~~are~~ ~~in another~~ cause in said Court
wherein the said Burgan wife are Plaintiffs
and Thomas Allen is Defendant and J. A.
Beal Attorney for Thomas Allen in the last
cause above mentioned do hereby agree
that the subjoined deposition of Samuel
Byrnes, taken at the residence of Thomas
Byrnes in Jefferson County on the 11th day
of March A. D. 1861, may be read by either
party, plaintiffs or defendants on the trial
of either of the above entitled causes. Each
one of us hereby reserving to ourselves all
objections to competency or relevancy.
Witness our hands this 11th day of March 1861.

John L. Thomas, Atty
for S. S. Cockrill -

Thos C Fletcher atty for Isaac
Burgan and wife, in the case of
Burgan & wife vs Cockrill.
James A Beal Atty for Allen & Perry.
Thos C Fletcher atty for Burgan & wife
in case no action being

Deposition of Samuel Byrnes taken at
the residence of Thomas Byrnes in Jef-

Jefferson County Missouri on the 11th day of March
A. D. 1861, by consent of the respective parties
in two certain causes now pending in the
Jefferson Circuit Court, in one of which Isaac
Burgan wife are Plaintiffs and Starks &
Cockrill et al are Defendants and in the
other the said Burgan wife are Plaintiffs &
Thomas Allen is Defendant—

Samuel Byrns of lawful age being produced
sworn and examined on the part of the defen-
dants in said causes deposes and says,

I am acquainted with Isaac Burgan and
Elizabeth his wife, I have known Mrs Burgan
ever since she married her first husband
Dave Hull, her maiden name was Elizabeth
Heldebrand she was said to be a daughter of
old Isaac Heldebrand, she was first married
I think in 1816, she lived two or three miles
from here till Dave Hull died, I don't know
the time of Dave Hull's death, she had I think
four children by Hull, the present wife of Wm
Scott is the youngest and was two or three
years old I think when he died, after he died
she married Isaac Burgan. I do not know
how long she remained a widow. I knew
Mrs Burgan's mother she was married to
Michael Hull Senr. I think he and his wife
Peggy lived when I first knew them on the

place now claimed by Starks & Co. Knell, I got acquainted with old Mike & Peggy before I ever recollect of seeing Mrs Burgan, Old Isaac Heldebrand left three children, Abram Isaac and Elizabeth, Old Mrs Knell (Peggy) was a good Talker very good. I have heard her say that her way of dividing the land would be for the boys to take the land down where she then lived and for Betty (meaning Mrs Burgan) to take the land up above Jonathan's meaning the interest of her father in the Peter Heldebrand land up Big River she said she (meaning her first husband) had left land enough for the children she claimed some property of her own and was almost always talking about her property, I do not know of any lines of division ever being run in the Isaac Heldebrand Tract, it was I think 640 acres, I don't recollect of hearing Mrs Burgan say anything about a division of that tract, Old Mike Knell in buying from the sons of Isaac Heldebrand bought the upper and middle third, I am not sure whether old Mike & Peggy lived at the Big Spring or over on the Isaac Heldebrand place when Mrs Burgan was married to Burgan, they lived first at one place and then at the other, there was 20 or 30 acres of land

opened over at the old Isaac Heldebrand place now
the Cockrill place it is the upper third & there was
a heron log house they were there (the improvements)
when I first saw the place, I never heard old
Mike say anything about Mrs Burgan owning
any interest in the two thirds of the tract bought
by him from Abram & Isaac, my understanding
was that she had her interest in the land up
the river, Old Mike claimed the upper and
middle third of the land as his own after his
purchase from Abram & Isaac, Old Mike
kept possession of the place until it was sold
to Cockrill, I think it was cultivated every
year, I do not recollect of any other person
cultivating it except old Mike & his son
John up to the time it was sold to Cockrill.
Pat Byrns has rented it generally since Cockrill
bought it.

I knew William Russell. he was surveying
in this country when I first came here, I got
acquainted with him in 1809. in St Louis county. I
know nothing of him surveying the land in
controversy, Old Mike talked about one Resden
surveying it.

I did not consider that there was any legal
divisions made of Isaac Heldebrands land
but I understood from Mrs Burgan and her
first husband that they got the share of her

father in the Peter Heldebrand land for their share, I heard her say afterwards that she and Dave Muel had sold it for, I think \$300. She said she could sue and get her land back because she had been ~~foolish~~ out of it or something of that kind, but said she would not do it, she said, I think that she was under age when it was done,

about four years ago Mrs Burgan told me that she thought of going to see Russell at St Louis, that the only valid agreement or bond about that land (meaning the lower third of the Isaac Heldebrand tract,) old Peggy her mother, had carried off with her to Texas many years ago in the lifetime of Dan McKell. I heard him and Mrs Burgan talk of Russell's claim to the land in controversy from them I learned that Isaac Heldebrand was too late in settling on his land to get a farm and that Russell being a land jobber and well acquainted with the board of commissioners an arrangement had been made with him by Isaac & Abram Heldebrand to get their land confirmed and he was to have the lower third of ^{both} the tract, ^{claimed by them} I don't recollect of ever hearing Mrs Burgan say that the lower third of the Isaac Heldebrand tract belonged to Russell, sometime before 1820 I think it was

I tried to buy the land in Controversay from Russell, It was never cultivated there was no improvement on it, except a little work done by a man by the name of Gray who leased it from old Mike Mull, until Allen sold it to the present occupant. Gray put up a little House and cleared a little patch that was before 1816, he stayed there but a little while, when he left it the improvement went to decay no other person ever lived on it or done anything on it until Sam Perry went on it.

Mrs Burgan has lived in the neighborhood of the land in Controversay ever since I first saw her in 1816, she talked to Isaac Sullens and myself about having some claims to land about here some 12 or 15 years ago. I never heard her say what her claims were until since 1856,

Crop examined,

Mrs Burgan was a right young girl not exceeding 18 years old when she married Dane Mull, during the time she was a widow old Mike Mull & Peggy either lived on the land in Controversay or had the control of it, I don't think Mrs Burgan can read and write. I have understood that old Mrs Mull the mother

of Mrs Burgan is dead, she has been dead one
or two years, she was a woman of strong will
and seemed to rule with a pretty stern
rod generally had her own way about things

Samuel
Byrns

Sworn to & subscribed before me this 11th day of
March 1861.

John L. Thomas

Notary Public Off. Co. Mo.

J. Burgess & wife
vs.
J. A. Cochrane et al

J. Burgess & wife
vs.
Thomas Allen et al

Depositions - -

Received for hand of
Geo. J. Morris on or 13th
1861. paid
Giles J. Morrey
Clerk

Thomas J. J. \$140-
Certificate 50
\$190-

COUNTY OF JEFFERSON.

THE STATE OF MISSOURI,

To Joseph Woodley, D. Edgar Wood Price

GREETING :

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 10th day of June 1863 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 Isaac Purgan wife are Plaintiff and J. B. Smith is Defendant on the part of Defendant and herein you are in no wise to fail.

WITNESS, ELIAS F. HONEY, Clerk of our said Court, with the Seal thereof hereto affixed, at office, this

2nd day of May A.D. 1863

Elias F. Honey
Clerk.

TO JEFFERSON CIRCUIT COURT.

June Term, 1863

Isaac Burgeon wife

S. S. Cockrill

for debt

Joseph Medley D 27

v. Peter
Thos. Price

Sheriff Fees \$1.50

I Executed the within writ on 8th Pitzer on the
6th Day of May & on Joseph H. Medley on the 29th Day
of May 1863 by Recelling the same in ~~their~~ presence
& hearing the within named
Thos. Price not found in
my County the June 8th 1863

George B. Porter Sheriff

COUNTY OF JEFFERSON.

THE STATE OF MISSOURI,

To *Washington, Stephens & Co. Merchants, Sec of some the*
Pro. Attorney

GREETING :

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
second day of June 1863 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 *Isaac Burgeon* trade are
Plaintiff and *J. B. Leach* is Defendant on the
part of *defendant* and herein you are in no wise to fail.

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

with the Seal thereof hereto affixed, at office, this

2nd day of *May* A.D. 1863

Elias F. Honey
Clerk.

TO JEFFERSON CIRCUIT COURT.

June

Term, 1863

Isaac Burgan wife

S. S. Lockrill

for debt

Markus Stephens

Mrs W. Stephens

Geo A. Smith

Mrs A. Hensley

Sheriff Fees \$2.00

I, Lieutenant the within writ on Markus Stephens
this, Mark, Stephens & John Hensley on the 9th & on
George A. Smith on the 27th days of July, 1863 by
Reading the above in their presence & hearing

Jessie Ballman Sheriff

COUNTY OF JEFFERSON.

THE STATE OF MISSOURI,

To Mark Stephens, who Mark Stephens & Co Smith
vs A Hensley, Geo Medley, & J. J. J. J.

GREETING :

You are Herely 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 June 1862

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 Isaac Hunsan vs

Plaintiffs and J. J. J. J.

Defendant on the

part of defendant and herein you are in no wise to fail.

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

with the Seal thereof hereto affixed, at office, this

19th day of May A.D. 1862

Edw J Honey

Clerk.

TO JEFFERSON CIRCUIT COURT.

June Term, 1862

Isaac Burgans wife

vs

S. S. Cockrill

for debt

Wash Stephens May 27

Mrs Wash. Stephens May 27

Geo A Smith May 27

Geo A. Henrly May 27

Jos Medley May 27

D. Pitzer May 27

Due for \$3.00

I certify that within three weeks from the term of the court in the above case, I have received from the parties the following money, to wit: George A. Smith, John A. Henrly, Joseph Medley, and D. Pitzer, the sum of \$3.00, which I have paid to the said Isaac Burgans wife, and the said S. S. Cockrill, and the said money is hereby acknowledged by me, the undersigned, on the 17th day of July, 1862.

COUNTY OF JEFFERSON.

THE STATE OF MISSOURI,

To *John* *Candler*, *Samuel Herrington*

GREETING :

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 *10th day of June 1863* 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 *Joac Burgan* *trle* are Plaintiff and *J. J. Bookatt* is Defendant on the part of *plaintiffs* and herein you are in no wise to fail.

WITNESS, ELIAS F. HONEY, Clerk of our said Court,
with the Seal thereof hereto affixed, at office, this

23^d day of *May* A. D. 186 *3*

Elias F. Honey

Clerk.

TO JEFFERSON CIRCUIT COURT.

June

Term, 1863

Jesse A. C. Burgar

S. S. Cochran

for Pett

Wm Chandler

Saml Herrington

Sherrill Dec \$104

I do certify the within are the parties
of May 1863 by settling in the
presence and hearing of Samuel
Herrington
of May 1863
Jesse A. C. Burgar
S. S. Cochran
Wm Chandler
Saml Herrington
Sherrill Dec \$104

THE STATE OF MISSOURI,

COUNTY OF JEFFERSON.

To

John A. Webster

GREETING:

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 *12th day of June 1863* 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 *Isaac Burman* is Plaintiff and *D. Schochardt* is Defendant on the part of *Plaintiff* and herein you are in no wise to fail.

WITNESS, ELIAS F. HONEY, Clerk of our said Court, with the Seal thereof hereto affixed, at office, this

12th day of *June* A. D. 1863

Elias F. Honey
Clerk.

TO JEFFERSON CIRCUIT COURT.

June Term, 1863

Isaac Bungan

S. S. Lockright

for P. L. H.

Phil. Hutterbrand

I, Alexander H. Hutterbrand, Phillip Hutterbrand leg
Reading the same in his presence & hearing this
12th Day of June 1863

Jerome B. Hutter, Sheriff

COUNTY OF JEFFERSON.

THE STATE OF MISSOURI,

To

George Graham

GREETING :

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
12th day of June 1863 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 *James Morgan wife and*
of Jackson Defendant on the
part of *Plaintiff* and herein you are in no wise to fail.

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

with the Seal thereof hereto affixed, at office, this

12 day of *June* A. D. 186 *3*

Elias F. Honey
Clerk.

TO JEFFERSON CIRCUIT COURT.

June Term, 1863

Lucas Morgan
vs
S S Cockrill

for reff
Geo Graham
Sheriff Fees \$ ac 50

I executed this writ for George Graham by leading
the same in his presence and hearing this 12th day
of June 1863.
Jesse B. Denver Sheriff

COUNTY OF JEFFERSON.

THE STATE OF MISSOURI,

To

Alfred B. Burgean

GREETING:

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

fourteenth

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

Isaac Burgean male

Plaintiff and

vs J. Beckwith

Defendant on the

part of

deft

and herein you are in no wise to fail.

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

with the Seal thereof hereto affixed, at office, this

29th day of *June* A. D. 186 *5*

Elias F. Honey

Clerk.

TO JEFFERSON CIRCUIT COURT.

June

Term, 1863

J. Burgan

S. S. Cockrill

for debt

Chas. Burgan

Sheriff Fees \$10.50

I, Executed this writ for Elizabeth Burgan by
Reading the same in her presence and hearing
this 12th Day of June 1863

George B. Governor Sheriff

Quogan & wife

B. B. Lockard et al

In the Circuit Court of Jefferson
County Mo
June Term 1863

Plaintiffs come and move the Court to set
aside the verdict of the jury in this case for causes
thereof assigns the following to wit

1 Because the verdict was against the Evidence in the
case

~~2nd~~ Because the verdict against the Evidence & the rights
of Evidence

3rd Because the verdict is against the law

4 Because said verdict is against the Instructions of
this Court

5 Because improperly Evidence was given to the
jury

6th Because said jury was misled by improper &
incompetent testimony

Wm. H. Carter attys
for Plaintiffs

European style

17

Coastal style

Motion to set aside

Order of the

Army

Filed June 13th 1863

John J. Moore
Clerk

Commenced June 16th
1863

Organ with 25 cords

(Instructions added by Sept. 1890)

If the jury believe from the evidence that plaintiffs are ~~in~~ ⁱⁿ possession and have McElrath made a verbal partition and division among themselves of the 908 and they took possession of the land so divided and they and those to whom they conveyed took possession and occupied the same as divided for 20 years before any measurement of the land, the jury will find for defendants

Refused

It is not necessary for defendant to prove by positive ^{evidence} a verbal partition among the plaintiffs and Abraham & Isaac McElrath, but the jury may infer the partition from facts & circumstances of the case

Refused

Bryan's recipe

Is
Cockle

Instructions

Refused

to run against her and did not cease
although the jury may find that she on
said 28th Dec. 1835 married Isaac Burgoon
then continued a married woman ever
since

3. The Court instructs the jury that the two
deeds read in evidence to the jury, are sufficient
color of title under which twenty years ad-
verse possession by Defendant & those under
whom he claims, against Plaintiff, will
be effectual although the jury may find
that Defendant has derived no title from
Plaintiff, as to their interest in the land.

4. That it is not necessary for a party him-
self to be in the actual possession of land
in order to hold adversely to the world
but such party may have the actual
adverse possession thereof by tenants
or agents.

5. It is not necessary for the Defendant
to bring home to the Plaintiff his adverse
possession & claim: it is sufficient if
such possession by Defendant, his tenants
& agents was public & notorious.

Burgessal
vs
Cockrell

} Instructions for Sept-

1 The Court instructs the jury that when one entering into the possession of land having title thereto, is presumed to enter in conformity to that title

2 One tenant in common may ^{disseise} ouster another but it is not necessary to turn the cotenant by force into ^{disseise} ouster. Such ouster and disseisin

3 One ~~tenant~~ ^{tenant} in common may turn his cotenant out of possession of the land owned in common by a public, notorious & unequivocal act or declaration of possession, connected with the possession of the land showing the character thereof

4 It is not necessary in all cases to bring home to the cotenant a knowledge of the adverse possession by the other owner and cotenant, but when the act asserting the entire ownership by one is of such a nature as the law will presume to be noticed by persons of ordinary diligence, in attending to their own interests and of such an unequivocal character as not to be misunderstood, it does not devolve upon the possessor to show that actual notice was given to the cotenant

811

or to prove a probable actual knowledge
on his part. It is sufficient that the
act of ^{asserting the entire ownership} ~~ownership~~ is open and notorious,
and if in such case ~~and of in such~~
Case the cotenant is ignorant of
his rights or neglects them, he must
bear the consequences.

That the entry of Michael Hall upon
the land ~~was~~ ~~made~~ from Abraham and
that conveyance from Michael Hall
to Coekrel of the whole ~~the~~ ~~to the~~
~~part of~~ land in controversy and an entry
upon the land by Coekrel under the
and is sufficient evidence of an ouster
an entry upon land under claim
to the whole is considered by the
law adverse to all others.

By Elizabeth Pugham

all (C)

FT

188 Mrs

188 Mrs

188 Mrs

188

Burgan & wife }
vs
S. S. Lockwell }

The court instructs the jury that if they believe from the evidence that Elizabeth Burgan, who is one of the Plaintiffs in this suit, was at any time between the year 1830 and the 23rd day of December 1835, twenty years of age and a single woman; that Michael Hull Sr. under his deed from Isaac & Abraham Ketterbrand dated Aug. 7th 1826 entered upon and took actual possession of the premises in controversy and prior to and at the time of the Marriage of Elizabeth & Isaac Burgan on the 23rd Dec. 1835 held said premises in person or by his tenants and agents, adversely to Mrs. Burgan and all others and that such adverse possession was continued by the said Hull and this Defendant who claims under Hull by his deed dated Oct. 16th 1847, either by the possession of themselves tenants or agents for a continuous period of twenty years before the Commencement of this suit, then Plaintiffs' claim is barred by limitation and they will find the issues for the Defendant.

2. If the jury believe from the evidence that Mrs. Burgan was unmarried & twenty one years of age at any time prior to the 23rd Dec. 1835, then Statute of limitation commenced

If the jury believe from the evidence that Abraham Hilderbrand & Isaac Hilderbrand and the plaintiff Elizabeth Burzan were the heirs of Isaac Hilderbrand senr, and that the said Abraham and Isaac conveyed their interest in Confirmation No 908 to Michael Muller by deed dated August 7th 1826 then the said Michael & the said Elizabeth became tenants in common in said tract of land; and the possession of the said Michael was the possession of the plaintiff Elizabeth

And unless the jury shall find that the said Michael did actually oust the said Elizabeth prior to her marriage with the plaintiff Burzan or set up a claim of open & notorious possession adverse to the rights of said Elizabeth prior to said

against plaintiff and they will find for the plaintiff. Unless they should further find from the evidence that more than twenty four years have elapsed since said ouster by the said Michael or the setting up the claim of adverse possession as aforesaid

The jury are Instructed that after the conveyance of Abraham Hilderbrand Jr and Isaac Hilderbrand Jr to ~~Michael Mull~~ heirs of Isaac Hilderbrand Sen, to Michael Mull dated Augst 7th 1826 the said Michael Mull and this plaintiff ~~became~~ (Elizabeth Burgan) became tenants in common.

If the jury believe from the Evidence that Abraham Hilderbrand Jr and Isaac Hilderbrand Jr and the plaintiff Elizabeth Burgan were the heirs of Isaac Hilderbrand Sen, and that the said Abraham & Isaac conveyed their interest in Confirmation 908, to Michael Mull by deed dated Augst 7th 1826 then the said Michael & the said Elizabeth ~~became~~ ^{became} tenants in common in said tract of land and the possession of the said Michael was the possession of the plaintiff Elizabeth. And unless the jury shall find that the said Michael did actually oust the said Elizabeth prior to her marriage with the plaintiff Burgan or by ~~her~~ ^{her} act set up a claim of open & notorious possession adverse to the rights of said Elizabeth prior to said ^{the statute of limitation does not run against plaintiffs and} time then they will find for the plaintiff.

Unless they should further find from the Evidence that more than twenty four years have elapsed since said ouster by the said Michael or the setting up the claim of adverse possession as aforesaid.

Byington

18,

Coastville

1844,
Instructions

1st If the Jury believe from the evidence that Abraham Hutterbrand jr and Isaac Hutterbrand jr and the plaintiffs Elizabeth Burgum were the heirs of Isaac Hutterbrand Senr, and that the said Abraham and Isaac conveyed their interest in Confirmation N^o 908 to Michael Null Sr. by deed dated August 7th 1826 then the said Michael Null and the said Elizabeth became tenants in Common in said tract of land, and the possession of Null was the possession of the Plff. Elizabeth, and the Jury will find for the plaintiff.

2nd Unless they find from the evidence that the Plaintiff Elizabeth was twenty one years of age and a single woman any time between the year 1830 and the 23rd day of December 1835- and the said Michael Null entered upon & took actual possession of the premises in controversy and prior to and at the time of the marriage of said Elizabeth with Burgum on the 23rd day of December 1835, held said ~~premises~~ premises in person or by his tenants or agents adversely to Mrs Burgum and all others, and that said adverse possession was overt notorious and continued by the said Null and the defendant who claims under Null by his deed dated Oct 16th 1847. either by themselves, tenants, or agents for a continuous period of twenty years before the commencement of this suit. Then the Jury will find for the Defendant.

3rd To constitute an adverse possession of one tenant in common against his Co-tenant there must be some notorious act asserting an entire ownership. If said act consists of a mere verbal assertion of entire ownership, such assertion must be communicated or made to him. But when the act of the tenant in common holding the possession is of such an unequivocal character as not to be easily misunderstood and that persons of ordinary diligence in attending to their own interests would take notice of, then it is not necessary that any positive notice should be given.

That Margaret Willdebrand and the widow of
Joac Willdebrand Senr was entitled to the
possession of the land in controversy
as such widow, and if the jury find that
she was in such possession by herself
or by her subsequent husband Michael
Will or any other person holding under
and for her and her husband Michael
Will ^{during} ~~at~~ the time plain Tiff ^{deceased} was a
widow then such possession was not
adverse to her,

That no possession or adverse claim
of the defendants or those under whom
they claim will give the defendants
the benefit of the statute of limitations
unless they & those under whom they
claim had such possession and asserted
such claim at a time when said plaintiff
Elizabeth was unmarried, and capable
in law of bringing her separate suit for
the recovery of such possession,

And the jury should find that more than
twenty four years have elapsed since the asserting
of the claim & possession as aforesaid

We the jury find for the defendant
John. S. Byrd
foreman

In the case of Bayard & Holl the testimony of Burns will probably be very important. He I believe was here during the life time of Isaac Hutterbrenner.

He will probably know of the contentment between him & Russell. He will have heard both Russell & Hutterbrenner speak in reference to the matter.

Draw out of him all he knows from I Hutterbrenner and his heirs - in reference to ~~the matter~~ original contentment.

Have him tell all he knows about the division of the trust between Russell & Hutterbrenner or his heirs.

If he knows the dividing line get him to speak particularly of that and by what authority it was made. It would not be out of place to have him speak of the division of the whole trust.

Beaumont & Co

17

Allen & Gray

Minnesota

Buysan }
 Lock rule }

Shewitt's per paid by Murray
 on orce two notices on Buysan &
 wife State depositions .50

\$1.00

Lock rule of depositions of Murray no. 887

1.00

John L. Murray's depositions
 per paid by Murray
 on orce two notices on Buysan &
 wife State depositions .10

.50

1.42

\$3.92