

Jefferson County Circuit Court
Case Files - Civil
December 1860, No. 50

Box 13 Folder 1

Gemache, Amanda
Gemache, John B.
vs.

Hartmon, Anton
Ogle, John

Ejectment

Land in S13 T42 R5E; \$100 damages;
James A. Beal substituted as plaintiff
1863; Supreme Court

Amanda Gemache
John B Gemache Plaintiffs
vs
Arthur Harmon
John Oggle Defendants

In the Circuit Court
of Jefferson County
Missouri

The plaintiffs state on the 1st day
of February 1856 they were entitled to the poss-
ession of the following, described premises
situate in Jefferson County to wit

The North West 1/4 quarter of the South
East quarter and the North East 1/4 quarter of
Section 13 Township 42, Range 56

and being so entitled to the possession thereof
that the defendants afterwards to wit on the
24 day of February 1856 entered into the poss-
ession thereof and unlawfully withheld from
the plaintiffs the possession thereof &
the damage of the plaintiffs of one hundred
dollars

Plaintiffs further state that Amanda
Wright entered said land many years ago at the
land office in St Louis Mo and has since
named John B Gemache the plaintiff and
is still a married woman

Plaintiffs demand judgment for the
recovery of the premises and for damages for
the same & for monthly rents and for all
other and further orders as may be proper
& necessary
J A Real Atty for
Plaintiffs

J A Real Atty for the plaintiffs states
on oath that the foregoing petition
and the matters as therein stated

he believes to be true
Jat Bial

Subscribed & sworn to before me
this 21st of November 1860
Elias McConney clerk

Amalia Senacke ~~with~~

as

Austen Harman
~~with~~

Ephraim

Filed Jan 21st 1860

Chas. S. Moorey
J. C. H.

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

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

We command you, that you summon *Arthur Herman*
John B. Gamache Ogle

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 November
next, then and there to answer unto *Amada Gamache*
John B. Gamache

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

Witness, **ELIAS F. HONEY**, Clerk of our said Circuit
Court, with the seal thereof hereto affixed, at office
in Hillsboro, this *Twenty First*
day of *November* A. D. 1860

Elias F. Honey

Clerk Circuit Court.

No 50

2153

To Jefferson Circuit Court

December Term 1860

James A. Deal

Amanda Gamache

John B. Gamache

vs } Summons

Arthur Harmon

John Ogile

Sheriff Fees \$2.00

I executed the writ the within writ in the
County of Jefferson State of Missouri on
the 28th day of December 1860 by Deliver
Arthur Harmon a copy of the within writ
and a next Partition as furnished to me
by the Clerk also on the 29th day by
Reading the within writ and a next Partition
in the Presence and hearing of John Ogile
as seen & answered then
by J. B. Pauer Deff

Lemache
^{ms}
Atkinson & Co. 3

Now comes the defendants
and make the court to require the
plaintiffs to give security for costs
because the said plaintiffs are
misadventured and unable to
pay costs,

Fletcher & Pipkin
for Defendants,

Germach
by -

at Amman & Ryke

Practitioner for County
for each,

Delivered Dec 1st 1860
C. J. Henry etc

Amanda Lemache
 John B. Lemache }
 vs
 Anton Harmon }
 John Ogilvie }

In the Circuit Court
 of Jefferson County
 Decr. Term 1860

The defendant ~~John Ogilvie~~ ^{Anton Harmon} comes and for
 answer to the petition of plaintiffs says
 that the plaintiffs were not on the 1st day
 of February 1856 entitled to the possession
 of the lands and premises in petition
 described.

Defendant denies that he or his co-defendant
 Ogilvie unlawfully withheld from the plaintiffs
 the possession of said premises.

Defendant denies that the said plaintiff
 are damaged one hundred dollars or
 any sum whatever.

Defendant for further answer says
 that the plaintiffs ought not to have
 and maintain this action herein
 because he says that the said plaintiff
 their ancestors, predecessors, grantors or
 other person under whom they claim
 were ^{not} seized or possessed of the said
 premises, within ten years next
 before the commencement of this suit.

Peppin for Harmon

Anton Harmon makes oath and says
 that the foregoing answer and the matters
 therein as stated he believes to be true,
 sworn to & subscribed } before James M. ...
 before me Decr. 11th 1860 }
 Elias J. Honey Clerk

Mrs Anna Lemack
of D. D. Lemack
in
Hansen & Ogil

Mother of Hansen

Feb Dec 11. 1866
Wm & Henry
Clerk

Amanda Gamache v
John B Gamache Plaintiffs

against
Arthur Harmon & John Agle Defendants

In the Circuit Court Jefferson County

The defendant John Agle for
answer to plaintiffs petition states that he is
not in the possession of the land in plaintiffs
petition described or any part thereof, & was not
at the commencement of this suit.

He denies that plaintiffs are entitled to judgment
against him in said cause for anything whatever
and prays to be dismissed with his costs.

J. Fletcher for deft.

This J. Fletcher attorney for said defendant
on oath states that the foregoing answer and
the matters therein as stated he believes
to be true.

This J. Fletcher

Signed & sworn to before
me Mar 28 1861.

Elias J. Hooney clerk

Amanda & John Blumache

11

John Ogilvie

answer.

Wed. Mar. 28. 1861

Chas. J. Honey

clerk

Gemache & wife

vs

John Ogle &

Arthur Harman

}

In the Circuit Court
of Jefferson County, Missouri

I J. A. Beal, as security for the plaintiffs
do hereby acknowledge myself bound to pay all
costs which have accrued or may accrue in the
above entitled Cause
witness my signature May 7 1861.

J A Beal

J. D. Lemarche wife

228

Agla & Harmon

Security for Cows

Filed May 7th 1861
Chas. J. Honey
Clerk

Amanda Gamache
John B. Gamache

^{vs}
Anton Harmon

In the Circuit Court
Jefferson County Mo.

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}
}

defendants for Amended answer
to plaintiffs petition say that the plaintiffs were
not entitled on the first day of February 1886
to the possession of the land in petition described

They further say that one John T. McMullin
guardian of the said Amanda sold about the 21st
December 1847 the land in petition described and
the said McMullin became the purchaser thereof
afterwards said McMullin sold and conveyed
the land to the defendant Egler, who subsequently
sold it to defendant Harmon. Said Egler
took possession of said land soon after the sale to
him and the same has been held by the defendants
up to the present time. The said conveying the
land as aforesaid was described as South East
qr. of North West quarter of section 13. Township
42 Range 5 East containing 65⁷/₈ acres.

Afterwards to wit about the day of Jan'y 1886
the said Egler having sold the land to Harmon
and having discovered the error in the description
went to said Gamache & wife and demanded
amortization and a perfect deed which they agreed
to give and did sign a deed conveying
the said land which deed was signed by
the said plaintiffs and the defendant
Egler and acknowledged before James G. Crone
a justice of the ^{peace} but by some means or other
the same erroneous description was given in
this latter deed as in the deed referred to above

As a consideration for the execution and signing
of said deed last made as aforesaid, and for
the purpose of quieting the title to said land
the said Ogle paid the sum of eighty
dollars to the plaintiffs.

After the purchase aforesaid in pursuance
thereof said Harmon made valuable and
lasting improvements thereon and has had
the possession ever since.

Defendants further say that said last
conveyance was intended to convey the land
in petition described. That the said defendants
were not able to read the English language
and supposed that the said deed contained
the true description.

Plaintiffs aver therefore that said
plaintiffs are not entitled to the possession ^{of said land}, that
said defendants do not unlawfully withhold the
possession thereof to the damage of the plaintiff
of any sum whatever.

P. Pipkin Atty
for Harmon

Philip Pipkin makes oath and says that the
 foregoing ~~conveyance~~ and the matter therein
is stated he believes to be true.

Sworn to and subscribed
before me Jan^y 16th 1863
Elias F. Hooney Clerk

P. Pipkin

Honorable
no

John W. Alden

Commander
of Steamship

Filed Jan'y 16. 1863
Ellis A. Honey
Clerk

To the Circuit Court of Jefferson County Mo is
shown. The undersigned shows that on the
day of 18 John B Gemache and
Amanda Gemache commenced suit in this Court
against Anthon Harman and John Ogles
for recovery of the following land situate
in Jefferson County Mo viz the North
West 1/4 quarter of the South East quarter and
the North East fractional quarter of Section 13
Township 42 Range 5 East. That on the
1st day of December 1860 said John B Gemache
and Amanda Gemache by their deed of that
date sold and conveyed to James A Beal
all of their right and title to the land in
controversy in that suit and that said
Beal is now the owner thereof as will
more fully appear by said deed of record
in the records office of Jefferson County
He therefore prays this Court to substi-
tute him said J A Beal Plaintiff in
the place of John B & Amanda Gemache
and for their suit against said Harman and
Ogles to proceed in the name of said Beal
as plaintiff
J. A. Beal

James A Peal
 vs
 Anton Harman
 and John Ogle } In the Circuit Court
 of Jefferson County Miss
 ouri

James A Peal, substituted plain-
 tiff in place of John B Gemache and
 Amanda Gemache in their suit against above
 defendants, states that on the day of
 18 John B Gemache and Amanda Gemache
 instituted suit against Anton Harman and
 John Ogle in the Circuit Court of Jefferson
 County Missouri for the recovery of the
 North West 1/4 quarter of the SE quarter of Section
 13 T42 R 5 East and the North East 1/4 quar-
 ter of Section 13. T42 R 5 East, that on
 the first day of December 1860 said John B
 Gemache and Amanda Gemache, conveyed
 by their deed of that date, to James A Peal
 all their right title to said lands.

This plaintiff states that he was on the 1st day
 of December 1860 ~~was~~ entitled to the possession
 of the premises situate in Jefferson County
 aforesaid viz The North West fractional quar-
 ter ^{of South East quarter} and the North East fractional quarter of Section
 13 Township 42, Range 5 East, and being so entitled
 to the possession, thereof, the defendants having
 unlawfully witherhield into such premises and
 unlawfully witheld the same as stated in the petition
 of said John B Gemache and Amanda Gemache,
 the defendants unlawfully withhold from this
 plaintiff the possession thereof from the

date of the conveyance aforesaid viz 1st of December
1860 to his damage five hundred dollars

This plaintiff further states that the
monthly rents & profits of the premises is
.. dollars, that Defendants have since
the first day of December 1860 cut and appropri-
ated to their use large quantities of the timber
and wood standing on said ground & premises
of the value of three hundred dollars

Plaintiff further states that Amada Wright
entered at the land office in St Louis, the prem-
ises and afterwards married John B Lemache

Plaintiff prays judgment against
defendants for recovery of the premises
and for five hundred dollars damages for
the unlawfully withholding the same from
plaintiff, for the rents and profits and
for the wood and timber taken from said
premises by defendants and otherwise de-
stroyed and for monthly rents and profits
until rendition of judgment and for other
proper relief

Done to before me

J A Beal

Decr 7th 1863

Elias J Honey Clerk



J. A. Deal

As

Author Harmonical

Answered Petition
substituting Deal poff -

Dated Decr 7 1863

Geo J. Henry
Clerk

James A. Beal

vs

Anton Harmon

John Ogle

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3
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The defendant Anton Harmon
for answer to the petition of James A.
Beal plaintiff who is substituted in the
place of John B. Gornache & Amanda
Gornache in this suit against the
said defendants states, that he denies
that the said James A. Beal was on the
1st day of December 1860 entitled to the
possession of the North West fractional
Quarter of South East Quarter and the
North East fractional Quarter of Section
13 in Township 42 Range 5 East in
Jefferson County Wisconsin.

Defendant denies that he unlawfully
entered into such premises and unlawfully
withholds the same as stated in the petition
heretofore filed in this cause by said
Gornache and Beal.

Defendant denies that said Beal is
entitled to five hundred dollars damages
or any sum for damages, or for monthly
rents and profits.

Defendant denies that since the first
day of December 1860 he has cut and
appropriated to his use large quantities
of the timber and wood standing on
said land of the value of three hundred
dollars.

Defendant for further answer says that
one John J. McMullin was duly appointed
guardian for the said Annema wife
of John B. Gomaeh and as such
sold on or about the 21st December 1847
the land in petition described, and
said McMullin became the purchaser
thereof. Afterwards said McMullin sold
and intended to convey said land
to the defendant Ogden, who took possession
thereof and retained the same until he
sold the land to this defendant, who
has retained the possession to the time
of bringing this suit. The said conveying
the land as aforesaid described it as
the South East 1/4 of North West Quarter
of section 13 Township 42 Range 5
East containing 65^{1/4} acres.

Defendant further says that
afterwards to wit about the day
of Jan'y 1856 the said Ogden having sold
the land to this defendant, and having
discovered the error in the description
went to said Gomaeh & wife and
demanded another and a perfect deed
which they agreed to give and did
sign and acknowledge a deed conveying
to this defendant all the right and title in
law or equity to said land as this defendant
believed at the time. The said deed was also
signed and acknowledged by said Defendant

Ogden. The acknowledgment to said and
restated before James G. Crow Justice of
the peace. By some reason or other which
this defendant is unable to explain this
~~same~~ erroneous description was given
in this title and as in the deeds referred
to above. This defendant was then in
possession. As a consideration for the
execution of said and and a reconveyance
of said land by Gornache & wife and for
the purpose of quieting the title to the same
the said Ogden paid to said Gornache
& wife the sum of eighty dollars.

After this last and was procured this
defendant made lasting and valuable
improvements thereon.

Defendant says that said land was
bought and paid for by John J. McMullin
and the proceeds applied to the education
and maintenance of said Amanda,
and again in order to quit the title as
aforesaid the further sum of eighty
dollars was paid to her & her husband
Gornache.

Defendant further says that all the
proceedings touching the sale of said
land in the first instance by McMullin
guardian of said Amanda, which were
had in the County Court, were made &
by the advice of the plaintiff James
A. Real who was the attorney in the case
and who drew up all the papers

until the same is paid.

Defendant says that said plaintiff his
ancestors predecessors grantors or other persons
under whom he claims were not seized
or possessed of the said premises within
two years next before the commencement
of this suit and therefore not entitled
to recover in this action

P. Pipkin Atty
for Harmon

P. Pipkin Atty for defl. Makes oath and says that
the foregoing answer and the matters
therein as stated he believes to be true.

Sworn to & Subscribed

Given on Dec^r 11th 1863

P. Pipkin



James W. Peck

W. Harmon &
John Cople.

Answer to the
petition of Peck

Filed Decr 10th 1863

Geo. S. Henry
Clerk

James A Peal }
vs }
Haman & Ogle }

The plaintiff demurs to the answer of defendant for the following reasons viz

1st Because the sale of the land by the guardian of Amanda wife of J B Semache if erroneously sold is a judicial sale and it must stand as far as the numbers of the land are set forth

2 Because the guardian had never a trustee of his ward and there was no statutory provision of this state allowing the guardian to purchase at his own sale the land of his ward or to sell the land for the debts of the ward

3 Because said Amanda was a married woman and the acknowledgment of the deed before a justice of the peace could not convey her land nor can a court of equity reform a deed of a married woman, if it was by mistake either land was erroneously described

4 Because the sale and purchase of the land by McMullen was unauthorized by law & conveyed no title, there being no provision of law for sale of the land of the ward for a balance that may be allowed in favor of the guardian

5 Because the land sued for is no part of the land sold by McMullen as guardian to himself at his own sale

6 Because McMullen was a trustee of Anna Wright & could not buy her land at his own sale

7 Because the Report of the Sale was made at same term of the Sale

8 Because The answer is inconsistent it does not confess the cause of action & avoid but denies plaintiffs right of recovery & at the same time sets up claim for compensation for improvements on the supposition of a right to recover notwithstanding the denial of plaintiffs right of recovery

9 Because The defendant Harman does not show himself entitled to any money for the amount that McMullen sold the land for to agree her to what Oggle paid to Genashe wife. That there is no right to sue a married woman on her warranty of title & if the land was sold without a warranty, there was no fraudulent description in the deed passed by said Genashe wife

10 The Answer is insufficient & is no defence against the right of recovery.

11 Because the defendant ~~cannot~~ cannot claim compensation for improvements before judgment is rendered for plaintiff for recovery of possession and thereby deprive plaintiff of the right to surrender the title on receiving the value of the land aside from the improvements

J. W. Beal

Beal

vs

Harman & Oggle

Defendant

Filed Jan 12 1864

E. J. Hoarey clerk

James A. Beal, Plaintiff
Against
Anton Harman }
and John Ogles, } defendants }
In the Circuit Court
Jefferson County Mo,

John Ogles, one of the above defendants,
for Answer to Plaintiff's Amended petition,
denies that he on the 1st day of December 1860,
or at any other time unlawfully entered into
the possession of the premises described in
said petition, and denies that he unlawfully
withholds from the Plaintiff the possession
of said premises, from said 1st day of Dec-
ember 1860. He states that he claims no
interest whatever in said premises, and
and has not since the commencement
of this suit, and has not been in possession
of said premises since then. He there-
fore disclaims all interest in the premises
and asks to be discharged with his
reasonable costs,

A. Green
Attorney for John Ogles

Abner Green Attorney for John Ogles,
one of the above defendants, makes oath
and says The above Answer and the
matters therein as stated he believes
to be true,

Sworn to and subscribed before
me, this 7th day of June 1864

Saml. H. H. H. Clerk

Abner Green
Atty, for John Ogles



In Court's Court
Jefferson County

James D. Beal

vs.

John McCormack
vs. John Doyle

Answered
of John Doyle

Filed June 7th 1844

James A Beal

vs

Anton Harmon &

John Cyle

The amended answer of defendant Anton Harmon to the petition of James A Beal states that, the following described land was purchased by Amanda Wright of the United States to wit. The SE $\frac{1}{4}$ of T. 24, the NW $\frac{1}{4}$ of SE $\frac{1}{4}$ & NE $\frac{1}{4}$ of section 13 Township 42 Range 5 East containing 65 $\frac{2}{3}$ acres. That said Amanda was a minor and one John T. McMullen was duly appointed by the Jefferson County Court her guardian and took charge of her estate; that afterwards he employed the plaintiff James A Beal his attorney to manage the administration of the estate of said Amanda in the County Court aforesaid and to procure an order of sale of said land for the support of said Amanda, that said Beal proceeded to draw up a petition for that purpose but through his negligence and mismanagement in the matter he described only a part of the land yet he stated in the petition for the sale the full quantity of the whole land to wit 65 $\frac{2}{3}$ acres. That said land was afterwards sold, that it was understood at the time of the sale and so intended that the whole three pieces so above described was sold, that the same sold

for one dollar and ten cents per acre, that said
Mr. Mullin bought the same at that price, and afterwards
sold it to one John Agle defendant, who sold to this
defendant.

Defendant further avers that James A. Beal as said
attorney for said Mr. Mullin took a title from S. B.
Gornache & wife knowing at the time that the whole
of said land had been sold and that this defendant
was the owner thereof, that he paid Gornache & wife
nothing therefor, that he is a volunteer, and defendant
further charges that said Beal was guilty of gross
negligence and mismanagement in conducting the
sale of the land as the guardian said aforesaid,
and by said negligence as attorney aforesaid has
brought about this law suit and now tries
to speculate upon the difficulties himself has
made

Defendant further states that sometime after
the sale above referred to and when it was discovered
that the title was defective in not conveying the
whole of said land, the said John Agle & this defendant
went to Gornache and wife and they agreed to
make a perfect title to said land, then in pursuance
of this agreement, that Agle paid them eighty
dollars to do so, and they did undertake to do it,
but utterly failed and afterwards finally refused

to do any thing whatever, defendant knew, and he
so charges, that said Beal advised them that they
could hold the land and further advised them not
to perfect the title; that Beal was fully advised
and informed of all the facts above stated at the
time he procured his deed from Gomahe
and wife

Defendant therefore says that in consideration
of the premises and that the difficulty in the
title was brought about through the negligence
of said Beal as attorney aforesaid that it would
be inequitable and unjust for him to recover
the land in controversy,

Defendant denies that said plaintiff was entitled
to the possession of the land in controversy on the
1st day of December 1860 denies that he is
damaged five hundred dollars or any sum whatever
denies that he cut since the 1st of December 1860 and
appropriated large quantities of timber of the value
of three hundred dollars or any other sum
and that the same was cut and appropriated by him

1865,

defendant prays the Court to reform and correct the
mistake in the deed conveying the land to M'Mullin
and in the deeds from M'Mullin to Ogil & ~~the~~
defendant. That said Gamache Wife and the
plaintiff Deal be divested of all title to the land
said for and that the same be vested in this
defendant & having fully answered asks
to be discharged. Ppkin for deft.

Philip Ppkin attorney for the
defendant makes oath and says that the foregoing
answer and the matters therein as stated he ~~says~~
~~to the Court~~ to be true, P. Ppkin

Sworn to and Subscribed before
me this 16th day of Nov 1865.
Samuel A. Peppy clk

Samuel M. Buel

17

Warren & Co

Amended account of
at Warren

Filed May 13/85
Warren & Co

Beal

vs

Hoaman & Ogbe

}

In the Jefferson Circuit
Court

The plaintiff moves
the Court to strike out the amended answer
of defendants for this reason viz

Because the answer is not verified
by affidavit

Beal P.L.

150
 150
 150
 150
 600

J. A. Deel
 M
 Harmon & Co

Motion to strike
 out answer

Filed Nov 14 1865
 J. A. Deel
 J. A. Deel

James A. Beal

vs

Anton Harmon +

John Agle

In the Circuit Court of Jefferson
County Mo. Nov. Term 1868-

Now comes the defendant Anton Harmon
and moves the Court to set aside the decree in
this case and grant him a new trial for
the following reasons

1. The Court excluded competent and relevant testimony
offered by the defendant.
2. The declarations of law in reference to the effect
to the sale by the County Court of Jefferson County
of the lands of Amanda Wright are erroneous
3. That the declarations of law in reference to the
purchase by Beal with the knowledge of the
agents of Harmon are erroneous
3. That the Court erred in refusing to reform the
decree as to divest the plaintiff of the fee
4. That the Court having found that the defendant
is entitled to the possession of the land in controversy
could not render a judgment for damages in this
suit
5. That the finding of the Court ^{as to the damages} is not warranted by
the proof as it does not show that the cutting
was done prior or subsequent to the time Beal

purchased the land of Gomache

6. That the finding of the Court and the judgment based thereon are inconsistent and not warranted by the facts or the law of this case
~~The Court erred in giving judgment for costs~~

That the Court erred in taxing the costs against Harmon that accrued before the date of Mr. Beals' death.

Pipkin Thomas & Green
for defendants.

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Worm and Cyst

Protein der Maus
Linné.

Wm. H. Foxenden 18-1865.
Saml. A. Tappan, Esq.

Real
ms
Herman & Ogles

The Court instructs as follows:-

- I The Sale by John McMullen, Guardian of Amanda Wright in 1847, and the deed made by the Clerk of the Court in pursuance of said Sale, passed no title to John McMullen the purchaser, as against said Minor, Amanda.
- 2nd. The deed made by Thos C. Fletcher as Clerk to McMullen the Guardian who purchased at his own Sale, is not admissible in evidence & is excluded.
- 3rd. The Deed of John B. Lomarch and Amanda Lomarch (late Amanda Wright) and John Ogles, to A. Herman passed no title out of Amanda Lomarch, and is inadmissible to show that she passed or attempted to pass any title; she being a feme covert, and having made no legal acknowledgment.
- 4th The last mentioned deed is good and sufficient in law to pass the title and interest of John B. Lomarch and John Ogles in and to the land described in the deed to A. Herman. And that Lomarch's interest consisted solely in his Curtesy in right of his wife Amanda.
- 5th That the Statement of John Ogles who testified, (~~if admissible at all~~) to the effect that plaintiff told him (the witness) in 1856 that witness' title was not good to the land now in controversy, and ~~that~~ if plaintiff did then know that Lomarch & wife then intended to

include this land in the deed which Gomarsch & wife and John Ogile had previously made to A. Harman, is insufficient to attach any equities to him at the date of his deed in Dec. 1860, or put him (plaintiff) upon his enquiry after any outstanding equities in the present defendant Harman.

6th That the open and notorious possession of the defendant Harman, and the valuable improvements which he had made on the premises, were sufficient to put the plaintiff upon his enquiry as to Harman's equities in the premises, and were in law a sufficient notice of such equities.

7th That this Court cannot correct the mistake in the description of the land as against Amanda Gomarsch.

8th That the open and notorious possession of defendant Harman, at the time of plaintiff's purchase, is sufficient to authorize this Court to correct the description of the deed from Gomarsch & wife, & Ogile so as to include the land in controversy against this plaintiff, so far as the interest in said land of said J. B. Gomarsch extends.

9th Plaintiff stands in the same legal position now that said Amanda would have occupied if she had not sold to this plaintiff.

10th That the 14 years which elapsed between the date that Beal acted as Attorney in the Guardian's Sale ~~of~~, and the date of Beal's purchase, precludes any equities reviving and attaching to the land by reason of the negligent conduct of plaintiff as atty. for McMullen, at the Guardian's Sale in 1847.

11th That ~~And~~ the mistake in the description of the land in the deed of Gomarsh & wife And Ogle, to Harman be corrected so far as to convey to Harman the Curtesy of J. B. Gomarsh.

12th That ^{owns the fee simple and} J. A. Beal, should recover the — acres & — in controversy, subject to the life estate of the said Harman, and the sum of \$75.00 — The value of timber taken from the premises and not used thereon.

do not

as per 11th & 12th instructions above

The

Shutrone Lane Swiss

Deal
no

Stomach

1 Refused.
If the Court finds from the evidence that John B Gemache & his wife in making the deed to Haman intended to convey the property of Amanda Gemache & that the object was not to convey the Cuntessy of Gemache alone, then this Court cannot reform the deed so as to make it pass the Cuntessy of Gemache to the lands not described in the deed

2 Refused
That John Ogile is an incompetent witness in this cause for Haman against the plaintiff

3 Given
That Amanda Gemache being a married woman could not convey her land by acknowledgment of the deed before a justice of the peace & that the defendants are not permitted to introduce parol evidence to prove a mistake in, the ^{description of} lands mentioned in the deed & the Court will not correct the deed of Amanda Gemache so as to pass her fee to the lands not included in the deed to Haman

4 Refused
That in order for this Court to correct or reform the deed, so as to pass the Cuntessy of John B Gemache to the lands

Refused
not mentioned in the deed to Harman
the Court must find that the prime
& sole object of the conveyance to Harman
by John B. Gemace, was to pass
his Centry in the lands not included
in deed.

5 That if John B. Gemace joined
in the deed with his wife for the purpose
of enabling her to convey her fee in
the lands, then the Court will not
Refused.
Correct or reform the deed so as to
pass the Centry of Gemache in
the lands not included in the deed

Real
vs
Harman & Oggle

Instructions
for Plaintiff

Refused
If there was a mistake in the description
of the deed of Gemache wife to Harman, so
as not to convey the centry of Gemache,
in the lands not included, yet if Real had
no notice of the mistake of the description
before he purchased the land, the Court will
not Correct & reform the deed so as to pass the Centry
of Gemache to the lands not described in deed.

Lamus A. Beal
vs
John Ogden & Tutor
Harmon

In the Cir' Court Court
of Jefferson County
Missouri

Be it remembered that this
cause came on to be heard before the Court
sitting as a jury, and the plaintiff to sustain
the issues on his part introduced the following
testimony, to wit,

1. The patent of the U.S. dated Oct. 1st 1840.
(Here copy the patent in full).
2. Deed from J. B. Gornache & wife to plaintiff
dated Dec. 1st 1860 (Here copy the deed).
3. The record of the marriage of J. B. Gornache
to Amanda Wright 16th Nov. 1849. (Here copy
the marriage record).

Wilson Hunt, being called & sworn, that he did not
know Amanda Wright before marriage, but became
acquainted afterwards. Don't think she was 21 years
old when married. They have always lived together
since as husband and wife. They are both
still living. Has seen land in possession of
Harmon, not quite ten years ago. Harmon has
clear and some 15 acres of land built stable and
dwelling house. They are up as well as the land
in possession of Harmon thinks the rent of the
land ^{with} two dollars per acre. Can't tell how much
timber has been cut, nor that it was cut on the
land in controversy. "Wood worth \$1.00 per cord."

Land is not worth as much now as it was when
Hannan got it. it is about $3\frac{1}{2}$ miles from the
rail road. Gornach & wife lived all the time
from their marriage up to about two years ago in
the neighborhood of this land. They then moved
to Carson ditto. Amanda is about 36 years
of age at this time. 300 to 500 cords wood cut on all
the land. Dont know how much cut on the tract in controversy
James L. Johnson

Knew Amanda for twenty
years and when she married Gornache ~~she was~~
in 1849. They still live. Dont think she was
20 years old when married. I claimed the
price of land in controversy, there was no
improvements on it at the time. The survey was
made for Gornache some 12 acres more or less
cleared on the land situated by Amanda. Dont
know who built the Cabin. The the rents
worth as much as the improvements.
Dont know where Hannan got the wood from
He let me have one cord. The wood I saw
him & his team, haul came from the direction
of the land. Saw many persons hauling wood
from that direction. The improvements have
been made some five years.

Robert Hunt

Knew Amanda when single 20
years ago, she married in '47 or '48, to Gornache
Her age was then 17 or 18. The land in dispute
Glucks

is in Township 41 R. 5. N. 3. E. Sec 10, around
the land said to be Gernach's land. Herman
went on the land in 1859 or 1860. The improvements
will be worth as much as the rents. The land
was well timbered. Between 3 & 500 cords of
wood cut on all the land, don't know
how much was cut on the land in dispute
wood worth 75 Cents per cord. Gernache
should owe the liens. about 10 years ago

Plaintiff has closed.

The Plaintiff to support the issue on his part
afforded in evidence the following proceedings and
papers from the County Court of Jefferson County, Mo
to wit, Petition of John J. McMullin guardian
of Amanda Wright. ~~in the land of~~
~~the land of~~ ~~the land of~~ ~~the land of~~
~~the land of~~ ~~the land of~~ ~~the land of~~
order of sale and affidavit
also, Certificate of appraisement, advertisement
for sale, Report of sale, and due from the Clerk
of the County Court to said J. J. McMullin. ^{See copy}
In connection with this evidence the defendant
introduced J. J. McMullin, who testified as follows
that he made a deed to John A. G. for the land of Amanda Wright.
Real object of this conveyance was to transfer the land to the defendant & his heirs.
I know Amanda Gernach formerly Amanda
Wright. She lived with me from the time she was
9 years old ^{2 or 3 years} until she died.
A little child up to a few years before she married.
She was 15 or 16 years old when she left my house. She lived & worked in my family & was a very
good girl but was not very healthy. The proceeds of the
land were her guardian. She had three pieces of land
mentioned in the Petition. I employed Mr. Beal
to draw up the papers and procure a sale of
this land for the education and support of Amanda.
He had been my attorney for three years in the manage

to be reflected
X County Court, to the grand jury and objects to McMullin testifying as incompetent
because he has made a deed for the land to John Agle

ment of the estate of William Wright. And I employed him to superintend the sale of Amard's land for which I paid him twelve dollars. I asked Mr Beal if I could sell her land to pay a portion of the debt. He said I could, I gave him the Patent. On the day of sale I told Beal that Mr. Johnson was the only man who would bid on the land, and I was afraid the land would sell for little or nothing. He told me I could bid on the land and become the purchaser by paying $\frac{3}{4}$ of the appraised value. I instructed him to sell all the land the Patent called for, three pings. I never knew but the whole was sold 65^{cts} the very night this trouble arose about the land. The Court made the deed to me Mr Beal told me to go to Court, Amarda was in 1847 about 20 years old, I made a deed of the land to John Agle.

to all of this evidence of the proceedings in the County Court and the evidence of McMullin plaintiff ^{because the grand jury could not sell the Real Estate of his wife for debt & the same} objected ^{he could not purchase for his own sale & there is no law for sale of the} and the Court sustained the objection and excluded the evidence, to which ruling of the Court excluding the evidence defendant objected and excepted. And

Defendant then offered the deed from John Agle & L.B. Gornach & wife dated 5th January 1856 to Anton Hamman (New copy the deed) to which plaintiff objected, but the Court overruled the

objection, and plaintiff excepted.

Defendant then introduced ~~Wilson~~
Wilson & Hunt,

stated that Gornache and wife Amanda
came to my house and staid all night, and
said they had sold all this land ^{and made a deed for them land before they came to his house} ~~that~~ all
the land Harman claimed, to Harman, for \$80. The land
that Amanda had, it was all together. Some
six months after they said in another conversation
that they found out they had made ^{another mistake} ~~another deed~~ ^{and}
and they got more to make another ~~deed~~ ^{deed} and
they intended to sell it again & get all they could. These
conversations were all before this suit was
brought, & after making deed to Harman
I heard Gornach say he employed
Beal to bring this suit

John Ogle says that he made the deed to Harman with Gornach
& wife says that ~~he~~ ^{was} defendant Beal told him
this evening to go he dismissed him, I sold the land
to Harman & before the deed was made I went to
Gornach and he said he would make a deed for
\$80. This was to correct the mistake that we had
discovered in McMullins deed to me. He and wife
made the deed & I signed it too. This was done
at my house. This last deed also contained the
same mistake that the other did. The number
of acres 65 ^{two} acres men correct, but the other
description was wrong. I can neither read nor

And Harmon was a German and could not understand
the English language very well, Mr Deal told
me at Sulphur Springs some time last year
before the said, that he would clear me for
\$10 - It should not cost me a cent. This was after
the suit was brought. Before this suit was brought
Deal told me that the title of Mc Mullin was
not good, there was a mistake in the description
of the land. I told him a short time after the
Harmon and was made, that there was a mistake
in the description. He said he knew there was
a mistake. it did not describe the section, it
was right in quantity, but did not describe
it all. ^{I told Deal that ~~that~~ ~~paid~~ Gornache had been paid twice & I got no good.} I had Mc Mullin said to me, at the
time the Gornache & wife made the deed to
Harmon, ^{it was before the Squire} in all of which testimony of Agle
^{because Agle is defendant and because he made a deed of the land to Harmon}
^{& an interpreted answer} plaintiff objected, but the Court overruled the
objection and plaintiff excepted.

The defendant then called Mr. Deal
who testified that he paid Gornache
and wife \$100. That he did not take the
deed to return him against the costs,
but paid the money absolutely.

~~Harmon~~

^{by the Court}
John Agle was again recalled. He testified
that there was not more than 100 cords of wood cut
and carried off the land in controversy.

x This was all the evidence

* To the refusal of the Court to give said instructions Plaintiff objected and excepted at the time.

Here the plaintiff asks the Court to declare the law as follows. (Here copy plaintiffs instructions refused by the Court.) ^{asked by the defendant, and refused} also the following ^{copy of the instruction refused} by the Court). to the refusal of the Court to give said instructions defendant ~~Plaintiff~~ objected and excepted.

The Court then declared the law and the conclusions thereon as follows. (Here copy the declarations of law by the Court and the conclusions thereon) to which declaration and conclusions defendant objected and excepted.

The Court rendered the following judgment judgment (Here copy) ~~and defendant~~ to which judgment of the Court defendant ~~objected~~ and the Court denied the objection and defendant ~~excepted~~.

The defendant then moved the Court for a new trial ~~which motion~~ (Here copy the motion) which the Court overruled and defendant excepted and here renders his bill of exceptions and prays the Court to sign & seal the same and make it a part of the record which is accordingly done.

John W. Emerson (Seal)

Real

is
Hutton Massena

Bill of Lading

Filed June 21 1865,
Saml. A. De Puy, Clk

James A. Deal

vs

Antoine Harmon

In Sup Ct Mo

Oct 5 1866

Opinion of the Court

This was an action in ejectment brought in the Circuit Court of Jefferson County to recover certain tracts of land lying in that county containing about fifty-five acres. The record discloses the facts to be that the land was originally entered by Amanda Wright a minor whose guardian was one J D Mc Mullen and that he petitioned and obtained an order from the County Court of Jefferson County to sell the same for her maintenance and support. The land was duly appraised at the sum of one dollar and fifty cents per acre, and at the sale the guardian became the purchaser at and for the price of one dollar and ten cents per acre. The sale was approved by the County Court and an order was made directing the clerk to make and execute a deed to ^{the} said guardian as the purchaser thereof. That Mc Mullen afterwards sold the land to Ogden, who sold to Harmon.

the defendant who is now in possession
The sale took place in 1847 and in 1849
Amanda Wright intermarried with one
Gamache. There was a mistake
in the deed conveying the land from McMullen
to Ogler and from Ogler to Harmon, so
that all the land was not included,
though it is clear that it was intended^{to} to be.

When the mistake was discovered
Harmon applied to Gamache and wife and
Ogler to have it rectified, and finally paid
eighty dollars in consideration that they
would make him a new deed supplying
the defects and omissions of the prior conveyance.

Gamache and wife and Ogler all
joined in this second conveyance and the
instrument was acknowledged before a
justice of the Peace in the County where
the land was situated. This last deed
was executed and acknowledged on the fifth
day of January 1856, but by the neglect or
carelessness of the person drawing up the
same it contained the same description only,
and embodied the same mistake which was
committed in the first conveyance. Ogler was
an ignorant man and could neither read
nor write and Harmon a German unac-
quainted with our language. On the

first day of November 1860. Gamache and wife commenced this suit in ejectment and subsequently sold their interest in the premises to Beal who was substituted as plaintiff of record. Beal it seems was the attorney of M^cMullen the guardian and advised and procured the order of sale in the County Court and is alleged to have had full notice of the mistake in the subsequent transfers.

The Court rendered a judgment reforming the deed so as to vest the land unintentionally omitted, in Harmon, and then proceeded to adjudge that Harmon was entitled to the land during the life of Gamache and that upon the death of Gamache he should surrender the premises to Beal the legal owner of the fee, and also gave judgment in favor of Beal for seventy five dollars for waste committed on the premises and awarded execution therefor. From this judgment Harmon sued out his Writ of Error.

The proceedings in the County Court of Jefferson County at the instance of M^cMullen the guardian were void and he took no title by purchase at the sale.

The law then in force only authorized

the County Court to order the sale of real estate belonging to a minor to procure and complete the education of such minor, but no power was given to sell for support and maintenance. The guardian occupied a relation of trust and confidence towards his ward which precluded him from bidding or purchasing at the sale made and conducted by himself, and there was no warrant in law for the action of the Court in directing the County Clerk to execute to him a deed for the premises.

No title therefore could be derived either through or from him. But it is objected on the part of the defendant in Error, that the deed made by Gamacho and wife to Harmon on the fifth day of January 1856 conveyed no title because it was defectively acknowledged.

The Acknowledgement was taken before a justice of the Peace and the law at the time required that to pass the wife estate the deed should be acknowledged before an officer of a Court of record.

The Plaintiff in Error relies on an act of the Legislature approved February 15. 1864, by which it is provided that the acknowledgment of a married woman conveying her separate Estate

may be taken before any court, Judge justice or clerk thereof, notary Public or any justice of the Peace in the county within which the real Estate conveyed is situated. (Laws Mo Sdg & Sess 1863 p27)

And by the second section of the act, all such acknowledgements taken and certified by a notary Public or justice of the Peace in due form of law after the first day of January 1856, were ratified and confirmed.

We express no opinion as to the effect of the act concerning acknowledgements which were taken before the passage, but the deed was sufficient to convey the husband's life estate if it did not convey the fee and such a title ^{is good} to maintain or resist an action of ejectment (Bryant vs Wear 4 Mo 106)

The defendant then held the premises under a legal title with actual possession and before a plaintiff can recover in ejectment he must show both a legal interest and a possessory title (Rev Stat 1853 p689, § 2 Grunt Eject § 208; Adams on Eject 33.)

In ejectment the Plaintiff is only entitled to recover for waste when he proceeds in the action (2 Rev Stat 1855 p692 § 13) The

assessment of damages in this case, and the
judgement as entered by the court was
wholly unauthorized and it is therefore
reversed and the cause remanded.

The other judges concur

David Wagner

State of Missouri S.S

D. C. D. Fishback
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 have
hereunto set my hand and affixed the
seal of said court at offices in
the City of St Louis this Twentieth
day of December A D Eighteen
hundred and Sixty-Six

D. C. D. Fishback Clerk
by E. M. Larky Deputy



"copy"

~~Oct 21 1885~~

2185

Dear

Woman

Opinion of the bank
Hagman

21 Oct 29 1886
C. B. Schuchter

Remind. 21 Oct 29 1886

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

October Term 1866

October 29th 1866

James A. Beal
Defendant in Error

vs

Arthur Harmon by John Agle
Plaintiff in Error

Error to 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 Plaintiffs in Error be restored to all things which they have 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 Plaintiffs in Error recover of the said Defendant in Error their costs and charges herein expended, and have execution therefor. Opinion filed

STATE OF MISSOURI, SS.

O D Distack
I, ANDREW W. MEAD, 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 herunto set my hand and affixed the seal of said Court, at office in the City of St. Louis, this *twentieth* day of *December* A. D. eighteen hundred and *Eighty Six*

O D Distack Clerk.

by *EM Ledy* Deputy

Supreme Court of Missouri.

James A. Beale

vs

J. E.

Abner Hammon et al
Pls

MANDATE.

Judgment Jefferson Circuit Court
Reversed and Remanded.



James A Real
vs
Anton Harman &
John Cogle

Now at this day
Comes the said plaintiffs and said def
endants in their proper persons and
neither party requiring a jury, all
and singular the matters in contro
versy & issues are submitted to the
Court who after hearing all the
proof allegations, pleadings doth find
that on the the lands in controversy
to wit the North West fractional quarter
of the South East qr of Section 13 Township
42 Range 5 East and the North East
fractional qr of Section 13 Township 42
R. 5 East was entered by Amanda
Bright at the Land office in St Louis
on the ^{first} day of ~~January~~ ^{October} 1840 that
~~the~~ named John B Gemache in
1859 & is still a married woman
That on the 5 day of Janury 1856
John B Gemache made a conveyance
to Anton Harman of part of Real
estate owned by his wife and ~~also~~
~~mistake~~ omitted to describe the above
lands so as to pass his Controversy

and that it was his intention in said deed to convey his interest in above lands to said Haman. The court doth further find that James A Beal is the owner of the fee and estate in the above described lands subject to the life estate of J. B. Gemache ~~attempted~~ ^{intended} to be conveyed and further finds that Anton Haman has committed waste on said lands by destruction & sale of timber to the amount of \$75. The court dismisses as to legals.

It is therefore ordered adjudged and decreed that said deed from John B. Gemache to ~~Haman~~ ^{Haman} dated 5 January 1856 be reformed & corrected ~~so that~~ and the court doth here correct said deed by vesting in Anton Haman during the life of John B. Gemache the ~~estate~~ ^{possession} of the lands to wit, of & with the west 1/4 of the South East 1/4 and the North East 1/4 of Section 13 Township 42, Range 5 East and at the death of John B. Gemache to deliver the possession & fee to James A Beal and the court further considers that J. A Beal have & recover of Anton Haman seventy five dollars for waste to said lands & for costs of this suit & have execution therefor.

Shunanda Samache State

25.

Shunon Hoonon State.

Oliver J. Honey Creek. 12 pils 60¢ copy with 100 cent & seal 85¢
 3 index 15¢, Motion 20¢ Graph 50¢, low count 50¢, Motion 20¢.

and 20¢.

84, 25

St. Hoping Creek 4 pils 20¢. Under cut 60¢, and 25¢

Graph. 50¢ Motion 20¢ Blue Cr. 25¢. 2 motion 40¢. 240

A. Green Cherry, 200 2 dpts 200. Cuts 10 240

A. J. Dore Cuts 40 40

W. H. H. H. H. 10 10

18. 20

Free Bill

and

\$9.95-

State of Missouri
County of Jefferson
The Clerk of the County Court for said County William
Lyle. Stephen Osborn and James M. Miller who being by
me duly sworn upon their oaths say that they well
according to the best of their abilities view and
appraise the Real Estate belonging to Unmarried
Might a minor, which may led to them shown
by Mrs J. M. Miller Guardian of said Minor
to come to and subscribed

before me this 21st December

A.D. 1847. J. M. Miller Clerk

J. M. Miller
Stephen

James McKittrick

Wm. H. Osborn
(mark)

Stephen Osborn

Off^r of Appraisers

Filed Dec 22^d 1847.
J. H. Alford
Clerk

Wile of Great Britain,

In pursuance of an order of the County Court of the County of Jefferson made at the September Term thereof AD 1847. at the undersigned Guardian of Amundson Wright will on Wednesday the second day of the next term of said County Court, sell at public sale to the highest bidder at the Court House door in the town of Stillport, between the hours of 9 o'clock in the forenoon and 5 o'clock in the afternoon, the S E $\frac{1}{4}$ in W $\frac{1}{2}$ Section 13 Township 4th Range 3rd containing 63 $\frac{21}{100}$ acres. Situate in Jefferson County Mo. on a credit of twelve months the purchaser or purchasers giving bond and security.

October 16th AD 1847.

Amos M. Muller
Guardian of Amundson Wright

(A)

Field Decr 22^d 1847
J St Alford

Cek

Received of John D McMillen
Guardian of Amos Wright the sum of one
dollar in full for services as appraiser of
lands belonging to said ward -

Dec^r 21 1847

James M^d Miller

Received of L. S. Morrison Guardian of
Amos Wright the sum of one dollar
in full for services as appraiser of lands
belonging to said ward

Dec^r 21 1847

Wm^d Miller
T^r
w^m J^r L^r

Received of L. S. Morrison Guardian
of Amos Wright the sum of
one dollar in full for services as
appraiser of lands belonging to said
ward Dec^r 21 1847 Stephen Estlin

No 3

J. McCall
Guardian

E. M. Wright

Workers

\$3.00

The undersigned appeared and sworn
to appear the Real Estate belonging to
him and his right a minor and ordered to be sold
by the County Court of Jefferson County did also
and appear the following to wit
152¹⁰⁰ acres SE 1/4 of T¹⁰ N¹⁴ E 1/4 of SE 1/4 of
NE 1/4 quarter of Section 13 Township 42 Range
3 East at and for the price and sum of one
dollar and fifty cents per acre.

Given under our hands this 21st December
A D 1874.

662 1/3
83 1/4
1000

Stephen Ashorn

Wm. H. Gable
mark

James M. Miller

Filed Dec 22^d 1847
J. S. Alford
clerk