

Jefferson County Circuit Court
Case Files - Civil

Box

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Nov 1867 - No. 97

Shypek, Joseph
vs

Braz, Mathias

Ejectment

200 acres in S 23, 26, 28 & 43 & SE,
\$400 damages

Joseph Shypick, ser. p'tiff } In the circuit
v. } Court of Jefferson
Mathias Broz, def'd. } County, Mo.
Novr. Term 1867.

Plaintiff states, that on the eighth day of February 1867. he was entitled to the possession of the following described real estate, situate in the County of Jefferson, State of Missouri, to wit: the North East quarter of the North west quarter of section twenty six and the South East quarter of the South west quarter of section twenty three in Township Forty three of Range five east containing eighty acres, and the undivided one half of the East half and North west quarter of section twenty eight Township Forty three Range five east containing one hundred and twenty acres in all, and being so entitled to the possession thereof, that the defendant afterwards, on the ninth day of February 1867. entered into such premises and unlawfully withholds from the plaintiff the possession thereof

to his damage in the sum of four hundred dollars, He further avers, that the monthly value of the rents and profits of said premises is twenty dollars, Wherefore he demands judgment for the recovery of the premises and four hundred dollars damage for the unlawfully withholding of the same from the plaintiff and twenty dollars for monthly rents and profits from the rendition of judgment until the possession of the premises is delivered to plaintiff and for other proper relief.

Henry F. Ahrens
Attorney for plaintiff.

For the Defendant
Leamity, Leamity
Leamity.

Joseph Shyppack
ver. defts. plffs
no.

Matthias Broz
defdt.

Petition.

Notam in ex parte.

1310 by plff.

Filed Sept 10 1867.
E. A. Honey Clerk
By C. J. Moore Deft.

1310 by plff.

THE STATE OF MISSOURI, } SS.
COUNTY OF JEFFERSON.

THE STATE OF MISSOURI,

To the Sheriff of the County of Jefferson—Greeting:

We command you, that you summon *Mathias Broz*

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 *First* Monday after the
~~fourth Monday~~ of November next, then and there to answer unto
Joseph Shypek Sr

upon his 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 hereunto affixed, at office in Hillsboro, this
Eleventh day of *September* A.D. 1867,

Elias F. Honey
Clerk Circuit Court.
By *Charles J. Horne* Deft

21097

26 TO 23

JEFFERSON CIRCUIT COURT.

November Term, 1867

David Haycock

vs Edmund

Mathias Broz

Original

John Williams
Sheriff fee \$1.00

I Executed this Writ in Jefferson County Mo on the
3rd Day of October 1867 on Mathias Broz
By Leaving a true copy of this Writ and Petition
at his usual place of abode with a white
Person of his family over the age of fifteen
years
John Williams Sheriff

Joseph Shyack }
 vs }
 Mathias Brey }
 In the Circuit }
 Court of Diff. }
 County of }
 Nov. Term 1867.

Matthias Briz, defendant in this suit,
states that on the _____ day of _____ 186-
he executed a certain deed of trust
in favor of the plaintiff to secure the
sum of — dollars — days after date,
upon the property described in the
petition of the plaintiff, that
afterwards & at some time prior
to the _____ day of February 1867, the
said plaintiff caused the real
estate above mentioned to be put
up and sold without giving the
~~legal~~ notice required by said deed
of trust, and without giving sufficient
notice, and at such pretended sale
the said plaintiff became the
purchaser thereof, that afterwards
to wit on or about the 21st day
of June 1867 said plaintiff brought
an action upon Justice H. M. Parker
for the forfeiture of said premises
against this defendant, that on
said last day above named, the said

plaintiff and this defendant had a settlement of all matters in dispute between them invalably in said writ and by way of compromise, entered into an agreement in words and figures as follows.

"It is agreed that Matthias Brown is to pay to Joseph Schuyler Sr. on or before the 13th day of July next seven hundred and sixty dollars and the said Schuyler is to make to said Brown a writ claim and to the land bought by him at trustees sale on Day of July 1867 and the same sold for taxes and redeemed by said Schuyler this June 21st 1867

(signed)

J. A. Beal Atty
for Jos. Schuyler Sr.
P. Popkin Atty
for Matthias Brown

Defendant further states that he did on or before the 13th day of July 1867 get the money above named to wit \$760 and sent a man to pay the same to the plaintiff, and that said plaintiff refused to take said sum or to make to said defendant a writ claim and as

above agreed upon.

Defendant avers that the said sum of \$760, was made up of the amount which defendant was then owing on the said deed of trust, and the amount of taxes which had been paid by said Plaintiff to redeem the land from the tax sale of said and the costs in part which had accrued on said pretended sale under said deed of trust & upon said protest.

Plaintiff avers that the pretended sale under the deed of trust, and the said tax sale were illegal and void and of no effect, that the same were not in conformity to law nor the requirements of the deed of trust aforesaid.

~~Plaintiff~~ Defendant prays the Court to allow him to redeem said land from and under said deed of trust, and in conformity with the terms of the above agreement and for this purpose he has bring into Court the said sum of \$760 heretofore tendered and further prays the Court to set aside said deed aforesaid under the pretended sale aforesaid and said tax and or compel

The said plaintiff & convey to this
defendant said land by Quit Claim
and as agreed upon as aforesaid -

Defendant therefore says that said
plaintiff was not on the 8th day of
July 1864 nor at any other time entitled
to the possession of said real estate,
and denies that on the 9th day of
July 1864 or at any other time ~~entitled~~
unlawfully withheld from the plaintiff
the possession of said premises to plaintiff
damages in the sum of \$400 or any other
sum and also denies that the monthly
rents and profits of said premises is
twenty dollars.

Wherefore defendant asks judgment
for costs.

D. Perkins atty
for the Deft

Joseph Henry Beck Sr
as
Weather's Press.

Independent Answer
~~to~~ Editor's

Filed Nov 14th 1867
J. H. Henry Esq

Joseph Shyrock, } In the Circuit Court
vs. } of Jefferson Co. Mo.
Matthias Braz } May Term 1868.

Narr on this day comes plaintiff
and demurs to the answer of defen-
dant for filed Mar. 14th 1867. in the
above case, for the following reasons:
1st the defence, stated in the answer, is
demurrable on account of the duplicity
of its contents, in this, that it contains
two causes of defence, each of which, if
sustained, would bar plaintiff action,
2^{ndly} because defendant cannot in the same
answer rely upon the insufficiency and
illegality of the trustee's sale, therein men-
tioned and also set up by way of
defence a written agreement between the
parties, such as is described in defen-
dant's answer
3^d because the two defenses in the answer are entirely inconsistent.
Wm F. Ashness
Atty for petff,

Joseph Shylock
vs
Matthew Bray,

~~Plaintiff~~
Defendant of both
to defendant answer.

Dated May 12th 1865,
J. Stoner & Co.

Joseph Shypeck, ex. plaintiff, } In the Circuit
against } Court of Jeffer-
Mathias Braz, defendt. } son Co. Mo,
Novr. Term 1867.

Plaintiff in replication to the answer of defendant, filed November 14th 1867,, admits, that on the 16th day of Novbr. 1864. defendant executed a certain deed of trust ^{to Joseph Shypock, jun., as trustee,} in favor of plaintiff upon the real estate, described in plaintiff's petition, to secure the payment of a promissory note for six hundred dollars, made by defendant to plaintiff ^{order} on said 16th day of Novbr. 1864. and payable one year after date, and plaintiff also admits, that on the 7th day of February 1867. he caused the said real estate to be sold, and that at such sale he, plaintiff, became the purchaser thereof, but plaintiff denies, that he did not give the notice required by said deed of trust, and that he did not give sufficient notice and that the sale was a mere pretended one, Plaintiff says, that the notice of the sale of said property was given in every respect in accordance with the conditions and provisions, contained in said deed of trust, that the ^{sale} was properly

in accordance with the provisions in said deed of trust had and conducted, and that plaintiff became the bona fide purchaser of said real estate at said sale.

Plaintiff also admits, that at the time mentioned in the answer of defendant, the agreement, of which a copy is contained in said answer, was entered into between plaintiff and defendant, but plaintiff positively denies, that on or before the 13th day of July 1867. (the time stipulated in said agreement) the defendant ~~got~~ sent a man with \$760. to plaintiff, to pay the same to him, and that plaintiff refused to take said sum or to make to defendant a Quit-claim deed, as agreed upon. Plaintiff states, that he was always ready and willing, to perform the agreements, referred to, which he entered into, on his part, but that defendant has always neglected and refused to perform the agreements on his side, that defendant has not complied with the condition precedent, in said agreement, that he has not on or before the 13th day of July 1867, offered or tendered in person or through others the sum of \$760. stipulated in the agreement or any other sum.

Plaintiff repeats his averment, that the above said sale under the above mentioned deed of trust, as well as the tax-sale referred to in defendants answer, were legal and binding and effective sales, that the same were in conformity to the requirements in said deed of trust and in conformity to law, and plaintiff says, that the defendant, not having fulfilled the condition precedent, in said agreement, entered into on his part, or offered to fulfill the same, cannot now require the plaintiff to fulfill the same by giving him a quitclaim deed.

And in further replication plaintiff repeats his statements in his petition, and asks judgment as therein asked.

Henry F. Ahlness,
Atty for petff.

Joseph Shyrock
Senr, Perth,
"
Matthew Bros,
Leeds.

Representation
of Journalists
at Leeds' answer

Bills Mar 27 ~ 1868,

E. J. May Clerk

476, 489, 490, 526,
538, 434.

Left Instructions

The defendant asks the Court to declare the law to be that as the plaintiff has failed to show a perfect legal title from the United States down to the plaintiff he cannot recover in this action.

That

If the Court should find from the evidence that the agreement ^{set forth in defendant's answer} ~~made in evidence~~ was entered into for the purpose of showing the indebtedness of the defendant and for the further purpose of securing that indebtedness then the transaction was a mortgage and the defendant had a right to redeem said land on payment of said sum of money with interest

That the plaintiff

Refused

Refused

Wm. H. H.

Wm. H. H.

Wm. H. H.

Joseph Shuppek, Plaintiff
vs
Mathias Bros, Defendant } In the Jefferson
Circuit Court,
W. Term 1868.

Now at this day Comes said Defendant
moves the Court to set aside the finding
& judgment of the Court in this case
for the following reasons -

1. Because the finding should have
been for Defendant.
2. Because the judgment should
have been for Defendant instead
of Plaintiff.
3. Because the Court refused proper
instructions.
4. Because the Court gave improper
instructions.

P. Pipkin
Atty for Defendant.

Joseph Dyfauell

21

Mathias Bruce

Motion for New
Trial.

Filed Nov 28th 1868,
G. F. Mcnary CLK

Shypek } B5.655. Nov 28 1888.
 Bros.

\$ 84.00

Honey CLK, cap feb, ⁵⁰ - ⁵⁰ - files ³² dock ¹⁰	\$1.40
answer ²⁰ Semur rule ²⁰ Rep ²⁰ motion ²⁰ trial ²⁰	1.00
rule on motion ²⁰ sub 2 cont, ⁵⁰ - sub ³⁵ " hgt. ²⁰	1.35-
org ²⁰ issue joined ²⁵ " est filing of ans ²⁰ leave to withdraw ²⁰ Rep	85
leave to refile rep ²⁰ making cost, ⁴⁰ " 4 B 10	70
~~leave to~~ est appl. to Dist ct, ³⁵ - org ²⁰ indexes, ⁴⁵ -	~~1.00~~ ~~1.50~~
with & copy ^{41.10}	1.10
John Williams Sheriff Serv Sept. ~~100~~	1.00
Calls,	.20
	<u>1.20</u>
	8.80
	3.00
	<u>11.80</u>

Amount paid by Plaintiff

Situate in Jeff Co Mo

North, the N E q^r of the N W q^r Sec 26,

The S E q^r of the ~~N~~ W q^r Sec 23,

Tract 43, R 3 E Cont 80 acres

and the undivided half of the E 1/2 of

N W q^r, Sec 28 Tract 43, R 3 E

Cont 20 acres and being as the

1/2 undivided as aforesaid Cont 60 acres

Recorded in the Records office

of Jeff Co Mo in Book 'R' page 237

J. Fine Fine
 Fine Fine
 Fine